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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEAVION JAHQUWAN BURGESS,

APPELLANT

APPELLATE CASE NO. 2022-001092

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT #20(A) – SURVEILLANCE TAPE VIDEOS

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1 the death.

2 So, he died of complications of cervical
3 spine injury due to gunshot wound to neck.

4 Q All right, thank you.

5 Now that the lights are up a little bit, I'm
6 going to ask you to repeat that for us and a little
7 bit closer to the microphone.

8 A Okay.

9 Q What did you determine as to the cause of death
10 for Quinton Ventress?

11 A Complications of cervical spine injury due to
12 gunshot wound to neck.

13 Q And your opinion on the manner of death?

14 A Homicide.

15 Q Now, we know -- well, at this point -- this
16 autopsy, when was this performed again?

17 A September 18, 2020.

18 Q All right. And Quinton Ventress was shot
19 April 3rd, 2020.

20 Can you help us understand how you reached
21 your opinion that five months later it's a homicide?
22 Help us understand.

23 A Yes. So, because he was basically unable to
24 move, he was dependent on a respirator for basic
25 bodily functions. And, you know, the logic tells

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1 us that, but for having sustained the gunshot
2 wound, such as he did, to the neck, which resulted
3 in his being a quadriplegic, he would not have
4 developed the pneumonia and body infection that he
5 developed without the gunshot wound.

6 So we're not saying it would be guaranteed
7 that he would have been alive. Maybe he would have
8 died of something else, potentially. But, you know,
9 the cause of death is directly traceable to his having
10 sustained the gunshot wound in early April.

11 Q Thank you, doctor.

12 MS. CAMPBELL: That's all.

13 THE COURT: Thank you.

14 Mr. Lee, cross-examination.

15 MR. LEE: Very briefly.

16 CROSS-EXAMINATION

17 BY MR. LEE:

18 Q Did you have any legal education training?

19 A I do.

20 Q Yeah? What do you have?

21 A When I graduated from college --

22 Q Uh-huh.

23 A -- I went to law school, thinking that's what
24 I wanted to do at the time.

25 Q Okay.

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1 A And I completed law school and practiced law
2 for approximately five years before going to
3 medical school.

4 Q Well, that was a good decision. So you got both.

5 A That was a long time ago.

6 Q I hear you. The reason I ask you that is because
7 you said that the cause of death was deemed to be
8 homicide. That's a medical determination, not a legal
9 determination, correct?

10 A Yeah, that's correct. So it's a -- it's what
11 we call medical legal determination.

12 Q Yeah.

13 A So, we have various choices on -- we only
14 basically have five choices on the manner of the
15 death. A natural, that would be if somebody died
16 of natural disease like a heart attack or cancer.

17 Homicide, which it basically means death at
18 the hands of another. It doesn't imply any kind of
19 legal responsibility, but it's death at the hand of
20 another. It's not a legal determination.

21 Q And it certainly doesn't foreclose self-defense,
22 for example, or other things like that, correct?

23 A Absolutely not.

24 Q Okay.

25 A And then there's other -- the other manners

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1 that we have to choose from are suicide. That
2 would be if somebody shot themselves or took drug
3 overdose purposely because of depression.

4 Then there is accident. So if somebody is
5 struck by a car or they fall and hit their head and
6 then get a head bleed, those are the accidents.

7 And then finally, the last manner we have to
8 choose from is undetermined. Sometimes, even after a
9 complete investigation and autopsy, we don't
10 necessarily know. You know, for instance, let's say
11 somebody took -- had a drug overdose, that was a very
12 high level of drugs and the person really was, kind
13 of, despondent, but we're not sure if it was
14 intentional death, or just by accident, then we might
15 say undetermined.

16 So those are the choices. I mean, in this
17 case, the conclusion is -- or simply that it's a
18 homicide because it was at the hands of another
19 person.

20 Q All right. That's all I have. Thank you.

21 THE COURT: Any redirect?

22 MS. CAMPBELL: No, Your Honor.

23 THE COURT: All right. Doctor, thank you
24 so much for coming down. Have a safe trip back.

25 MS. CAMPBELL: Thank you, Your Honor.

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1 The State rests.

2 THE COURT: All right. Thank you.

3 Ladies and gentlemen, the State has
4 rested, and, as a result, it's actually a good
5 time to take a break for numerous reasons. One,
6 it's 12:15, about time to eat lunch. Two, there's
7 going to be several matters of law that I now need
8 to take up outside of your presence. So what I'm
9 going to ask you to do, ladies and gentlemen, if
10 you would go ahead and enjoy your lunch and be
11 back in your jury room probably at 1:30. I'll see
12 you back at 1:30.

13 Again, the fact that the State has
14 rested -- do not talk about the case. I'm going
15 to tell you when you're supposed to do that.

16 All right. Have a good lunch. Thank
17 you.

18 (Jury exits the courtroom at 12:14 p.m.)

19 THE BAILIFF: Jury is clear, Your
20 Honor.

21 THE COURT: All right. Thank you. All
22 right. The State has rested. Do we have any
23 motions from the defense?

24 MR. LEE: Yes, Your Honor.

25 THE COURT: I'm happy to hear from you,

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1 sir.

2 MR. LEE: Judge, at this point, we would
3 make a motion for a directed verdict under Rule 19
4 of the rules of criminal procedure.

5 As you know, the standard is whether the
6 existence, not the weight, taken in the light most
7 favorable to the State, of either any direct evidence
8 or substantial circumstantial evidence as to each
9 element of the crime.

10 So taking them one by one, the murder
11 charge as to Quinton Ventress as the victim, it's
12 our position that the State has not established or
13 presented any testimony -- admissible testimony
14 establishing malice, which obviously malice
15 aforethought is a requirement for murder. The old
16 school inference of malice from the use of a
17 deadly weapon, as you know, is gone from Belcher
18 and Burdette and that line of cases, so there can
19 be no inference taken from the use of a weapon.
20 The allegation was it was a gun.

21 And for those reasons, I would
22 respectfully -- as to the murder case,
23 respectfully ask for a directed verdict of not
24 guilty.

25 I don't know if you want her to respond

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1 to that, or you want me to go to the second
2 charge.

3 THE COURT: Go ahead to the second,
4 sir.

5 MR. LEE: Judge, on the second charge,
6 that is attempted murder of Zachary Wilson --
7 Zachary Wilkerson. And attempted murder is
8 codified. In 2010, they had omnibus crime bill
9 and they took away the old common law assault and
10 battery and they finally codified for us and in a
11 code. And they also, at that time, created an
12 amended murder charge. In the past, they say
13 typically in a common law assault and battery with
14 intent to kill, but, nevertheless, 16-3-29 is the
15 statute on attempted murder.

16 THE COURT: 16?

17 MR. LEE: 16-3-29.

18 THE COURT: Thank you.

19 MR. LEE: I have copies, if you'd like me
20 to pass them up. And it says, a person, who with
21 intent to kill, attempts to kill another person
22 with malice aforethought, either express or
23 implied, commits the offense of attempted
24 murder.

25 So, interpreting that statute and that

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1 charge our courts have said that attempted murder
2 is clearly a specific intent crime and there was a
3 requirement of express malice. And I have the
4 cases here. I wasn't quite ready to pass them up,
5 but I will. I believe we're looking at *State vs.*
6 *Campbell*, 437 S.C 528. I can pass up a copy in
7 just a second. I'll read from that real quick.
8 I'll submit to you that *State vs. Campbell*
9 indicates that it must prove specific intent as
10 well as express malice in order to prove an
11 attempted murder charge.

12 There is no testimony at all, Judge,
13 about a specific intent. And, again, it's
14 arguably more difficult to prove an attempted
15 murder than a murder, because on an attempted
16 murder you have to show the person charged had the
17 specific intent to not only kill the person but to
18 kill that person. And there's been no testimony
19 at all about -- the only testimony is that
20 Zachary Wilkerson was in the back seat of this car
21 when it was fired into. There's a question of
22 whether he can even be seen by the shooter.

23 And so, it's kind of -- I would liken it
24 to the cases where the unknown pedestrian gets hit
25 in some type of crossfire. That is not an

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1 attempted murder case, because there no specific
2 intent.

3 And also the requirement of express
4 malice is certainly not met in this case. There
5 has been no testimony at all of any type of
6 preplanning, premeditation, anything like that.
7 From looking at the video, it seems apparent it's
8 something that's very spontaneous that happened.

9 So, if there is not that express
10 malice -- I'm actually looking for the charge that
11 you-all -- that we used before. But any express
12 malice has to be something that is overt,
13 something that is more -- it's certainly not
14 inferred malice.

15 Your Honor, according to the proposed
16 charge that was sent to us, on page 31, "Express
17 malice is shown when a person speaks words which
18 express hatred are ill will for another, or when
19 the person prepared beforehand to do the act which
20 was later accomplished. For example, lying in
21 wait for a person or any other acts of preparation
22 going to show that the deed was within the
23 defendant's mind would be express malice." And
24 that is from the proposed charge that we talked
25 about briefly yesterday, and I think it came from

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1 another case that we tried before.

2 I can -- I wasn't expecting to pass these
3 cases up. I'm certainly willing to -- happy to
4 get them together and get them to you. The cases
5 that I brought were *State vs. Michael Juan Smith*,
6 *State vs. Montrelle Campbell*, *State vs. Rodney*
7 *King*. The King case, I believe, is the first one
8 that said, hey, there is a specific intent on
9 attempted murder.

10 So, for those reasons, we would
11 respectfully ask for a directed verdict on the
12 attempted murder.

13 To piggyback both of those, if one -- if
14 both of them are, obviously, granted, then the gun
15 charge would necessarily fail as well because they
16 have not been convicted of a requisite violent
17 crime as the gun charge requires.

18 THE COURT: All right. Solicitor.

19 MS. CAMPBELL: Thank you, Your Honor.

20 The evidence in the record at this time,
21 Your Honor, is clear from the testimony of
22 Carletha Benning and from the surveillance video.
23 Both direct and circumstantial evidence bear upon
24 the decision.

25 The defense attorney has brought up the

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1 issue of malice. Defendant's own statements, his
2 own words, *"I had to do what I had to do. I had*
3 *to get them boys,"* that's it right there. That
4 testimony from Carletha Benning as to when she
5 asked him why, *Why did you do this? I had to get*
6 *them.*

7 The video shows the defendant, he sees
8 them, he forms his decision to kill them, pulls
9 out his gun, points his gun, fires his gun five
10 times, and tells her he meant to do what he did.
11 To get them.

12 In terms of the -- and the defense
13 attorney referenced the jury charge, that applies
14 to both; the murder and the attempted murder.
15 Your Honor, I know, is familiar with your charges.
16 Not only can you look at that evidence, the
17 conduct, really, total disregard for human life.
18 That is also a factor to be considered when you're
19 talking about malice. And clearly based on the
20 surveillance video, that's also in evidence.

21 And so the State takes the position that
22 we certainly, through the evidence now before you,
23 have met the burden that we are required to meet.
24 And the evidence now in the record is nothing in
25 terms of self-defense, which would be referenced

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1 as well. Zero.

2 So what we're working with is the State's
3 case, void of any justifications other than, *I had*
4 *to get them.*

5 Thank you, Your Honor.

6 THE COURT: All right. And you were
7 about jump up.

8 MR. LEE: Yeah, I stopped myself.

9 THE COURT: That's all right. Hold on.
10 Go right head.

11 MR. LEE: I think what Traci was
12 remembering was Carletha Benning's testimony
13 pretrial, not at trial, because it was different
14 as to what was allegedly said. And this, *I had to*
15 *do what I had to do*, whatever, was said at
16 pretrial. I was trying to find my -- I wrote
17 exactly what she said at trial. She said
18 something about, *Them boys shouldn't have shot up*
19 *my mama's house.*

20 So I find it -- I don't get the argument
21 that to prove express malice aforethought we're
22 going to use a statement that happened after the
23 crime. I don't think that makes sense to say,
24 well, because of what was said afterwards, that
25 means the fact -- that he had malice in his mind

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1 and in his heart before it started. I mean that
2 could mean a lot of things.

3 THE COURT: A statement that was made
4 less than 10 seconds after?

5 MR. LEE: Yeah. I don't think --

6 THE COURT: If he made it while he was
7 doing it, then it would.

8 MR. LEE: We're saying --

9 THE COURT: Hold on. Hold on. But
10 you're saying because it was stated, perhaps, no
11 more than 10 seconds later, than it's no good. Is
12 that what you're saying?

13 MR. LEE: I'm saying that they have to
14 show malice aforethought.

15 THE COURT: Right.

16 MR. LEE: Granted, it can exist a
17 microsecond before the actual act.

18 THE COURT: Yeah.

19 MR. LEE: But they're attempting to do
20 that based on a statement that was made postact.

21 THE COURT: Right.

22 MR. LEE: And the statement itself is
23 very inconsistent with him having an intent to go
24 do anything. I mean, watch the way he walks out
25 of that car. He's waiting for the car to go by.

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1 I mean, he's looking down. I mean, his body
2 language certainly never would suggest that he's
3 intent on going up there and popping a cap in
4 somebody that he -- and Carletha Benning said, *We*
5 *didn't go there to do anything.*

6 I just think him saying -- him saying
7 whatever he said about them shooting up his mama's
8 house, I don't think is sufficient to establish
9 any type of express malice. I think it has to be
10 something that's done -- evidence of what he did
11 leading up to it rather than any statement or
12 anything afterwards.

13 THE COURT: Solicitor?

14 MS. CAMPBELL: I just don't think that's
15 the law, Your Honor. She testified he's saying, *I*
16 *had to do it, I had to get them.* Those are my
17 notes from her testimony during the trial because
18 they were shooting at his mama's house. I think
19 that's clear.

20 I think the State has shown, again,
21 through the conduct that he displayed showing
22 total disregard for human life, shooting five
23 times into a vehicle where he sees people, you
24 can't think but anything other than you're going
25 to kill somebody, and he did that.

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1 And, again, I'd say we met the burden.

2 MR. LEE: May I add one thing?

3 THE COURT: Hold on. Yeah, I'll be happy
4 to. Yes.

5 MR. LEE: I'd just like to add to that.
6 I'll follow it up when we talk about the jury
7 charge and everything else. I don't think it's
8 appropriate at this step or in charging the jury
9 or for the jury to make a determination for the
10 State to attempt to suggest there can be
11 transferred malice. Meaning, if you have malice
12 towards one person, in this case it would be
13 Quinton Ventress, and somebody else gets injured,
14 or, you know, in this case, charged with attempted
15 murder, you can't have transferred malice.

16 And I think that they are relying on
17 that, because if there was any malice, I believe,
18 it would have to be towards the person that was
19 shot. And just if somebody had been driving down
20 Sea Island Parkway and got hit by a stray bullet
21 in this case, it would not be attempted murder,
22 and there would not be malice present. Again, I
23 just don't think there can be any type of
24 transferred malice from the murder charge to the
25 attempted murder charge from one victim to

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1 another.

2 THE COURT: All right. Well, my notes
3 reflect had to get those boys, with an S, back for
4 shooting at his mother's house. That's what my
5 notes reflect, which I think is substantially
6 similar to what the solicitor mentioned.

7 And so I think that she did indicate in her
8 testimony in trial that when asked why, he had to get
9 those boys back for shooting at his mother's house.

10 I think I'm looking at the existence of
11 evidence at this point. I think evidence does
12 exist. And, therefore, I understand, but I do
13 agree -- I mean, we're talking about a statement
14 that he made to a witness who testified under
15 oath, and that statement couldn't have been more
16 than 10 seconds after the shooting. He ran back
17 to the car, got in, and, at that point, before he
18 even told her to pull off, I believe -- he may
19 have told her to hurry up and drive off. And, at
20 that point, she asked him.

21 I think that statement is close enough,
22 sir, at this point, given the existence of
23 evidence, I'm going to respectfully deny your
24 motions. All right?

25 MR. LEE: Yes, sir.

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1 THE COURT: Are you ready for me to
2 address your client concerning his right to
3 testify?

4 MR. LEE: Your Honor, we'd ask to be
5 allowed over the short lunch break to make that
6 decision.

7 THE COURT: All right. What about
8 charges? Have you-all had a chance to look at all
9 that. Because what I'm trying to do is, I'm
10 trying to plan the afternoon because, depending
11 on -- I mean, it's possible we could move forward
12 and the jury gets the case this afternoon, or it
13 could be possible we come back and argue and
14 charge in the morning, but I'm trying to -- I'll
15 have you come back here -- come back at 1:30, and
16 then I will question him as to whether he wants to
17 testify and we'll go from there. Okay?

18 MR. LEE: Yes, sir.

19 THE COURT: That's what we'll do. All
20 right. So I'll see everybody back at 1:30.

21 MR. LEE: Thank you, Judge.

22 (A break was taken from 12:32 p.m. to 1:27 p.m.)

23 THE BAILIFF: All rise. Court is in
24 session.

25 THE COURT: All right. Is the State

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1 ready to proceed?

2 MS. CAMPBELL: Yes, Your Honor.

3 THE COURT: Defense?

4 MR. LEE: Yes, sir.

5 THE COURT: I submit, sir, that now would
6 be the time for me to place your client under oath
7 and explain to him his rights as it relates to
8 testifying. Does that meet with your approval?

9 MR. LEE: Yes, sir. If I could be heard
10 on one thing before we get to that point. I've
11 never in 28, 29 years asked a judge this, but I
12 have spoken with Deavion, and part of his
13 decision, Your Honor, may hinge on whether or not
14 he is going to get a self-defense charge as it is
15 right now without his testimony. I don't know --
16 I don't know if you can tell us that or whether
17 the State objects to that -- and I don't know if
18 you can answer that question. If you can't answer
19 it, he'll have to make his decision without having
20 that in mind, but I certainly think that's a
21 relevant inquiry at this point. I told him that I
22 would, at least, ask you. I've never asked that.
23 I don't know.

24 THE COURT: Well, let me ask you this,
25 Mr. Lee --

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1 MR. LEE: Yes, sir.

2 THE COURT: -- I would take it that you
3 would be arguing for a self-defense charge.

4 MR. LEE: Yes, sir.

5 THE COURT: And let me just ask, what
6 would the State's position be on self-defense?
7 And I don't need a full argument. I'll get to an
8 argument, I just -- because if you're going to
9 say, we don't care, then there's your answer. If
10 you say that you would be against that, then I
11 want to hear -- then I'm going to hear arguments
12 on it. So what would be your position?

13 MS. CAMPBELL: The State is against a
14 self-defense charge.

15 THE COURT: All right. And that's fine.
16 Thank you. And I'm going to give everybody an
17 opportunity to voice their argument, but I wanted
18 to just see. Because, gosh knows, the other day I
19 was about to make a ruling, and, all of a sudden,
20 Mr. Lee -- you-all worked out an agreement before
21 I could even make a ruling. And, you know, so
22 that's why I wanted to make sure where we were.

23 MS. CAMPBELL: Did the Court need to be
24 heard -- I know you asked from the State if we had
25 a position on this request from the defendant?

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1 Did you need to be heard from us on our position
2 on that, on the request to disclose the Court's
3 ideas on self-defense at this juncture?

4 THE COURT: Okay, yeah. Let me hear you
5 on that.

6 MS. CAMPBELL: Okay.

7 THE COURT: Fair enough.

8 MS. CAMPBELL: Your Honor, the State
9 would be opposed to the Court putting in another
10 factor that is outside the bounds of the law on
11 the advisement of the defendant on whether or not
12 he should take the stand. We feel that falls
13 outside the scope of the factors that the Court
14 has said are permissible for the defendant to
15 consider information coming from the Court. We
16 think it should remain as-is as directed by our
17 law.

18 Thank you.

19 THE COURT: Let me hear from you.

20 MR. LEE: Judge, like I said, it's
21 just -- it's never come up before in a case that
22 I've had, and I've done plenty of self-defense
23 cases. And I think -- I don't have a case to
24 say, hey, Judge, we give these advisory opinions
25 on what his thoughts are at the time. But, you

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1 know, the general purpose of a trial is fairness,
2 making sure everybody gets a fair shot on both
3 sides. And the decision to testify or not testify
4 when you boil it down to its basic elements is
5 probably the most important decision that the
6 defendant is facing -- is forced to make -- during
7 the trial of this case -- is whether or not to
8 testify.

9 And we fully understand and I've explained to
10 Deavion the pros and cons of testifying. That he has
11 the absolute right not to testify and that you would
12 specifically instruct the jury not to hold that
13 against him.

14 The solicitor could argue that, you
15 know --

16 THE COURT: Of course.

17 MR. LEE: Of course. So I've explained
18 all that to him. But, you know, it's still a
19 tough decision. And I guess the argument is just
20 having the basic fundamental fairness, due process
21 just trying to -- when he's making this important
22 decision, just do everything that we can as a
23 group, even though we have different positions and
24 arguments, is to provide as much information so
25 that he can make as informed of a decision as he

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1 can under the circumstances.

2 And that's our position. So I guess it will
3 just be based on a basic due process of -- you know.

4 THE COURT: Well, wouldn't everybody
5 always like to know that. I mean, I don't know --
6 I understand -- I'm not being smart. I'm just
7 asking. From your perspective it's the first time
8 you've done this, or have asked for this, is what
9 your telling me.

10 MR. LEE: Yes.

11 THE COURT: What I'm wondering is, why
12 wouldn't everybody want to do that every time to
13 then know ahead of time whether or not it's going
14 to be the case.

15 MR. LEE: Maybe, like me, they haven't
16 thought of it. I mean, I just think this is a
17 unique situation. I mean, I think --

18 THE COURT: Well, Solicitor --

19 MR. LEE: I think of new stuff all the
20 time. In all candor, I'm just putting it out
21 there. I don't know if you can even do it, quite
22 frankly. But I want to make a record of it and
23 try to get him as much information as possible
24 before he puts up his case.

25 THE COURT: Let me ask you this: Have

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1 you ever had a charge conference before the
2 defendant makes the decision whether or not to
3 testify?

4 MR. LEE: Charge conference before.

5 THE COURT: Yeah, in other words, going
6 over the charges. Because, in one respect, going
7 over these charges and deciding whether or not a
8 charge applies, I would think, basically, that's
9 what we're talking about here, right? Correct?

10 MR. LEE: Right.

11 THE COURT: So then I guess what I'm
12 asking is, can we have a charge conference before
13 he makes a decision to testify? Because then, all
14 of a sudden, are we just picking and choosing
15 which charges we're going to talk about until
16 afterwards? I don't know. I'm asking. And I'm
17 going to hear from the State in just a second.

18 MR. LEE: I mean, it's a good question.
19 I'm not trying to plow new ground here, but, I
20 mean, if you're ever going to have a pre-trial --
21 a pre-decision charge conference, this is the kind
22 of case you would do it.

23 I mean, the State has rested. All the
24 evidence has come in. And, you know, the defense
25 may or may not put up -- it wouldn't make sense to

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1 have a charge conference last night, obviously,
2 but, you know, I don't think it would hurt to do
3 that. We've been looking at the charges.

4 THE COURT: All right.

5 MR. LEE: I mean, we asked Monica to send
6 us stuff.

7 You know, so -- and, again, I realize the
8 charge has to reflect what the evidence that's
9 come in dictates. And I'm not trying to say the
10 evidence -- I'm not trying to do it the reverse
11 way by saying, this is what I need to do to get
12 the charge.

13 THE COURT: All right.

14 MR. LEE: I am kind of saying that,
15 but -- you know.

16 THE COURT: I mean, I understand what
17 you're saying, sir.

18 MR. LEE: Yeah.

19 THE COURT: Mr. Lee, you're a good
20 lawyer. I understand what you're saying.

21 Let me hear from you, Miss Campbell, one
22 more time and then I'll make a decision as it
23 relates to this matter. Yes, ma'am.

24 MS. CAMPBELL: Thank you, Your Honor.
25 I'd say to the Court, first, it's an absolutely

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1 correct and insightful observation about our
2 situation with the jury charges.

3 The jury charge conference that occurs at
4 the end of the entire case and that is when the
5 defense rests. It would be improper -- because,
6 again, we have the right, both the State and the
7 defendant to make our argument to the Court, and
8 we have not done that yet. So that would be
9 asking the Court to form an opinion prior to
10 argument from the parties.

11 So, again, we would say it would be
12 impossible to advise the defendant of the Court's
13 position.

14 THE COURT: All right. Go ahead.

15 MR. LEE: We can make an argument about
16 it and charge him on it right now.

17 THE COURT: Hold on one second.

18 MS. CAMPBELL: But I can't --

19 THE COURT: Hold on.

20 All right. We'll be at ease.

21 (A break was taken from 1:41 p.m. to 1:48 p.m.)

22 THE BAILIFF: All rise. This court is
23 back in session.

24 THE COURT: Mr. Lee, I've given it
25 deliberate and careful consideration to your

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1 request. I'm going to grant your request to this
2 extent. You know, I guess you're going to argue
3 now as to why self-defense should be allowed and
4 then the solicitor would respond, and from there
5 then you want to know what my ruling is going to
6 be; is that right?

7 MR. LEE: That's correct.

8 THE COURT: And you want to know that
9 now?

10 MR. LEE: Yes, sir.

11 THE COURT: All right. I'm going to
12 allow you to make your argument, sir.

13 MR. LEE: Okay.

14 THE COURT: And then I'm going to allow
15 the solicitor to respond. And I understand that
16 may be over the solicitor's objection. I
17 understand and appreciate that, but I'm going to
18 go ahead and allow you to make your argument now,
19 sir. Go right ahead.

20 MR. LEE: I'll argue just as if he
21 decided not to testify and we'll have the same
22 conference anyway. I understand.

23 Judge, I think that -- first of all, the
24 standard, as you know, if there's any evidence
25 supporting a charge -- or a request charge -- a

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1 request to charge, the Court is required to do it.
2 Particularly, that is particularly significant if
3 it is a major charge, major point of contention,
4 or, you know, major defense, which, obviously,
5 self-defense is probably the most powerful of any
6 of those as far as whether it comes in or not and
7 the significance of it coming in.

8 The thing that makes self-defense charges
9 different than everything else is that the
10 Constitution of South Carolina says, Judge, you
11 can't charge on the facts. That case law as to
12 every other charge, accept self-defense, says
13 judges do not charge on the facts. Self-defense,
14 *State vs. Starnes*, *State vs. Fuller* has developed
15 and morphed into almost the exact opposite where
16 the court has told judges and lawyers that it's a
17 completely different ball game when it comes to
18 self-defense. And, judges, you need to fashion a
19 case-specific, unique, fact-specific charge on
20 self-defense. Unlike you do for anything else.

21 So I think against that backdrop the
22 courts are saying self-defense is different, be
23 more liberal in allowing of self-defense because
24 it is such an important defense. We're making an
25 exception for it as far as what you can charge.

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1 And I will submit to you that perhaps the rules
2 are a little bit lessened with self-defense
3 whether it's charged or not because they have --
4 they do treat it differently.

5 Again, I still think the standard is any
6 evidence of self-defense, but I think you might be
7 able to twist things a little bit more fact-wise
8 to justify any evidence standard for whether or
9 not Your Honor charges self-defense.

10 So, having said that, under
11 *State vs. Wiggins*, as far as the elements of
12 self-defense -- really four things. One is, that
13 person is without fault in bringing about the
14 difficulty. It doesn't mean that they can't ever
15 have had any disagreements before, but,
16 essentially, the defendant doesn't insert himself
17 and start a fight and insert himself into a fight
18 and as soon as the other person responds, he
19 claims self-defense. That's what bringing about
20 the difficulty would mean.

21 And, clearly, based on what the video
22 shows and everything else, his body language, what
23 you plainly see, where they park, et cetera, he's
24 walking into the store. At some point, he stops
25 when he passes the car that has Quinton Ventress

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1 in it. It has the window down. Smoking -- ashing
2 a blunt, I think is what they said, smoking
3 marijuana. The music loud. No sound on the
4 video. Something made Deavion stop and turn
5 around and look at him. And, in an instant, reach
6 in his waistband and shoot. That is not bringing
7 about the difficulty. So I think, certainly,
8 number 1 is satisfied.

9 Number 2, the defendant must actually believe
10 he was in imminent danger of losing his life or
11 sustaining serious bodily injury, or actually he was
12 in such imminent danger.

13 Obviously, you can't go into somebody's
14 mind, even if they don't testify, but I think, if
15 you look at as to whether or not he was in such
16 imminent danger, I think that there has been
17 evidence that has been introduced through the
18 State's witnesses that he had been, on St. Helena,
19 shot at. He was shot at when he was riding in
20 Carletha Benning's car. She finally agreed to
21 admit that. It was on St. Helena. He was in the
22 car.

23 She testified nobody had any reason to
24 shoot her. They must be shooting him. So he's in
25 danger for some reason, and that's about a week

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1 before this happened.

2 And then I believe there was also
3 testimony that where he was staying, Carletha's
4 mama's house, had been previously shot up within
5 the previous week or two. I think that came in
6 through law enforcement.

7 So he has been shot at in a car, the
8 place where he stays, right by there, has been
9 shot up, and it would certainly be reasonable for
10 him to believe he was in imminent danger.

11 If you're not sure about whether he was,
12 the night of this shooting, April 3, 2020, at his
13 mom's house on Reunion Road, there's a drive-by
14 shooting right by Deavion's mom's house where he
15 often stays and she gets, the back of her car -- a
16 bullet in the back of her brand new Nissan --
17 white Nissan Sentra. So that furthers that he was
18 actually in danger because people were continuing
19 to shoot at him.

20 And then you fast forward two more months to
21 June 12th of 2020, Reunion Road, what's listed as his
22 address is some kind of family gathering. I asked
23 Officer Byrd about this, about the Lawrence Burgess
24 shooting. When there was at that family gathering out
25 there, a truck drove by, fired shots, and Deavion's

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1 father was killed.

2 When Inessa Bryan was talking to Byrd,
3 that's the case she was talking about. Not this
4 one. Byrd showed her some pictures and stuff like
5 that. That's what she was talking about.

6 So this is one where the -- actually
7 being in imminent danger seems to be pretty clear.
8 And I'm not sure how you can actually be in
9 imminent danger and not know it, but I certainly
10 think he knew and a reasonable person would know.

11 And so I think we would satisfy he
12 believed he was in imminent danger of losing his
13 life or sustaining bodily injury, and he was
14 actually. So he's both.

15 Now, if he was in actual such imminent
16 danger, you don't even go down to the third
17 requirement, because the third requirement says if
18 the defense is based upon his belief or perceived
19 imminent danger, then you have to do -- if he has
20 a subjective fear, you have to then say, all
21 right, is it objective? Does a reasonable person
22 under the same circumstances, would they have the
23 same fear and is it reasonable under the
24 circumstances of a man of ordinary prudence,
25 firmness and courage to do what -- to strike the

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1 fatal blow or to -- in order to save himself from
2 serious bodily harm or losing his own life?

3 So, again, I think -- both of those, I
4 think it's either don't even get to number 3
5 because he was in actual danger. If you do want
6 to go to number 3 about objective versus
7 subjective, a reasonable person under these
8 circumstances, which are outlined, would certainly
9 be in fear for his life as Deavion was that day.

10 Now, the fourth one, the defendant had no
11 other probable means of avoiding the danger of
12 losing his own life or sustaining serious bodily
13 injury than to act as he did in this particular
14 instance.

15 This video shows some things, but not a
16 lot. I think that a lot can be gleaned from body
17 language, from reactions and stuff like that which
18 we're forced to do. And I certainly think that he
19 had no other proper means of doing it. It
20 happened very quickly. He wasn't, like, sneaking
21 up on the car. You can tell something stopped
22 him, got his attention, made him turn around, and
23 he really had no choice based upon the person that
24 was talking to him, the person who caused him to
25 turn around.

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1 No, again, there's probably a question,
2 since he had a right to be there, Ventress had a
3 right to be there. It's public property. There
4 also is not -- there's not a requirement for him
5 to retreat. That's *State vs. Fuller*. It says,
6 "If the other requirements for the right to use
7 deadly force and self-defense are satisfied, a
8 defendant need not retreat in order to avoid the
9 need for deadly force if it is not possible or did
10 not reasonably appear possible to retreat without
11 danger of being killed or suffering serious bodily
12 injury." So it says he need not retreat because
13 elements are there.

14 So I think that based upon what we've
15 heard so far and the reasonable inferences that
16 can be gleaned therefrom that if we were going to
17 charge right now I think self-defense would be an
18 appropriate charge, and also think that a lot of
19 the specific charges related to self-defense,
20 which the Fuller and Starnes court have clearly
21 said are okay, are applicable, and I think even
22 gives the jury a better opportunity to have some
23 guidance on what they're supposed to look for.
24 The right to act on appearances, the perspective
25 of the defendant, the reputation of the assailant

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1 if that was applicable, prior instances of
2 violence by the assailant, assailant's drug or
3 alcohol use, you know, multiple shots being fired,
4 and that can be done if necessary.

5 So I think this case is ripe, and, under
6 the circumstances, is a perfect candidate for a
7 self-defense charge and that one is warranted
8 under the prevailing case law in South Carolina.

9 THE COURT: All right. Solicitor.

10 MS. CAMPBELL: Thank you, Your Honor.

11 If I may, I'm going to just take this through
12 the witnesses. The 911 call, zero evidence in term of
13 self-defense. And each one we'll be addressing would
14 be in terms of the defendant's argument.

15 EMS, zero evidence. Mr. Patel, the
16 surveillance video, zero evidence. However, it
17 does speak for itself. And what it speaks is the
18 truth that there are no shots fired from the car.
19 There are no guns in the car that's being shot
20 into.

21 Garcia and Perkins, none, zero, except to
22 say no guns were found on scene. Dr. Rehman, zero
23 evidence. Joe Burnes, zero evidence. Zach
24 Wilkerson, he completely refused a self-defense
25 charge. No guns in the car. No threats made from

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1 the car. Nobody shooting in the car. Josie
2 Maldonado, zero. Carletha Benning, she did admit
3 that her car had been shot at, but she absolutely
4 did not identify Quinton Ventress as the person
5 shooting at her car, wherever it was down on Folly
6 Road. Camille Linnen, zero evidence. Inessa
7 Bryan, zero evidence. Officer Burnes, zero
8 evidence. Sosa, zero evidence. Duncan, zero
9 evidence. Garinger, zero evidence, and
10 Dr. Riemer, zero evidence, and
11 Investigator Duhamel, no guns. Again, no guns.

12 So the defendant talked about one of the
13 factors being that the defendant's father was shot
14 weeks later. You can't even factor that in. That
15 wasn't in existence at the time this was taking
16 place.

17 And there's no evidence on an actual
18 relationship, I mean zero relationship between the
19 defendant and Quinton Ventress or Zach Wilkerson.
20 Zero, none.

21 So, he does say, *I had to get them boys*,
22 he doesn't say who them boys are. They're the
23 boys in that car. That's all we got. So as far
24 as prior difficulties, or anything to do with
25 that, zero evidence as well.

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1 So the State would take the position as
2 we stand here now in the record in the evidence of
3 this case, Your Honor, respectfully, there is zero
4 evidence to support the Court charging
5 self-defense. Thank you.

6 THE COURT: All right. She's looking up
7 something for me concerning a request for a charge
8 of self-defense as it relates to the evidence as
9 it exists now. I've listened to the arguments of
10 defense counsel and also the arguments of
11 Miss Campbell. What I will say is, I think what
12 I'm bound to look at are basically the factors as
13 it relates to self-defense, and I think I was
14 looking at the White case. State v. White
15 basically outlines really the same thing that
16 Mr. Lee went through.

17 First, the defendant must be without
18 fault in bringing on the difficulty. And what I
19 would say is, as it relates to that, okay. I
20 think that -- possibly, I think there may be --
21 the evidence right now may be or it could be
22 inferred from the evidence that's been presented
23 that he was without fault in bringing about the
24 difficulty.

25 But then I got to go to number 2. I

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1 think under number 2 is, the defendant must have
2 actually believed he was in imminent danger of
3 losing his life. So the old school that I went
4 to, and it took a minute to find it. I just
5 looked at the Black's Law Dictionary. What's
6 imminent? What is imminent? Imminent, according
7 to Black's Law Dictionary is, "A danger or
8 calamity threatening to occur immediately.
9 Dangerously impending. About to take place ...,"
10 and then it goes on to say as an example, "The
11 appointment is now imminent."

12 And so what I would have to say is, I
13 don't think there's anything in the record,
14 Mr. Lee, that shows that this was imminent,
15 imminent danger. I think that could he have
16 actually believed he was in danger? Yes, sir, you
17 gave the examples and some of the testimony about
18 some shootings that may have occurred days or -- a
19 few days to a week or more before the shooting at
20 the Tiger Express, but, A, we've heard nothing
21 about guns. There is no evidence about guns in
22 this case. More really, more importantly, I just
23 don't think there is any evidence that your client
24 could have believed that he was in imminent
25 danger.

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1 And, in fact, your argument about how he
2 just casually was walking around the parking lot,
3 going into the store, just a normal day, I don't
4 think that that's imminent danger. I don't think
5 he believe he's in imminent danger.

6 And while -- I don't know what happened.
7 There is no evidence about what happened. He
8 stopped. I'm with you on that. He stopped. Why
9 he stopped, I have no idea. All I know is what
10 that video shows, according to your argument, is
11 that he's bee-bopping up, not a care in the world,
12 look at his body language, go in, that is not
13 somebody who is believing he was imminent danger,
14 and I don't think he was in -- there's no evidence
15 to show at any point that he's in imminent danger.

16 And I think that for that reason alone, I
17 think the self-defense charge fails. You know,
18 the perceived danger, believed he was in fear for
19 his life, you know, maybe you got a better
20 argument as it relates to that, but, again, the
21 casual approach, walking up, you know, just a
22 beautiful spring day going in to buy a cigar.
23 Yeah, I just don't see it as -- I don't see him --
24 I don't think there is any evidence that he is, at
25 that point -- that an objective person would have

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1 been in fear -- I guess, an objective person would
2 have been in fear for their life.

3 Number 4, you know, whether there's a --
4 I'm not going to get into a whole argument about
5 whether there's a duty to retreat as it relates to
6 they were both in a public place, potentially
7 where they had a right to be. You know, amongst
8 other things, there's no testimony at all -- to me
9 there's no testimony at all that he could not have
10 retreated. That he could not have gone and run.
11 That he could have run into the store. He could
12 have backtracked. There is no -- what I'm saying
13 is, there is no evidence as to what he could or
14 couldn't have done. Nobody got out of the car.
15 There's no evidence about a gun being pointed at
16 him. There's no evidence that somebody threatened
17 him. There is no evidence -- there's nothing in
18 the record as it relates to that.

19 Again, I'm not even going to get into the
20 self-defense analysis -- or the 4th factor any
21 further than that as it relates to duty to
22 retreat, because I agree they are both in the
23 public place.

24 But I really think that, for sure on the
25 2nd factor, I believe that fails because I don't

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1 believe he was in -- I don't believe there's
2 evidence to show that he was actually in imminent
3 danger.

4 MR. LEE: And I understand your ruling.
5 And just for purposes of the record, I was not
6 suggesting that necessarily he was in imminent
7 danger when they pulled up to the gas pump and he
8 was walking into the store.

9 But something changed, Judge. And what
10 changed was when he heard or he saw that guy in
11 the car, and that's when the imminent danger
12 began, that's when it was triggered, and that's
13 why he acted the way he did. My argument, if I
14 was unclear --

15 THE COURT: Yeah, but your whole
16 argument, sir, was he was shot at several days
17 earlier. Somebody shot his mama's home. That's
18 what you were talking about under number 2.
19 That's what -- you gave me these examples. I'm
20 writing your notes down.

21 MR. LEE: But I was showing --

22 THE COURT: Hold on. You were talking
23 about why he might think the way he's thinking
24 because of these things. And so that's why -- I
25 mean -- go ahead.

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1 MR. LEE: He'd been shot at a week
2 before, and if you know, apparently, if somebody
3 is out to get you and you see that person, I think
4 you're in imminent danger because you know for a
5 fact they've already shot at you.

6 THE COURT: Well, what evidence is there
7 in the record that that's the person that was out
8 to get him? Not a lick.

9 MR. LEE: I mean --

10 THE COURT: Not a lick. Is there?
11 That's the problem.

12 MR. LEE: I understand. And just for the
13 question about imminent and then I'll sit down --

14 THE COURT: Yes, sir.

15 MR. LEE: -- the imminent danger portion
16 of the potential self-defense charge, and when we
17 have the charge discussions, hopefully we are
18 charging self-defense later on, *State vs. Nichols*,
19 *State vs. Rash*, and *State vs. Starnes* talks about
20 if a defendant is in imminent danger or the
21 defendant believed that he was in imminent danger
22 of death or believes serious bodily harm is
23 reasonable, the defendant need not wait until
24 actual attack or injury when said force is used by
25 the assailant before exercising the right to use

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1 deadly force. In other words, it says, you don't
2 have to wait until somebody gets the drop on you.
3 I point that point out.

4 THE COURT: Yes, sir.

5 MR. LEE: Also, a proposed charge that we
6 will pass up at the proper time, the right to act
7 on appearances. It is sufficient to believe --
8 it's sufficient that he believe this imminent
9 danger. A defendant need not actually be in such
10 danger because people are entitled to act on
11 appearances.

12 And then another proposed charge I'll
13 pass up later perspective of the defendant is a
14 1936 case, *State vs. Rash*, essentially telling the
15 jury to put yourself in the place of the defendant
16 and what his appearance was.

17 I understand Your Honor.

18 THE COURT: Yes, sir.

19 MR. LEE: I understand at this point
20 you -- based on what you heard and interpreted,
21 that you will not charge self-defense, if we stop
22 right now. So I think my client is in the
23 position to be able to make the decision as to
24 whether to testify.

25 THE COURT: Okay, great. So what I'm

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1 going to do, sir, is, I'm going to ask you to
2 stand. I'm going to have the clerk swear you in,
3 and then I'm going to ask you certain questions.
4 Okay?

5 THE CLERK: Please raise your right hand.

6 Do you solemnly swear or affirm to
7 truthfully answer all questions asked of you by
8 this court so help you God?

9 MR. BURGESS: Yes, ma'am.

10 THE COURT: All right. Sir, are you
11 Deavion Jahquwan Burgess?

12 MR. BURGESS: Yes, sir.

13 THE COURT: Mr. Burgess, at this time,
14 I'm going to explain to you, sir, certain of your
15 rights. If you do not understand anything I say,
16 please let me know. If you want me to explain
17 anything more in more detail, please let me know.
18 Do you understand that, sir?

19 MR. BURGESS: Yes, sir.

20 THE COURT: All right. Mr. Burgess, we
21 now reached the stage of the trial where you may
22 present your defense. You have a right to claim
23 the protections given to you, sir, by the Fifth
24 Amendment to the Constitution of the United
25 States. This amendment, sir, reads in part: "No

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1 person shall be compelled in any criminal case to
2 be a witness against himself." This means,
3 Mr. Burgess, that you cannot be required to
4 testify in this case. You have the right to
5 testify on your own behalf. However, no one can
6 make you testify. This is a personal right and no
7 one can waive this right but you, Mr. Burgess.

8 Do you understand that?

9 MR. BURGESS: Yes, sir.

10 THE COURT: Mr. Burgess, if you decide to
11 testify, you will be subject to the same rules
12 that govern other witnesses and you may be
13 examined and cross-examined on any relevant issue
14 in the case. In addition, Mr. Burgess, if you
15 have any convictions involving dishonesty or false
16 statement or for crime punishable for more than
17 one year and the Court determines that the
18 probative value of admitting this evidence
19 outweighs its prejudicial effect to you, the
20 solicitor will be able to introduce your record to
21 attack your credibility.

22 Do you understand that, sir?

23 MR. BURGESS: Yes, sir.

24 THE COURT: All right. Mr. Burgess, if
25 you decide to testify, this decision on your part

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1 must be freely, voluntarily, and intelligently
2 made with knowledge of the protection given to you
3 by the Fifth Amendment and the consequences of
4 your decision to testify.

5 Do you understand that?

6 MR. BURGESS: Yes, sir.

7 THE COURT: All right. Mr. Burgess, if
8 you decide not to testify, I will instruct the
9 jurors, sir, that they cannot give the fact that
10 you did not testify any consideration whatsoever
11 and that there is to be absolutely no prejudice to
12 you, sir, because you did not testify.

13 Do you understand that?

14 MR. BURGESS: Yes, sir.

15 THE COURT: Mr. Burgess, it is left
16 entirely up to you whether or not you testify.
17 You may talk with your lawyer, your family and
18 friends, or anyone else, but the final decision,
19 sir, will be left entirely up to you.

20 Mr. Burgess, do you understand what I
21 have explained to you?

22 MR. BURGESS: Yes, sir.

23 THE COURT: Do you have any questions,
24 Mr. Burgess, about what I've explained to you,
25 sir?

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1 MR. BURGESS: No, sir.

2 THE COURT: All right. Mr. Burgess, have
3 you been able to talk with your lawyer about
4 whether you should or should not testify?

5 MR. BURGESS: Yes, sir.

6 THE COURT: You've talked with your
7 lawyer about this?

8 MR. BURGESS: Yes, sir.

9 THE COURT: Okay. Do you wish to talk
10 with your lawyer more at this time, sir?

11 MR. BURGESS: Not really. No, sir.

12 THE COURT: Then let me ask you,
13 Mr. Burgess, do you wish to testify?

14 MR. BURGESS: Yes, sir.

15 THE COURT: Great.

16 MR. LEE: I would like to add, it's my
17 understanding that his decision is based upon the
18 Court's ruling that self-defense would not
19 otherwise be charged if we stop right now and he
20 did not. We've spoken about that beforehand.

21 MR. BURGESS: Yes, sir.

22 MR. LEE: And I would ask that be relayed
23 to you that that is the basis of his decision.

24 THE COURT: Well, I mean, that's fine.
25 He can base his decision on anything he wants.

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1 The rules say that he alone makes that decision
2 and he's got to do that. All right?

3 MR. LEE: Yes, sir.

4 THE COURT: All right. Thank you, sir.
5 You can be seated.

6 Is there anything that we need to take up
7 from the State before we get the jury back in
8 here?

9 MS. CAMPBELL: I'm sorry. No. I was
10 listening to co-counsel. I apologize.

11 THE COURT: All right. We're ready to
12 bring the jury in.

13 MS. CAMPBELL: Yes, sir.

14 THE COURT: All right. Counsel approach.

15 Yes, sir. He's wearing some type of device
16 right now. He needs to have that off, because I don't
17 want the jury -- I don't want him to be impeded by
18 walking over there, and I can have another bailiff
19 stand over there.

20 MS. CAMPBELL: I've seen it done where
21 he's already on the stand with courtroom
22 security.

23 THE COURT: Let me see. Hold on one
24 second. What's he got? Come over here, sir.

25 MS. CAMPBELL: You can't see that.

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1 THE COURT: Let me see.

2 MR. LEE: He thought if you went a
3 certain distance.

4 THE COURT: Well, I mean -- I can't see
5 it. Go ahead.

6 MR. LEE: Okay.

7 THE COURT: I think -- court security is
8 indicating to me that they want it to remain on.
9 I've looked at it. I mean, quite frankly, I think
10 it's very difficult to discern, and I don't think
11 that anyone is going to notice.

12 Now, I would also tell you, sir, if he
13 wants to be seated when they come in, that's fine.
14 If you're worried about the way it looks, he can
15 go over there and he can be seated when they come
16 in. Or he can just walk over. Whatever you want
17 to do.

18 MR. LEE: If you don't mind just go ahead
19 and have him be on the stand.

20 THE COURT: That's fine.

21 MS. CAMPBELL: I do need to be heard on
22 thing before he does.

23 THE COURT: Yes, ma'am.

24 MS. CAMPBELL: Co-counsel was discussing
25 with me the fact that I would say to the Court,

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1 this testimony we're about to receive in terms of
2 State vs. Day and State v. -- I can't read that.
3 It's not character assassination of the victim,
4 the murder victim, Quinton Ventress. And the
5 defense, if they intend to try to bring up
6 specific instances of violence by the victim,
7 that's not admissible under the rules, Your Honor.
8 And, you know, if it's directed at Mr. Burgess or
9 so close to the time of the murder and the state
10 of mind of the victim to produce reasonable
11 apprehension and great bodily harm. I just wanted
12 to put that on the record.

13 THE COURT: So, I'm not following you.

14 MS. CAMPBELL: I just don't want to be in
15 a situation where this is an assassination of
16 Quinton Ventress's character.

17 THE COURT: Well, if he says that he had
18 it in for him, that they've had prior problems,
19 absolutely I'm going to allow that.

20 MS. CAMPBELL: Yes, that's correct.

21 THE COURT: I mean --

22 MS. CAMPBELL: Just in general, no. But
23 correct. The connection between the two, yes. In
24 general, no.

25 THE COURT: He's not going to go and ask

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1 him -- well, I don't know what he's going to ask
2 him. But, I mean --

3 MS. CAMPBELL: That's why I just wanted
4 to put that on the record.

5 THE COURT: That's fine. You can put it
6 on the record. I'll make a ruling as we get into
7 it.

8 MS. CAMPBELL: Thank you.

9 MR. LEE: State vs. Fuller says the jury may
10 consider prior instances of violence or unprovoked
11 aggression by the assailant involved. I mean,
12 that's --

13 THE COURT: I'm not going to --

14 MR. LEE: I'm not going to say that's the
15 entirety of his character.

16 THE COURT: I can't preemptively rule on
17 this, because I don't know what's going to happen.
18 And I have a feeling we'll bring the jury in and
19 send them right back out. But, I mean, I'm not
20 going to make a pre-emptive ruling on this.

21 MS. CAMPBELL: Absolutely.

22 THE COURT: Okay. So is there
23 anything -- let me ask you this: We're going to
24 need -- how do you want to swear him in? You're
25 on the stand right there -- or how do you want to

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1 do that? I want this to be as smooth a process as
2 possible, Mr. Lee, and I'll give great deference
3 to you, but I also got to give deference to what
4 my security people say. Do you understand what
5 I'm asking?

6 MR. LEE: Just swear him in.

7 THE COURT: You just want her to swear
8 him in right there?

9 MR. LEE: Yes.

10 THE COURT: Okay. I didn't know if you
11 wanted him to stand right there and be sworn in
12 and two step around.

13 MR. LEE: Do it right there.

14 THE COURT: That's fine. Yes, sir.

15 We'll go ahead and bring the jury in.
16 That will be great. Thank you.

17 THE BAILIFF: Jury is entering the
18 courtroom, Your Honor?

19 THE COURT: Thank you.

20 (Jury enters the courtroom at 2:25 p.m.)

21 THE COURT: All right. I'm almost an
22 hour late getting you in here. I want to let you
23 know, we're not back here playing funksies or
24 having a great time. We're working. And as I
25 told you earlier in the week, this is a slow,

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1 repetitive, an deliberative process because it's
2 very important to the State, it's very important
3 to the defendant. I appreciate you bearing with
4 this.

5 All right. So the State has now
6 completed their case and presented all their
7 evidence. So at this time, Mr. Lee, I'm happy to
8 have you present your case.

9 MR. LEE: Thank you, Judge. The defense
10 called Deavion Burgess.

11 THE COURT: All right. Madame Clerk, can
12 you swear in Mr. Burgess, please?

13 THE CLERK: Yes, Your Honor.

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Testimony of Deavion Burgess

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1 Mr. Burgess, can you raise your right hand,
2 please? Do you solemnly swear or affirm to truthfully
3 answer all questions asked of you by this court so
4 help you God?

5 THE WITNESS: Yes, ma'am.

6 THE CLERK: Thank you.

7 THE COURT: All right, Your witness.

8 MR. LEE: Thank you, Your Honor.

9 THE COURT: Sure.

10 WHEREUPON:

11 DEAVION BURGESS,
12 after having been sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. LEE:

15 Q Deavion, can you tell everybody what your full
16 name is and spell your last name for us?

17 A Deavion Burgess, B-u-r-g-e-s-s.

18 Q And, Deavion, do you go by Deavion?

19 A Yes, sir.

20 Q How old are you?

21 A Twenty.

22 Q Where did you go grow up?

23 A St. Helena Island.

24 Q Did you go to high school there, in that area?

25 A No. I went to school in Columbia. I mean,

Testimony of Deavion Burgess

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1 high school in Columbia.

2 Q Okay.

3 A I went to high school in Columbia, South
4 Carolina.

5 Q How far did you go in high school?

6 A I went to college. I made it all the way
7 through high school.

8 Q What college did you go to?

9 A Allen University?

10 Q In Columbia?

11 A Yes, sir.

12 Q But you've had family and friends and people you
13 know in St. Helena your whole life.

14 A Yes, sir.

15 Q Were you born in St. Helena?

16 A Yes, sir.

17 Q And so you're 20. Are you married?

18 A Yes, sir.

19 Q Do you have any kids?

20 A No, sir. Well, yes, sir. I got four kids.

21 Q All right. And what are their ages, range?

22 A One is three, one is two, and one is five
23 months, and other one is in the stomach.

24 Q Not born yet.

25 A Yes, sir.

Testimony of Deavion Burgess

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1 Q All right. Deavion, now you understand that you
2 don't have to testify in your own trial. Do you
3 understand that?

4 A Yes, sir.

5 Q And if you had chosen not to testify, taking the
6 5th as they say on TV and stuff, the judge would have
7 told this jury, you-all can't even consider the fact
8 that you didn't get on the stand. You understand
9 that?

10 A Yes, sir.

11 Q So, if you just sat down by me and didn't testify,
12 this jury couldn't even talk about that or couldn't
13 hold it against you. You understand that?

14 A Yes, sir.

15 Q But you're testifying anyway; is that right?

16 A Yes, sir.

17 Q Okay. And you're putting yourself out there to be
18 asked questions?

19 A Yes, sir.

20 Q Okay. And you understand the State of South
21 Carolina is going to get to ask you questions just
22 like we got to ask questions of their witnesses?

23 A Yes, sir.

24 Q And that's what you want to do. You want to tell
25 this jury what happened.

Testimony of Deavion Burgess

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1 A I want to tell the truth. I want the truth
2 to come out.

3 Q Why do you want to do that?

4 A Because I'm innocent. I felt like I'm
5 innocent with the truth. You know what I'm
6 saying?

7 Q You know you're under oath and you got to tell the
8 truth.

9 A Yes, sir.

10 Q And you've been here during the testimony of all
11 these other witnesses the State called, right?

12 A Yes, sir.

13 Q Okay. And are you're saying that all of that that
14 was testified to first by the witnesses is not the
15 truth?

16 A It was half of the truth.

17 Q Half of the truth?

18 A Yes, sir.

19 Q So some stuff was true and some stuff wasn't?

20 A Yes, sir.

21 Q Okay. Let's start with a couple of things. The
22 State has gone to great lengths to show this jury that
23 you were the person in the white car that got out of
24 the car and fired a gun into the other car. Have you
25 noticed that?

Testimony of Deavion Burgess

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1 A Yes.

2 Q They have DNA experts, and they've done
3 fingerprints, and they've done witnesses, and they've
4 impeached other witnesses. Is there any question,
5 Deavion, whether or not that's you getting out of that
6 the white car and shooting Quinton Ventress?

7 A No question of it.

8 Q Never has been.

9 A No, sir.

10 Q Okay. So as far as the State proving the who,
11 it's been done many, many times over, hasn't it?

12 A Yes, sir.

13 Q And just in case it hasn't, that's you in that
14 car, isn't it?

15 A Yes, sir.

16 Q And who's driving that car?

17 A Carletha.

18 Q Carletha. Carletha who?

19 A Benning.

20 Q Okay. And tell us a little bit about how you knew
21 her.

22 A I met her probably about March, beginning of
23 March 2020. She was a friend. It wasn't nothing
24 serious. We were meeting up, having a little --
25 you know what I'm saying? Sexual intercourse. I

Testimony of Deavion Burgess

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1 guess that's the way you say it, sexual
2 intercourse. Smoking. Sometimes chilling.
3 That's all it was. It wasn't like a love
4 triangle. It was more like a good vibe
5 relationship. You know what I'm saying? Friends,
6 close friends.

7 Q All right. And prior to April 3rd of 2020, that
8 had been going on for a few weeks?

9 A Yes, sir.

10 Q Okay. And had you -- before that day, had you
11 ridden in her car before?

12 A Before April 3rd.

13 Q Had you ridden in her car before?

14 A Yes, sir.

15 Q Let me walk you back a little bit. When did
16 you -- well, the college thing. You were in Columbia
17 before coming back to Beaufort, correct?

18 A Yes, sir.

19 Q When did you get back to Beaufort?

20 A Like, February -- I want to say like the
21 second week of February.

22 Q So like two weeks before the Tiger Express deal --
23 I mean, two months.

24 A Yes, sir.

25 Q Because it happened April 3rd, and that's sometime

Testimony of Deavion Burgess

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1 in February?

2 A Yes, sir.

3 Q So you get back in town, and who were you staying
4 with?

5 A At the moment, I was staying with one of my
6 friends. You know what I'm saying? Ossie Daramen
7 (ph).

8 Q So what was -- where was that?

9 A On Dulamo Road. Probably like a couple mile
10 before Lamar lived.

11 THE COURT: Sir, you know the deal. It's
12 just hard. They want to hear. They want to hear
13 what you got to say.

14 THE WITNESS: I ain't trying to get too
15 close to mic.

16 THE COURT: Then I need you to speak up
17 for me. Okay?

18 THE WITNESS: I got you.

19 THE COURT: Thank you, sir.

20 BY MR. LEE:

21 Q So part of your time here you were staying on
22 Dulamo Road?

23 A Yes, sir.

24 Q And tell us about that place? Who owned it and
25 who was staying there?

Testimony of Deavion Burgess

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1 A My friend Mark owned the place. I just was
2 staying there because he had known I had just came
3 back down here. I was trying to get on my feet
4 working and stuff like that.

5 Q Okay.

6 A So he trying to help me get that leeway.

7 Q Now, there was somebody else that lived right at
8 that property too, was it not?

9 A Yes. It's a couple different houses. You're
10 talking about the area?

11 Q Uh-huh.

12 A There's a couple different house in that
13 area.

14 Q And Mark's mom, Anita, was there as well, right?

15 A Yes. She lived in the front. We lived in
16 the back.

17 Q Okay. And then were you also occasionally staying
18 at your childhood home on Reunion Road?

19 A Yes, sir. I go up there.

20 Q So you, kind of, bounced back and forth a little
21 bit.

22 Now, Miss Anita's house -- you pretty
23 close to Miss Anita?

24 A Yeah, I called her mom.

25 Q You called her mom?

Testimony of Deavion Burgess

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1 A Yeah.

2 Q She helped raise you and look after you?

3 A Yeah.

4 Q So if you're talking about your mom, you could
5 talking about Miss Anita or you could talking about
6 your mom -- and what's her name?

7 A Octavia.

8 Q Octavia Bryan, okay. And Octavia Bryan is the one
9 that has the house on Reunion Road, right?

10 A Yes, sir.

11 Q Okay. Now, let's talk about Anita Singleton's
12 house. Anything in the time that you were staying
13 there that happened that was unusual or that you
14 remember?

15 A Yes, sir. I was -- I wasn't actually there,
16 but he shot up her house.

17 Q Hold on one second. You weren't there, but you're
18 saying "he," we don't know who "he" is.

19 A All right. Let me correct myself. Let me
20 speak properly. Quinton Ventress shot up her
21 house.

22 MS. CAMPBELL: Objection, Your Honor. He
23 said he wasn't actually there, so how does he know
24 this?

25 THE COURT: I'm going to sustain that.

Testimony of Deavion Burgess

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1 MS. CAMPBELL: Thank you.

2 THE WITNESS: He shot her house and
3 Cameron Murray called me and told me that --

4 MS. CAMPBELL: Objection, Your Honor.
5 Hearsay.

6 MR. LEE: You can't talk about --

7 THE COURT: Sustain. Go ahead. Tell
8 him.

9 BY MR. LEE:

10 Q You talk --

11 MR. LEE: I may need to be heard on that
12 as far as offering for the truth of that
13 hearsay.

14 THE COURT: All right. I'm sustaining
15 her objection, sir.

16 MR. LEE: Okay.

17 BY MR. LEE:

18 Q Well, let's not talk about what people say, okay?

19 A Yes.

20 Q Don't say what somebody told you, don't give any
21 names, I guess. Tell us, just in general, what
22 happened?

23 A Quinton Ventress --

24 Q You give names.

25 A The house got shot up.

Testimony of Deavion Burgess

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1 Q Miss Anita's house?

2 A Yes, sir.

3 Q Did you see where had it had been shot up? Did
4 you see the results of it being shot up?

5 A Yes, sir.

6 Q By yourself. On your own.

7 A On my own, yes, sir.

8 Q And that house is essentially right at the place
9 you and Mark were staying.

10 A Yes, sir.

11 Q And that happened approximately what time in
12 relation to April 3rd of 2020?

13 A Probably like four or five days before.

14 Q All right. Now, let me take you forward again.
15 There was some testimony that you were in a car with
16 Carletha Benning on Seaside Road. Do you remember
17 that?

18 A Yes, sir.

19 Q Okay. And what, if anything, unusual happened
20 when you arrived on Seaside Road?

21 A Somebody said -- do I still -- can I say
22 names?

23 Q I depends on whether you saw it or not. Whether
24 you heard it or whether you saw it.

25 A I saw Quinton Ventress shot at her car.

Testimony of Deavion Burgess

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1 Q All right. And that was the same -- well, I
2 won't -- I'm trying to corroborate this.

3 And that was on Seaside Road.

4 A Folly Road. I was coming from Seaside from
5 my granddaddy's house.

6 Q And do you know what part -- where Quinton
7 Ventress lives?

8 A I don't know his exact address, but I know
9 that's where he's from. That's where he grew up
10 from.

11 Q So he's in that area of St. Helena?

12 A Yes, sir.

13 Q All right. So when did that happen in relation to
14 April 3rd, timewise?

15 A That happened probably -- it happened the day
16 before Miss Anita's house got shot up, so probably
17 -- the mom's house the fourth day. That happened
18 the fifth day. That happened the day before mom's
19 house got shot up.

20 Q So, like, four and five days before April 3rd?

21 A Yes, sir.

22 Q Did anything happen unusual to you during -- after
23 those four or five days but between then and
24 April 3rd? Were there any other shootings, or any
25 other threats, or anything like that?

Testimony of Deavion Burgess

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1 A Well, it was just threats saying, basically,
2 you know what I'm saying, that he's trying to get
3 at me, basically. That he was trying.

4 Q How would you describe -- Deavion, how would you
5 describe your state of mind, how you felt during
6 those -- during that time leading up to the April 3rd
7 Tiger Express?

8 A Because I didn't know why -- I didn't know
9 why -- I didn't know why the hatred was coming
10 towards me, basically. I didn't know why he
11 wanted to injure me.

12 Q Did you have any run-ins or interactions with him
13 prior to April 3rd? After the two shootings but prior
14 to April 3rd.

15 A After the two shootings?

16 Q Did your paths cross or anything? Did you see
17 him, or anything?

18 A No, sir.

19 Q Okay. April 3rd, let's take you to that day.
20 Tell us a little about your day on April 3rd. Not
21 what you had for breakfast, but just, kind of, walk us
22 through the events leading up to it.

23 A On April 3rd, I had an interview set up with
24 the landscaping company that Carletha Benning's
25 mom owned, and I went there around twelve o'clock.

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1 I went there -- well, she picked me up. She took
2 me there. We went there. We did the interview.

3 Q Let's slow down a little bit. Carletha picked you
4 up.

5 A Yes, sir.

6 Q Around lunchtime?

7 A Twelve o'clock she went on break.

8 Q And she took you to an interview at where?

9 A I think it's called the AC Place, or D&H.

10 Q D&S Heating & Air Conditioning?

11 A Yes, sir.

12 Q And who works there?

13 A Her and her mom.

14 Q Carletha and her mom. And you had an interview
15 there with them?

16 A Yes, sir.

17 Q Okay. And how long did the interview last?

18 A The interview probably lasted, like, 15, 20
19 minutes.

20 Q So what, if anything -- what did you do after
21 that, after the interview?

22 A After that, she took me on St. Helena Island.
23 She took on St. Helena Island because she had to
24 go back to work. She dropped me off.

25 Q So D&S, that place is right there at Lost Island

Testimony of Deavion Burgess

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1 Road and it's kind of at the end of Lady's Island
2 before St. Helena's Island?

3 A Right there after the Walmart a little bit on
4 the left.

5 Q The Taco Bell.

6 A Yeah, the Taco Bell.

7 Q So, Carletha took you home -- took you back home
8 that day?

9 A Yes, sir.

10 Q To Dulamo or Reunion?

11 A She took me to Dulamo.

12 Q Dulamo.

13 A Yes, sir.

14 Q And that was her lunch break or something you
15 said?

16 A Yes, sir.

17 Q What did you do in Dulamo the rest of the day?

18 A I think we -- I stayed over there for,
19 like -- until she got off which was around 3:00.
20 Probably played the game, smoked a little weed, or
21 whatever. And after that, she came back to get
22 me.

23 Q So she, being Carletha, came back to Dulamo where
24 you were staying to pick you up?

25 A Yes, sir. Around 3:30, four o'clock when she

Testimony of Deavion Burgess

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1 got off.

2 Q And that Dulamo is the same Dulamo Road where you
3 were staying behind Miss Anita's house, the one that
4 got shot?

5 A Yes, sir.

6 Q I just wanted to make sure we were talking about
7 the same place.

8 Then she comes and picks you up.

9 A Yes, sir.

10 Q Where do you go next?

11 A Then she had to go change her clothes so we
12 went to Lady's Island down Sam's Point to her
13 house. She changed her clothes. We grabbed some
14 weed from Lady's Island and went back to
15 St. Helena Island.

16 Q And that would explain why you were coming from
17 Lady's Island when her car pulled into the --

18 A Yes, sir.

19 Q Because if you were coming from Dulamo, you would
20 be past there and you would be taking a right coming
21 towards town, right?

22 A Yes, sir.

23 Q So she went back to St. Helena.

24 Okay. And what was the purpose of stopping
25 at the Tiger Express?

Testimony of Deavion Burgess

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1 A Because we passed all the stores and we
2 forgot to get cigars, so we had stopped at that
3 one.

4 Q Okay.

5 All right. Had anything important planned or
6 anything? You-all just going to get some --

7 A We just about to go back to my house and just
8 chill, really.

9 Q So that was the plan.

10 All right. When you-all pulled up, did you
11 recognize any cars in the parking lot?

12 A None.

13 Q Did you notice, kind of, a purple-ish black Maxima
14 parked there?

15 A I didn't even notice the car. Like, I didn't
16 see nobody I knew out there.

17 Q When you go to gas stations in public, do you,
18 kind of, scope it out before to see if you know
19 anybody?

20 A Yes, sir, because nowadays you never know.
21 You know what I'm saying?

22 Q Okay. So that purple car, did you know whose it
23 was?

24 A No, sir.

25 Q Okay. Had you ever seen Quinton Ventress in that

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1 car before?

2 A I never seen the car before.

3 Q Okay.

4 All right. So, Carletha, pulls, kind of,
5 like where the gas is, and then you were going in to
6 get the cigars, correct?

7 A Yes, sir.

8 Q All right. Now, Deavion, it's obvious from
9 watching that video that you had a gun in your pants,
10 right?

11 A I did.

12 Q Okay. Why are you carrying a gun?

13 A Because I was getting shot at and getting
14 threats for the last two weeks.

15 Q Okay. Were you worried about your safety?

16 A Yes.

17 Q In general?

18 A I was worried about somebody catching me and
19 doing something to me.

20 Q Who were you worried about catching you and doing
21 something to you?

22 A I worried about if Quinton seen me on the
23 Island, if he might jump out, beat me up, shot at
24 me. He done shot two times, so I didn't know -- I
25 didn't know what was coming. You know what I'm

Testimony of Deavion Burgess

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1 saying? I didn't know.

2 Q All right. Now, you've seen the video, obviously,
3 a few times of it. When you were walking across the
4 parking lot, it doesn't seem like you're scared or
5 running from anybody or anything like that, does it?
6 You just kind of --

7 A I just went in.

8 Q And then you actually, it looks like, walked by
9 the purple car, right?

10 A Yeah.

11 Q That you've never seen before. And, at some
12 point, you look back; is that right?

13 A Yes, sir.

14 Q What made you look back at the purple car that was
15 parked in front of the store?

16 A I heard yelling, and then I heard "bitch ass
17 nigger" when I looked back.

18 Q Slow down. You heard some yelling?

19 A Like I heard -- yes, sir.

20 Q Was it coming from the car?

21 A At first, I didn't know where it was coming
22 from. That's why I looked back. I had to figure
23 out where it was coming from.

24 Q Okay. And that's when you stopped and looked
25 back. And when you looked that way, what did you

Testimony of Deavion Burgess

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1 see?

2 A I see him moving around.

3 Q Who's "him?"

4 A I seen Quinton Ventress moving around.

5 Q Moving around in the front seat?

6 A Yeah.

7 Q Was anything said to you?

8 A He was like -- when he was yelling, I didn't
9 understand the words at first. That's when I
10 first turned around. When I turned around, I
11 heard him say, "Finally caught your bitch ass."

12 Q That's what he said to you, finally caught you?

13 A Yes, sir.

14 Q What, if anything -- how did that make you feel
15 hearing that?

16 A It scared me in a way that make me -- it
17 scared me to the way to react in the most humblest
18 way I knew how, to get out of the way. That's why
19 I fired my ammunition and ran back to my car.

20 Q Now, aside from saying something, his window was
21 down, right?

22 A Yes, sir.

23 Q So you could see him because his window was down,
24 right?

25 A Yes, sir.

Testimony of Deavion Burgess

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1 Q And he said something. Did you see him doing
2 anything in the car?

3 A When he said it, it looked like he was moving
4 around. He was either trying to fumble or
5 something. He grabbed the door or something. It
6 looked like he was trying to do something too
7 fast. You know what I'm saying?

8 Q So you didn't know what he is doing?

9 A No, I didn't know.

10 Q But it concerned you, what he was doing?

11 A Yes. Because I already heard -- I already
12 got threats saying what he was going to do to me
13 when he catch me.

14 Q Did it concern you for your safety?

15 A Yes.

16 Q Were you worried that you may be shot, killed, or
17 injured?

18 A Yes, sir.

19 Q Were you worried that that threat was imminent?
20 In other words, it was very soon to happen?

21 A It felt like it was go time, like he was
22 about to get busy on me.

23 Q Okay, good.

24 So you didn't keep going in the score,
25 obviously, to buy your blunts, did you? You turned

Testimony of Deavion Burgess

574

1 right around.

2 A Yeah.

3 Q Did you try to talk to him, or say, let's chill
4 out. Did you try to --

5 A Naw, just got out of the way.

6 Q Did you feel like you had to do what you did as
7 far as firing a gun in order to get away safely?

8 A Yes, sir.

9 Q Now, Deavion, did you and Carletha plan that day
10 to cruise over to Tiger Express and pop some cap in
11 some guy and then go home?

12 A No, sir. I honestly wish we went to a
13 different gas station, or even that I sent her in
14 there. Because at the time, I probably -- I
15 shouldn't have -- I wasn't even available to buy
16 them anyway. I didn't have my ID on me. But
17 Tiger Express usually would sell me tobacco
18 products.

19 Q He would sell them to you without your ID?

20 A Yes, sir.

21 Q Did you ever -- again, did you go there with the
22 intention of shooting your gun or shooting anyone or
23 causing any kind of trouble?

24 A No, sir.

25 Q All right. How about this Zach Wilkerson guy, had

Testimony of Deavion Burgess

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1 you ever met him before?

2 A I don't know him at all.

3 Q Had you ever seen him before he was in court
4 yesterday?

5 A Before court, no, sir.

6 Q You never seen him before. You don't have any
7 beef with him at all, do you?

8 A I don't know him at all.

9 Q Did you even know he was there?

10 A No. I didn't know there was a second person
11 in the car until, you know, the article and stuff
12 like that came out.

13 Q The article in the newspaper, or Nixle, or
14 whatever?

15 A Yeah.

16 Q So when this happened, you thought it was just
17 Quinton in the car. You didn't know anyone else when
18 you turned around?

19 A No, sir.

20 Q Deavion, do you feel like you had any -- under the
21 circumstances, do you feel like you had any
22 alternative, under the circumstances, for doing what
23 you did?

24 A Can you repeat the question?

25 Q I mean, do you have some other choices? Did you

Testimony of Deavion Burgess

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1 feel like you didn't have to shoot? Or you feel like
2 you had to do that to protect yourself?

3 A I had to or it would have been my life.

4 Q And all that is, kind of, happening real quick
5 going through your head, right?

6 A (Witness nods head up and down.)

7 Q Are you sorry about what happened?

8 A I wish I never even came back to Beaufort, to
9 be honest with you.

10 Q Do you feel any sympathy or remorse for Quinton's
11 family, the people that are here?

12 A I don't want to hurt nobody. Anybody that
13 know me, know I'm a peaceful dude. I don't get
14 into harming nobody, even having issues with
15 people out there.

16 Q Do you feel bad about what happened?

17 A Do I feel bad about hurting somebody?

18 Q Yeah.

19 A Of course I do. I wish never had to be
20 there.

21 Q Do you feel like you were put in a position,
22 though, that you had to act the way you did?

23 A Yes.

24 Q What is it like growing up and living in
25 St. Helena? Let me ask you, these officers talking

Testimony of Deavion Burgess

577

1 about, kind of, the Wild Wild West out there at times.

2 How would you describe living out there?

3 A It's crazy man. It's a whirl, you know,
4 crazy.

5 Q Do you wish you lived somewhere else?

6 A Yeah.

7 Q Do you wish you were able to live somewhere
8 else?

9 A Yes, sir.

10 Q All right.

11 MR. LEE: That's all I have, Your
12 Honor.

13 MS. CAMPBELL: Your Honor, may we
14 approach?

15 THE COURT: Yes.

16 Yes, ma'am.

17 MS. CAMPBELL: Mr. Lee opened the door to
18 my questioning him about his armed robbery charges
19 in Columbia when he characterized himself as a
20 peaceful person.

21 THE COURT: Absolutely.

22 MS. CAMPBELL: I want to cross him.

23 THE COURT: Absolutely.

24 MR. LEE: I mean, he's just alleged to have
25

1 done that. He's only been charged with it.

2 MS. CAMPBELL: I'll make that clear, that
3 he has been arrested for a violent crime, which is
4 armed robbery.

5 MR. LEE: But he's been arrested. I
6 think the way that you --

7 MS. CAMPBELL: I'm not saying it's been
8 proven.

9 THE COURT: Well --

10 MR. LEE: I need it on the record.

11 THE COURT: I need case law. We're going
12 to have to send the jury out.

13 MR. LEE: This is four to five methods of
14 proving character.

15 THE COURT: We'll have to look it up.
16 This is not something that I'm going to do in the
17 morning.

18 MR. LEE: Good.

19 THE COURT: But, I mean, peaceful --

20 MR. LEE: I think --

21 THE COURT: Peaceful, when he's -- all
22 right.

23 MS. CAMPBELL: All right. Thank you.

24 THE COURT: All right. Ladies and
25 gentlemen, don't talk about the case. I will need

1 you to go back. There's a couple matters of law
2 I'm going to have to take up with these folks
3 outside of your presence. I'm sorry. I'll get
4 you back out here as soon as I can.

5 (Jury exits the courtroom at 2:51 p.m.)

6 THE BAILIFF: Jury is clear, Your Honor.

7 THE COURT: All right. Thank you.

8 All right. Solicitor, let's go back on
9 the record and tell me what you got.

10 MS. CAMPBELL: Your Honor, I'm going to
11 refer the Court to 405. This defendant just
12 testified --

13 THE COURT: All right. Hold on one
14 second.

15 Yes, ma'am. Go ahead.

16 MS. CAMPBELL: All right. Your Honor, he
17 just testified that he is a peaceful person, and
18 the State seeks to introduce his arrest for a
19 violent crime involving a weapon, armed robbery in
20 Columbia, and that is a 405(b). And so this is a
21 specific instance of his conduct. And I'm happy
22 to make it clear that that is not a conviction.
23 He's simply been arrested for it. There was
24 enough probable cause to believe and arrest him.
25 There is no outcome. But, nevertheless, it has

1 occurred.

2 THE COURT: Mr. Lee.

3 MS. CAMPBELL: And then 404, again,
4 number 1, pertinent character trait offered by the
5 accused which is a peacefulness, and I'm allowed
6 to rebut that.

7 Thank you, Your Honor.

8 THE COURT: Mr. Lee.

9 MR. LEE: The 405 is methods of proving
10 character. Proof may be made by testimony as to
11 reputation or by testimony in the form of an
12 opinion. I don't think you can give an opinion
13 about yourself. I don't think you can provide
14 testimony about yourself. That's not -- the way
15 you get into 405 stuff, Your Honor, is for
16 somebody to say, does Mary Jones have a reputation
17 as being a peaceful person, and that wasn't what
18 was done. I mean, it was a slip up that he made
19 to, you know, talk about -- talk about this. So I
20 don't think it's 405.

21 Going to 404, character evidence
22 generally, evidence of a person's character trait
23 of character is not admissible for proving it,
24 except the character of the accused, which is 404
25 (a)(1) would be applicable. Evidence of a

1 pertinent trait of character offered by an accused
2 or by the prosecution to rebut the same.

3 So I think they would have to show that
4 as being offered as a pertinent trait of his
5 character. The fact that he said something about
6 being peaceful, I don't think that opens the door.
7 This is a huge door to bust in. I mean, this is
8 the basic -- there's plenty of things. We already
9 said he had a gun on him. We already admitted he
10 was there. We're not saying he's some angle,
11 saying he's peaceful. I mean, he's on video
12 shooting somebody. So for them to then open the
13 door -- so the real question is whether they can
14 use specific instances of conduct to rebut him
15 saying one time that he was peaceful. And I'm not
16 sure how they -- then we go down to 404(b), I'm
17 not sure how they say that that opens the door for
18 them to all of a sudden show specific -- evidence
19 of specific other acts to show that that's not --
20 I guess she's going to 405(b) --

21 MS. CAMPBELL: 404(a)(1).

22 MR. LEE: 404(a)(1)?

23 MS. CAMPBELL: Yes.

24 THE COURT: I'm sorry.

25 MR. LEE: I'm just trying to figure out

1 where she's saying that she has the right to bring
2 out these specific instances of conduct to rebut
3 him saying one time that he was peaceful. And not
4 only to use a charge, but it was something -- it's
5 a pending case he has. I don't know anything
6 about it. I don't have any evidence of it. I
7 don't know if it's still a pending charge or not.
8 I don't know. I haven't seen any reports. I
9 don't know. I don't have any way to cross-examine
10 the charge that she's going to raise. I mean,
11 maybe it was dismissed the prelim. Maybe he
12 shouldn't have been arrested for it. Maybe it's
13 going to be going to be dismissed. I don't know
14 anything about it. And so I'm in a tremendous
15 disadvantage to try to even respond to a pending
16 charge that has been sitting out there for longer
17 than this one and nothing has been done on it.

18 So, I mean, I'm pretty hamstrung. And to
19 use it and say, well, there must have been
20 probable cause because he was arrested, if it's
21 going to be that big of a thing and that big of a
22 character assassination, to use her words, on him,
23 I think we got to have more than a mere allegation
24 on a case that's over two years old that we don't
25 know anything about.

1 So, you know, I just -- I don't think that a
2 specific --

3 THE COURT: So let me ask you this,
4 Solicitor: Would you agree with me that basically
5 you're -- this is a prior bad act?

6 MS. CAMPBELL: No.

7 THE COURT: It's not a prior bad act?

8 MS. CAMPBELL: No, Your Honor. And I'm
9 not trying to, you know, get into a prior bad act
10 of his. What I think I am allowed to do at this
11 point under State v. Major, which is the 1990
12 case, it's very clear when the accused,
13 Mr. Burgess, offered evidence of his good
14 character, which he just sat up there and did, *I'm*
15 *a peaceful person*, regarding specific character
16 traits relevant to the crime charged couldn't be
17 any more relevant than to murder --

18 THE COURT: Let me just pull the case up
19 and read it.

20 MS. CAMPBELL: Please, thank you.

21 THE COURT: There you go.

22 MS. CAMPBELL: And I'll just finish the
23 statement for Your Honor. The State may
24 cross-examine as to acts relating to those traits
25 focused on the accused. Are you a peaceful

1 person? He said he was. Now I'm allowed to see
2 he's not.

3 And in terms of the proof of that, his
4 NCIC rap sheet was provided to the defense.
5 There's a copy of that. It's right there on his
6 record and it is still pending on the judicial
7 website.

8 THE COURT: Well, first of all, I would
9 submit that the public index has the reliability
10 of a Chinese watch. Okay? Because just last
11 week, the solicitor's office thought something was
12 pending when it wasn't, and didn't know that
13 anything -- that it had been dismissed, I believe,
14 at the preliminary hearing and that the charge had
15 been changed completely. So I will tell you right
16 now, I put zero credibility in the public index,
17 Solicitor.

18 And that's not anything to do with you
19 and that's not a comment on the public index. I
20 think folks do as best they can with the public
21 index, and I think there are a lot of problems and
22 a lot of work involved with matters that are being
23 adjudicated in magistrate's court and trying to
24 make it into the big court. I don't want to be --
25 I'm not putting blame or fault on anybody, but

1 it's just my experience that it's not something
2 that this court can rely upon.

3 MS. CAMPBELL: Your Honor, if I could
4 change my answer a little bit to you -- I'm sorry.
5 It is a prior bad act. I did not mean to tell the
6 Court that I felt differently.

7 Normally, outside of why we're trying to
8 use it here, it would be considered a prior bad
9 act.

10 THE COURT: So you are agreeing with me
11 that it's a prior bad act?

12 MS. CAMPBELL: It is. And that was --

13 THE COURT: Let me also, that's it's
14 not -- it's not a conviction.

15 MS. CAMPBELL: That is correct.

16 THE COURT: All right. Well, then let's
17 look at *State vs. Gillian*. *State v. Gillian* says,
18 "If not the subject of a conviction, a prior bad
19 act must first be established by clear and
20 convincing evidence," and that's quoting
21 *State V. Bett*.

22 And so where is my -- I haven't heard a
23 lick of clear and convincing evidence, reading
24 straight from *State v. Gillian*, 360 S.C. 433.

25 MR. LEE: Respectfully, too, I don't

1 think they've established one of five basis for
2 admission under Lyle.

3 THE COURT: Hold, hold, hold on.

4 MR. LEE: Before we get to that.

5 THE COURT: Hold on. I want to hear a
6 response to this.

7 MS. CAMPBELL: And, Your Honor, I can't
8 give you something I don't have. I don't have
9 that.

10 THE COURT: Well, then I don't think --

11 MR. LEE: It's unreliable and not relevant.

12 THE COURT: Hold on, Mr. Lee. I'll give
13 you an opportunity in a minute.

14 MR. LEE: Okay.

15 THE COURT: I can't -- I don't
16 multi-task.

17 MR. LEE: I thought you wanted me to
18 talk. I'm sorry.

19 THE COURT: Well, I think it's very easy.
20 If you can't establish by clear and convincing
21 evidence, then, in that case, I don't see how it
22 comes in. I mean, I'm reading straight from the
23 case. Do you have the case? Can you pull it up?

24 MR. LEE: Are you talking to Traci or me?

25 THE COURT: Well, I'm talking to the

1 solicitor, but, if you want to look at it too, you
2 can.

3 MR. LEE: I don't have it with me, but I
4 know exactly what case it is.

5 THE COURT: I bet you do.

6 MS. CAMPBELL: May it please the Court?

7 THE COURT: Yes.

8 MS. CAMPBELL: The State is going to
9 withdraw the motion at this point. I can't give
10 the Court what the Court wants. I'm going to
11 withdraw it so we can proceed.

12 THE COURT: Now -- wait a minute. When
13 you say what the Court wants, Solicitor, I want to
14 make sure --

15 MS. CAMPBELL: Excuse me. What the law
16 requires.

17 THE COURT: Thank you.

18 MS. CAMPBELL: Yes, sir.

19 THE COURT: I believe that is what the
20 law requires.

21 MS. CAMPBELL: Yes. Thank you so much.

22 THE COURT: So we're going to withdraw
23 the talk about the prior --

24 MS. CAMPBELL: Correct.

25 THE COURT: Arrest.

1 MS. CAMPBELL: That's correct.

2 THE COURT: All right. So then, in that
3 case, are we ready to bring the jury back in?

4 MR. LEE: Yes, sir.

5 THE COURT: Bring the jury back in.

6 (Jury enters the courtroom at 3:55 p.m.)

7 THE BAILIFF: Your Honor, the jury is
8 entering the courtroom.

9 THE COURT: Thank you. All right.
10 Ladies and gentlemen, again I'm sorry for that.
11 Just certain important matters take outside --
12 some outside of your presence.

13 So I think the solicitor is ready to
14 cross-examine Mr. Burgess.

15 MS. CAMPBELL: I am. Thank you, Your
16 Honor.

17 THE COURT: Yes, ma'am.

18 CROSS-EXAMINATION

19 BY MS. CAMPBELL:

20 Q You know, I just heard your lawyer give a lot of
21 testimony, and I heard you answer yes and no. Isn't
22 that what we just heard? Your lawyer testify and you
23 say yes, sir, no, sir? Isn't that what we heard?

24 A I'm testifying.

25 Q Didn't you say yes and no?

1 A My answer is yes, no.

2 Q And hadn't you talked with your lawyer and worked
3 with your lawyer to get your answers and those
4 testimonies from your lawyer just right?

5 A No, ma'am.

6 Q You never talked to your lawyer about what you
7 were going to get up here and say?

8 A Not about my answers, no, ma'am.

9 THE COURT: Please talk louder.

10 THE WITNESS: Not about my answers, no,
11 ma'am.

12 BY MS. CAMPBELL:

13 Q So you want this jury to believe that your lawyer
14 put you on the witness stand and he had absolutely no
15 idea what you were going to say?

16 A Not -- he did not contradict none of my
17 answers. That's what I'm saying, ma'am. He never
18 told me not to say this or not to say that.

19 Q No, no. That's not what I'm asking you.

20 A You asked me did I speak to him about my
21 answers.

22 Q And you said, no, you didn't tell him what your
23 answers were going to be.

24 A I didn't say I didn't tell him. I said I
25 didn't argue with him about --

1 Q Okay.

2 THE COURT: Hold on. Let him finish.

3 BY MS. CAMPBELL:

4 Q I'm sorry. Go ahead.

5 A He didn't tell me what to say. He didn't
6 persuade me not to say words. Everything I say,
7 that's how I speak. Yes, ma'am.

8 Q Okay. On April 3, 2020, at the Tiger Express,
9 that gun you had, did you have that tucked in your
10 pants?

11 A Yes, ma'am.

12 Q Yeah, you had a gun tucked under your pants. Tell
13 this jury where you got that gun.

14 A Where I got it?

15 Q Uh-huh.

16 A I believe I bought it off the streets.

17 Q Okay. You bought that gun off the streets.

18 A Yes, ma'am.

19 Q Who loaded that gun?

20 A I think it came loaded.

21 Q It came loaded?

22 A Yes, ma'am.

23 Q Who's the person that sold you that gun? Give us
24 the truth.

25 A The truth?

1 Q Yeah.

2 A He's dead now, actually.

3 Q What's his name?

4 A I don't know his last name, but I believe his
5 first name is -- hold on. I don't want to give
6 you his nickname. I want to give you his real
7 name. It's on the tip of my tongue. Dang. Can
8 you come back to that question, because I got to
9 think about it?

10 Q You want me to come back to that question?

11 A I'll answer your question. I just can't
12 remember the name right now.

13 Q Okay. We'll let you think on that.

14 Now, you shot that gun that you bought
15 off the street from some guy you can't give us the
16 name for. You shot that gun five times into that
17 car, didn't you?

18 A I never knew how many times I shot until I
19 actually looked, honestly.

20 Q How many bullets did that gun hold?

21 A That gun holds 17, I believe.

22 Q Seventeen bullets. How many bullets did you have
23 in it that day?

24 A That day?

25 Q Uh-huh.

1 A I guess it was fully loaded.

2 Q Fully loaded.

3 A Yeah.

4 Q Now, where is that gun today? Where's the gun
5 that killed Quinton Ventress today?

6 A I threw it.

7 Q I'm sorry. What?

8 A I threw it.

9 Q You threw it. Where did you throw it?

10 A In the woods.

11 Q In the woods. What woods?

12 A Well, after she -- Benning took me back to
13 Dulamo, riding through the back of Dulamo, I threw
14 it somewhere in the woods over there.

15 Q You know where you threw it, don't you?

16 A I told you. On the back road, Tilford Road,
17 like, there's trees on both sides of the road, I
18 just fling it as far as I could.

19 Q Two years, you could have took these officers to
20 that gun, couldn't you?

21 MR. LEE: Your Honor, I object for trying
22 to get into something about him not saying
23 something or doing something.

24 (Bench conference on the record.)

25 MR. LEE: She's commenting on his silence

1 for not saying something for two years.

2 THE COURT: Well, he's taking the stand now.

3 I mean --

4 MS. CAMPBELL: He's saying this is
5 self-defense.

6 MR. LEE: His silence for two years.

7 MS. CAMPBELL: He turned himself in. He
8 won't speak to the cops.

9 THE COURT: I think it's fair. Let's
10 move on. All right. We're going to move on,
11 thank you.

12 BY MS. CAMPBELL:

13 Q You took this gun that you used to kill
14 Quinton Ventress. You tossed it in the woods. You
15 know, as we sit here today, exactly where it is, don't
16 you?

17 A No, ma'am.

18 Q You know where you left it, how about that?

19 A No, ma'am. When you throw something out of
20 the car and it's moving, you, kind of, don't know
21 where it falls at, where it goes at.

22 Q Okay. You threw it out the car window.

23 Now, you come in here and told this jury,
24 I'm fearing for my life, right? That's what
25 you're telling them. I'm walking these streets.

1 Quinton Ventress, he's after me. That's what you
2 told them, right?

3 A Yes, ma'am.

4 Q Okay. And so you got a situation going on here
5 where your life is in danger. That's what you want us
6 to believe, right?

7 A That's the truth.

8 THE COURT: Mr. Burgess?

9 THE WITNESS: Speak up?

10 THE COURT: Yes, sir.

11 THE WITNESS: I got you.

12 BY MS. CAMPBELL:

13 Q And you want us to believe that you were afraid
14 for your life back in April 2020, right?

15 A Yes, ma'am.

16 Q Okay. Well -- and self-defense, too. He acted
17 like he was going to shoot me, right? That's what you
18 want us to believe.

19 A Can you rephrase the question?

20 Q I was fearing for my life. I thought he was going
21 to shoot me.

22 THE COURT: Hold on. Hold on.

23 THE WITNESS: Can you rephrase the
24 question?

25 THE COURT: Let's -- again, he was

1 starting to answer in the middle of the question.
2 Just make sure that she finishes her question,
3 sir. And if you understand it, then you can
4 answer it. And then she will allow you, sir, to
5 answer your question -- or answer the question
6 before she moves on.

7 Thank you. Please proceed, Solicitor.

8 BY MS. CAMPBELL:

9 Q Have you ever gone to the police and told them,
10 I'm afraid, somebody is after me, in those weeks?

11 A No.

12 Q No, okay.

13 So there's no record anywhere that you're
14 riding around fearing for your life, is there?

15 A Technically, I wasn't riding around. And if
16 you were out here and you understand what's going
17 on out here in these streets, when we make reports
18 to the police officers, you-all don't do nothing
19 about it. You feel what I'm saying? Because
20 you-all say I don't have enough precaution. You
21 feel what I'm saying? So I didn't have enough
22 precaution to call the police and say -- like,
23 when I was riding through Folly Road, I couldn't
24 stop on the side of the road and say this man just
25 shot at me. You feel what I'm saying?

1 Q And so what you're talking about is what you
2 believe in, which is street justice, right?

3 A No, ma'am. What I'm talking about is the
4 truth of what's going on in the world right now.

5 Q You're wanting this jury to believe that you don't
6 believe in street justice?

7 A I don't. I believe in the truth.

8 Q But you don't believe in real justice, which would
9 come through law enforcement.

10 A I do believe in it. That's why I turned
11 myself in and I was waiting on you-all to ever
12 come to me with the right approach. You never
13 came to me with the right approach. You-all
14 locked me up for murder and attempted murder and
15 made me a criminal. Right?

16 Q Yes. And so locking you up for killing
17 Quinton Ventress. And what you're saying is, you
18 hadn't been able to tell your side of it, that's
19 right? That's what you're saying?

20 A Yes, ma'am.

21 Q Okay. And you've come here today to tell the
22 truth to this jury?

23 A That's why I'm in court. To try.

24 Q And you say to them, I'm a peaceful kind of guy,
25 right?

1 A I stated that.

2 Q And you're a peaceful kind of guy who has a gun,
3 fully loaded, 17 bullets, and fires five times into a
4 car to an unarmed man strapped in his seat, seat belt
5 across him, smoking a cigarette. That's your peaceful
6 kind of guy, isn't it?

7 A I'm answering your question, right? I didn't
8 know -- half of the things you're saying, I didn't
9 know that at that current moment. Like, what
10 you're saying is, a dude sitting in the car,
11 unarmed, smoking a cigarette, if I probably would
12 have known that, and I knew -- you know what I'm
13 saying? Then I wouldn't have felt scared. But
14 that's not what was in my head at the moment.

15 Q What you did know, what you told this jury you
16 knew --

17 MS. CAMPBELL: Let's play the clip for
18 us, please.

19 BY MS. CAMPBELL:

20 Q -- is that he said to you, the unarmed man in the
21 car -- and you said this is what makes you turn
22 around. So you say he says --

23 MS. CAMPBELL: Come all the way up and
24 bring the lights down for me. There we go.

25 (Video played.)

1 MS. CAMPBELL: Now, stop. Let's go back
2 and look at that one more time. Stay with me. Go
3 all the way -- yeah, there we go. Stop.

4 BY MS. CAMPBELL:

5 Q You are looking in that car before you even get to
6 the windows, aren't you?

7 A Ma'am, the windows are tinted and they're
8 halfway up. You cannot see -- you can't see
9 inside a car like that.

10 MS. CAMPBELL: Turn the lights back up.

11 THE COURT: Hold on. Let him finish his
12 answer.

13 THE WITNESS: You can't see -- if you
14 replay the video, you see when I double looked at
15 him because I heard something. And then when I
16 double looked at him and I seen him moving, then
17 that's when I got scared and I go to protecting
18 myself first.

19 BY MS. CAMPBELL:

20 Q Okay. So, will you then, after watching it, admit
21 that you are checking out the people in that car?
22 When you get to the back of that car, you can see
23 inside that car and you are steady looking in that car
24 as you walk past that car, aren't you?

25 A Back it up. Ma'am, the windows are up. The

1 front window is probably up to about this much
2 (indicating.) I didn't even clearly see this
3 man's face until this man started moving around.
4 I heard a sound first.

5 Q Wait a minute. You heard a sound first --

6 A I heard --

7 Q -- before you saw his face?

8 A That's what made me turn because I was
9 looking for what was yelling. What was -- you
10 know what I'm saying? What was screaming. What
11 was coming.

12 Q So you told this jury, when you go to a gas
13 station, you're steady, checking out your scene,
14 aren't you?

15 A Around that time right there, being that --
16 yes, ma'am. I was -- I was -- if I would have
17 seen -- if I would have felt like I seen any car
18 there that may have looked like a car that would
19 have did something to me or anything, I wouldn't
20 even have went to that gas station.

21 Q And you are preparing yourself as you reach the
22 back of that car, steady looking in those windows, up,
23 down, you can see in there, and you are looking in
24 there, and looking at your scene, and preparing
25 yourself, aren't you?

1 A No, ma'am. I don't know when you say
2 prepping, what am I prepping for? I'm going in
3 the store to buy a cigar. All I'm doing is
4 walking around. If you look at the front -- at
5 the video of the car, if you look when I first got
6 out of the car, I took off my hat. I took off my
7 hat so I won't be out looking out of pocket. You
8 feel what I'm saying? So when I'm walking in the
9 store, it's common to just look. You feel what
10 I'm saying?

11 Q Uh-huh. It's common to look. But you said you
12 had changed your behavior, that you are not checking
13 the scene out to make sure there wasn't anybody around
14 that was going to get you.

15 A No, ma'am. You mixing up words.

16 Q I'm wrong, okay.

17 A I'm saying, if I would have -- when she was
18 turning in this gas station, if I would have seen
19 Quinton out of that car, standing around that car,
20 or I would have seen maybe like a car that
21 probably pointed to him, I would have turned and
22 keep going. I don't want to go to that gas
23 station. I never knew no harm was at this gas
24 station.

25 Q That takes me exactly where I want to go now.

1 Thank you. Because what you say he said to you was,
2 "I finally caught your bitch ass," right?

3 A Yes, ma'am.

4 Q Now, what kind of gangster shooting around town is
5 he if he's strapped into a car and he is going to say
6 to you, "I finally caught your bitch ass?" Who's in
7 the superior position here? You, right?

8 A No, ma'am, because I can't control no one's
9 actions. I can't say how somebody else would
10 react or take control over a situation.

11 Q He is sitting down in his car, is he not?

12 A Yeah, he's sitting in the car.

13 Q Yes, he is. He's strapped in. He can't get out
14 before he takes his seat belt off.

15 A Ma'am, I didn't knew that. And you know
16 people get shot from people sitting inside the
17 car.

18 Q Who's in the superior position here? The man
19 standing up with the gun coming out down into the car
20 or the man down in the car?

21 A I can't say who got the superior position.

22 Q Okay.

23 MS. CAMPBELL: That's all.

24 MR. LEE: Real quick, Deavion.

25 REDIRECT EXAMINATION

1 BY MR. LEE:

2 Q He's sitting in the car. You can't really see
3 inside the car very good, can you?

4 A No, sir.

5 Q He's moving around.

6 A Yes, sir.

7 Q You're sitting out there in the middle of the
8 parking lot with nothing else around you and you can't
9 see what he's doing, but he can see exactly what
10 you're doing, right?

11 A That's right.

12 Q So who's in the superior position?

13 A Him, if he can see my surroundings and I
14 can't.

15 THE COURT: Anything else?

16 MR. LEE: No, sir. Nothing from the
17 defense.

18 THE COURT: All right. Are you going to
19 call another witness?

20 MR. LEE: No, sir.

21 THE COURT: All right.

22 MR. LEE: Defense rests.

23 THE COURT: Okay. Ladies and gentlemen,
24 the defense has rested. And so with that having
25 been said, you heard all the evidence in this

1 case. It is almost 3:30. There are several
2 matters of law that we're going to have to take up
3 this afternoon now that all of the evidence has
4 been presented to you. I expect that will take
5 the balance of the afternoon.

6 Tomorrow morning, you will you come back.
7 At that point, I believe that the only thing left
8 would be that the lawyers would be able to present
9 their closing arguments. And thereafter, I will
10 give you my charge on the law.

11 You would then retire to the jury room
12 and I would finally be able to say, or at least
13 have the bailiff tell you can tell deliberate.

14 So for right now, don't talk about the case.
15 I'm going to discharge you for the afternoon. Come
16 back tomorrow morning at 9:30 and we'll have closing
17 arguments and jury charge. Okay? Have a good
18 evening, folks. Thank you.

19 (Jury exits the courtroom at 3:22 p.m.)

20 THE BAILIFF: Jury is clear, Your
21 Honor.

22 THE COURT: All right. Mr. Burgess,
23 thank you, sir. You can go back and sit down with
24 Mr. Lee.

25 Mr. Lee, any motions, sir?

1 MR. LEE: Yes, sir. And I guess before I
2 renew my directed verdict motion, I would just
3 want to put on the record, I didn't object at the
4 time, but we clearly had pretrial motion that no
5 gang stuff was going to come in here, and I know
6 that she -- Miss Campbell a trying to talk a
7 certain way, but she was saying, what kind of
8 wanna-be gangster, referring to Quinton Ventress.
9 I just would ask the Court to ask her to please
10 stay away from any form of the word gang,
11 gangster, anything like that. Because we've done
12 a great job of keeping it out. It shouldn't be in
13 in any way. I think she slipped up caught in the
14 moment. I think that is improper, and I would ask
15 the Court to remind her that that type of
16 argument, et cetera, has already been ruled upon
17 and is not appropriate.

18 THE COURT: I think she got caught up in
19 that when she referred to gang, we're going to try
20 to gangster, street -- and so she's not going to
21 -- I'm sure she won't make any reference to that
22 in her closing.

23 MS. CAMPBELL: No, sir.

24 THE COURT: Thank you, Mr. Lee.

25 Mr. Lee, other matters?

1 MR. LEE: Judge, at this time, I would,
2 again, make a directed verdict on behalf of
3 Mr. Burgess for the same reasons mentioned at the
4 close of the State's case. Since that, we have
5 had the opportunity to hear Mr. Burgess testify.
6 I certainly -- I mean, the only evidence so far --
7 again, there's no malice for the murder charge. I
8 submit to you that there is no malice for the
9 murder charge to go forward. I would respectfully
10 ask for a directed verdict on murder for the lack
11 of malice.

12 The attempted murder again, even with his
13 testimony, I think his testimony cleared up that
14 there was no specific intent. He didn't see
15 anybody. I mean, that's the only testimony. As
16 to what he saw or didn't see, was he said he
17 didn't even see anybody else in the car, which is
18 Mr. Wilkerson. So if there's no specific intent
19 there, then there's certainly no express malice.
20 There's been no testimony again that anything was
21 said. In fact, the testimony was that
22 Quinton Ventress in the front seat is the one that
23 said to him.

24 So there is no testimony, again, to
25 reenforce. The only testimony as far as -- we

1 went there just to buy by cigars. So there's no
2 pre-planning. There is no premeditation. There's
3 no aforethought to form any malice, so there's no
4 express malice which is the pre-planning, getting
5 ready for something.

6 There's testimony that he had a gun on
7 him, but his testimony said I don't know whose car
8 that was. And there was no evidence that all of
9 this was pre-planned, pre-thought, or that
10 Mr. Wilkerson was an intended target.
11 Mr. Wilkerson was there.

12 So with no express malice and no -- I
13 lost my train of thought for a second. No express
14 malice and -- what was the other? It's completely
15 -- the two requirements for attempted murder are
16 specific intent and express malice. There's no
17 evidence of either one of those.

18 THE COURT: All right. Thank you.

19 MR. LEE: Actually, the only testimony
20 out there, really, is contradictory to that
21 though, to those requirements.

22 So I would respectfully ask for a
23 directed verdict on all three charges for reasons
24 we stated earlier.

25 THE COURT: All right. Miss Campbell.

1 MS. CAMPBELL: Your Honor, I stand by the
2 State's argument. Nothing has changed to argue
3 differently based upon the defendant's testimony,
4 except I would say that in furtherance of our
5 position, again, we are here with zero testimony
6 that anyone in the vehicle that was shot into was
7 armed, that they had a gun, that he saw a gun, and
8 he was threatened with the gun. I think that's
9 what came out of the defendant's testimony.

10 It's contradictory testimony. There is
11 evidence in the record that he referred to "them
12 boys," from one of the State's witnesses. If he
13 wants to say he didn't see Zach Wilkerson, I mean,
14 that's a matter for the jury to determine.

15 Thank you, Your Honor.

16 THE COURT: All right. I'm going to
17 respectfully deny your motion really for the
18 reasons that were stated earlier. I understand
19 your client testified and I understand his
20 position, and there was testimony from him that he
21 did not know that anyone else was in the car.

22 However, I do believe that there was
23 testimony from -- Carletha? Carlita?

24 MS. CAMPBELL: Carletha.

25 THE COURT: Carletha that he informed her

1 that he had to shoot boys, with an S. At least
2 that's what the solicitor's notes reflect. That's
3 what my notes reflect. And I believe, while it's
4 contradictory, and I believe that I'm looking at
5 the existence of evidence now and not the weight,
6 so I'm going to deny your motions, Mr. Lee. Thank
7 you.

8 MR. LEE: Yes, sir.

9 THE COURT: All right. Have you-all had
10 a chance to look at these charges? Are we ready
11 to -- let's move forward with the charge. Do you
12 need a few minutes? What do you want to do?

13 MS. CAMPBELL: The State has looked at
14 the charges.

15 THE COURT: I'll tell you what, it's
16 3:30. Let's just take a 15-minute break and then
17 we'll come back and we'll examine these charges
18 because I think that's the only other thing we'll
19 need to do this afternoon. Okay?

20 MS. CAMPBELL: Okay.

21 (A break was taken from 3:29 p.m. 3:45 p.m.)

22 THE BAILIFF: All rise.

23 THE COURT: You-all can be seated.

24 Have you-all had an opportunity to look
25 at these jury charges? From the State?

1 MS. CAMPBELL: Yes, sir.

2 THE COURT: From the defense?

3 MR. LEE: Yes, sir.

4 THE COURT: All right. What I like to do
5 is just, kind of, go through these charges on the
6 record. And so, on page 1 and 2, I think you got
7 my jury charges, what I call the general -- sort
8 of a general statement or general instruction.

9 Any objection from the general
10 instruction from the State?

11 MS. CAMPBELL: No, Your Honor.

12 THE COURT: From the defense?

13 MR. LEE: No, sir.

14 THE COURT: All right. On page 3, I've
15 got charge, arrest, and indictment not evidence.

16 Any objection to that from the State?

17 MS. CAMPBELL: No, Your Honor.

18 THE COURT: From the defense?

19 MR. LEE: No, sir.

20 THE COURT: All right. On page 4, I've
21 got multiple charges.

22 Any objection from the State?

23 MS. CAMPBELL: No, Your Honor.

24 THE COURT: From the defense?

25 MR. LEE: Judge, my thought on that is, I

1 don't know how we explain to the jury that they
2 cannot transfer malice from the murder charge to
3 an attempted murder charge, because I think
4 there's a real risk of that happening. And, for
5 example, I don't think there's any factual
6 scenario out there where the jury said, all right,
7 we're finding him not guilty of the murder, guilty
8 of attempted murder for Zachary Wilkerson, I don't
9 think that that is within the realm of
10 possibility. Maybe we have to deal with more
11 towards the verdict sheet, which we can talk about
12 in a little bit.

13 But I'm not sure the statement the
14 defendant is making -- or putting it on any or all
15 of the defenses charged -- I mean, he couldn't be
16 convicted of possession of a weapon during the
17 commission of a violent crime because there's a
18 prerequisite. You have to be convicted of a
19 violent crime in order for that to happen.

20 THE COURT: Okay.

21 MR. LEE: I'm not sure -- I'm not sure
22 how he could be acquitted on murder and found
23 guilty of attempted murder, because if he's
24 acquitted on murder, it either means --

25 THE COURT: All right. So what do you --

1 MR. LEE: That means there's no malice or
2 it's self-defense.

3 THE COURT: What do you propose?
4 Removing the charge in its entirety?

5 MR. LEE: I think maybe the easiest
6 evident thing, at this point, is after it says
7 uninfluenced by your decision as to any other
8 indictment, we will provide a verdict form which
9 explains the possible verdicts -- or explains the
10 process of returning your verdicts.

11 THE COURT: How about if I just stop at
12 indictment?

13 MR. LEE: Okay.

14 THE COURT: Take out "The defendant may
15 be convicted," and leave that language out.

16 MS. CAMPBELL: That's what I was going to
17 suggest.

18 THE COURT: Because the verdict form,
19 kind of, will be self-explanatory as it relates to
20 that matter.

21 MR. LEE: Yes.

22 THE COURT: Is that satisfactory?

23 MR. LEE: Yes, sir.

24 THE COURT: All right. So we're going to
25 make that modification.

1 All right. Number 5 and 6, duties of the
2 judge.

3 Any objection from the State?

4 MS. CAMPBELL: No, Your Honor.

5 THE COURT: Defense?

6 MR. LEE: No, sir.

7 THE COURT: All right. Number 7, and 8,
8 credibility of the witnesses.

9 Any objection?

10 MS. CAMPBELL: No, Your Honor.

11 MR. LEE: No, sir.

12 THE COURT: Thank you. Page 9, expert
13 witness charge on 9 and 10.

14 Any objection from the State?

15 MS. CAMPBELL: No, Your Honor.

16 THE COURT: Defense?

17 MR. LEE: No, sir.

18 THE COURT: Presumptions of innocence
19 charge on page 11 and 12.

20 Any objection from the State?

21 MS. CAMPBELL: No, Your Honor.

22 THE COURT: Defense?

23 MR. LEE: No, sir.

24 THE COURT: I've got a reasonable doubt
25 charge on 13 and 14.

1 Any objection from the State?

2 MS. CAMPBELL: No, Your Honor.

3 MR. LEE: No, sir.

4 THE COURT: Defense?

5 MR. LEE: No, sir.

6 THE COURT: Thank you. Direct and
7 circumstantial evidence on 15 and 16.

8 Any objection from the State?

9 MS. CAMPBELL: No, Your Honor.

10 THE COURT: Mr. Lee?

11 MR. LEE: Judge, it appears to be the
12 exact language from Logan, which I think we talked
13 about before. Logan tells you what you need to
14 charge, and if that's Logan I think it is correct.
15 So I have no objection.

16 THE COURT: That's what I wanted to hear.
17 The magic words, "No objection."

18 MR. LEE: I wanted to make sure that was
19 Logan. I don't have it in front of me.

20 THE COURT: To the best of my knowledge,
21 we changed it so it's always Logan. Okay?

22 MR. LEE: Okay.

23 THE COURT: Page 17 and 18, intent.

24 Any objection from the State?

25 MS. CAMPBELL: No, Your Honor.

1 THE COURT: Mr. Lee?

2 MR. LEE: I'm okay with that so long as
3 specific intent goes with the charge on attempted
4 murder.

5 THE COURT: Well, what I would say, we
6 kind of went through this with intent a week or so
7 ago, I think. Right? There is no charge in the
8 charge book for a charge for general intent versus
9 a charge for specific intent.

10 MR. LEE: Right.

11 THE COURT: So what I do is, I charge on
12 intent. And so, you know, I want to go ahead and
13 let you know that because we spent several
14 hours -- I don't know -- in Jasper or Hampton on a
15 case on trying to find something that, kind of,
16 you know, perforated or divided that in some way
17 and we couldn't. We just charged intent, sir.

18 MR. LEE: Okay. When we get to that
19 point, I'm going to ask to discuss specific
20 intent. I think specific intent on attempted
21 murder is important because, number 1, that's the
22 specific intent to kill, and it also has to be a
23 specific intent as to who the intended target is.

24 THE COURT: All right. Well, we'll talk
25 about that in a moment. As it relates to this

1 charge, sir, is there any objection?

2 MR. LEE: Not as it relates to this
3 charge.

4 THE COURT: All right. Number 19 and 20,
5 identification.

6 Any objection from the State?

7 MS. CAMPBELL: No, Your honor.

8 THE COURT: Any objection from the
9 defense?

10 MR. LEE: No, sir.

11 THE COURT: All right. Defendant's --
12 all right, we're going to take that out, correct?

13 LAW CLERK: Yes.

14 THE COURT: All right. Page 21,
15 defendant's choice not to testify is going to come
16 out.

17 All right. 22, self-defense.

18 Any objection from the State?

19 MS. CAMPBELL: Yes.

20 THE COURT: Okay.

21 MS. CAMPBELL: Would you like to hear
22 argument?

23 THE COURT: Yes, ma'am.

24 MS. CAMPBELL: Thank you, Your Honor.

25 If we take the elements one by one, the

1 defendant has to be without fault in bringing on
2 difficulty. *State v. Slater*. That's a 2007 case.
3 In that case, the defendant was attempting to
4 claim immunity inserting himself armed into a
5 dispute that he had no connection to. Slater then
6 shot and killed one of the parties of the
7 argument, and the court held that any act of the
8 accused in violation of the law and reasonably
9 calculated to produce the occasion not to bring on
10 the difficulty barred himself from the right to
11 assert self-defense.

12 The defendant, in this case, had
13 testified that he was unlawfully carrying a
14 firearm on April 3rd, 2020. He had bought it off
15 the street. He didn't remember who he bought it
16 from. And the Court said in Slater that Slater's
17 unlawful possession of the weapon was the
18 proximate cause of the homicide. Exactly the same
19 situation here. Slater was not merely in
20 possession unlawfully of the weapon. He carried
21 cocked and ready to go. He loaded it with 17
22 bullets, Your Honor, is the testimony you have
23 before you. And the Court held that Slater was
24 not entitled to a self-defense charge on that
25 prong of self-defense, and that is on point with

1 what you have in testimony here.

2 I can move on or we can --

3 THE COURT: Go ahead.

4 MS. CAMPBELL: Okay, thank you.

5 MR. LEE: What case is that, Traci?

6 MS. CAMPBELL: *State v. Slater*,

7 373 S.C. 66, 2007.

8 Number 2, the defendant must have been in
9 actual imminent danger of losing his life or
10 sustaining serious bodily injury, or he must have
11 actually believed he was in imminent danger of
12 losing his life or sustaining bodily injury. The
13 records in this case is devoid factually, zero, in
14 terms of -- to substantiate that he was in any
15 imminent danger.

16 The victim in this case, as has been
17 shown repeatedly, was in a seated position
18 strapped into a car and unarmed. The defendant,
19 when he took the stand, did not testify that he
20 saw a gun in any, way, shape, or form, just that
21 the victim moved around in the car. And that that
22 danger that number 2 talks about must be
23 immediate, dangerous impending, or about to take
24 place.

25 You know, if the defendant is going to

1 rely on the belief of imminent danger, then we use
2 that reasonable person standard, Your Honor. A
3 reasonably prudent person of ordinary firmness and
4 courage would have entertained the same beliefs
5 that he was actually in imminent danger, and the
6 circumstances were such as would warrant a person
7 of ordinary prudence, firmness, or courage to
8 strike the fatal blow in order to save himself
9 from that serious bodily harm or loss of his life.
10 And factually here, again, zero evidence to
11 support that.

12 It would be that we have, you know, a
13 situation where they want to work around the law.
14 Self-defense does not apply to "I don't know," and
15 that's what the defendant testified to. "I don't
16 know." He had to be in danger and he was not.

17 The *State v. Winnington*, which is at
18 375 S.C. 25, South Carolina Court of Appeals case,
19 2007 supports the position on that as well.

20 Additionally, in that case, Your Honor,
21 the Court said -- because we had testimony that
22 there was some phrase or something tossed out,
23 like, *I got your bitch ass now*, words are never
24 enough. Words alone cannot be enough to put a
25 reasonable person in fear for their life, and

1 that's the standard that we use.

2 And then lastly, no other probable means
3 to avoid the danger. The video speaks for itself.
4 He was literally a foot from the door. Instead
5 of, if he heard something that he felt threatened
6 by, *I got you now*, he can grab the door and
7 there's safety, you know. And instead he makes
8 the conscious decision, and you can see in the
9 video, he pivots, he turns, makes himself
10 literally a foot from the car, pulls out his gun,
11 point his gun, and shoots his gun and kills
12 Quinton Ventress.

13 And so for those reasons cited, the State
14 takes the position that a self-defense charge in
15 this case is absolutely unwarranted.

16 THE COURT: All right. The Wittingham
17 case or Wingington?

18 MS. CAMPBELL: Wingington.

19 THE COURT: Wingington.

20 MS. CAMPBELL: That's the case where
21 there was a dispute between father and daughter,
22 the grandfather intervened. He yelled at the
23 father. The grandfather goes to the truck, gets a
24 gun, shoots the father. And, again,
25 uncontroverted that the victim had never, in that

1 case, hit the defendant prior to being shot. And
2 the defendant was trying to rely on some earlier
3 physical altercation. I think it was a CDV
4 between the two of them to justify it. And the
5 Court said, no, you can't do that. It's what
6 matters right today, not what happened three weeks
7 ago, or two days.

8 THE COURT: All right.

9 MS. CAMPBELL: Thank you.

10 MR. LEE: That's all argument for the
11 jury. We're talking about charges. I mean, I
12 mean, I went down during the testimony and went
13 through each element of self-defense with him and
14 provided that testimony. Whether she believes
15 it --

16 THE COURT: I noticed your use of the
17 word "imminent," sir.

18 MR. LEE: I did. I did use it.

19 THE COURT: I know you did.

20 MR. LEE: At this point, it doesn't
21 matter whether Traci Campbell believes him or not.
22 It needs to be charged. And those are great
23 arguments she can make to the jury about why she
24 doesn't think it's self-defense, but right now
25 it's a charge conference. And if there's any

1 evidence at all, it needs to be charged,
2 particularly when that's the only defense, and
3 it's important. And that's the way the whole case
4 has been presented from the get-go even to the
5 extent of having the defendant forego his Fifth
6 Amendment rights and testify.

7 You know, that the one thing I'll respond
8 to is, well, he bought the gun or whatever.
9 *State vs. Burriss*, B-u-r-r-i-s-s, 334 S.C. It's
10 an important case because you see this a lot. It
11 says a person can be acting lawfully, even if he
12 is in unlawful possession of the weapon, if he was
13 entitled to arm himself in self-defense at the
14 time of the shooting.

15 So what that --

16 THE COURT: What year is that case?

17 MR. LEE: '99.

18 THE COURT: All right.

19 MR. LEE: If you're on probation, you're
20 not allowed to have a weapon. But if somebody
21 breaks into your house, you're allowed to defend
22 yourself and defend your home even though you're
23 not allowed to possess a weapon. Self-defense is
24 not taken away because someone is somehow
25 prevented from having a weapon or has an unlawful

1 weapon. There's a difference between the unlawful
2 possession of a weapon, which could lead to a
3 criminal charge versus lawfully arming yourself in
4 self-defense. And it doesn't matter if he used a
5 pistol with a scratched off serial number, a sawed
6 off shot gun, and automatic rifle. If you have
7 the right to -- you may not have a right to
8 possess it, and it's a separation thing, but you
9 have the absolute right to arm yourself with
10 whatever it may be if it's self-defense, and I
11 think that that takes care primarily of the only
12 argument of hers that had my type of teeth to it.

13 So there's clearly, based on his
14 testimony -- clearly, they can say they don't
15 believe it or whatever, but there's clearly
16 evidence that all four of those elements, even,
17 again, using the word "imminent" to support a
18 self-defense charge.

19 I have one more thing.

20 THE COURT: Yes, sir, Mr. Lee. I always
21 let people fully state what they want on the
22 record. You know that?

23 MR. LEE: We appreciate that.

24 Words alone are not enough to get there,
25 but words accompanied by hostile acts. I think,

1 certainly, his not being able to see him fully his
2 saying he was moving around in the car. I think
3 that, the words plus that -- and they can say
4 there's no gun in the car or whatever, he doesn't
5 know that. And if he saw him acting in a
6 suspicious way and it's coupled with what he said
7 to him, clearly that's enough to get you past the
8 threat or perceived threat of imminent bodily
9 harm.

10 THE COURT: All right. I'm going to
11 allow the self-defense charge. You know, when I
12 look at *Slater*, which the solicitor made reference
13 to, *Slater*, which is 373 S.C 66, in that case, in
14 the *Slater* case, the record reflects that Slater
15 approached an altercation that was already
16 underway with a loaded weapon.

17 There is no altercation that was already
18 underway. This is -- I just don't see the
19 similarity. I don't see the applicable here. You
20 know, there just wasn't an altercation underway.

21 The *Burriss* case was the one I was thinking
22 about and that's where basically they weren't supposed
23 to have the gun, but ended up being there, used it,
24 the defendant, and I believe the Court allowed that in
25 the *Burriss* case.

1 Mr. Campbell, I believe that the imminent
2 danger that he testified to -- he said he thought
3 he was in imminent danger, and I think his
4 testimony alone is enough to allow it to go to the
5 jury.

6 I think there's great potential argument
7 for close, as it relates to that and
8 reasonableness of it, absolutely. But I believe,
9 as it relates to close, I believe that -- I
10 believe that, under the circumstances, based upon
11 his testimony on the stand, that an objective
12 person in the same place would fear for their life
13 or certainly could. I think that's reasonable
14 based upon the testimony, and so I think that's
15 something the jury could evaluate.

16 As it relates to the flight or to
17 removing himself, number one, I think that they
18 both have a right to be there, and I think they
19 both had a right to be there under that
20 circumstances. I don't think he has a duty to
21 retreat.

22 Is that correct, Mr. Lee?

23 MR. LEE: I agree with that, yes, sir.

24 THE COURT: I believe that to be the
25 case. I also think that -- and you talked about

1 words alone, but I do believe that he made a big
2 deal about it on direct and cross that, yes, the
3 window was only halfway up or halfway down, I
4 guess, depending on how you look at it. But he
5 did say he was moving about in the car, and he
6 used these words and then started moving. And I
7 just think that given all of that -- and for all
8 those reasons, I think I'm going to allow -- I'm
9 going to allow the self-defense charge.

10 Hold on one second.

11 (Off the record discussion with law clerk.)

12 THE COURT: All right. So what about
13 my -- and I note your objection for the record,
14 Solicitor, as it relates to the self-defense
15 charge and that you don't believe any self-defense
16 charge is appropriate. I understand that and I
17 understand your reasoning.

18 What I want to know is: As it relates to
19 the charge I proposed, in my opinion, abandoning
20 your opposition at all, is there another charge --
21 or if you want to make any comment as relates to
22 the charge. Again, I'm not asking you to abandon
23 your -- I'm not putting you in a position to
24 abandon your argument, but I just want to know
25 that's the charge that I plan on using. Is there

1 anything or any comment you want to make as it
2 relates to that charge?

3 And then I'm going to give Mr. Lee the
4 same opportunity, because I can tell you, Mr. Lee
5 sent me 100 pages of self-defense charges here.

6 MS. CAMPBELL: I just --

7 THE COURT: Sir? I'm joking. It wasn't
8 100.

9 MS. CAMPBELL: When I came back from the
10 break, I'm trying to go through them as well.

11 So, if I take Your Honor's proposed
12 self-defense charge, if I may take it by the
13 heading, I guess would be the best way to do that
14 perhaps, or the page number here, so on page 22,
15 your Honor --

16 THE COURT: Yes, ma'am.

17 MS. CAMPBELL: There is no objection from
18 the State.

19 THE COURT: All right. And again, I'm
20 not --

21 MS. CAMPBELL: That is correct.

22 THE COURT: I think it's a correct
23 statement of self-defense.

24 MS. CAMPBELL: It is.

25 THE COURT: Again, I'm not asking you to

1 make comments such that you would abandon your
2 argument and your objection to it. I just wanted
3 to know what your thoughts were as to the way it
4 is. And I think I understand and appreciate that.

5 Now, Mr. Lee, I'll let you -- I'll hear
6 from you, sir, on my charge -- my proposed charge
7 on self-defense.

8 MR. LEE: The only thing that I would ask
9 for you to consider, Judge, is some type of --
10 more of a bridge between self-defense versus
11 malice. And I think on the proposed charge
12 number 11, which I sent to you and the solicitor,
13 State vs. Wiggins, my proposed jury charge 11 says
14 self-defense is a complete justification for
15 homicide and attempted homicide and negates the
16 existence of malice.

17 I just ask that we somehow tie that
18 that's what self-defense is. It negates the
19 malice element of murder and attempted murder.
20 That's what it's -- that's what it's all about. I
21 mean, it says it's a complete defense, you must
22 find him not guilty, but I'd like to try to bridge
23 that gap a little bit to say this is what
24 self-defense is, saying if you're acting boom,
25 boom, boom, boom, you know, you don't have the

1 malice that is required for a murder or attempted
2 murder.

3 THE COURT: All right. "The defendant
4 has raised the defense of self-defense.
5 Self-defense is a complete defense, and, if it is
6 established, it negates the existence of malice
7 and you must find the defendant not guilty.

8 MR. LEE: Would you consider putting it
9 negates the existence of malice in a murder and
10 attempted murder case?

11 THE COURT: Solicitor?

12 MS. CAMPBELL: That feels almost like a
13 statement on the facts.

14 MR. LEE: That's what self-defense
15 charges are, Judge.

16 MS. CAMPBELL: That comments on the facts
17 on this case.

18 THE COURT. Hold on. Hold on. Let her
19 finish, Mr. Lee.

20 MS. CAMPBELL: I would object to that.
21 It's statement specific to this case and these
22 facts.

23 MR. LEE: It's a statement on what he's
24 charged with. It's not saying, you know, if you
25 use a 9-millimeter, you know, treat him more

1 harshly or less harshly. It's not on the facts of
2 the case. It's on the indictments for which we're
3 here. And it is a defense to attempted murder and
4 murder. And the reason it is is because it
5 negates malice and both of those requirements for
6 which they've charged -- which they indicted him
7 require malice, so it applies to both of them. I
8 just think you need to make that clear.

9 THE COURT: Of course, I'm saying you
10 must find him not guilty. If I say, you got to
11 find him not guilty, you got to find him not
12 guilty. And I'm going to read what the charges
13 are. I mean --

14 MR. LEE: Well, I just don't see the harm
15 in doing it to make sure they understand both
16 charges.

17 THE COURT: All right. What I'm going to
18 do is, I'm going to put, "The defendant has raised
19 the defense of self-defense. Self-defense is a
20 complete defense. And, if it is established, it
21 negates the existence of malice and you must find
22 the defendant not guilty of homicide and attempted
23 murder."

24 MR. LEE: Of homicide and attempted
25 murder.

1 THE COURT: Attempted homicide. I'm
2 reading your charge.

3 MR. LEE: Okay.

4 THE COURT: You write, "Justification:
5 Self-defense is complete justification for
6 homicide and attempted homicide."

7 MR. LEE: Right.

8 THE COURT: Do you want me to call it
9 murder and attempted murder?

10 MR. LEE: Since that's what he's charged
11 with, yes.

12 THE COURT: All right. So that's better
13 than what you got. You don't want me to use
14 homicide.

15 MR. LEE: I don't want you to use it.

16 THE COURT: I don't either. That's why
17 I -- so murder and attempted murder.

18 All right, sir?

19 MR. LEE: The only other thing -- and,
20 again, just because defense lawyers are naturally
21 paranoid. The only thing that I want to make sure
22 doesn't happen, I don't think the solicitor would
23 argue this, but we got to make sure that the jury
24 doesn't think that it has to be self-defense as to
25 the threat and everything as to Quinton Ventress.

1 I don't want the jury to think that we also have
2 to establish that Zach Wilkerson was a threat and
3 did all this kind of stuff. You know, that's --
4 if he's using self-defense as to Ventress, that's
5 going to take away the malice for the attempted
6 murder.

7 THE COURT: You're starting to get too
8 confusing. It's going to be too confusing to the
9 jury as I start going through this and adding more
10 and more and more, Mr. Lee. I just don't -- I
11 don't --

12 MR. LEE: I understand, but, I mean --
13 you know --

14 THE COURT: What are you saying? What
15 charge do you want me to read?

16 MR. LEE: Well --

17 THE COURT: What charge for attempted --
18 excuse me. What charge for self-defense are you
19 proposing, sir, in its entirety?

20 MR. LEE: Well, I don't have it in its
21 entirety right now because I haven't --

22 THE COURT: Well --

23 MR. LEE: I can look at it and I can try
24 to come up with something right now, or I can get
25 back to you. I mean, I never had that exact issue

1 come up before and it's confusing to try to make
2 sure -- particularly when you're giving them the
3 charge. They're going to look at every single
4 word.

5 THE COURT: I'm assuming -- hold on. I'm
6 assuming we're giving them the charge. I only
7 give the charge to the jury -- is that what you're
8 talking about?

9 MR. LEE: Yes, sir.

10 THE COURT: I only give the charge to the
11 jury when both parties agree to give the charge to
12 the jury. So, I don't know, do you want to give
13 the charge to the jury or not?

14 MS. CAMPBELL: I never give the jury the
15 charge.

16 THE COURT: Then we won't give it to
17 them. I always default, if they agree I do it.
18 If you don't, I default old school and they don't
19 get the charge.

20 And the reason I brought that up, and I
21 didn't mean to interrupt you, is because I don't
22 want anybody to be under the impression. I know
23 you indicated -- and I don't have a problem doing
24 that, but I only do that --

25 MR. LEE: Okay.

1 THE COURT: -- when both parties agree.
2 But if they're not going to agree, then I'm not
3 going to send it back. I just want you to know
4 that.

5 MR. LEE: I think I'm recalling some case
6 I tried with Judge Price and he was sending it
7 back no matter what we said. So I know judges
8 have different thought processes. I thought yours
9 was, we send it over there. So if it's
10 voluntarily --

11 THE COURT: My policy -- the same way, if
12 you want me to, I'll read the charge before you
13 argue to the jury if both parties agree. If not,
14 we default old school, which is you-all argue and
15 then I charge. I'll do it any way you want if
16 you-all have an agreement. If not, I always
17 default old school. I mean, I brought out Black's
18 Law Dictionary today.

19 MR. LEE: I know. I'd like to do that
20 old school, argue and then charge.

21 THE COURT: Well, in that case, we'll be
22 old school on it. All right? But the charge
23 doesn't go back. We go old school unless there's
24 an agreement. Okay?

25 So, you know, I mean -- well, let me ask

1 you this: Your proposed self-defense charge that
2 you haven't had a chance to put together yet, is
3 that going to affect any of these other charges as
4 we go through them, sir?

5 MR. LEE: Well, I mean, I've sent my
6 proposed self-defense charges to you-all. But I
7 agree with what you have. It's consistent with
8 what I'm asking for.

9 THE COURT: I'm -- Mr. Lee, I don't
10 understand what you want. Okay? And that's my
11 problem. I don't know what you want. You're not
12 -- logic is here.

13 MR. LEE: I know.

14 THE COURT: I'm down here on common
15 sense. And so if I can figure it out, you're
16 going to have to explain again to make sure I
17 understand, sir.

18 MR. LEE: Well, I'm trying my best to
19 explain it. I'm just thinking as we go. You
20 know, I just don't want there to be some
21 misunderstanding of law that we could have done a
22 better job of having the jury -- and I don't think
23 the solicitor would argue this, but, if I didn't
24 have a law degree and practice law, I would wonder
25 whether it was two issues of self-defense. Did he

1 have a right to use self-defense against Ventress
2 and did he have a right to use self-defense
3 against Wilkerson.

4 And I don't think that they can make a
5 case or argue. I think it's a proper defense
6 saying, maybe against Ventress, but he had no
7 right to use self-defense against Wilkerson. The
8 Wilkerson is involved and charged simply because
9 bullets went near him.

10 THE COURT: I understand.

11 MR. LEE: And no malice was for the
12 underlying murder, the underlying shooting with an
13 unintended target.

14 THE COURT: I understand. What I want is
15 -- what do you propose I charge to address your
16 questions, or is that that you don't have that yet
17 and want until the morning?

18 MR. LEE: I probably need until the
19 morning, or if it can be addressed on the jury
20 verdict to explain that portion.

21 THE COURT: All right. We're moving
22 on.

23 MR. LEE: Yes, sir.

24 THE COURT: What he's going to do --
25 What Mr. Lee is going to do is this: Mr. Lee is

1 going to come up with a comprehensive one charge
2 for self-defense that he is proposing. In other
3 words, I want to be able to read something that
4 you want. Because you don't like what I got or
5 think it needs modified, or you think it could be
6 improved, is what I'm hearing. Is that fair?
7 Yeah?

8 MR. LEE: I'm trying to get it as
9 favorable to my side as I possibly can.

10 THE COURT: Sir?

11 MR. LEE: And I may be pushing
12 boundaries, and that's what I'm doing.

13 THE COURT: Sir? I understand that,
14 Mr. Lee.

15 MR. LEE: Yes, sir.

16 THE COURT: All I want is, I want you to
17 give me a piece of paper that you would want me to
18 read.

19 MR. LEE: Okay.

20 THE COURT: For my consideration. Not
21 that I'm going to read it. But, I mean, I'm not
22 going to sit here and craft some jury instruction
23 to then ask you back and forth as to whether it's
24 -- I want you to present me with a jury
25 instruction that you believe is appropriate for

1 self-defense.

2 MR. LEE: Yes, sir.

3 THE COURT: And what I'm going to do is,
4 I'm going to give them a copy of it, and I'm going
5 to look at it, and I may say forget it, I'm
6 charging what I've got. Or I may make a -- I'll
7 listen, but then I'm not going to waste any more
8 time on it. And I say "waste," I understand it's
9 important to your client. I understand,
10 Mr. Burgess, this is important as anything in your
11 life.

12 MR. BURGESS: Yes, sir.

13 THE COURT: I understand that. But you
14 got to give me something.

15 MR. LEE: Okay. I'll be glad to do that.
16 When do you want it by?

17 THE COURT: I mean, as long as you give
18 it to me tomorrow morning. I want to give you
19 plenty of time. Is that all right?

20 MR. LEE: Yes, sir. By nine o'clock in
21 the morning. I'll send Traci a copy.

22 THE COURT: All right. Let's just go to
23 -- because everything else up to 30 is just on --
24 we're going to page 30, proximate cause of death.
25 Any objection from the State?

1 Actually, it's backwards. Mine actually says

2 -- no, I got it right here. 29, excuse me.

3 Okay for the State?

4 MS. CAMPBELL: Yes, sir.

5 THE COURT: Mr. Lee?

6 MR. LEE: Perfect.

7 THE COURT: Thank you, sir.

8 All right. Page 31, 32, murder. State?

9 MS. CAMPBELL: No objection.

10 THE COURT: Mr. Lee?

11 MR. LEE: One small objection. It's on
12 page 32.

13 THE COURT: Yes, sir.

14 MR. LEE: I made the argument before and
15 you denied it. I would just ask that that last
16 sentence be stricken: "Malice may be shown from
17 conduct showing a total disregard for human life."
18 I think it has been properly defined prior to
19 that. I think that that goes too far in defining
20 malice. I don't think that's a correct statement,
21 and I would just respectfully ask that it be
22 stricken, but I have been denied that in the
23 past.

24 THE COURT: Solicitor.

25 MS. CAMPBELL: Your Honor, I think it's

1 proper law and it should be charged. There's no
2 reason not to charge the law to this jury.

3 THE COURT: All right. I'm going to
4 leave that in.

5 33, attempted murder. State?

6 MS. CAMPBELL: No objection.

7 THE COURT: Mr. Lee?

8 MR. LEE: I'm okay with that.

9 THE COURT: 34, possession of a weapon
10 during the commission of a violent crime.

11 From the State?

12 MS. CAMPBELL: No objection.

13 THE COURT: Mr. Lee?

14 MR. LEE: No objection.

15 THE COURT: All right. I've got 35, 36,
16 37, and I guess this is 38 and 39 as my
17 conclusion.

18 Any objection from the State?

19 MS. CAMPBELL: No, Your Honor.

20 THE COURT: Mr. Lee?

21 MR. LEE: No objection.

22 THE COURT: All right. So then the only
23 thing that we're going to do is, we're going to
24 talk for a few minutes about the self-defense
25 charge and what we're going to do with that

1 tomorrow morning.

2 MS. CAMPBELL: Your Honor, I think I have
3 an additional.

4 THE COURT: Hold on one second. I need
5 everybody to be here at 9:00 tomorrow.

6 Is that okay. Can you be here at 9:00,
7 Sharon?

8 COURT REPORTER: Yes, sir.

9 MS. CAMPBELL: Sure, I can be.

10 THE COURT: All right. Something else,
11 Miss Campbell?

12 MS. CAMPBELL: Yes, sir.

13 THE COURT: Yes, ma'am. Solicitor.

14 MS. CAMPBELL: So prior inconsistent
15 statements needs to be charged. We've had
16 witnesses who were provided or through extrinsic
17 evidence with statements they made previously. I
18 think that's appropriate.

19 THE COURT: Mr. Lee, what about prior
20 inconsistent statements?

21 MR. LEE: There are witnesses that had a
22 lot to say.

23 THE COURT: I think there are prior
24 inconsistent statements. That's fine.

25 MR. LEE: Yes, sir.

1 MS. CAMPBELL: Absolutely. And so we did
2 have a blurb in there about the testimony being
3 stricken, but I think there's a specific charge on
4 it. I'm sure it's a standard charge in your
5 charge book and we'd ask that that be charged as
6 well.

7 MR. LEE: Sure. What statement was that?

8 THE COURT: Had I stricken anything?

9 MS. CAMPBELL: You did. We were
10 concerned whether it was stricken or not.

11 THE COURT: Well, what happened is, I
12 said stricken. I believe I said that out loud to
13 the jury and then there was some issue here,
14 perhaps at the bench, and, you know, maybe -- and
15 I'm trying to remember what it even was.

16 MS. CAMPBELL: It could have been Pope,
17 Devin Pope.

18 MR. LEE: It was Officer Pope for saying,
19 "It could have been me."

20 THE COURT: Right. I told that to them
21 to be stricken from the record.

22 There's no charge in our charge book on
23 striking.

24 MS. CAMPBELL: Okay, that's fine.

25 THE COURT: But, I've got it. I told

1 them in the charge to disregard it.

2 MS. CAMPBELL: You did.

3 THE COURT: So that's what we've used. I
4 don't have anything in charge book. That's not to
5 say it doesn't exist. Lord knows where they come
6 up with these charges.

7 All right. Anything else?

8 MS. CAMPBELL: No, Your Honor. Not from
9 us.

10 MR. LEE: I'm going to complain about the
11 verdict form at some point.

12 THE COURT: We're getting ready to go to
13 the verdict form. What I'm talking about is the
14 charges.

15 MR. LEE: Oh, no. No, no.

16 THE COURT: Mr. Lee, I expect you to
17 complain.

18 MR. LEE: Yeah, some of us, that's all we
19 do.

20 THE COURT: That's no problem. Oh, gosh.

21 All right. So we got a verdict form.
22 Let's see. What's the State's position on the
23 verdict form?

24 MS. CAMPBELL: Your Honor, Mr. Lee and I
25 talked about it in an effort to reach an agreement

1 for Your Honor. I think we are of the opinion
2 that the wording needs to be a little bit
3 different.

4 THE COURT: Okay.

5 MS. CAMPBELL: I'll let Mr. Lee tell you
6 what we think the wording should be, and then I'll
7 agree to that.

8 THE COURT: Cool.

9 MR. LEE: Oh, really?

10 MS. CAMPBELL: Really.

11 MR. LEE: Okay. What if I say --

12 MS. CAMPBELL: We tried to work this out
13 for the Court.

14 THE COURT: That's all right.

15 MR. LEE: I can't put my hands on it. I
16 looked at it, Judge. My concern -- I know you're
17 tired of hearing my concerns, but my concern is it
18 says, "As to the charge of murder, we find the
19 defendant ..., " guilty or not guilty.

20 MS. CAMPBELL: Look at ours.

21 MR. LEE: And then number 2 is the
22 attempted murder as to Zachary Wilkerson, and
23 third is possession of a weapon.

24 THE COURT: Right.

25 MR. LEE: So, certainly, without question

1 there needs to be a disclaimer or an explanation
2 saying, hey, if you're not guilty on 1 or 2, you
3 don't go to 3. Now, she says you still need a
4 verdict. The disclaimer says if you find not
5 guilty, not guilty, you got to put not guilty on
6 the verdict form.

7 MS. CAMPBELL: That's correct.

8 THE COURT: Okay.

9 That's fine.

10 MR. LEE: And if she wants to put it like
11 that, that's fine. Now, what my question is, is
12 under any set of circumstances a verdict proper of
13 not guilty of murder as to Quinton Ventress,
14 guilty of attempted of Zachary Wilkerson. Because
15 if he's acquitted of murder as to Ventress, it's
16 not because some other dude did it. It's because
17 there's either no malice or it's self-defense. I
18 think all of us would agree on that.

19 MS. CAMPBELL: I think that's incorrect.
20 I think if the jury finds him not guilty of
21 murder, what the defense attorney is trying to do
22 is try to figure out why they found him not guilty
23 of murder. There could be a myriad of reasons and
24 it is absolutely proper for them to bring back a
25 verdict of guilty on the second indictment and

1 we're not going to invade their province.

2 THE COURT: So you're saying that, if
3 they find him not guilty of murder --

4 MR. LEE: Right.

5 THE COURT: -- then you're saying they
6 can't find guilty of attempted murder?

7 MR. LEE: Yes, sir.

8 THE COURT: What about the evidence that
9 said he was trying to shoot the boys, as in the
10 guy in the front seat and the guy in the back and
11 he shot five times because he wasn't that great of
12 a shot?

13 MR. LEE: They can make that argument.

14 THE COURT: But isn't that -- isn't that
15 evidence. Isn't that evidence in the record?

16 MR. LEE: That's evidence. But suppose
17 that scenario, they start with murder.

18 THE COURT: Right.

19 MR. LEE: The guy that got hit, it wasn't
20 one of the boys if you read that that way. So --

21 THE COURT: One of the two.

22 MR. LEE: One of the two. He's saying
23 "Them boys." If they find him not guilty of
24 murder of one of the boys --

25 THE COURT: Right.

1 MR. LEE: -- the guy that got hit, that
2 is either they don't think he did it, that it was
3 not a -- there was no malice because they read the
4 definition of malice and go out on the road and
5 decide there's no malice, or they say there's no
6 malice because he acted in self-defense.

7 So a not guilty at that point -- it's not
8 possible to go from, under this circumstance, a
9 not guilty on murder and a guilty of attempted
10 murder. Because, number 1, the self-defense
11 argument -- again, this is why I'm being such a
12 pain about it -- the self-defense -- if he had a
13 right to use self-defense and the State does not
14 disprove self-defense as to the guy who said
15 something, as to the guy who was moving around, as
16 to the guy that got hit, if we prove -- or not if
17 we prove. If they don't disprove it beyond a
18 reasonable doubt the elements of self-defense and
19 he's not guilty as to that, they then can't get a
20 guilty verdict when he's been -- when the malice
21 has been negated for the shooting of Mr. Ventress.

22 They can't then, all of a sudden, get a
23 guilty on attempted murder for someone who is just --
24 not -- in this case, not a bystander, but he's not the
25 target, he's not the one that said anything, he's not

1 the one in the front seat. There's testimony he
2 wasn't even there, so there is not a --

3 THE COURT: But there is testimony that
4 he was a target. There is testimony that the
5 gentleman in the back was a target.

6 MR. LEE: Well --

7 THE COURT: Right?

8 MR. LEE: I guess depending on how you
9 read that.

10 THE COURT: Well, I mean -- but I got --
11 how can I not? I mean, there's evidence that --

12 MR. LEE: You can't split the baby,
13 though. You can't say that he had a right in that
14 situation, with two people in a car -- I believe
15 only one was there. If he's in imminent bodily --
16 danger of imminent bodily harm and he uses
17 self-defense and it is established and he's found
18 not guilty on the murder of Quinton Ventress,
19 there's no way he cannot be protected by the
20 protections of self-defense as to someone else in
21 the car.

22 THE COURT: Why? Why? Why can't he
23 see -- the one guy's --

24 MR. LEE: Because there can't be two
25 different elements of malice. He can't have

1 self-defense as to one guy and not as to the other
2 guy. I mean, the defense of self-defense has to
3 go towards everything because it is a shooting
4 inside a car, et cetera.

5 Now, if he -- self-defense and then he
6 running, he gets to the car, he shoots one out the
7 window or shoots someone walking by, it's different.
8 But this is a boom, boom, boom, boom five shots
9 inside-the-car-type of thing. It's self-defense as to
10 both or it's self-defense as to neither.

11 THE COURT: All right.

12 THE BAILIFF: It's malice to both or
13 malice to none.

14 THE COURT: What days the State say?

15 MS. CAMPBELL: I think that Mr. Lee is
16 misstating the law and I object to anything other
17 than what the Court has proposed. There is
18 evidence in the record as has been repeated many
19 times.

20 He had the intent. It's a stated intent
21 out of his own mouth that he had to get the boys.
22 There are two men in the car. One of the them
23 died. That's the murder. The other one survived,
24 didn't get hit. That's the attempted murder.

25 And I think that if Mr. Lee has some

1 proposed charge, as Your Honor said, that he would
2 like to give to us so that we could take a look at
3 that and support it with the law, then fine. But
4 I feel like we're just arguing the law here.

5 And right now I believe the Court has the
6 instruction correct and the verdict form correct.
7 Save the disclaimer. That's the State's position.

8 THE COURT: All right. Mr. Lee, I'm
9 sorry I disagree with you, sir.

10 MR. LEE: Yes, sir.

11 THE COURT: I believe that given the
12 evidence that's been presented, I certainly think
13 it's possible for a jury to find the defendant not
14 guilty of murder. I certainly think a jury could
15 come back and find self-defense in this case as it
16 relates to Mr. Burgess on the murder charge. I
17 think he has a history with this individual. He
18 saw that individual moving around and so forth and
19 so on. He's shot at him. The word on the street
20 is QV is ready to get him. Okay? So he had to do
21 what he had to do. And I think a jury could go
22 and could find him not guilty of that.

23 However, I certainly think that there's
24 evidence in the record that he tried to shoot the
25 boys. The other gentleman was in the car, and,

1 for all we know, I think with the evidence it
2 could certainly be argued that he took one pop,
3 hit QV in the neck. And while the other boy was
4 in there, bam, bam, bam, bam, put four right
5 there.

6 And so I think that they could determine
7 that that's not self-defense. They could find
8 that malice under these facts. And I think -- you
9 know, again, I think you can argue any way you
10 want, but I don't think it's inconsistent. I
11 think it's permissible and I'm going to allow the
12 jury verdict to stand as is.

13 On 1 and 2, I'm going to put in -- basically
14 what I'm going to do is, I'll reword it. Usually what
15 I do, I'll put an asterisk in big bold that says, "If
16 you find him not guilty of 1 and 2, you must find him
17 -- you got to find him not guilty of 3.

18 MR. LEE: Okay.

19 THE COURT: All right. So, that's going
20 to be --

21 Any objection to that from the State as I've
22 outlined the modification to the verdict form?

23 MS. CAMPBELL: No, Your Honor.

24 THE COURT: You can say any objection --

25 MR. LEE: I make one last pleading point

1 for the record.

2 THE COURT: Sure.

3 MR. LEE: The State always uses hand of
4 one hand of all. It kills us from the defense
5 side. They're allowed to use the hand of one hand
6 of all.

7 So suppose the situation was this, Judge,
8 to get to the question of malice. Once malice is
9 established that's it's not there, it can't come
10 back. That's my point. Suppose it happened
11 differently. Suppose he walks in the store. He
12 doesn't see him. He walks out of the store, they
13 see him. Quinton Ventress got in the car. The
14 other kid riding beside him. They run him down.
15 Or they try to run him down in the parking lot.
16 And right before they do, he starts shooting and
17 he kills Quinton Ventress and the other guy
18 doesn't get hit. All right? And he uses
19 self-defense in that.

20 Why is it not self-defense as to both of
21 them? They're together and it is -- the guy's not
22 driving. I mean, the guy may be in the back seat
23 minding his own business, but he is there. This
24 Zachary kid, he's there.

25 So that's the point I'm trying to make,

1 is if that was the situation, they're coming right
2 at him, Zachary is hanging out in the back,
3 playing with his phone or whatever, Quinton's
4 driving. Shoot, shoot, shoot, hit Quinton, miss
5 Zachary, and then it's shown he was acting in
6 self-defense when he shot him because he was about
7 to run him over. He was acting in self-defense,
8 therefore there's no malice in what he did. The
9 act he did of shooting the gun. There's no malice
10 there.

11 How in the world could he possibly be
12 convicted of attempted murder of the Zach kid
13 who's just riding in the car? He's exercising --
14 his safety is what he's protecting. That's why
15 there's no malice because he is exercising a
16 legally recognized defense to protecting himself,
17 therefore they say no malice. You can't have an
18 evil heart if you're scared for your life. And
19 you can't be scared for your life to defend
20 yourself as to one person and then some other
21 person who just is there. You were scared to
22 death of him. Well, that other guy is there.
23 What you did to defend yourself, unfortunately
24 involved the other guy.

25 So, you know, if the situation was

1 different and they were riding in the car and
2 getting ready to do it, even though Zachary
3 Wilkerson isn't -- doesn't have his foot on the
4 accelerator, he didn't do any anything, he's in
5 the car, would that be appropriate for attempted
6 murder? I don't think so.

7 And I think that points out the issue on
8 this, just as if a bystander had been hit, he
9 wouldn't have to show that he had -- I mean, if he
10 shot and then went down Sea Island Parkway and
11 somebody was driving and a bullet came through and
12 killed him, it wouldn't be attempted murder on the
13 guy that went by him because there is no --
14 there's no malice. It might be some kind of
15 involuntary manslaughter. It might something
16 discharging a firearm, but it wouldn't be
17 attempted murder because of a specific intent
18 requirement and because of the malice requirement.

19 That's how they call it malice and say it
20 applies to him, it doesn't apply to him.

21 So that's -- I know you've heard enough.
22 That's just for the record. That's an example of
23 what I'm trying to show and why that this is
24 appropriate. And it runs the risk of having a
25 crazy inconsistent verdict because they didn't

1 quite understand what we're trying to say and that
2 wasn't told to them.

3 THE COURT: I appreciate -- yes, sir. I
4 note that for the record. No problem.

5 All right. Anything else we need to take
6 up before we reconvene tomorrow morning at 9:00
7 for closing arguments and charge? Yeah, closing
8 arguments and charge.

9 MS. CAMPBELL: To be clear, at 9:00 in
10 morning, are we then going to go over Mr. Lee's
11 proposed self-defense charge that he's going to be
12 submitting to everyone? What are we doing?

13 THE COURT: Sure, I'll be glad to tell
14 you what we're going to be doing. First of all,
15 when I say nine o'clock in the morning, it will be
16 at least 5 or 10 after before we get started.

17 Number 2, I'm going to have to look at
18 Mr. Lee's form that I'm going to get around nine
19 o'clock, and don't worry, it's no big deal,
20 because I'll be on the road until nine o'clock
21 when I come in here. I'll look at it and I don't
22 need it any earlier. I listen to Billy on the way
23 down, and so I can't concentrate or anything
24 else.

25 MR. LEE: You make her drive.

1 THE COURT: She drives and I listen. Not
2 going to do that. We're going to come in and
3 we're going to discuss Mr. Lee's self-defense.
4 And I guarantee you, that's going to take 40
5 minutes. So what I'm going to do is, I'm going to
6 come at 9:00 because that way, hopefully, we'll
7 have a jury in here at ten o'clock, so that's kind
8 of the plan. Really, I'd like to have the jury in
9 here at 9:30, but it's just going to take longer.
10 I'm not going to make people get here before --
11 I'm not going to make people get here before nine
12 o'clock, particularly the clerks. I know they'll
13 say we come to work at 8:00.

14 So that's what we're going to do. Okay,
15 Miss Campbell?

16 MS. CAMPBELL: Yes, sir. And with that
17 understanding, there's nothing else from the State
18 this afternoon.

19 THE COURT: All right. Great.

20 Mr. Lee, I'll be glad to get it to you
21 whenever you want. If you want it earlier, it will be
22 here.

23 THE COURT: Mr. Lee, if you can get it
24 tonight, then send it to her. She'll look at it.
25 I'm not going to look at it tonight. You probably

1 want her looking at it, not me. But you can send
2 it to her this evening if you want to do that, and
3 be sure to send the State a copy.

4 We'll be at ease until tomorrow morning
5 at nine o'clock.

6 (Court adjourned at 5:15 p.m.)

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CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions for Beaufort County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

A handwritten signature in cursive script, reading "Sharon G. Hardoon".

Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

1 STATE OF SOUTH CAROLINA
2 IN THE GENERAL SESSIONS
3 COUNTY OF BEAUFORT

4 State of South Carolina,

5 vs. Transcript of Record
6 2020-GS-07-2146
7 2020-GS-07-1264
8 2020-GS-07-1265

9 Deavion Jahquwan Burgess,
10 Defendant.

11 March 24, 2022
12 Beaufort, South Carolina
13 Vol. IV of IV

14 B E F O R E:

15 The HONORABLE ROBERT BONDS

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

17 Traci Campbell, Solicitor

18 Scott Lee, Representing the defendant

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22 SHARON G. HARDOON, CSR
23 Official Circuit Court Reporter, III

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1 THE BAILIFF: All rise. This court is
2 now in session. The Honorable, Bobby Bonds
3 presiding.

4 THE COURT: Good morning, folks. I have
5 looked at the self-defense charge that I have
6 proposed, the self-defense charge that the State
7 has proposed, and what has been submitted by
8 Mr. Scott (sic). I am going to charge Mr. Scott's
9 definition in full as it relates to the
10 self-defense charge. That's the charge that I
11 will be using. I will allow the State to put
12 anything on the record that they want as it
13 relates to that, but that's the charge that I'm
14 going to use in this matter.

15 There was also a modification, I believe,
16 as it relates to the attempted murder charge that
17 Mr. Scott (sic) has proposed concerning, I
18 believe, malice. Is that correct? I'm going to
19 allow that.

20 I'm not going to include the State's
21 request regarding self-defense. I'm happy to
22 allow -- I've spent at least an hour reviewing and
23 considering this, and so if there is anything that
24 the solicitor wants to put on the record as to
25 what my ruling is as it relates to the jury

1 charges, and, specifically, the self-defense and
2 the attempted murder modification, I'm happy to
3 hear from the solicitor.

4 MS. CAMPBELL: Thank you, Your Honor.
5 I'll be brief.

6 THE COURT: Yes, ma'am.

7 MS. CAMPBELL: The State requests that
8 State v. Bixby, which is the law on self-defense,
9 be charged to this jury. We've submitted that to
10 the Court. The State has the burden of disproving
11 self-defense and this burden is carried by
12 disproving any one of the four elements by proof
13 beyond a reasonable doubt.

14 And, second, the State requests that the
15 definition of "imminent" be defined as Your Honor
16 defined it yesterday from Black's Law Dictionary
17 as being immediate, impending danger about to
18 happen, as we submitted.

19 Thank you, Your Honor.

20 THE COURT: All right. I note your
21 exception for the record.

22 All right. Anything from the defense?

23 MR. LEE: Your Honor, very briefly. And
24 really just for PCR purposes, it came to my
25 attention this morning that Miss Carletha Benning

1 was arrested last night by the Beaufort County
2 Sheriff's Office according to the public index.
3 For what it's worth, it's for assault and battery
4 third. I asked Miss Campbell this morning if
5 there's anything I need to know under her duty to
6 disclose, was it in any way related to this case,
7 and she has informed me that she looked into it
8 and it does not have any bearing on this case. It
9 does not involve any other witnesses in this case,
10 or anything like that.

11 So I just want to put that on the record.
12 So if I'm ever questioned later on about, did I
13 look into that, it could potentially be relevant.

14 It's my understanding from the solicitor,
15 if I'm incorrect, she can please let me know, that
16 is totally unrelated to this case.

17 MS. CAMPBELL: That is correct. That's
18 the information we have from law enforcement.

19 THE COURT: All right. Thank you.

20 MR. LEE: Judge, there's two other brief
21 things. I can pass this up. We discussed this
22 yesterday. Do you want to talk about the verdict
23 form now or later?

24 THE COURT: Yes.

25 MR. LEE: Your Honor, I have provided the

1 solicitor's office with two proposed verdict
2 forms. They're a little bit different than what
3 your clerk sent us. They both were included on
4 there. The first verdict form tells the jury to
5 consider the first charge which is listed as
6 murder, and that if they return it -- if the
7 verdict on that is not guilty, that they should
8 automatically check not guilty, or charge 2,
9 attempted murder, and charge 3, possession of a
10 weapon during the commission of a violent crime.

11 The argument for that, I laid out in
12 detail yesterday, probably too much, but our
13 position is that essentially a not guilty on
14 murder necessitates a not guilty on attempted
15 murder because the State, just like they're
16 attempting, I believe, to argue transferred
17 intent, malice does not -- if intent travels with
18 the bullet so does malice. And if there is no
19 malice for the murder, for the shooting charge,
20 there necessarily cannot be any malice -- you
21 know, even more so express malice that is required
22 for an attempted murder case.

23 So, you know, I think it's essentially an
24 estoppel. Usually estoppel is judicial estoppel
25 or collateral estoppel and the argument is that

1 essentially the jury is estopped from even going
2 to the second charge if, indeed, the first --
3 under the extreme circumstances of this case, if,
4 indeed, the first verdict is not guilty.

5 The second proposed one, if you are not
6 inclined to do that, I think is more housekeeping.
7 I think Miss Jones spoke of this yesterday. She
8 called it a disclaimer. Essentially it says, look
9 at number 1, look at number 2, if you're not
10 guilty on those two you automatically have to
11 check 3 not guilty, because if there's no violent
12 crime, obviously, there can't be possession of a
13 weapon during the commission of a violent crime.

14 THE COURT: Yes, sir.

15 MR. LEE: I would -- the first choice
16 would be the first one. The second one would be
17 my back up.

18 THE COURT: Well, I think your argument,
19 certainly for the record, I don't think it changes
20 what I ruled or what my decision was yesterday.

21 MR. LEE: Yes, sir.

22 THE COURT: As it relates to the intent.
23 I understand the issues on that. I think there's
24 evidence to the contrary.

25 MR. LEE: Yes, sir.

1 THE COURT: And so -- would that still be
2 the State's position?

3 MS. CAMPBELL: We stand by our argument
4 from yesterday, Your Honor.

5 THE COURT: All right. Let me ask you
6 this then, on the second verdict form that he's
7 presented, which basically has an asterisk at the
8 bottom of page 2, if not guilty of 1 and 2, you
9 must check not guilty for number 3. If guilty of
10 1 or 2, move to 3. Is that satisfactory?

11 MS. CAMPBELL: Yes, sir.

12 THE COURT: Is that satisfactory to the
13 State?

14 MS. CAMPBELL: Yes, sir.

15 THE COURT: Then that's the verdict form
16 that we will use.

17 MR. LEE: Yes, sir. And I would ask
18 that, for record purposes, that I be permitted to
19 introduce as a Court exhibit these --

20 THE COURT: I've already got it up here,
21 sir. That will be marked as a court's exhibit.
22 I'm going to give it to the court reporter right
23 now.

24 (COURT EXH. 1, Verdict form; Defense,
25 was marked for identification.)

1 MR. LEE: Judge, very last thing, I think
2 it will only take a minute is, since the defense
3 put up a case, obviously we don't get the last
4 argument. I told Miss Campbell that it's our
5 position that, under State vs. Beatty, that it is
6 our position that the State opens in full -- or
7 closes in full, we close in full, and then they
8 are entitled to a rebuttal. But, again, what the
9 law says is, they can't bring up a new theory or
10 new arguments in the rebuttal portion of this.
11 And basically the reasoning in that case is that
12 they can't sandbag what they're going to argue to
13 the jury waiting for us to go, and then say, we
14 didn't talk about that, he didn't have a chance to
15 address this, but this is what we're really
16 arguing.

17 So I believe it can be changed by consent
18 where I can go first and she's going to say, for
19 the record, the defense does not consent to that
20 chain. I think under State vs. Beatty, State
21 closes in full. Defense closes in full. The
22 State has a chance to rebut what has been said in
23 our closing.

24 THE COURT: Close in full.

25 MS. CAMPBELL: That's the law. Close in

1 full.

2 THE COURT: He closes in full and then
3 you rebut.

4 MS. CAMPBELL: Correct.

5 THE COURT: All right. Thank you.

6 All right. She's going to print out -- or
7 she's going to make a couple modifications and then
8 print out an entire copy of the jury charges that I
9 now believe, based upon my rulings, are going to be
10 the charges. But what I want to do is, I want to give
11 you an opportunity to glance through those before we
12 get going because there's several changes that we
13 incorporated yesterday and then several changes today.
14 Just give her a minute. She's going to work on that
15 and then we're going to print it out and give it to
16 you-all. Okay?

17 We'll be at ease for about five minutes.

18 (A break was taken from 9:57 a.m. to 10:05 a.m.)

19 THE BAILIFF: All rise. This court is
20 back in session.

21 THE COURT: Has the State had an
22 opportunity to look at the jury charges that my
23 clerk printed out?

24 MS. CAMPBELL: We have.

25 THE COURT: All right. Was it consistent

1 with what we discussed and with my ruling?

2 MS. CAMPBELL: It was consistent.

3 THE COURT: And likewise, Mr. Lee?

4 MR. LEE: It is, Your Honor. The only
5 thing that appears to change is, it looks like you
6 moved the self-defense to before you told them
7 murder and what they mean. I would just
8 respectfully ask that you consider putting
9 self-defense after you tell them the definition of
10 murder, attempted murder, and possession of a gun,
11 and then put the -- I think it fits better because
12 it says, the defendant could raise a defense and
13 his defense is these two.

14 THE COURT: I'm just going to keep it the
15 way it is.

16 MR. LEE: Okay.

17 THE COURT: Anything from the State
18 before we bring the jury in?

19 MS. CAMPBELL: No, Your Honor.

20 THE COURT: Anything from the defense?

21 MR. LEE: Very briefly, Judge. We
22 discussed it yesterday. My understanding is the
23 State objects to the written charge being
24 submitted to the jury. I would ask that it be
25 submitted to the jury, but I understand she

1 objects. I'm not sure that still exists.

2 THE COURT: She -- yes, my understanding
3 is she objects. And I've told you, I think it's
4 in my discretion.

5 MR. LEE: I agree.

6 THE COURT: My policy is, unless both
7 folks agree, I do not send it back.

8 MR. LEE: Thank you, sir.

9 THE COURT: All right. In that case,
10 let's get the jury.

11 THE BAILIFF: Yes, Your Honor.

12 THE COURT: Madame Forelady, ladies and
13 gentlemen of the jury, the parties have presented
14 their evidence in this case and it's now time for
15 the attorneys to make their closing arguments to
16 you, the jury.

17 The arguments of the attorneys are not
18 evidence in this case. They're closing statements
19 and arguments are meant to help you understand the
20 evidence and apply the law to the evidence. You
21 should disregard any remark, statement, or
22 arguments which is not supported by the evidence
23 present during the trial or the law that I will
24 explain to you after their argument.

25 We're ready to proceed.

1 Is the State ready to proceed with closing
2 argument?

3 MS. CAMPBELL: Yes, sir, Your Honor.

4 THE COURT: Please, feel free.

5 MS. CAMPBELL: Thank you, Your Honor.

6 CLOSING ARGUMENT

7 MS. CAMPBELL: Good Morning. Back in
8 North Carolina, which is where I'm originally
9 from, there's a river in eastern North Carolina
10 called the Tar River. And when we built our house
11 on that creek that we talked about back when we
12 started back on Tuesday, I remember my mom said,
13 why in the world are you building this house, to
14 my dad? There's so many steps going up this
15 house. There's about 15 steps to get in my front
16 door. And he said, look, I've studies the
17 situation. I've looked with the flood plain maps.
18 Our house is above the 100-year plan. It's going
19 to be okay. Every other house in that community
20 was on a concrete slab.

21 Now, if you think back with me. I think
22 it was the late 90s. Hurricane Floyd came
23 through. If you lived in the Low Country or on
24 the coast here during that time, you know that
25 that was the largest peacetime evacuation in the

1 history of the United States. Everybody left.

2 When the Tar River started rising and
3 came over its banks, we had, like, five minutes to
4 get out. When we came back, what did we find?
5 Two things. Number 1, our house in that community
6 was the only house that didn't have river water in
7 it. Up to rafters in every other house.

8 Number 2, that bridge built over the
9 tributary off the Tar River, that bridge was still
10 there because it was built correctly. It was
11 built with the right tools and the right
12 materials. It survived, not a 100-year flood, it
13 was a 1000-year flood.

14 Now, if you have the right tools, you,
15 this jury, and the right materials that we're
16 going to talk about in just a minute, what else do
17 you need? You need the right builder. You need
18 someone who is going to study the situation and
19 make the right adjustments, make the right moves,
20 build the right bridge. Do you know who is the
21 right builder? You are. You are the right
22 builders for this case.

23 Now, let me get you started on where
24 we're going to build your bridge. The presumption
25 of innocence. It's the law. It's the right place

1 for you to start; the Court is going to tell you.

2 Now, from here let's build this bridge
3 with these materials to where you're going and
4 that's your true verdict.

5 Identification, the charge from His Honor
6 on identification, he's going to give you the law
7 on that. There's a tool that you're going to use.

8 Where are your materials on
9 identification? Right here in the evidence. The
10 photographic lineup.

11 You know what else you have on
12 identification when you're starting out on your
13 bridge? The defendant. He told you, I did it.

14 Now, let's talk about two types of
15 evidence the judge is going to give you. Direct
16 evidence and circumstantial evidence. You have
17 the 911 call, direct evidence. There's been a
18 shooting at the Tiger Express. I just saw it
19 happen. Somebody shot, like, five times into a
20 car. EMS testified. They arrived. There's a
21 shooting victim. He's been shot. He's
22 unresponsive. Tiger Express, the surveillance
23 video, you have that material. You can watch it.
24 You're the builders of this bridge.

25 When you watch that video, you will see

1 very clearly there are no guns in Quinton
2 Ventress's hands. There are no guns with
3 Zach Wilkerson. There are no guns in that car.

4 In short, three men on scene escape. Who
5 doesn't escape? Quinton Ventress; shot and
6 killed.

7 Henry Wright came in here and he did his
8 best, as I told you he would, to tell you what he
9 saw. I think the most shocking thing for Henry is
10 when he told you, they almost ran me over.

11 Intent. You know, when you talk about
12 intent, you got a situation where, did you mean to
13 do this? Did you mean to fire your gun? Did you
14 mean to get them boys? Absolutely. You know how
15 you know that? The defendant told you. I did it.
16 I meant it. I meant to shoot him.

17 Let's talk about a little bit about the
18 credibility of the witnesses for your case.
19 Zach Wilkerson, he's a victim. He's your victim.
20 He puts himself in your hands. Yeah, we were out
21 there on that day smoking, joking, riding around.
22 Friends, sunny day, and then this dark shadow
23 appears out of nowhere, shots ringing out. I am
24 literally moving to try and avoid getting shot.

25 Carletha Benning, oh my goodness.

1 Carletha is a little bit like -- well, I'd say
2 she's like the wallflower at the party. Okay?
3 Shy, really not familiar with some of their ways.
4 Always at the skirt tails of her BFF, as she said,
5 her best friend Camille Linnen. They met him at a
6 yard party. They hooked up. They were joking and
7 smoking, riding around. And I'm going to tell you
8 what, that two-and-a-half weeks, that was, I
9 guarantee you, one wrong ride for
10 Carletha Benning.

11 But you know that feeling you get when
12 you get on a roller coaster and it's all
13 excitement at the beginning, and then that huge
14 drop comes and you feel like you might die?
15 That's what happened. That's what happened to
16 Carletha on April 3rd, 2020, in the Tiger Express
17 parking lot when this fellow, who we know for sure
18 now, is the defendant, when he gets back in her
19 car and she said, what just happened? And he
20 says, I had to get them. I had to do it. I had
21 to get them boys.

22 And Scott Lee talked about fear and
23 self-preservation, well, yeah, she tries for weeks
24 to preserve herself because she knows -- she's not
25 stupid -- what just happened and what she's a

1 witness to. And so when she talks to Duhamel,
2 honestly, she does everything she can to keep
3 yourself safe, to give as little information as
4 possible.

5 You heard the defendant talk to you
6 about, you know, you-all don't do it right.

7 And so, what do we have? We have,
8 ultimately, they arrest her, charge her with
9 obstruction of justice. Put her in a place where
10 she could and would tell the truth, and she did.
11 And she unlocked the case. You know, it's kind of
12 hard to unlock some of those cases, the shootings
13 on St. Helena. So with that ID, we get the
14 beginning. We get the name, we get the firm
15 identification, and the case starts to move,
16 unlike some of the other cases the defendant told
17 you about through his attorney, unsolved.

18 So, Camille Linnen, she came in here and
19 she said -- let me say this, if Carletha is the
20 wallflower at the party, I'm going to tell you,
21 Camille is going to be the queen of the party.
22 You can tell that about her. And she is not --
23 she is in no way going to involve herself in
24 saying something that's going to get her in
25 trouble. No, no.

1 But on the street, in her yard, she told
2 Duhamel, absolutely, yeah. He's your shooter.
3 And, oh, my goodness, poor, poor cousin Inessa.
4 She had lost her vision. She was so afraid when
5 she came here -- she had had an episode and she
6 could no longer see. And when I asked her, do you
7 recognize him? No, I can't see him. Do you see
8 him in the courtroom? I can't see.

9 But back in April 2020, she could see
10 fine in the safety of Officer Byrd's office, and
11 she pointed him out and she said, yeah,
12 absolutely. Yeah.

13 I mean, honest, she says that one is a
14 little blurry, that one is a little blurry. And
15 you're going to have all this in your jury room.
16 That's blurry, but that's him. That's him right
17 there. That's your shooter. I know who that is.
18 That's Deavion Burgess.

19 And now, of course, you have expert
20 witnesses who had come in here. Who came in here
21 and told you essential materials that you need.
22 They said -- you have Dr. Rehman -- Quinton
23 Ventress was a quadriplegic on April 3rd, 2020,
24 from a gunshot wound to his neck. Jennifer Nates
25 from SLED talked to you-all about gunshot residue.

1 Why we don't do gun shot residue on victims.

2 So where are you now? Let's see how far
3 you've gone in the building of your verdict. You
4 started over here at the Tiger Express and you
5 have the evidence, all the photos, everything that
6 happened, the casings from his gun. And then you
7 have this, too. You're going to see the bullet
8 hole that went through the seat into his neck.

9 In the investigation, you're going to see
10 the car that he was riding in. And all the
11 evidence from that comes through your expert
12 witness, Garinger, from the sheriff's department.
13 All of the swabs he took from that car. All the
14 DNA he collected from witnesses and from the
15 defendant.

16 The last person that you heard from in
17 the State's case was Dr. Riemer from MUSC, and
18 Dr. Riemer, she's been doing this for a long time.
19 She told you she had gone to law school, too. She
20 was a lawyer and a doctor. She told you, when she
21 performed the autopsy on Quinton, she found the
22 bullet in his neck between C-1 and C-2. She took
23 it out. And he died from that gunshot wound to
24 his neck. He had become a quadriplegic. He had
25 never taken another breath on this earth on his

1 own. A machine had to do that for him. And the
2 cause of his death was this bullet in his neck.

3 Now, the defendant has been indicted, and
4 His Honor will tell you, for murder, attempted
5 murder, and possession of a weapon during the
6 commission of a violent crime. He will give you
7 the definition of that.

8 You know who did it, right?
9 Investigator Duhamel, the lead investigator, he
10 got the shooter. He brought the shooter to you.
11 His dogged determination brought you the person
12 who shot and killed Quinton Ventress. He put out
13 the call out for the car. He was the shooter. If
14 anybody knows him. He worked every possible lead,
15 every way to get Carletha to come off her silence
16 and give him a name, give him a face, and she did.

17 He swabbed her car. He tracked down the
18 phone calls, like the defense attorney talked
19 about. He followed his protocols. He came here
20 from Maine to testify for you about the
21 surveillance video, the car, the casings, and the
22 DNA.

23 So where do we find ourselves now?
24 Because that's your evidence. Those are your
25 materials. Where are we now? I'll tell you where

1 we are, we're at the story you got yesterday. How
2 many times do you think the defense attorney met
3 with the defendant to go over that story?

4 MR. LEE: I object to that line of
5 testimony. I don't have any way to respond to
6 that.

7 THE COURT: Whoa, whoa, whoa. Counsel
8 approach.

9 MS. CAMPBELL: I'm just going through his
10 testimony.

11 MR. LEE: I don't have any way to
12 respond.

13 THE COURT: Well, I understand, but I'm
14 going to sustain that objection. But I don't have
15 a problem with the State --

16 MS. CAMPBELL: Absolutely.

17 THE COURT: That will be my ruling.

18 I'm going to sustain the objection. The
19 jury will disregard the last comment.

20 And please proceed, Solicitor. Thank
21 you.

22 MS. CAMPBELL: Thank you, Your Honor.

23 THE COURT: Yes, ma'am.

24 MS. CAMPBELL: The defendant told you, my
25 lawyer had no idea what I was going to say when I

1 got up here. I don't believe that. You don't
2 believe that. Nobody believes that. You're going
3 to come in here and have absolutely no idea what
4 they're going to say? No. It didn't happen like
5 that.

6 So what you're going to do is, you're
7 going to have a script. You're going to make a
8 story up. And you're going to put that story up,
9 and that story is going to be, oh, my God, you
10 know, they got you. No question, hands down,
11 that's you. What else you got? And the defendant
12 told you what else he had. Well, let me think
13 about this. What do I need to prove to show
14 self-defense. Well, I need to show I was in fear.
15 I need to show that fear was reasonable. I need
16 to show it was imminent, something was going to
17 happen. Okay, okay, okay. So I am, oh, yeah,
18 somebody shot outside of the car and somebody was
19 shooting at my -- you know what we don't know with
20 the story, with the script, no piece of evidence
21 ever gives you Quinton Ventress is that person.
22 Zero. Absolutely none.

23 Yeah, somebody was probably shooting at
24 the defendant. They probably were shooting at his
25 mama's house. But there's zero evidence that the

1 person who was doing that was the victim in this
2 case.

3 Now, let's look at the script, the script
4 that you got. He says, I'm in fear for my life.
5 Well, the interpretation is that I thought he was
6 going to shoot me, right? That's the natural
7 interpretation. So let's stop right there. That
8 script fails. It fails why? Because there is no
9 immediate danger. And the plain meaning of
10 immediate or imminent means immediate, dangerously
11 impending, about to take place. There's no
12 imminent danger from an unarmed man sitting in a
13 car, still as a statue, strapped into his car
14 seat.

15 Now, the Court is going to instruct you
16 that all the State has to do is to disprove one
17 part of self-defense. Done. We've done it. The
18 video does it, disproves imminent harm.

19 Let's talk about what was really going
20 on. I asked him, I said, where did you get that
21 gun? Where did you get the gun? That wasn't in
22 the script. Suddenly, he has lost his memory.
23 He's dumbfounded. I don't know. Oh, you know
24 what, come to think of it, yeah, yeah, yeah, the
25 guy I got it from, he's dead. He's dead? Okay.

1 He's dead because law enforcement can't go
2 question a dead guy and arrest him and charge him
3 for selling you that gun. Hmmm, smart. He's
4 dead.

5 Then I said, well, where is the gun now?
6 Oh, I was a -- I was driving. Well, yeah, I
7 tossed it in the woods. Where? I don't remember.
8 Come to think of it -- let me remember. Oh, yeah,
9 I was riding in a car. I tossed it out the
10 window.

11 Now, remember his words. He says to you,
12 oh, I'm a peaceful guy. This peaceful guy, he
13 takes a gun, which we assume it still had 12
14 bullets in it if he wasn't shooting something
15 else, throws it out the window. You know who can
16 find that gun? A child. Shoot themselves, shoot
17 someone else. That's how much he cares.

18 He, with that 9-millimeter strapped to
19 him, Burgess was looking for one thing on the
20 streets that day, one thing only, he's looking for
21 revenge. Revenge for what? Somebody, not
22 Quinton Ventress, somebody shooting up his mama's
23 house. We don't know. Word on the street.

24 So when he pulls into the Tiger Express,
25 he sees that car. He knows that car. He knows

1 the gun's ready. It's them boys I've been hearing
2 about. It's them boys. I'm going to get them
3 boys. Totally unarmed men, he got them.

4 The defendant wants you to take his
5 script, he's wrapped it up in a pretty little
6 package for you, he wants you to take that, and he
7 wants you to sit it on top of the bridge that you
8 have built and blow up your bridge. Don't do it.
9 Don't let him read that script to you and do that
10 to your work, because that's the only way he walks
11 away from this murder and attempted murder, by
12 bringing you-all in to play a part in his story.

13 Because in order to find him not guilty,
14 you have to believe him. You have to believe the
15 story that he told in the artful, creative
16 delivery you received it. You have to say,
17 self-defense, okay, not guilty. And if you
18 believe the story he told you, then he just built
19 himself a bridge out that back door.

20 If you believe -- excuse me. If you have
21 a question in your mind, you don't believe some
22 part of what he told you, the judge is going to
23 tell you, you take that part that you don't
24 believe and you can use that to disregard
25 everything he told you. And I would say there's

1 plenty that he lied to you about.

2 Now, I'm going to ask that the video be
3 played. If we could bring the lights down just a
4 bit, please. We're going to walk through this
5 together, I hope, you and I.

6 And the first thing -- we're going to
7 play it twice. And I want to look first at
8 exactly, closely what Quinton Ventress does. It's
9 as clear as it gets. If you'll look very closely
10 in the front seat of that black-ish, purple car,
11 there's a seat belt across the victim.

12 You can play it.

13 (Video played.)

14 He's not moving. He's not moving. He's
15 not moving. Watch him not move an inch.

16 Stop. Rewind it so we can watch it one
17 more time and watch the defendant.

18 The defendant told you he saw
19 Quinton Ventress moving around inside that car.
20 Obviously, he's trying to make you think he was
21 reaching for a gun. Not a single move by
22 Quinton Ventress the entire time.

23 Now, let's watch it to watch what the
24 defendant does when he gets out of that car.

25 (Video played.)

1 Now, he's seen the purple, black Nissan.
2 Watch what he does. Right there. Looking,
3 checking, moving around, and killing.

4 Thank you. You can stop it and pull the
5 lights up.

6 What he does when he gets out of that
7 car, lots of people in law enforcement will tell
8 you this, but you're checking it. You're checking
9 that you're at the ready when you're getting ready
10 to go into something. And that's what he does
11 when he adjusts his pants and he makes sure that
12 his 9-millimeter loaded with 17 bullets is ready
13 for what, it's ready for revenge on the people in
14 that car. He's ready to take action.

15 He checks out those people. As soon as
16 he starts getting to the back of that car, he's
17 looking in those windows, he's confirming what he
18 can see. Maybe it's the guy he's heard about that
19 got a beef with him on the street.

20 And in one smooth, quick -- it's almost
21 like slow motion at that point from the other
22 angle. He pulls out his gun and shoots five
23 times. And he's go, go, go, go. You know, like
24 watching a movie or a TV show and the cops are
25 busting in somewhere or whatever. Like, go, go,

1 go, go. That's what he's doing. It's an
2 offensive move. There's nothing defensive at all
3 about that. He is in a superior position,
4 tactically moved around to shoot an unarmed man
5 strapped into his car seat.

6 The only movement that happened for
7 Quinton Ventress was before the defendant got into
8 the parking lot. And, you know what that was?
9 That was flicking the marijuana cigarette out the
10 window, which he then passed to Zach Wilkerson.
11 That, what you just saw, is cold, calculated
12 revenge on the street. And in this courtroom,
13 what we're doing, what you're doing is about real
14 justice not street justice.

15 Now, here we are at the end, and what is
16 one of the most important things in the law.
17 Well, you started way over there with the
18 presumption of innocence and absolutely concrete
19 foundation of where we all sit and stand today in
20 this courthouse.

21 And the last, as we come over here to the
22 defendant, is proof of guilt beyond reasonable
23 doubt. And I will say to you, you are there. You
24 are at proof of his guilt, of the defendant's
25 guilt beyond reasonable doubt. You have come all

1 the way over and used the tools and materials and
2 you have built a strong bridge for your verdict,
3 your true verdict. Again, it's the kind of bridge
4 that would survive a 1000-year flood.

5 The key is reasonable, and the judge is
6 going to tell you, you don't have to remove every
7 doubt. Exactly what he's going to say to you, the
8 tool that you will use, he'll say, proof beyond a
9 reasonable doubt is proof that leaves you firmly
10 convinced of the defendant's guilt. And,
11 obviously, there are few things that we know in
12 this world with absolute certainty. So in any
13 criminal case, the law does not require proof that
14 overcomes every possible doubt.

15 However, you know -- and based on your
16 consideration of all the evidence, you're firmly
17 convinced that the defendant is guilty of the
18 crimes charged, you must find him guilty.

19 And on the other hand, if you think there
20 is a -- listen, if there's a real possibility that
21 he's not guilty, then you have to give him the
22 benefit of that doubt and find him not guilty.

23 When we started on Tuesday and talked to
24 you, the defense attorney talked about three Ds;
25 darkness, deception, distraction. Oh, I wrote

1 them down.

2 The State of South Carolina has done
3 everything possible to shine a spotlight on what
4 happened at the Tiger Express on April 3rd, 2020.
5 And you know what, in that spotlight, there's only
6 standing one thing, one person, and that is the
7 defendant.

8 Now, deception, that sounds like a fancy
9 word for lying. Nobody at this table is a liar.
10 Nobody is coming in here with lies to you. We're
11 seeking truth and justice. That's the foundation
12 of the prosecution.

13 And what's the third one? Distraction.
14 Again, well, that sounds like calling somebody out
15 for doing something that you're doing yourself.
16 The only distraction here is the defense waiving
17 around bad blood, word on the street, prior beefs,
18 dark roads, shootings. You know what, this is not
19 about Folly Road or Seaside Road. This is about
20 the Tiger Express and what happened at the
21 Tiger Express.

22 And all the distraction from the
23 defendant is never going to change the fact that
24 Quinton Ventress sat completely still like a
25 statue in that car, an unarmed man. Flicked his

1 marijuana cigarette out the window, before the
2 defendant even got there. And that flicking of
3 that cigarette, that is the last time
4 Quinton Ventress ever used that arm or that hand,
5 because in the moments that followed that, the
6 defendant came up on him and put a bullet in his
7 neck and stopped everything below that bullet.

8 Now, when you get over there, you've met
9 your oath. You've done what you promised to do.
10 And you can come together and you can walk
11 together back into this courtroom and deliver a
12 true verdict.

13 Deavion Burgess murdered
14 Quinton Ventress. He tried to murder
15 Zach Wilkerson, and he did that with a
16 9-millimeter gun in his hand.

17 And, under all three indictments, that's
18 guilty, guilty, guilty.

19 Thank you.

20 THE COURT: All right.

21 CLOSING ARGUMENT

22 MR. LEE: Can we have her remove this
23 imaginary bridge before I get up there and talk?

24 MS. CAMPBELL: It's not imaginary, and
25 I've asked my staff to do that. Thank you.

1 THE COURT: Okay. Hold on, Mr. Lee.

2 Let's let him get those up.

3 MR. LEE: Okay.

4 THE COURT: All right, Mr. Lee.

5 MR. LEE: May it please the Court?

6 Miss Campbell, Miss Jones?

7 Ladies and gentlemen -- I can't do it
8 this way. Hang on a second.

9 I can't stand behind this podium and throw a
10 bunch of legal words at you, have these fancy
11 exhibits, and make these paper bridges like the
12 solicitor is doing. It's not what you want to hear.
13 That's not how we talk. That's not how we
14 communicate.

15 And so what I'd like to do is stand up and
16 talk to you, collectively and individually.
17 Unfortunately, not that I know of, none of our kids
18 play soccer together. We don't go to the same church.
19 We're not on the school board together. So I wish I
20 knew each one of you personally. I wish you knew me
21 because we've all been thrust into this tragedy. It
22 is a tragedy for Ventress's family. No doubt about
23 it. It's a tragedy for the Burgess family as well.

24 So, I'm going to do my best, not knowing
25 you-all, and I'm going to tell you the truth, and

1 despite some personal attacks from the solicitor, I'm
2 telling you the truth. That was real what you heard.

3 So let's talk about this. I don't need
4 all the notes that I stayed up late last night
5 writing. I don't need this video to show you the
6 parts. You've already seen all of that. Let's
7 just talk.

8 I said on Tuesday, I made some promises
9 and predictions, and so did the solicitor. You
10 know what this case isn't about? Hurricanes and
11 floods and bridges and wall flowers and queens and
12 whatever excuses they want to use to make up for
13 not proving the case at all.

14 Liars, calling us liar, scripted, staged.
15 That's what they got to say because they got
16 nothing else to say. The truth hurts for them.

17 What this case -- and I talked about it,
18 and she's got it right there; darkness,
19 deception, and distraction. Well, we can't really
20 do a good investigation on St. Helena because
21 nobody wants to talk to us. That's an excuse.
22 That's a joke. Maybe they don't want to talk to
23 you. So what do you do? You use all the
24 resources. We had scientists come in here, DNA
25 guys from SLED. Not really saying, but offering

1 an excuse. We didn't do it. Why didn't you?
2 Because they didn't ask us to. It was important
3 enough for them to take DNA. They didn't do it.

4 So maybe the approach is -- and the
5 dogged determination from Duhamel, I would
6 respectfully disagree. If that's dogged
7 determination, I want to see what a half-way
8 investigation looks like, because he deserves it.
9 They deserve it. I deserve it. You-all deserve
10 it.

11 Okay. People won't talk. The funny
12 thing is, all the people that are not telling the
13 truth are the State's witnesses. Did you notice
14 on every single one of them, they had to bring in
15 things from -- she did say that, didn't she?
16 Didn't she really say this? Because she didn't
17 say the right thing on the stand. So we're going
18 to go back and get a whole video. It's excuses.

19 So if the witnesses are not so hot or not
20 telling you what you need to know, step two, what can
21 you learn from the witnesses that will allow you to
22 bring solid, confirmed, good evidence to this jury?
23 Again, I beg to differ that you-all are the builders
24 of this case. They're the builders and they got to
25 build a case beyond a reasonable -- to remove all

1 reasonable doubt from your mind. All of it. You
2 don't have to build anything.

3 What you-all are, are the building
4 inspectors that comes in after this bridge has
5 been built and you look underneath, you look at
6 the foundation, you make sure there's enough
7 nails, enough screws per foot, you make sure that
8 the rise and the run is proper, you make sure the
9 hammer nails are right. That's your job. You
10 don't have to build anything. They have to build
11 it. And they have to build it beyond a reasonable
12 doubt. What's a reasonable doubt? The type of
13 doubt that causes you to hesitate to act when
14 making one of life's important decisions.

15 There's so many hesitations, so many
16 reasons to hesitate, I can't even list them. I'm
17 going to try to. I believe you-all saw them.
18 You-all probably saw some that I didn't even talk
19 about.

20 So, you-all are the inspectors. You-all
21 are the ones that are pulling the curtains back.
22 You-all are the ones who get the final say.
23 You-all are the safety net because, after this
24 verdict, this case is over. If Deavion Burgess is
25 convicted, well, he'll appeal. Well, I'll just

1 tell you the way that goes. In order for someone
2 to win a case on appeal after they've been
3 convicted. They have to show the judge --

4 MS. CAMPBELL: Objection, Your Honor.
5 That's improper argument.

6 THE COURT: Counsel approach.

7 MR. LEE: Okay.

8 THE COURT: Yes, ma'am.

9 MS. CAMPBELL: That's improper argument,
10 to discuss the verdict issue on appeal. It's
11 improper.

12 MR. LEE: They are the judges of the
13 facts. The facts are only the judge's --

14 MS. CAMPBELL: Say that then.

15 THE COURT: Well --

16 MR. LEE: That's what I'm trying to
17 say.

18 THE COURT: Hold on, hold on. Actually,
19 I think that's where he was going. You're the
20 judge of the facts. Pay attention. You can't
21 change an erroneous finding of facts.

22 At the same time, Mr. Lee, you're getting
23 real close to what's going on in an appeal. I
24 think, again, that's outside of the jury province.
25 What I'm going to do is, I'm going to sustain the

1 objection. If you want to change words -- you
2 know, they're the finder of facts. It's very
3 difficult to change those findings of fact that
4 would be appropriate. Okay, sir?

5 I'm going to sustain the objection.
6 Thank you.

7 MS. CAMPBELL: Thank you, Your Honor.

8 MR. LEE: What I was trying to say is,
9 you-all are the finders of facts. The judge has
10 already told you that. You-all are the final
11 finders of fact. That's why it's important.

12 Now, we talked a little bit about, again,
13 the standard of proof that the State has to prove
14 a case, each and every element in this case, and
15 disprove self-defense beyond a reasonable doubt.
16 Beyond a reasonable doubt. Reasonable doubt is
17 the type of doubt that would cause a reasonable
18 person to hesitate to act when making one of
19 life's important decisions. And there's tons of
20 reasonable doubt in this case.

21 Now, hold a minute. You're telling me
22 that if we have any reasonable doubt that the
23 verdict has to be not guilty? That seems like a
24 really high standard. I mean, you're telling them
25 to bring up a case and to build a case that is so

1 strong that we have no reasonable doubts as to
2 guilty? Yeah. Well, that seems like a really
3 high standard. Well, it is. And there's a reason
4 it is, because the stakes are so high. Before
5 anyone can be convicted in court, they have to be
6 proven guilty beyond a reasonable doubt.

7 We all know what's at stake in criminal
8 cases; fines, jail, liberty, freedom, everything.
9 Everything is at stake so the standard is that
10 high and the way it should be. And the
11 solicitor's office has to recognize that's their
12 job and that's their obligation. They haven't
13 gotten there.

14 Now, I talked about the three Ds, about
15 the darkness and you think that shining a
16 spotlight on Deavion Burgess is that he's the guy
17 that shot. She spent two days proving who? Think
18 about it.

19 Well, we got these girls, the wallflower
20 and queen, as she described them. It was his
21 second cousin, Inessa Bryan, came in and said,
22 that's Deavion. They put out some Nixle. Yeah.
23 They took DNA on Carletha Benning's car on the
24 inside of it and it's his. And they went
25 through -- she cross -- they took, what, 14 swabs

1 from the white Nissan to try to prove that, and
2 they tested three of them. And, yeah, one of them
3 came back for Deavion on the passenger handle.
4 That guy took longer to testify than their lead --
5 or former lead investigator, and that should put
6 things in perspective.

7 So they got 14 things they wanted the DNA
8 lab to look at, and this dogged determination and
9 this investigation sent them what are called
10 exemplars. This is who they want to compare it
11 to, because we're not leaving no stone unturned.
12 The guy said, well, it was negative for Zachary
13 Wilkerson. It was negative for Quinton Ventress.
14 Of course, Devin Pope, we'll talk about that in a
15 minute. And it was negative for Josie Maldonado,
16 there was some of Carletha's and some of Deavion's
17 DNA.

18 They had time to test a white Sentra that
19 Carletha Benning was driving and come in here and
20 go through all that stuff to tell you that Zachary
21 Wilkerson's DNA and Quinton Ventress's DNA were
22 not on Carletha Benning's car, and they spent a
23 long time. That doesn't make any sense. Why
24 would they do that? Distraction.

25 Why would they show you an x-ray of

1 someone's head with a bullet lodged in it? To
2 scare you, to get you mad, to get you upset, and
3 get you to feel sorry. Everybody feels sorry for
4 the family. It's a tragedy for everybody. So
5 don't be blinded by fear.

6 All right. Then we talked about, you
7 know, the distraction. What the one hand is
8 doing. There's a lot of stuff they don't want you
9 to see. There's a lot of stuff they didn't show
10 you. She conveniently forgot the fourth D that I
11 talked about in my opening in this bridge to
12 nowhere that she made. She never once said one
13 person's name. She never mentioned it. She wants
14 you to forget about it or ignore it, I guess.
15 Whose name did she not say? Devin Pope.

16 I said in my opening, I can't wait to get
17 him on the stand. I can't wait for them to call
18 him. They got the burden of proof. They fly
19 Duhamel in from Maine and there's some mention
20 about the guy is in Ohio. His plane probably flew
21 right over Ohio. They could have picked him up.
22 The solicitor's office flies this man and puts him
23 up for the week. The lead investigator is here.
24 Devin Pope? Got to make me wonder. What are they
25 hiding? What do they not want you to see?

1 Well, one answer to that is the
2 two-minute highlight reel that they showed
3 originally. Think back to Tuesday. Think about
4 the highlight reel. What do they do as soon as
5 the white car drove off? Stop, stop the tape.
6 Stop. That's all we wanted to see. Stop the
7 tape. You, as the jury, got to say, what else is
8 there? What am I not seeing and not hearing?
9 Well, that's totally where the defense come in.

10 And what did I do? I got the thing, I
11 started playing it, I started asking him, hey,
12 where is he going? Who is he calling? Why can't
13 we see him anymore? What did he just pull out of
14 the car and apparently throw in the trash? I
15 don't know. There's at least three instances
16 where Devin Pope walks off screen. Why? I don't
17 know. I wish he was here to ask him. I wish they
18 had brought him. I wish they had paid his way to
19 come down here. I mean, nowadays, nobody can
20 hide. You can track credit cards. You can track
21 everything. Law enforcement has all the
22 resources. There's no excuse for not having him
23 here unless you don't want him here. No excuse.

24 You know, you can really judge a person
25 by his actions. And even though there's no sound

1 on there, he's going this way, he's going that
2 way. There's people over by the fruit stand. And
3 you physically see him grab something out of the
4 car the second time. The first time, we don't
5 know. But you talk about the gestures. He's
6 pulling his pants up. He's got stuff in his
7 pants. Well, I guess, you can search. Oh, we
8 didn't search him. We didn't search for a gun.
9 We didn't search for a knife. We didn't search
10 him.

11 Devin Pope is real concerned about what
12 was in that car. He was a lot more concerned
13 about what was in that car and how to get rid of
14 it than he was about his buddy who was in the
15 front seat, according to her, with a seat belt on.
16 EMS says he was unrestrained, which means no seat
17 belt.

18 The other thing, when you look at that
19 tape, that sunroof is open. It's four o'clock in
20 the afternoon. The sun is at an angle. There
21 also appears to be a strip of light across his --
22 across his chest, seat belt off to the side. I
23 don't think it makes a difference being strapped
24 in. Yeah, Quinton Ventress was strapped. But
25 what he was strapped with wasn't there when the

1 cops rolled in. And Devin Pope walks off three
2 separate times. I mean, behind the building where
3 you can't see him on all these cameras. Well,
4 they sure can look. They didn't even look.

5 He watched the tape that day. Duhamel
6 watched the tape that day. Remember he said he
7 watched all of them that day immediately
8 afterwards. April 3rd, that's the day to do
9 stuff. That's the day that you're dogged and
10 determined and they didn't do it. There were
11 dozens of officers there. Nobody thought to look
12 around a little bit. How about the trash can? We
13 know you can actually see in his hand that he was
14 carrying something.

15 And I'm not saying Devin Pope shot
16 anybody or anything. Devin Pope, it's his car.
17 It's his friend. Doesn't look real good for him
18 or his friend who had been shot if there's a gun
19 in the car. It doesn't look good at all.

20 Well, Devin Pope, we did talk to him.
21 And Todd Duncan came in and he's been an
22 investigator for a long, long time. He's the one
23 that interviewed Devin Pope that day. And what
24 did he say, what did he write in his report that
25 was most significant? That Mr. Pope was

1 apprehensive, that he was hesitant, even though
2 his friend had just been shot and he was hesitant
3 to provide exact information.

4 He also wouldn't provide DNA. Well,
5 that's his right, not to provide DNA. Why
6 wouldn't he provide DNA? He's not accused of any
7 part of the crime. He wasn't even in the car. We
8 have to speculate because he's not here and they
9 didn't follow up.

10 Maybe Mr. Pope knew that they found that
11 weapon that he ditched in the woods or behind the
12 place or in the trash can. Because that day when
13 he was interviewed, he didn't know they had
14 searched that place. He's like -- it would be
15 like a little popsicle thing. It's not like
16 giving blood or something like that. It's simple.
17 It's painless and takes two seconds.

18 Maybe Pope is a little smarter than they
19 think he is. If they find a gun when they search,
20 he's going to have DNA on it. It's going to have
21 my DNA on it. That makes perfect sense. They
22 didn't try to get anything out of him, DNA from
23 him or anything like that.

24 And his actions alone are very, very
25 suspect. Again, I'm not saying he shot anybody.

1 We said from the beginning, it was Deavion. We
2 never contested that. They spent two days of
3 you-all's time proving who did it when it never
4 was an issue. Why did they do that? Because they
5 didn't have any answers to anything else. They
6 didn't have the why, the how, under what
7 circumstances. And that's where investigation
8 comes in. That's why you don't stop when someone
9 says, well, we'll try to talk to somebody, or, you
10 know, I'm not sure. Because even if people
11 weren't open and cooperative, there's little clues
12 and little things that they do tell you that can
13 lead to bigger and better things.

14 Like what? Well, Carletha Benning
15 said -- came in and said it had to do with
16 something about shooting his mama's house. That
17 he was on April 3rd, 2020. On March 24th of 2022
18 today, there has not been any type of
19 investigation or looking into mom's house getting
20 shot at. They don't need a cooperative, good,
21 willing witness to do that. They can go to their
22 own records, I guess. Talk to other detectives.
23 Hey, you got any kind of shooting about a week and
24 a half before this happened? Yeah, yeah, we get
25 calls, whatever. Where is it? Nowhere. That's

1 not dogged determination. That is ignoring stuff.
2 That is not wanting to know stuff.

3 And since they didn't do that, it's a
4 little bit ironic they're saying well, you know,
5 there's nothing to show that his mama's house got
6 shot up. Well, he said it. Carletha Benning said
7 he said it that day. They know. They could
8 certainly find out. And if it didn't happen, any
9 witness would say that was BS. No house got shot
10 up.

11 And how the earlier shooting a week or so
12 before. Carletha Benning never said anything
13 about that. She didn't say anything about the
14 initial interview. She didn't say -- after she
15 got charged with obstruction of justice, she
16 didn't say how she got charged as an accessory.
17 She didn't say anything in her meetings with the
18 solicitor, I assume. She didn't say anything in
19 her direct testimony. The only time she did was
20 when I held that to her, you got to tell the
21 truth. She finally said -- I said, anything
22 unusual happen to you-all riding around? No. I
23 said, you sure about that? Maybe around Folly
24 Road. Oh, yeah. I forgot about that. I don't
25 think anyone would forget about your car being

1 shot at. You don't.

2 Then we get blamed for scripting and
3 making stuff up because he's saying the car got
4 shot at. That's what Carletha said. He's making
5 some of this stuff up.

6 So I know -- I've known Investigator
7 Duhamel. I've had a lot of cases with him. I
8 consider myself friends with him. Had plenty of
9 cases with him. He does a good job. This is not
10 a personal attack. This is bringing to you what
11 you need to hear. It may not be what they want
12 you to hear, but it's what you need to hear as the
13 building inspector, as the final safety net, the
14 final deciders of what happens -- what the future
15 is for Mr. Burgess.

16 And it reminds me of a Bible verse.
17 Luke 12:48. It's the perfect thing. For everyone
18 who has been given much, much will be demanded.
19 And from the one who is entrusted with much, much,
20 much more will be asked of. So, to whom much is
21 given, much is expected.

22 We give law enforcement all kinds of
23 resources, all kinds of power. They have the
24 power to take our liberty away. To search our
25 house, do stuff like that. And they have that

1 power, and that's fine. That's the way things
2 work. But to whom much is given, much is
3 expected. We need to be able to expect from them
4 to do a full, a fair, and a focused investigation,
5 whether it's a DUI or a murder allegation.
6 Whether it's an armed robbery, house break-in,
7 whatever it is, everybody is entitled to that. In
8 this case, Deavion is entitled to that. He didn't
9 get that. He absolutely didn't get it.

10 And so, to whom much is given, much is
11 expected, you-all are given a lot. You-all are
12 given the final say so in which way he walks out
13 of this courtroom. You can either say the State
14 has proved guilt beyond a reasonable doubt and
15 he's guilty, or you can say, not so fast, there's
16 reasonable doubt. We discussed the reasonable
17 doubts and we have reasonable doubts. And based
18 on our talking about it, the proper verdict is not
19 guilty.

20 And to hear the phrase in a murder trial
21 where there's all this missing evidence and
22 there's only the who and not the what, the where,
23 the when, and the how, the why, anything like
24 that, to hear it referred to by the lead
25 investigator -- who, by the way, left 15 months

1 ago and there is nobody who has been reassigned.

2 At least he didn't know. Nobody's called him.

3 Nobody has done anything for 15 months.

4 Think of all the things they could have
5 done. Think what another fresh set of eyes who
6 will look at the report, like I did in trying to
7 present to you in critiquing their case, hey, this
8 is about somebody's house -- mama's house getting
9 shot up. Let's go look at that. What's this
10 about this video? Where is this guy going? To
11 whom much is given, much is expected.

12 And for -- under that circumstance for
13 this case, to call this a cut and dry case is a
14 joke. It was a cut and dry case as to who it was,
15 but nobody -- we never disputed that. And they
16 went through a couple months and they dug around
17 and diddly dogged, put it on Nixle. Deavion
18 Burgess, what does he do? He goes and turns
19 himself in when he found out. Cut and dry. It's
20 neither one. It's not even close.

21 I also told you in opening -- you know, I
22 made certain promises and guarantees. So did the
23 solicitor. She has to live up to hers, her
24 burden. I also said this case was about secrets
25 and shortcuts. You heard all the secrets that you

1 know of and we were able to uncover. Shortcuts
2 are fine if you're going to the grocery store or
3 if you're on a run and you get a little tired,
4 shortcuts are good a lot of times. But there's no
5 shortcuts to justice and there's no shortcuts in
6 court. And the State wants you to take those.
7 They want you to ignore anywhere that has danger
8 signs and reasonable doubt. They want you to go
9 the easy way. Take a shortcut. You can't take
10 any shortcuts. They have the job and obligation
11 and responsibility to make sure there are no
12 shortcuts.

13 And if you don't take shortcuts, here are
14 some excuses we can put out there. DNA, oh, we
15 got -- the lady that came down from SLED. Gunshot
16 residue. What does gunshot residue show us? It
17 either shows you're close to a gun, you fired a
18 gun, or you touched a gun. On the day it happened
19 within the six hours, they get gunshot residue
20 kits from Zach Wilkerson, from Quinton Ventress,
21 and from Devin Pope. And they send them up to
22 SLED like they're supposed to, and nothing
23 happened until last week when they sent them back
24 here and they hadn't been analyzed. And why
25 hadn't they been analyzed? Well, because they

1 started a new policy in January, three months ago,
2 that they wouldn't analyze them unless it was a
3 victim, unless somebody called and said, hey, this
4 is just fluff. This is legit. I need you to
5 analyze these. I think she said it takes one to
6 six hours to do it.

7 So instead of doing that, instead of, in
8 the almost two years, following up on it, hey, you
9 got a new policy, what do we need to do? Say it's
10 important, we'll get it done. Instead of doing
11 that, they bring her in here. It's real
12 interesting talking about GSR. But if there's no
13 GSR to talk about, what's the point? That was an
14 excuse. It's an excuse because it's reasonable
15 doubt and it doesn't look good for them. So, I
16 mean, it's excuses.

17 Close enough is not good enough when you
18 get to court, and there's no question about that.

19 And then the statement that Miss Campbell
20 referenced "had to do it." Had to do it is
21 self-defense. Under the circumstances then and
22 there existing, he was in danger, and he did what
23 he had to do.

24 Now, I don't think any of us carry guns
25 on a regular basis. I don't know. I don't. But

1 it's different out there, as we heard. And this
2 isn't pleasant to talk about. It's tough out
3 there. It really is. And the police treat people
4 differently out there. And maybe it's deserved.
5 Maybe it's not. Maybe we all wish it was a
6 different situation, but it's not.

7 So Deavion Burgess and others might get
8 treated differently by the prosecutor and by law
9 enforcement and by people in general. He
10 testified he was going to college. He had to come
11 back. He didn't want to come back. He wanted to
12 get out of this place, but he's back. He's got
13 three kids. Comes back. Came back in February.
14 He's fighting for his life out there. He's doing
15 what he has to do under the circumstances. In
16 these horrible circumstances. Probably something
17 none of us have been through, thank goodness. You
18 have to imagine. But he's treated differently,
19 just like a lot of people are treated differently.
20 People that are different are treated differently.

21 There is one place -- let me go over one
22 thing. The murder charge, self-defense. They
23 cannot disprove any of those elements the judge is
24 going to read you beyond a reasonable doubt.
25 Self-defense clearly has been established through

1 the evidence and the lack of evidence and the
2 reasonable doubt that you've heard.

3 Attempted murder of Zachary Wilkerson.
4 He's in the back seat. There is testimony he
5 didn't even know -- Deavion didn't even know he
6 was there. He's got tinted windows, whatever.
7 Zachary Wilkerson, wrong place, wrong time. But,
8 you know, just like he's sharing that joint back
9 and forth with Quinton Ventress, he also is there
10 with him and he's part of the enterprise. And if
11 Quinton Ventress does something that permits
12 someone to use self-defense and put him in danger,
13 Zach Wilkerson, unfortunately, is along for the
14 ride, and he shares that problem, if you will.

15 And so if there's no malice, no specific
16 intent, and if there's no what's called express
17 malice, it can't be attempted murder. Express
18 malice is planning something, premeditation, lying
19 in wait. The judge will talk to you about that.

20 There's no specific intent to do anything
21 to Zach Wilkerson. He didn't know he was there.
22 There's certainly no express malice where he laid
23 in wait planning this whole thing. This is not a
24 planned event.

25 This is the biggest, botched planned

1 shooting I've ever seen in my life. I know what
2 I'll do, I'll get some girl that I recently met to
3 stop at the gas pump and I'll walk up there -- I
4 mean, just going in to buy some cigars, whatever
5 you call them, and, if you know who that car is --
6 you're not doing that. You're saying, hey, pull
7 over here, I'm going to shoot and we're out of
8 here. You don't park and then walk over there and
9 then get alerted by something and stop, and then
10 all of sudden say, oh, and there it is. Something
11 caused him to look that way. Something caused him
12 to stop, and that was Quinton Ventress, not only
13 something, you heard what he said, *I finally got*
14 *you alone*, blah, blah, blah, and movement.

15 He didn't have five minutes to say, hmm,
16 is this danger, am I being spotted, is this what I
17 think it is? Things happen quick. Shot quick.
18 Had to. And he took off.

19 So, the self-defense would apply as well
20 to the attempted murder. And, clearly, they
21 cannot just disprove any of those elements beyond
22 a reasonable doubt.

23 So it's a tough case. It's tough being
24 here. It's tough hearing some of the way that my
25 client's testimony and situation is described by

1 the prosecutor, but that's all right. She's got a
2 job to do. Unfortunately, she doesn't have what
3 she needs; Duhamel. Duhamel didn't give her what
4 she needed. I mean, maybe it's best, because
5 there's a lot of things that now, as the
6 inspectors of this case, you can see.

7 So, one thing that I think is always
8 crazy. I've been doing this for 29 years. I've
9 never seen a book or an article or anything -- I
10 never tried to Google it. Maybe I should. How to
11 be a juror. How to be a good juror. What do I
12 need to do as a juror? Well, you got show up when
13 the judge tells you to. You got to sit in some
14 room with people you don't know. You get a crummy
15 lunch, you get an hour to go get lunch, and you
16 got to take care of your everyday affairs, and
17 then make a very important decision.

18 But nothing is ever talked about, about
19 the process for deliberation. And there's no
20 magic way to do it. But I would suggest this, and
21 I would ask for this, I would ask each one of you,
22 individually and as a group, to go back there and
23 be Deavion's voice, because I've been his voice up
24 to now. I'm going to sit down and I'm not going
25 to say anything else. Miss Campbell is going to

1 follow up with another argument. But I would ask
2 you to go ahead and talk about him. I would
3 respectfully recommend the first thing you might
4 do is say, all right, what are your reasonable
5 doubts? And some people might have one, some
6 people might have 10.

7 Let's talk about reasonable doubt,
8 because if there's any reasonable doubts, the
9 verdict is not guilty. You can talk about other
10 things, about, well, I thought it was weird that
11 they spent two days proving who did it when they
12 didn't talk about anything else. I thought it was
13 weird that, you know, they didn't really seem
14 worried about what Devin Pope was doing. I think
15 it was weird he didn't come to court. And I think
16 it's weird that they didn't follow up on this and
17 this. And I'd feel a lot better about this -- as
18 the inspectors, I'd feel a lot better about it. I
19 think that would be a good way to start and talk
20 about them and move through them. Okay?

21 He's going to give you the law. It's
22 somewhat complicated, but, basically, it talks
23 about reasonable doubts. I think you'll get where
24 you need to be.

25 I'm sure there's a lot of stuff I left

1 out, not intentionally. Things you've seen or
2 noticed that I'm sure I didn't. But this is a
3 tough case because we're trying to put ourselves
4 in people's shoes sometimes and that's tough. And
5 people are treated differently and that's the way
6 of life. Some people are privileged, some people
7 are not, et cetera, et cetera, et cetera.

8 So the reason that I left all that stuff
9 I had -- and I'm not getting my computer. I'm not
10 going to play the rest of the video for you. And
11 I'm not going to read pages and pages of notes I
12 had last night. The only thing I brought up here
13 was this. And this has been called by some the
14 best book ever written essentially. It's *To Kill*
15 *a Mockingbird*, Mr. Harper Lee. My last name is
16 Lee, obviously. And we named -- my daughter's
17 middle name is Harper because of this book. It's
18 written in 1960. It won the Pulitzer Prize. It's
19 been made into a movie and most of you may know
20 it.

21 But this takes -- this story takes place
22 in 1935 in Alabama, and I just wanted to read
23 something from it because it says it better than I
24 can about how to -- what we're asking for. Okay?
25 I'll just read it real quick. Again, this is from

1 1960 and it's talking about 1935. He's addressing
2 the jury, the lawyers, "One more thing, ladies and
3 gentlemen, before I quit. Thomas Jefferson once
4 said that all men are created equal. A phrase
5 that Yankees and the Executive branch in
6 Washington are fond of hurling at us. There is a
7 tendency in this year of grace, 1935," I would
8 change that to 2022, "for certain people to use
9 this phrase out of context, to satisfy all
10 conditions. We know all men are not created equal
11 in the sense some people would have us believe.
12 Some people are smarter than others. Some people
13 have more opportunity because they're born into
14 it. Some people make more money than others.
15 Some people make a better case than others. Some
16 people are born gifted beyond the normal scope of
17 most people. But, there's one way in this country
18 in which all men are created equal. There is one
19 human institution that makes the pauper equal to
20 the Rockefeller, the stupid man equal to Einstein,
21 and the ignorant man equal to any college
22 president. That institution, ladies and
23 gentlemen, is the court. It could be the Supreme
24 Court of United States or the humblest JP court in
25 the land or this honorable court which you serve.

1 Our courts have their faults as does any human
2 institution, but in this country, our courts are
3 the great levelers, and in our courts all men are
4 created equal. I'm no idealist to believe firmly
5 in the integrity of our courts and in the jury
6 system—that is no ideal to me, it is a living,
7 working reality. Ladies and gentlemen, a court is
8 no better than each one of you sitting before me
9 on this jury. A court is only as sound as its
10 jury, and a jury is only as sound as the people
11 who make it up. I am confident that you, ladies
12 and gentlemen, will review without passion the
13 evidence you have heard, come to a decision, and
14 restore the defendant to his family. In the name
15 of God, do your duty."

16 We trust you. We believe in you. We
17 know you're going to do the right thing. And the
18 right thing to do and the fair thing to do,
19 justice demands. No shortcuts, justice demands.
20 And we look forward to receiving your not guilty
21 verdict. Thank you.

22 THE COURT: Solicitor, reply?

23 MS. CAMPBELL: Very briefly.

24 THE COURT: Yes, ma'am.

25 MS. CAMPBELL: Thank you, Your Honor.

1 THE COURT: Sure.

2 CLOSING ARGUMENT

3 MS. CAMPBELL: The defense attorney told
4 you, he had to do it. No, he didn't. He didn't
5 have to do it. There was no imminent danger.
6 Self-defense from yesterday fails. And what's
7 left? Guilty.

8 Now, the defense attorney, Mr. Lee, he
9 read a long statement from *To Kill a Mockingbird*.
10 I've read it. I'm going to quote something a
11 little bit shorter for you. And it's from
12 Shakespeare. It's from *Titus Andronicus*. It's
13 actually the first tragedy that he ever wrote.
14 And it says: "Vengeance is in my heart, death is
15 in my hand, and blood and revenge are hammering in
16 my head." Back in the 1600's; April 3rd, 2020.

17 Thank you.

18 THE COURT: All right. Ladies and
19 gentlemen, I'm going to send you out for just a
20 few moments before I then begin my charge. So I'm
21 going to have you back in here at 10 till. One
22 bit of good news, don't discuss the case. One bit
23 of good news, I'm going to contact the clerk,
24 because when you're going to be receiving the
25 go-ahead to deliberate, I think the clerk is going

1 to provide some lunch for you. And so, we hope to
2 have that delivered while you would be
3 deliberating.

4 So we'll get you back in here probably 10
5 to 15 minutes. I'll read you my charges, and then
6 we'll allow you to begin your deliberations
7 shortly thereafter. Thank you.

8 (Jury exits the courtroom at 11:39 a.m.)

9 THE BAILIFF: Jury is clear, Your
10 Honor.

11 THE COURT: We'll be at ease for about 10
12 minutes. I'll see everybody back in here at 10
13 till. Okay?

14 (A break was taken from 11:39 a.m. to 11:55 a.m.)

15 THE BAILIFF: All rise. Court is back in
16 session.

17 THE COURT: Anything, before we bring the
18 jury in, from the State?

19 MS. CAMPBELL: No, Your Honor.

20 THE COURT: From the defense?

21 MR. LEE: No, sir.

22 THE COURT: Bring in the jury, please.

23 THE BAILIFF: Yes, sir.

24 THE COURT: Thank you.

25 (Jury enters the courtroom at 11:55 a.m.)

1 THE BAILIFF: Your Honor, jury is
2 entering the courtroom.

3 THE COURT: Thank you.

4 Ladies and gentlemen, it's now my duty as
5 the trial judge under the constitution of this
6 state to charge and instruct you on the law
7 applicable to this case. It's your duty as jurors
8 to accept and apply the law as I will now state it
9 to you. Furthermore, ladies and gentlemen, it's
10 your exclusive duty to try all issues of fact in
11 this case and determine the effect, value, and
12 weight of the evidence. Both the State and the
13 defendant will have a right to expect that you
14 will carefully consider and evaluate the evidence
15 and apply of this case to it so that in the end,
16 ladies and gentlemen, both the State of South
17 Carolina and the defendant will receive a fair and
18 impartial trial.

19 I want you to understand, ladies and
20 gentlemen, that when I use the word "defendant," I
21 refer to Mr. Deavion Burgess. Furthermore, it's
22 important to understand that the State of South
23 Carolina charges the defendant with the offense
24 known as murder, attempted murder, and possession
25 of a weapon during the commission of a violent

1 crime. To these charges, the defendant has
2 entered a plea of not guilty. This plea of not
3 guilty places the burden of proof on the State to
4 prove guilt of the defendant to you, the jury,
5 beyond a reasonable doubt.

6 Ladies and gentlemen, I remind you that
7 the fact that the defendant was arrested, charged,
8 and indicted in this case is not evidence in this
9 case and cannot be considered by you as evidence
10 of guilt in this case, nor does it create any
11 presumption or inference of guilt. The indictment
12 is simply the formal written instrument which
13 contains the charge made against the defendant.
14 It's the formal document by which the case is
15 brought into this court.

16 Ladies and gentlemen, the indictment in
17 this case alleged several different offenses
18 against the defendant. The charges are murder,
19 attempted murder, and possession of a weapon
20 during the commission of a violent crime. Each
21 indictment charges a separate and distinct
22 offense, ladies and gentlemen. You must decide
23 each indictment separately on the evidence and the
24 law applicable to it uninfluenced by your decision
25 as to any other indictment.

1 Now, during this trial, you and I have
2 had separate duties, ladies and gentlemen, to
3 perform. As the trial judge, it's my
4 responsibility to preside over this trial, and I
5 also have to rule upon the admissibility of
6 evidence offered during the process of the trial.
7 In that regard, you are to consider only the
8 competent evidence before you, ladies and
9 gentlemen, and you are to disregard from your mind
10 any testimony that was ordered stricken from the
11 record of this case during the progress of the
12 trial, if there was any, and you are to consider
13 only the testimony which has been presented from
14 the witness stand together with any exhibits
15 admitted into the record of this case and any
16 stipulations counsel made in the record, if there
17 were any.

18 Furthermore, I have the additional duty,
19 ladies and gentlemen, to charge you on the
20 applicable law of this case, and, in that regard,
21 I'm the sole judge of the law in this case. It's
22 your duty, ladies and gentlemen, to accept the law
23 as I state it to you. If you have any
24 preconceived ideas as to what the law is or what
25 the law ought to be and it does not agree with

1 what I tell you the law is, you're obligated,
2 ladies and gentlemen, under your oath to abandon
3 these preconceptions because you are sworn to
4 accept the law precisely as I state it to you.

5 Ladies and gentlemen, in this trial, you
6 are the sole and exclusive judge of the facts and
7 I am the judge of the law. Do not infer that I
8 have an opinion about the facts in this case from
9 anything I've said during the course of the trial,
10 in ruling upon the admissibility of evidence or
11 otherwise, or from anything that I say during the
12 course of this charge to you. In this regard, the
13 law simply does not permit me to have an opinion
14 about the facts.

15 As jurors, it's your duty alone to
16 determine the effect, the value and weight of the
17 evidence presented during the course of this
18 trial.

19 Ladies and gentlemen, in determining what
20 the facts in this case are, you must judge the
21 credibility which simply means the believability
22 of the witnesses and value or weight to be given
23 to their testimony. You alone must decide the
24 force and effect of the testimony. In making this
25 decision, there are many things that you may or

1 should take into consideration, such as, the
2 appearance and manner of witness on the stand, a
3 characteristic often referred to as the demeanor
4 of the witness, was the witness forthright or
5 hesitant, was the witness's testimony consistent
6 or did it contain discrepancies, what was the
7 ability of the witness to know the facts by which
8 he or she testified, did the witness have a cause
9 or reason to be biased and prejudiced in favor of
10 the testimony he or she gave, was the testimony of
11 the witness corroborated or made stronger by other
12 testimony in evidence or was it made weaker or
13 impeached by such other testimony in evidence.

14 As jurors, please understand you have a
15 right to believe a small portion of a witness's
16 testimony and disregard a larger portion or vice
17 versa. You may believe all of the witness's
18 testimony or none. You may believe the testimony
19 of a single witness against that of many witnesses
20 or the other way around. In exercising your
21 mental processes and attempting to decide the
22 verdict, the law simply requires that you exercise
23 your good judgment, ladies and gentlemen, your
24 common sense, your sense of logic, and reason and
25 your experiences in life. You then apply these

1 attributes, ladies and gentlemen, to the evidence
2 and apply the law as I state it to you and thus
3 arrive at a verdict.

4 The rules of evidence, ladies and
5 gentlemen, ordinarily do not permit a witness to
6 testify to opinions or conclusions. An exception
7 to this rule exists for witnesses we call expert
8 witnesses. A witness who, by education and/or
9 experience, has become an expert in some art,
10 science, profession, or calling may state an
11 opinion as to relevant and material matter in
12 which the witness claims to be a witness and may
13 also state the reasons for the opinion. You
14 should consider any expert opinion received in
15 evidence in this case like any other evidence.
16 Give it the weight you think it deserves. If you
17 decide that the opinion of an expert witness is
18 not based on sufficient education or experience,
19 or if you conclude that the reasons given in
20 support of the opinion are not sound, or that the
21 opinion is outweighed by other evidence, you may
22 disregard the opinion entirely.

23 An expert witness's testimony is to be
24 given no greater weight than that of other
25 witnesses simply because the witness is an expert.

1 You are not required to accept an expert's opinion
2 even though it's not contradicted.

3 Ladies and gentlemen, there's been
4 evidence presented that witnesses have made prior
5 statements which are not consistent with the
6 witness's present testimony. You may use this
7 evidence to decide whether to believe the witness.
8 You may also use the evidence of the earlier
9 contradictory statement to determine the truth of
10 those statements. It's up to you to believe the
11 earlier statements or the testimony given at
12 trial. If a witness is shown to have knowingly
13 testified untruthfully concerning any matter, you
14 may consider this in determining whether to trust
15 this witness's testimony as to other matters. You
16 may reject all testimony of that witness or give
17 all or part of the testimony the weight you think
18 it deserves.

19 Now, ladies and gentlemen, it is vital to
20 understand that the defendant is presumed under
21 the law to be innocent of these charges. The
22 defendant has no obligation to prove his
23 innocence. It's a fundamental rule of our law
24 that a defendant, irrespective of the charges
25 against him is always presumed innocent of the

1 crimes for which he is charged unless and until
2 his guilt has been proven by evidence that
3 satisfies you, the jury, beyond a reasonable
4 doubt.

5 The presumption of innocence is not a
6 mere legal theory or legal phrase. The
7 presumption of innocence is very important and you
8 need to understand, ladies and gentlemen, that
9 this presumption accompanies the defendant from
10 the time of his arrest and appearance in this
11 court and continues with the defendant even after
12 you retire to the jury room to deliberate. In
13 other words, the defendant receives the benefit of
14 the presumption of innocence until the very end of
15 this trial when you, the jury, will deliberate
16 upon the evidence and decide whether the State has
17 proven his guilt beyond a reasonable doubt.

18 Now, ladies and gentlemen, what is a
19 reasonable doubt, a reasonable doubt in the law?
20 A reasonable doubt is the kind of doubt that would
21 cause a reasonable person to hesitate to act.
22 Proof beyond a reasonable doubt is proof that
23 leaves you firmly convinced of the defendant's
24 guilt. There are very few things in this world,
25 folks, that we know with absolute certainty. So

1 even in criminal cases, the law does not require
2 proof that overcomes every possible doubt.

3 However, if, based on your consideration
4 of the evidence, you are firmly convinced that the
5 defendant is guilty of the crimes charged, you
6 must find him guilty. If, on the other hand, you
7 think there is a real possibility that he is not
8 guilty, you must give him the benefit of the doubt
9 and find him not guilty.

10 Jurors, please understand that reasonable
11 doubt may arise from evidence which has been
12 presented in the case or from the lack of evidence
13 in the case. It's your responsibility, ladies and
14 gentlemen, to determine whether or not reasonable
15 doubt exists as to the guilt of this defendant. I
16 charge you the defendant is entitled to every
17 reasonable doubt arising out of the whole case.
18 If upon any issues of fact essential to conviction
19 and a verdict of guilty you have a reasonable
20 doubt as to how that issue should be resolved, it
21 would be your duty, ladies and gentlemen, to
22 resolve that issue -- to resolve that reasonable
23 doubt in favor of the defendant.

24 Thus, in summary, it's important to
25 understand that a defendant is not required to

1 prove his innocence. Instead, the State is
2 required by law to prove every essential element
3 of the offense charged against the defendant by
4 evidence which satisfies you, the jury, of his
5 guilt beyond a reasonable doubt. Only then can
6 you convict the defendant and find him guilty.

7 Now, ladies and gentlemen, there are two
8 types of evidence which are jointly presented
9 during a trial. Direct evidence and
10 circumstantial evidence. Direct evidence directly
11 proves the existence of a fact and does not
12 require deduction. Circumstantial evidence is
13 proof of a chain of facts and circumstances
14 indicating the existence of a fact. Crimes may be
15 proven by circumstantial evidence. The law makes
16 no distinction between the weight or value to be
17 given to either direct or circumstantial evidence.
18 However, to the extent the State relies on
19 circumstantial evidence, all of the circumstances
20 must be consistent with each other and when taken
21 together, ladies and gentlemen, point conclusively
22 to the guilt of the accused beyond a reasonable
23 doubt. If the circumstances merely portray the
24 defendant's behavior as suspicious, the proof has
25 failed.

1 The State has the burden of proving the
2 defendant guilty beyond a reasonable doubt. This
3 burden rests with the State regardless of whether
4 the State relies on direct evidence,
5 circumstantial evidence, or some combination of
6 the two.

7 Now, ladies and gentlemen, in order to
8 establish criminal liability, criminal intent is
9 required. For example, the mental state required
10 to be proven by the State for a particular crime
11 might be purpose, intent, knowledge, recklessness,
12 or criminal negligence. Criminal intent must be
13 proven by the State beyond a reasonable doubt.
14 Criminal intent is always a matter that must be
15 determined by the jury from the circumstances
16 surrounding the situation. There is no way to
17 prove intent with a mathematical certainty. There
18 is no way medical science can dissect a person's
19 brain and determine what that person had in mind.
20 So the law says that criminal intent may be shown
21 from the circumstances shown to have existed.
22 This is how you make, ladies and gentlemen, a
23 determination of whether or not the element
24 requiring intent was present. It's not necessary
25 to establish intent by direct and positive

1 evidence, but intent may be established in the
2 same way as any other fact, by taking into
3 consideration the acts of the parties and all of
4 the facts and circumstances in this case.

5 Criminal intent is a mental state, a
6 conscience wrongdoing. It's up to you to
7 determine what the defendant intended to do based
8 on the circumstances shown to have existed.
9 Criminal intent can arise from action or a failure
10 to act. It may arise from negligence,
11 recklessness, or an indifference to duty, or to
12 consequences that is considered by the law to be
13 the equivalent of criminal intent.

14 Now, ladies and gentlemen, an issue in
15 this case is the identification of the defendant
16 as the person who committed the crime charged.
17 The State has the burden of proving identity
18 beyond a reasonable doubt. You must be satisfied
19 beyond a reasonable doubt of the accuracy of the
20 identification of the defendant before you may
21 convict the defendant. Identification testimony
22 is an expression or belief or impression by a
23 witness. You must determine the accuracy of the
24 identification of the defendant. You must
25 consider the believability of each identification

1 of the witness in the same way as any other
2 witness. You may consider whether the witness had
3 an adequate opportunity to observe the offender at
4 the time of the event. This will be affected by
5 things like how long or short a time was
6 available, how far or close the witness was, the
7 lighting conditions and whether the witness had
8 the chance to see or know the person in the past.

9 Once again, ladies and gentlemen, I instruct
10 you the burden of proof is on the State and it extends
11 to every element of the crime charged and this
12 specifically includes the burden of proving beyond a
13 reasonable doubt the identity of the defendant as a
14 person committing the crime. If after examination and
15 examining the testimony you have a reasonable doubt as
16 to the accuracy of the identification, you must find
17 the defendant not guilty.

18 Ladies and gentlemen, the defendant has
19 raised the defense of self-defense to the murder
20 and attempted murder charges. Self-defense,
21 ladies and gentlemen, is a complete justification
22 for murder and attempted murder and negates the
23 existence of malice in each charge. Thus, you
24 must find that the defendant is not guilty of
25 murder and attempted murder unless the State

1 proves beyond a reasonable doubt that any of the
2 following four elements of self-defense did not
3 exist in the case.

4 Now, ladies and gentlemen, there are four
5 elements. First, the defendant must be without
6 fault in bringing on the difficulty.

7 Second, the defendant must have actually
8 believed he was in imminent danger of losing his
9 life or sustaining serious bodily injury or he
10 actually was in such imminent danger.

11 Thirdly, ladies and gentlemen, if his
12 defense is based upon his belief of imminent
13 danger, a reasonably prudent man of ordinary
14 fitness and courage would have entertained the
15 same belief. If the defendant actually was in
16 imminent danger, the circumstances were such as
17 would warrant a man of ordinary prudence, firmness
18 and courage to strike the fatal blow in order to
19 save himself from serious bodily harm or losing
20 one's life.

21 And fourth, the defendant had no other
22 probable means of avoiding the danger of losing his
23 own life or sustaining serious bodily injury than to
24 act as he did in this particular instance.

25 Now, folks, if you have a reasonable

1 doubt of the defendant's guilt after considering
2 all the evidence including the evidence of
3 self-defense, then you must find the defendant not
4 guilty.

5 On the other hand, if you have no
6 reasonable doubt of the defendant's guilt after
7 considering all of the evidence including the
8 evidence of self-defense, then you must find the
9 defendant guilty.

10 A defendant is presumed to be innocent
11 until proven guilty beyond a reasonable doubt. If
12 any reasonable doubt as to whether the State has
13 shown -- if you have any reasonable doubt as to
14 whether the State has shown that the defendant did
15 not act properly in self-defense, then you must
16 find the defendant not guilty.

17 If the other requirements for the right
18 to use deadly force in self-defense are satisfied,
19 ladies and gentlemen, a defendant need not retreat
20 in order -- need not retreat in order to avoid the
21 need for deadly force if it is not possible or did
22 not reasonably appear possible to retreat without
23 danger of being killed or suffering serious bodily
24 injury.

25 If the defendant, ladies and gentlemen,

1 is in imminent danger or if the defendant's belief
2 that he is in imminent danger of death or
3 receiving bodily harm is reasonable, the defendant
4 need not wait until actual attack or injury or
5 until force is used by the assailant before
6 exercising the right to use deadly force in
7 self-defense. In other words, the defendant need
8 not wait until the assailant gets the drop on him
9 in order to be entitled to use force in
10 self-defense.

11 In addition, ladies and gentlemen, once
12 the right to fire and self-defense arises, a
13 defendant is not required to wait until his
14 adversary is on equal terms or until he has fired
15 or aimed his weapon in order to act.

16 In determining whether the defendant
17 acted properly in self-defense, it is sufficient
18 that he believed that he was in imminent danger, a
19 defendant need not actually be in such danger
20 because people are entitled to act on appearances.
21 A defendant acts properly for using force for
22 self-defense, if, under the circumstances as they
23 appeared to him, he believed that he was in such
24 danger and a reasonably prudent person of ordinary
25 firmness and courage in the situation and with the

1 defendant's characteristics would have entertained
2 the same belief.

3 In consideration of whether self-defense
4 is applicable herein, you should try as near you
5 can to put yourself in the defendant's situation
6 at the time he fired the shot. You should
7 consider the circumstances by which he was
8 surrounded and take into consideration the person
9 with whom he was dealing and all of the facts
10 which surrounded him. As you obtain the same from
11 the testimony and as near as you can, use the
12 situation from the defendant's standpoint unless
13 the State shows that a person of ordinary reason,
14 coolness, and prudence would not have acted as the
15 defendant did under the circumstances that
16 surrounded him at the time the shot was fired,
17 then you should find the defendant not guilty.

18 In determining whether the defendant has
19 a right to use force in self-defense, the
20 reputation of an assailant as a violent person may
21 be relevant as to whether there was a need for
22 force to whether the defendant had reason to
23 believe that there was a need for force and to
24 whether the deadly force was reasonably necessary.
25 It may also be relevant, ladies and gentlemen, to

1 whether the defendant could construe the
2 assailant's actions more harshly and could act
3 more quickly. One of elements of self-defense is
4 that the defendant must have actually believed he
5 was in imminent danger of losing his life or
6 sustaining a serious bodily injury, or he was in
7 such imminent danger.

8 In determining whether the defendant had
9 a reasonable belief of such imminent danger,
10 ladies and gentlemen, or whether the defendant
11 actually was in such imminent danger, you may
12 consider prior instances of violence or of
13 unprovoked aggression by the assailant. In
14 determining whether the defendant had a right to
15 use force in self-defense, the assailant's
16 appearance of impairment from consumption of drugs
17 and/or alcohol may be relevant as to whether there
18 was a need for force, to whether the defendant had
19 reason to believe there was a need for force, and
20 to whether deadly force was reasonably necessary.
21 When a person is justified in firing the first
22 shot, he is justified in continuing to shoot until
23 it is apparent that the danger to his life and
24 body has ceased.

25 Now, ladies and gentlemen, where a person

1 inflicts a fatal injury on another person and that
2 other person died at a later time, you must be
3 convinced beyond a reasonable doubt that the
4 infliction of the first injury was the proximate
5 cause of the victim's death. The proximate cause
6 is the direct cause, it's the immediate cause,
7 it's the efficient cause. It is that cause
8 without which death of the victim would not have
9 resulted. There must be a chain of causation from
10 the time of the injury inflicted by the defendant
11 until the time of the victim's death.

12 Proximate cause does not necessarily mean
13 that it occurred immediately prior to death.
14 Therefore, there may be more than one proximate cause.
15 The acts of two or more persons may combine together
16 to be a proximate cause of the death of a person. The
17 defendant's act may be regarded as a proximate cause
18 if it is a contributing cause of the death of the
19 victim. The fact that other causes also contributed
20 to the death of the victim does not relieve the
21 defendant from responsibility. The defendant's act
22 need not be the sole cause of death, but must be a
23 proximate cause contributing to the death of a victim.

24 It is not a defense to show that the
25 victim might have recovered had he been treated

1 according to the most approved surgical or medical
2 standards.

3 Now, ladies and gentlemen, the defendant
4 is charged with murder. The State must prove
5 beyond a reasonable doubt that the defendant
6 killed another person with malice aforethought.
7 Malice is hatred, ill will, or hostility towards
8 another person. It is the intentional doing of a
9 wrongful act without just cause or excuse and with
10 an intent to inflict an injury with evil intent.
11 Malice is a wrongful intent to injure another
12 person. It indicates a wicked or depraved sense
13 of intent of doing wrong. Malice is a legal term
14 implying wickedness and excluding a just cause or
15 excuse. The term malice indicates a form,
16 purpose, and desire to do a wrongful act under the
17 circumstances that exclude any legal right to do
18 it. Malice aforethought does not require that
19 malice exists for any particular time before the
20 act is committed, but malice must exist in the
21 mind of the defendant just before and at the time
22 the act is committed. Therefore, there must be a
23 combination of the previous evil intent and the
24 act.

25 Malice aforethought may be express or

1 implied. These terms *express* and *imply* do not
2 mean different kinds of malice but merely the
3 manner in which malice may be shown to exist
4 either by direct evidence or by circumstantial
5 evidence from the facts and circumstances which
6 are proved in this case. Express malice is shown
7 when a person speaks words which express hatred or
8 ill will for another, or when the person prepared
9 beforehand to do the act which was later
10 accomplished. For example, lying in wait for a
11 person, or any other acts of preparation going to
12 show that the deed was within the defendant's mind
13 would be express malice. Malice may also be
14 shown, ladies and gentlemen, from conduct showing
15 a total disregard for human life.

16 Now, the defendant is also charged with
17 attempted murder, ladies and gentlemen. In order
18 to prove this crime the State must prove the
19 defendant attempted to kill another person with
20 malice aforethought. And, again, malice is hatred
21 or ill will or hostility towards another person.
22 It's the intentional doing of a wrongful act
23 without just cause or excuse and with the intent
24 to inflict injury, ladies and gentlemen.

25 Malice aforethought does not require that

1 malice exist for any particular time before the
2 act is committed, but malice must exist in the
3 mind of the defendant just before and at the time
4 the act is committed. Therefore, there must be a
5 combination of the previous evil intent and the
6 act.

7 Again, ladies and gentlemen, a specific
8 intent to kill is an element of attempted murder.
9 Intent means intending the result which occurs.
10 Not accidentally or involuntarily. Express malice
11 is also an element of attempted murder. Express
12 malice is shown when a person speaks words which
13 express hatred or ill will for another, or when
14 the person prepared beforehand to do the act which
15 was later accomplished. For example, again, lying
16 in wait for a person or any other acts of
17 preparation going to show that the deed was within
18 the defendant's mind with the express malice.

19 Finally, the defendant is also charged
20 with possession of a weapon during the commission
21 or attempt to commit a violent crime. The State
22 must prove beyond a reasonable doubt that the
23 defendant was in possession of a firearm or
24 visibly displayed what appeared to be a firearm
25 during the commission of a violent crime. A

1 firearm means a machine gun, an automatic rifle or
2 revolver or pistol or other weapon which is
3 designed to or may be readily converted to expel a
4 projectile. In order to find the defendant guilty
5 of possession of a weapon during the commission of
6 a violent crime, you must first find the defendant
7 guilty of either murder or attempted murder. The
8 State must prove beyond a reasonable doubt that
9 the weapon further advanced or helped in the
10 commission of the crime.

11 Now, ladies and gentlemen, I want you to
12 clearly understand you are not partisans or
13 advocates for the State of South Carolina or the
14 defendant. It's your duty by your joint
15 deliberations to determine the facts in this case
16 giving the defendant the benefit of every
17 reasonable doubt on each and every issue. Then to
18 the facts which you determine to be true, you
19 should take and apply the law which has been given
20 to you by this court and thus arrive at a verdict
21 in this case. Thus when you have accomplished
22 these responsibilities, you will have satisfied
23 your oath as jurors and you will have discharged
24 your duty to this court.

25 Once you retire to the jury room, the

1 bailiff will give the verdict form to the
2 foreperson. When you, the jury, arrive at a
3 verdict as to the offenses charged in this case,
4 the foreperson will select the verdict as to that
5 offense on the verdict form. If the State has
6 failed to prove guilt of the defendant beyond a
7 reasonable doubt, your verdict will be not guilty.
8 Likewise, if the State has proven guilt of the
9 defendant beyond a reasonable doubt, your verdict
10 will be guilty. Once a decision has been made,
11 the foreperson will check whatever choice is the
12 verdict of the jury as to the offenses charged.

13 Now, the verdict that you rendered in
14 this case must be the verdict of each and every
15 juror, ladies and gentlemen. It must be your
16 unanimous verdict. All 12 jurors must agree on
17 the verdict which you authorized the foreperson to
18 write for the jury.

19 Now, ladies and gentlemen, I want you to
20 further understand that the order of choices of
21 the verdict that appear on the verdict form are
22 not suggestive of any verdict on the part of this
23 Court. The verdict in this case is to be
24 determined by you, the jury, not the Court.

25 Furthermore, ladies and gentlemen, please

1 understand that I will give the verdict form to
2 the foreperson, it is not her verdict alone. It's
3 the verdict of all 12 of you. And, again, I
4 emphasize your verdict has got to be unanimous,
5 ladies and gentlemen.

6 Now, folks, I want you to know that you
7 must consider the instruction that I've given you
8 as a whole and not follow some and ignore others.

9 Now, I'm going to ask you in a moment to
10 retire to the jury room, but do not begin your
11 deliberations until you are told to do so because
12 the law required that I consult with the attorneys
13 to make sure that I haven't left anything out of
14 these instructions. And after I've checked with
15 the attorneys, the bailiff will bring you the
16 verdict form and instruct you to begin your
17 deliberations.

18 Now, also I want you-all to know, if you
19 have any questions during your deliberations, you
20 must put them in writing and send them to me by
21 the bailiff. The bailiff will be placed
22 immediately outside the jury room during your
23 deliberations. If you have a question, please do
24 not write down the breakdown of your vote on the
25 paper that you give the bailiff.

1 Once you've reached your verdict, please
2 knock on the jury room door and ask the bailiff to
3 advise the Court that you've reached a verdict and
4 we will return you to the courtroom as promptly as
5 possible.

6 All right. Madame Forelady, while I got you
7 here, let me just show -- all right. Folks, this is
8 going to be the verdict form. And, quite frankly, it
9 just reads as follows: "We, the jury, in the
10 above-captioned case on the charge of murder of
11 Quinton Ventress find the defendant . . .," the
12 foreperson shall check one. And, again, that's why I
13 said earlier not guilty/guilty. Don't attach any
14 significant to the order in which the Court prepared
15 it. I prepared this verdict form. I had to put
16 something, but don't attached any significance to
17 that. Okay? That means nothing, the order in which
18 it is.

19 Number 2: "We, the jury, in the
20 above-captioned case on the charge of attempted
21 murder of Zachary Wilkerson find the
22 defendant . . .," again, the foreperson will
23 check -- and, remember, this is everybody's
24 verdict, not just the forelady's verdict, not
25 guilty/guilty.

1 All right. Right here an asterisk. If
2 not guilty of 1 and 2, you must check not guilty
3 on 3. Okay? I'll go to three in just a second.
4 But right here, if you find not guilty on 1 and 2,
5 you must check not guilty for 3. Okay?

6 If guilty of 1 or 2, move to 3. And number
7 3, of course, is on the second page. It just says:
8 "We, the jury, in the above-captioned case on the
9 charge of possession of a weapon during a violent
10 crime, to wit murder or attempted murder, find the
11 defendant . . .," and, again not guilty or guilty.
12 And the foreperson would then check what the jury's
13 verdict is.

14 I would ask that the foreperson also put
15 her initials right down here on the first page.
16 Actually, it says 2 of 2. That's incorrect. It
17 should say 1 of 2 and then say 2 of 2 on the back.
18 Madame Forelady, if you just put your initials
19 right there on the first page, and then when you
20 reach your verdict if you'd just go ahead, in
21 addition to checking the appropriate boxes, if you
22 would go and write your name right there. Okay?

23 So this is going to come back to you-all
24 in just a minute. I'm going to ask that you go
25 back to the jury room, but I would ask that you

1 please not commence with your deliberations yet.
2 I've got to ask them if there's anything that was
3 left out. And then what's going to happen is, the
4 evidence is going to go back with the verdict form
5 and the bailiff will then instruct the jury as to
6 when they can begin their deliberation.

7 Folks, thank you so much for your time.
8 And I will have this information back to you
9 hopefully shortly so you can begin your
10 deliberations. Thank you.

11 (Jury exits the courtroom at 11:34 a.m.)

12 THE COURT: All right. Anything from the
13 State concerning the presentation of the jury
14 charges?

15 MS. CAMPBELL: No objection to the
16 presentation.

17 THE COURT: Mr. Lee?

18 MR. LEE: No objection to the jury
19 charges. I would just ask to renew my objection
20 to the verdict form. The one that I've asked for
21 has been submitted as a court exhibit. I just
22 renew that objection.

23 THE COURT: I got this right here.

24 Thank you. I certainly understand your
25 objection. It's noted for the record.

1 All right. What I would like to do is, I
2 got the verdict form, page 2 of 2 and page 2 of 2.
3 I just noticed that, Mr. Lee, as I was presented
4 that to the jury. I assume that's not a problem.
5 I told the forelady about that and she's going to
6 initial the first page and sign the second.

7 So what I would like for you-all to do
8 is, A, let's look at what's going to go back with
9 the verdict form. Make sure we have an agreement
10 as to that. I want to put you on the record that
11 there is an agreement. Then I'm going to allow
12 the bailiff to take that evidence back with the
13 verdict form.

14 As it relates to the alternates, does the
15 State have a preference? I'm going to bring them
16 out. You want to discharge them. Normally, I
17 just go ahead and discharge them. That's up to
18 you-all.

19 MS. CAMPBELL: I think it's proper to
20 discharge them, Your Honor.

21 THE COURT: Mr. Lee?

22 MR. LEE: I'm okay with that, yes, sir.

23 THE COURT: So what I'm going to do is,
24 I'm going to ask -- when all of this goes back,
25 I'm going to then ask that he bring the two jurors

1 to the courtroom. I will thank them for their
2 service, discharge them, and then they'll be free
3 to go and do whatever they want to do. Does that
4 meet with everyone's approval.

5 MR. LEE: Yes, sir.

6 THE COURT: Take a look at the evidence.
7 And there's the verdict form, Madame Clerk.

8 (Off the record.)

9 THE COURT: So as it relates to the
10 evidence that's going to go back and accompany the
11 verdict form, do we have an agreement?

12 MS. CAMPBELL: We do.

13 THE COURT: All right. And so we have an
14 agreement as to everything that's going back and
15 that's been handed to the bailiff. Is that
16 correct from the State?

17 MS. CAMPBELL: That's correct.

18 THE COURT: From the defense?

19 MR. LEE: Yes, sir.

20 THE COURT: So we got everything that's
21 going back with the verdict form.

22 Pull out my two alternates and bring them
23 to me, and then, of course, tell them they can
24 begin deliberations.

25 THE BAILIFF: Yes, sir.

1 (Deliberations begin at 12:45 p.m.)

2 THE COURT: Hi. Folks, thank you so
3 much. Thank you so much for being here. Thank
4 you for honoring your summons to be here. I know
5 it's slow. I know that sometimes it's boring.
6 But, again, obviously we're dealing with very
7 important matters.

8 You know, I don't know how I would feel
9 if I sat here all week only to have somebody say
10 come on out, you can't deliberate with the jury.
11 Some people may be relieved. Some people may be
12 really disappointed. Unfortunately, the law
13 states that it will only allow 12 folks to be in
14 their deliberating. So, I can't, unfortunately,
15 allow you to remain in there.

16 I want you to know that you are
17 considered to have completed your jury service for
18 the week. Thank you. You will not have any jury
19 service now for the next three years. But, of
20 course, not city court, not federal court, or
21 magistrate's court. If you get called to any of
22 those, I can't help you. I wish I could give you
23 six years and not have to go anywhere. For these,
24 for what I call circuit court, general sessions,
25 this is criminal, and common pleas, which is

1 civil, you are good for three years.

2 Now, I want to let you know, if you want
3 to go, see you later. If you want to stay, you
4 can stay. If you want to go get something to eat
5 and come back, you can do that. I mean, you're
6 free to do whatever you want. And so I'm going to
7 release you or discharged from your duty.

8 Now, I also want to let you know that if
9 you want to talk to anybody about this case, you
10 can. If you don't want to talk to anybody, you
11 don't have to. That's up to you. If you don't
12 want to talk to somebody and they bother you or
13 they won't stop bothering you, you just call the
14 clerk, and they'll let me know, and that just puts
15 an end to the situation.

16 JUROR: Thank you.

17 THE COURT: I don't think you will. I
18 just say that because you never know. I mean,
19 somebody might want to just -- it could be
20 somebody wanting to know what your opinion is and
21 just want to talk about it. If this bothers you
22 and there's a problem, then you just let the
23 clerk's office know. They'll bring it to my
24 attention and I'll fix it.

25 So I thank you so much and whatever

1 you-all wanted to do, you're free to go and I
2 discharge from your summons at this point. Thank
3 you so much.

4 JUROR: Thank you very much.

5 MS. CAMPBELL: Your Honor, I know that
6 Miss Jones and I are not leaving the courthouse,
7 but I've written down our numbers for your clerk,
8 along with Mr. Lee in case you need us and we're
9 not upstairs.

10 THE COURT: Okay.

11 (Off the record.)

12 (Question from jury 1:37 p.m.)

13 THE COURT: We got a question. We got a
14 question. We're better wait a few minutes for
15 your client to get here.

16 MR. LEE: Yes, sir.

17 THE COURT: All right. We got a question
18 from the jury and the question reads: "Can/could
19 the defense have called Devin Pope as a witness?"
20 Signed by the foreperson and dated 3/24/22.

21 I'm going to make that a Court's exhibit.

22 (COURT EXH. 4, Note from jury, was marked
23 for identification.)

24 THE COURT: Solicitor?

25 MS. CAMPBELL: I think the Court isn't

1 allowed to comment on that, Your Honor. I've always
2 taken the position that no matter where I am, at this
3 table or that table, that the proper response is, *You*
4 *have all the evidence in this case, period.*

5 THE COURT: So it would the Court cannot
6 comment on that.

7 MS. CAMPBELL: Correct.

8 MR. LEE: My response would be that the
9 appropriate answer to that would be that -- remind
10 them of the presumption of innocence and no duty
11 for the defense to present any evidence. The
12 State has the absolute burden of proving a case
13 beyond a reasonable doubt.

14 THE COURT: I think that's untrue, as it
15 relates to you could have. Technically, you have
16 the ability to, correct?

17 MR. LEE: Correct.

18 THE COURT: That's what they're asking.

19 MR. LEE: But they could ask other
20 things, though.

21 THE COURT: They took my instructions as
22 a whole. No, sir. That, absolutely not.

23 MR. LEE: The response is, you can't
24 answer it.

25 THE COURT: Touche.

1 All right. Then we'll get the jury in
2 and I'll tell them they got everything that they
3 need and --

4 MS. CAMPBELL: Your Honor, I'll say this:
5 The State is perfectly fine with Your Honor
6 writing that on the note and sending it back to
7 them and marking it as a Court's exhibit and no
8 need to disturb our jury.

9 MR. LEE: Fine with me, as long as it's
10 part of the record.

11 MS. CAMPBELL: And we can come and see
12 it, right?

13 THE COURT: Ma'am?

14 MS. CAMPBELL: We can come and see what
15 you put on there and okay it?

16 THE COURT: Of course, of course. All
17 right. Can I get that exhibit back?

18 Solicitor, what was the language that you had
19 suggested?

20 MS. CAMPBELL: You have all the evidence
21 in this case, period.

22 THE COURT: I'm sorry. "You have all the
23 evidence . . . "

24 MS. CAMPBELL: . . . "in this case,"
25 period.

1 Mr. Lee?

2 MR. LEE: I'm okay with that.

3 THE COURT: All right. I'm going to put,
4 "You have been provided all of the evidence in
5 this matter." Is that satisfactory?

6 MS. CAMPBELL: Yes, sir.

7 MR. LEE: Yes, sir.

8 THE COURT: "You have been provided all
9 of the evidence in this matter." Satisfactory
10 from the State?

11 MS. CAMPBELL: Yes, sir.

12 THE COURT: From the defense?

13 MR. LEE: Yes, sir.

14 THE COURT: All right. So she's going to
15 get a copy of it.

16 All right. You-all come up and take a
17 look at this. Madame Clerk, if you could, hand
18 that to them. I want to make sure that that meets
19 their approval. Is that satisfactory to the
20 State?

21 MS. CAMPBELL: Yes, it is.

22 THE COURT: Defense?

23 MR. LEE: Yes, sir.

24 THE COURT: All right. What I'm going to
25 do is, I'm going to mark that as a Court's

1 exhibit, make a photograph copy of it, and send
2 the photocopy back to the jurors. Is that
3 satisfactory to the State?

4 MS. CAMPBELL: Yes.

5 THE COURT: Defense.

6 MR. LEE: Yes is.

7 THE COURT: All right. That's what we'll
8 do. Go ahead and mark that as a Court's exhibit.

9 (COURT EXH. 5, Answer to jury's
10 question, was marked for identification.)

11 THE COURT: Mr. Bailiff, if you could go
12 ahead and make them a copy and give them the copy.
13 And then, Madame Clerk, you can bring the original
14 back and give that to the court reporter.

15 THE CLERK: Yes, Your Honor.

16 THE COURT: All right. We'll be at ease.

17 (Off the record at 1:51 p.m.)

18 (Back on the record at 2:15 p.m.)

19 THE COURT: We got a question, and also
20 they've sent with the question State's Exhibit 34.
21 The question reads: "Could we watch State's
22 Evidence Number 34, the video, that it came from?"
23 Signed by the forelady. And State's 34 is a
24 picture of Mr. Burgess. I believe it's been
25 identified as Mr. Burgess walking passed, near, at

1 the vehicle. If you-all want to take a look at
2 it.

3 MS. CAMPBELL: That is in evidence.

4 THE COURT: Yeah.

5 MS. CAMPBELL: Okay.

6 MR. LEE: That's going to be camera 13.

7 MS. CAMPBELL: Well, State's 3- -- the
8 tiem they're asking for is in Inessa Bryan's
9 statement to Byrd. If they're identifying -- it's
10 unclear. Are they asking to see the surveillance
11 video or are they asking to see the -- this goes
12 with Miss Bryan's testimony.

13 MR. LEE: I think that is from -- the way
14 I would read it, I think that is a view from
15 camera 13 from the convenience store, and I think
16 that was taken out of that video. It was
17 introduced as State's Number 20. There's four of
18 them that are in there. Camera 4 --

19 MS. CAMPBELL: That is the other outside
20 angle that is camera 13. We're checking. Yes.
21 And there are two items in evidence, Your Honor.
22 There's the disk that is the full videos and then
23 there is the disk that is the action clip, 20 and
24 20-A. If they have to see the video of that angle
25 of the shooting, then absolutely they can watch

1 that.

2 THE COURT: All right. So then, in that
3 case, let's tee up the video of that angle of that
4 shooting and then bring them in here and play
5 it.

6 MS. CAMPBELL: All right. Is that
7 satisfactory for the State?

8 MS. CAMPBELL: That is satisfactory. And
9 the State's intention would be to play action
10 portion. And then if they come back and tell you
11 they want more, then we can play more.

12 MR. LEE: What is the action portion?

13 MS. CAMPBELL: The two-minute -- from
14 when the white Nissan pulls up until the white
15 Nissan leaves.

16 MR. LEE: I think we need to say, this is
17 the entire video. Tell us how much you want to
18 watch and tell us when you want to stop. We don't
19 know if they just want the montage highlight real
20 that the State decided to put up there. If they
21 seen enough, they've seen enough. 13 in full will
22 cover everything that's in the two-minute video
23 clip that she put in.

24 THE COURT: All right. They want to
25 watch the video that State's 34 came from. And

1 so, what was played to them?

2 MS. CAMPBELL: If they want to see the
3 video to see that angle, that's going to be 20 and
4 20-A. 20-A is the shorten clip version that's two
5 minutes long. 20 is the 30-minute version from
6 way before even the black Nissan gets there to way
7 after it leaves.

8 MR. LEE: Well, when it starts, the black
9 Nissan is getting gas. It takes a few minutes.

10 THE COURT: Are you saying that they
11 should watch the entire 30-minute clip.

12 MR. LEE: I don't know how much they
13 want. They said the video. I'm just --

14 THE COURT: What you want, sir. That's
15 what I'm asking.

16 MR. LEE: I think the way to interpret
17 that is to say, we have the full video and we can
18 watch as much or as little of it that you want to.
19 They can tell you when they've seen enough.

20 THE COURT: And so the State played you a
21 portion of the video from this angle and that
22 portion contained this photograph, correct?

23 MS. CAMPBELL: That is correct.

24 THE COURT: All right. I'm going to ask
25 them, do they want to watch the full video, which

1 is 30 minutes, or do they want to -- in its
2 entirety, or just the portion that was played by
3 the State which contains the still shot.

4 MR. LEE: Or some portion of the entire
5 30-minute tape. Judge, there was testimony.

6 THE COURT: Let's play the entire
7 30-minute tape. How's that? Let's just take our
8 time. And, Mr. Lee, we got everything covered for
9 you. So tee up that angle, 30 minutes, let's go.

10 MR. LEE: Your Honor, I apologize if I
11 upset the Court.

12 THE COURT: No, sir. I don't want to
13 hear anythin -- we're waiting on the jury to come
14 in. I don't need to hear anything like that.

15 THE BAILIFF: Nobody said go get the
16 jury, Judge.

17 THE COURT: Go get the jury. I
18 apologize. I'm in no rush.

19 (The jury enters the courtroom at 2:18 p.m.)

20 THE BAILIFF: Your Honor. The jury is
21 coming in the courtroom.

22 THE COURT: Thank you.

23 All right. Madame Forelday, ladies and
24 gentlemen of the jury, I received a question,
25 "Could we watch the State's Evidence Number 34,

1 the video that it came from?" And, of course, you
2 attached that photograph which was State's 34.
3 The answer to that is certainly and we're happy to
4 play that for. What we're going to do is, from
5 the angle from this shot came, we are going to
6 play that entire video. So I think that's teed up
7 and ready for you to observe and we'll cut the
8 lights down, and thank you.

9 (Video Exhibit 20 played in its entirety
10 from 2:19 p.m. to 2:42 p.m.)

11 THE COURT: Madame Forelady, ladies and
12 gentlemen, I believe that is the entire video from
13 the angle that included State's Evidence Number
14 34.

15 All right. So I will return you to your
16 jury room and please continue your deliberations.
17 Thank you very much.

18 (Jury exits the courtroom at 2:42 p.m.)

19 THE BAILIFF: Jury is clear, Your
20 Honor.

21 THE COURT: All right. Thank you.

22 I'm going to have the Exhibit 34, the
23 actual photograph that's marked into evidence, I
24 was going to have that returned to the jury. Any
25 objection from the State?

1 MS. CAMPBELL: No objection.

2 THE COURT: Defense?

3 MR. LEE: No, sir.

4 THE COURT: All right. Go ahead and take
5 that back to them, please. I made a copy of that
6 and attached it to the note which is now Court
7 Exhibit 6.

8 (COURT EXH. 6, Question from jury, is marked
9 for identification.)

10 (Off the record.)

11 (Verdict reached 2:56 p.m.)

12 THE BAILIFF: All rise. This court is
13 now in session.

14 THE COURT: Thank you. You can be
15 seated.

16 All right. I understand we have a
17 verdict. Anything before we bring the jury in
18 from the State?

19 MS. CAMPBELL: No, Your Honor.

20 THE COURT: From the defense?

21 MR. LEE: No, Your Honor.

22 THE COURT: All right. Great. Please
23 bring us the jury. I thought someone was going to
24 get the jury earlier. I kept thinking it was
25 taking a long time, and he's sitting there.

1 (Jury enters the courtroom at 3:00 p.m.)

2 THE BAILIFF: Your Honor, the jury is
3 entering the courtroom.

4 THE COURT: Thank you. Madame Forelady,
5 I understand you reached a verdict.

6 MADAME FORELADY: Yes.

7 THE COURT: All right. Could you hand
8 that verdicto to the bailiff, please. He will, in
9 turn, hand it to me. Thank you, so much.

10 All right. Madame Clerk, will you
11 publish the verdict, please?

12 THE CLERK: Yes, Your Honor.

13 In the State of South Carolina vs.
14 Deavion Jahquwan Burgess, we, the jury, in the
15 above-captioned case on the charge of murder of
16 Quinton Ventress find the defendant guilty.

17 We, the jury, in the above-captioned case
18 on the charge of attempted murder of
19 Zachary Wilkerson find the defendant guilty.

20 We, the jury, in the above-captioned case
21 on the charge of possession of a weapon during a
22 violent crime, to wit murder or attempted murder,
23 find the defendant guilty.

24 THE COURT: All right. Thank you,
25 Madame Clerk.

1 Any motions from the State before I
2 discharge the jury?

3 MS. CAMPBELL: No, sir.

4 THE COURT: Any motions from the defense?

5 MR. LEE: I would ask the jury be polled.

6 THE COURT: Yes, sir. Certainly.

7 Madame Clerk, would you please poll the jury?

8 THE CLERK: Yes, Your Honor.

9 When I call your number, if you would
10 just say yes or no as to your verdict.

11 Juror Number 355, is this your verdict?

12 JUROR 355: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR 355: Yes.

15 THE CLERK: Juror number 99, is this your
16 verdict?

17 JUROR 99: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR 99: Yes.

20 THE CLERK: Juror number 311, is this
21 your verdict?

22 JUROR 311: Yes.

23 THE CLERK: Is it still your verdict?

24 JUROR 311: Yes.

25 THE CLERK: Juror number 324, is this

1 your verdict?

2 JUROR 324: Yes.

3 THE CLERK: Is it still your verdict?

4 JUROR 324: Yes.

5 THE CLERK: Juror number 230, is this

6 your verdict?

7 JUROR 230: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR 230: Yes.

10 THE CLERK: Juror number 45, is this your

11 verdict?

12 JUROR 45: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR 45: Yes.

15 THE CLERK: Juror number 336, is this

16 your verdict?

17 JUROR 336: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR 336: Yes.

20 THE CLERK: Juror number 292, is this

21 your verdict?

22 JUROR 292: Yes.

23 THE CLERK: Is it still your verdict?

24 THE WITNESS: Yes.

25 THE CLERK: Juror number 83, is this your

1 verdict?

2 JUROR 83: Yes.

3 THE CLERK: Is it still your verdict?

4 JUROR 83: Yes.

5 THE CLERK: Juror number 343, is this

6 your verdict?

7 JUROR 343: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR 343: Yes.

10 THE CLERK: Juror number 227, is this

11 your verdict?

12 JUROR 227: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR 227: Yes.

15 THE CLERK: Juror number 377, is this

16 your verdict?

17 JUROR 377: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR 377: Yes.

20 THE CLERK: Juror number 162, is this

21 your verdict? That must be an alternate.

22 Juror number 70 is an alternate.

23 Juror number 61, is an alternate?

24 THE COURT: Yes, we had three

25 alternates.

1 THE CLERK: That's the end of the list,
2 Your Honor.

3 THE COURT: All right. Thank you.

4 Anything further from the defense?

5 MR. LEE: Before you discharge the jury?

6 THE COURT: Yes, sir, before I discharge
7 the jury.

8 MR. LEE: No, sir.

9 THE COURT: All right. Ladies and
10 gentlemen, thank you. Thank you for your time
11 this week. Thank you, first, again, I said it
12 earlier, for honoring your summons, for being
13 here. It means a lot to the Court. It means a
14 lot to your county. This is where you live. And,
15 ladies and gentlemen, I thank you for honoring
16 your summons and showing up. I thank you for
17 being attentive this week. I will tell you that
18 in the time I've been on the bench, I often look
19 over, I will see jurors doing the exact opposite
20 of what you-all did. And by that, I mean not
21 paying attention or nodding off. Never saw that.
22 Never saw that. You took your oath seriously, and
23 I appreciate that very, very much.

24 You are free from circuit court for the
25 next three years. Of course, as I've said before,

1 not federal court, city court, or magistrate's
2 court, but from circuit court. That's general
3 sessions, criminal court like today and this week,
4 or common pleas, which is civil court. So you're
5 good to go for three years. You've fulfilled your
6 duty.

7 I want to let you know that you are now
8 free to talk about this matter, if you want to
9 talk about this matter. All week I've told you
10 don't talk about this. If you want to talk about
11 it, you can. If somebody asks you something and
12 you want to talk with them, you can. If you
13 don't, you don't have to. If you don't and
14 somebody questions you or bothers you about it,
15 you just let the clerk of court know and I'll take
16 care of that. That individual won't bother you
17 again. Not that I think anyone is going to bother
18 you, but that having been said, if you want to
19 talk about this matter, that's fine. If not,
20 fine.

21 Now, ladies and gentlemen, I also want to
22 let you know that we are going to proceed with
23 some motions and then move directly -- I would
24 expect to move directly into sentencing. Okay?
25 And so, to that extent, if you would like to stay,

1 fine. If you would like to go, I certainly
2 understand that also. Okay? So whatever you want
3 to do when I discharge you, are you are free to
4 do. And you certainly are free to go back into
5 the gallery and remain, or you can leave now,
6 whatever you want to do.

7 And I'll also have escorts for you to
8 your car. Don't worry. Again, not that I think
9 there's going to be any problems or any issues,
10 but I want everybody to be completely comfortable
11 and I thank you so much for your work this week.

12 And, at this time, please, you are
13 discharged and go and know that you have all of
14 our thanks.

15 Thank you very much, Madame Foreman,
16 ladies and gentlemen of the jury. Thank you.

17 (Jury is excused at 3:08 p.m.)

18 THE BAILIFF: Jury is clear, Your Honor.

19 THE COURT: All right. Thank you.

20 All right. Mr. Lee, do you have any
21 motions, sir?

22 MR. LEE: Judge, at this time, I would
23 just renew all previous motions made throughout
24 the trial, particularly the directed verdict
25 motion after the State's case and after our case.

1 As far as the murder goes, renew any motions for
2 lack of any evidence as to malice. And then on
3 the attempted murder case, the lack of any
4 evidence of express malice, which, as you know,
5 requires some type of words, lying in wait, that
6 sort of thing, as well as a specific intent to
7 kill, and that's as to Zachary Wilkerson. I just
8 reiterate my argument that there was no evidence
9 that he could even see Zachary Wilkerson, that he
10 knew who that was, that he was in the back of the
11 car. He was an incidental person to this thing
12 that happened. So I think the State failed to
13 establish both specific intent and express malice
14 which are necessary requirements for attempted
15 murder.

16 So, again, I renew all my previous
17 motions, particularly that one.

18 And, you know, finally, I just ask for
19 JNOV as far as the verdict. It was not
20 appropriate.

21 THE COURT: All right. Solicitor?

22 MS. CAMPBELL: Your Honor, the State
23 stands by our arguments in response to Mr. Lee's
24 post-trial motions, and doesn't have anything
25 further to add at this time.

1 THE COURT: Mr. Lee, I'm sorry. I'm
2 going to deny all of your motions. I think that
3 there was evidence of specific intent, and I
4 think, as it relates to express malice in this
5 matter, again, I think there's a lot of different
6 things a jury could consider. But amongst one
7 would be the statement of the driver of the
8 vehicle who heard him, literally, within a matter
9 of seconds of the shooting state words to the
10 effect, *I had to shoot those boys*, with an S.
11 And, as a result of that, I think clearly we could
12 see that applying to both men in the car.

13 And for those reasons and others that we
14 stated multiple times this week in the trial, I'm
15 going to deny those motions, including the motion
16 for JNOV, sir. I think there's plenty of
17 evidence. Clearly, the jury deliberated. They
18 spent time on this matter. They asked questions.

19 I'm respectfully denying your motion, sir.

20 MR. LEE: Yes, sir.

21 THE COURT: Is the State ready to move
22 into sentencing?

23 MS. CAMPBELL: Your Honor, my staff is
24 preparing the sentencing sheets and they should be
25 here momentarily. If I may have just a moment to

1 review them before I present them to Mr. Lee?

2 THE COURT: Of course.

3 MS. CAMPBELL: Are they ready to hand to the
4 judge?

5 MR. LEE: Yes.

6 THE COURT: Thank you, ma'am.

7 All right. Solicitor, I'm happy to hear
8 from you.

9 MS. CAMPBELL: May it please the Court,
10 Your Honor?

11 THE COURT: Yes, ma'am.

12 MS. CAMPBELL: Your Honor, the
13 Tiger Express on St. Helena, that is a community
14 area where members of this community go every day.
15 This was a daylight shooting in essentially a
16 heavily populated area of our community. You can
17 see in the videos people coming and going all
18 throughout. This was a daytime revenge, vengeful
19 shooting. The State showed it is a complete and
20 total disregard for human life at that moment.

21 Mr. Burgess, I can tell you, as
22 Your Honor has heard before, he does not have a
23 prior criminal record of conviction. The only
24 thing that we have was the armed robbery arrest in
25 Columbia that has no disposition on it, so I can't

1 give you an outcome from that.

2 The State is asking for a sentence of
3 life on the murder, 30 on the attempted murder,
4 and 5 on the possession of a weapon during the
5 commission of a violent crime.

6 That's the State position, Your Honor.

7 Quinton's family has been with us all
8 week. They've been an invaluable part of this
9 entire process to solicitor's office.
10 Respectfully, I would say that Quinton Ventress's
11 mother would like to address the Court.

12 THE COURT: Sure. Mom?

13 MS. CAMPBELL: Thank you, Your Honor.

14 THE COURT: Come on up. That's fine.

15 Ma'am, can you pull your mask down. It's
16 going to help me hear you better. And can you
17 tell me -- could you state your name for me?

18 MRS. VENTRESS: My name Davinia Ventress.

19 THE COURT: And you are --

20 MRS. VENTRESS: Quinton's mom.

21 THE COURT: Quinton's mom. I'm happy to
22 hear from you, ma'am. Pull that down. I need to
23 hear you. Yes, ma'am. Yes, ma'am.

24 MRS. VENTRESS: Well, it's been a long
25 time coming. I miss my son. He is my only son.

1 That's my daughter, my husband, that's my mom, 85
2 years old. This is so hard.

3 I went to MUSC to see my son as much I
4 could. It was so hard, my husband couldn't go
5 inside. He had to stay outside in that heat while
6 I go up there to talk to my son to try to keep him
7 as comfortable as I could. As I always say, I
8 love you. He say, mama, stop telling me that,
9 because he know I love him.

10 I went there. We stayed that Friday,
11 Saturday, Sunday, Monday, and Thursday night
12 3:00-something in the morning, he passed away. I
13 didn't get it see my son anymore. His birthday
14 was the 22nd of September. He died on the 18th.
15 He won't get to see his sister. He had a
16 step-daughter that he loved so much. He won't get
17 to see her. Never will get the chance to see her.

18 He -- well, I had one nurse that said,
19 you know, by him being shot, he couldn't speak.
20 She was the person that told that doctor -- it's
21 his voice, trying to get him help to get that
22 monitor for him to speak, which she did. He
23 wasn't speaking as well as he wanted to, but we
24 could understand what he was saying.

25 THE COURT: Yes, ma'am.

1 MRS. VENTRESS: Instead of me going there
2 and reading his lips, because a lot of times it
3 would, like, frustrating him because I have to
4 keep asking him, what you say, what you say? You
5 know what I'm saying? And he didn't feel too good
6 about that.

7 But at least God gave me a chance. A lot
8 of people didn't have a chance to say goodbye to
9 their children, because right then and there my
10 son could have been dead on that spot.

11 I have five grandchildren that right now
12 are terrified because they love their uncle and
13 their step-father. The little girl that he loved
14 so much. And my daughter four children. Right
15 now, if they're going to the hospital or
16 something, we try not to even let them know it's
17 because they think they'll never come back because
18 of their uncle.

19 THE COURT: Right.

20 MRS. VENTRESS: He was a lot to them
21 kids. Them kids love their uncle because he was a
22 child at heart. Tossed them around, do all kinds
23 of stuff. Make jokes, call them names, big head,
24 and this and that and the next thing. You know
25 what I'm saying?

1 THE COURT: Yes, ma'am.

2 MRS. VENTRESS: He loved them kids.

3 I work in the public with people every
4 day. Guess what, what I do for my job, I do it
5 from the heart, because I got a mother right there
6 and a family. She cooks and gives to whoever. I
7 mean, we got a good heart. I have a good heart.

8 I go to the rooms or whatever and I talk
9 to my patients. I'm just not a person that's
10 going to have and walk back out the room. I go in
11 there, you know, some people don't have anybody.
12 I go in there and I let them know, just pray on
13 it, or whatever, you know, and sometimes they be
14 crying. I said, I let them know, you're going to
15 make me cry if you keep crying. You know what I'm
16 saying? Because that's my heart.

17 THE COURT: Right.

18 MRS. VENTRESS: And instead of them
19 crying, their tears go right on back up because a
20 jokester. I go in there and I present myself
21 well. I've been doing that for 21 years, almost
22 22.

23 And I feel for somebody to take my son's
24 life -- and working in the community, like I do,
25 and everybody said, when you go up there, you go

1 up to make friends. No I'm not. That's not the
2 case. I go up there because I have a heart.

3 THE COURT: Yes, ma'am.

4 MRS. VENTRESS: And they be so happy to
5 see me. I haven't been up there for five months
6 because of depression and my health dealing with
7 this situation.

8 THE COURT: Well --

9 MRS. VENTRESS: Not more I can say.

10 THE COURT: That's your husband?

11 MRS. VENTRESS: This is my husband.

12 THE COURT: Are you his father?

13 MR. VENTRESS: Yes, I am.

14 THE COURT: Yes, sir. I'd love to hear
15 from you if there's anything you want to tell me,
16 sir.

17 MR. VENTRESS: Right now, sir, I'm just
18 relieved that it's over with.

19 THE COURT: Yes, sir.

20 MR. VENTRESS: And, basically, I'm
21 just -- I have a lot of relief for us right now.
22 I really don't have much to say.

23 THE COURT: Sir, I understand that. I
24 understand that. Thank you.

25 MR. VENTRESS: Thank you.

1 MS. CAMPBELL: That's all, Your Honor.

2 THE COURT: All right. Mr. Lee, I'm
3 happy to hear from you, sir.

4 MR. LEE: Judge, it's always -- I can't
5 imagine what anyone feels. This is always the
6 toughest part for a defense lawyer because you're
7 go, go, go, fight, fight, fight pushing your side,
8 and, at this point, it's done and we're throwing
9 him on the mercy of the Court for a sentence.

10 I will tell you, when this happened,
11 Deavion was 18. He had done a few months at
12 Allen University up in Columbia. Came back to
13 Beaufort in February and this unfortunately
14 happened two months later. He's -- since it
15 happened in April 20th. He's 20 years old now,
16 Judge. He has no convictions. I think he may
17 have, like, juvi, being in a motor vehicle, or
18 something like that. He hasn't amast a record
19 like a lot of kids that you see.

20 As you heard, he's got three kids out
21 there that he supports to the best he can. His
22 mom, Octavia, is back here. His sister, Brianna,
23 I think she's 15 or 16, and his my wife Jasmine is
24 back there as well.

25 This is obviously a tough case for

1 everybody. I mean, everybody loses. I mean, it
2 just depends what kind of loss it is. Whether
3 it's the loss of life, or the loss of youth, or
4 the loss of being able to see people that you
5 love. And it's bad it came to this, and I just
6 hate that everybody is here today.

7 Deavion is -- I've enjoyed my talks with
8 him. He's a bright guy when you talk to him. He
9 is smart. He's street smart, but he's also smart,
10 intelligent. And, you know, this obviously has
11 had a profound effect on the rest of his life.

12 And at this point, I've told him what the
13 possible sentences are. I will tell you, never
14 was there any offer made for a plea. He didn't
15 walk away from some type of offer. You know, to
16 hear them say life and maximum, maximum, I mean,
17 they haven't offered anything up to this point.
18 And I do hope that everybody understands that, you
19 know, he didn't have any choice but to go to
20 trial.

21 But I also don't think that his defense
22 was frivolous. The jury was out for a few hours.
23 We certainly respect and understand the verdict
24 and would never question that.

25 I appreciate law enforcement working

1 this. The solicitor, Your Honor, everybody.

2 But now it's time to make a decision. I
3 would respectfully ask you to consider that murder
4 and attempted murder have two of the, perhaps,
5 broadest spectrums of sentencing that you can get.
6 Murder is 30 to life, as you know, and attempted
7 murder is zero to 30, and so I think that it
8 builds in for the court the ability to take some
9 things into consideration. And, you know, enhance
10 or reduce or mitigate the penalty as much as you
11 see fit.

12 The murder charge, Judge, sentence 30 to
13 life. The statute specifically says, I know you
14 this, I remind you, day for day. No 85 percent,
15 no work release, no education credits, nothing.
16 It is day for day. So if you get -- you don't get
17 credit time. If you get sentenced sentenced
18 today, on 30 years, you get out in 2052 on
19 March 24th. So it is -- it's it's serious and
20 it's steep. It is day for day. So I would just
21 ask you to consider taking that into effect.

22 So we would respectfully ask, Judge, for
23 a 30-year sentence, the minimum on the murder. I
24 think it's appropriate under the circumstances,
25 and whatever sentence is on the other two charges

1 to run concurrent. At best, he would be over 50
2 years old when he gets out. I was talking to the
3 two officers earlier today about the life
4 expectancy and how much you age more in prison
5 than you do on the outside. I mean, 30 years is
6 quite a bit. He's going to be, you know,
7 two-and-a-half times older than he is now when he
8 gets out.

9 So I would respectfully ask you to
10 consider that sentence.

11 THE COURT: All right. Anything else?

12 MR. LEE: No, sir. Just that his family
13 is here and I don't think anybody wants to
14 speak.

15 THE COURT: Okay, that's fine. We'll be
16 at ease for about ten minutes.

17 MR. LEE: Thank you, sir.

18 (A break was taken from 3:30 p.m. to 3:42 p.m.)

19 THE BAILIFF: Court come to order.

20 THE COURT: All right. Case number
21 2020-GS-07-2146, State vs. Burgess for murder,
22 sir, I'm going to sentence you to the
23 South Carolina Department of Corrections for life.

24 In case number 2020-GS-07-01263, the
25 State of South Carolina vs. Burgess for attempted

1 murder, sir, I'm sentencing you to the state
2 department of corrections for 30 years. That's to
3 run concurrent with the sentence that I just
4 pronounced and the sentence that I will pronounce
5 now.

6 That is, GS-2020 -- 2020-GS-07-01265, and
7 that's State of South Carolina vs. Deavion
8 Burgess, possession of a weapon during the
9 commission of a violent crime. Sir, I'm
10 sentencing you to the South Carolina Department of
11 Corrections for a period of five years. Again,
12 that's to run concurrent with the other charges.

13 Thank you.

14 MR. LEE: Your Honor, sorry. I
15 apologize. The jail is figuring out how many
16 day's credit for time served. I realize it's a
17 life sentence. It may not make make a difference.
18 But would you allow me to send you the number of
19 days he has served?

20 THE COURT: What I have done is, on
21 the -- I have checked the box for time served on
22 each of these.

23 MR. LEE: Okay.

24 THE COURT: And I think what SCDC will do
25 is, they will calculate those days time served,

1 sir. Okay?

2 THE COURT: Yes, sir.

3 THE COURT: Madame clerk, there you go
4 thank you.

5 (The trial was concluded at 3:44 p.m.)

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CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions Court for Beaufort County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

March 29th, 2022



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT	)	2020-GS-07-01264
	)	2020-GS-07-01265
	)	2020-GS-07-02146
	)	
	)	
THE STATE,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
DEAVION JAHQUWAN BURGESS,	)	
DEFENDANT.	)	
_____	)	

May 12, 2022
Beaufort, South Carolina

B E F O R E:

THE HONORABLE ROBERT J. BONDS, JUDGE.

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

TRASI CAMPBELL, ESQ.
Attorney for the Plaintiff

SCOTT LEE, ESQ.
Attorney for the Defendant

Proceedings recorded via DCRP
Transcribed by Penny M. Johnson

I N D E X

(There were no witnesses called.)

E X H I B I T S

(Court's Exhibits)

1 Copy of Fortune case

Page 8

P R O C E E D I N G S

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THE COURT: I believe we're here on Mr. Lee's motion?

MR. LEE: Yes, sir, that's correct.

THE COURT: Yes, sir, I'm happy to hear from you.

MR. LEE: Your Honor, I had filed a total of three motions. On March 25th, I filed a motion to reconsider sentence. On --

THE COURT: Hold on one second.

Solicitor, has the victim's family been notified of the hearing today?

MS. CAMPBELL: May it please the Court. Yes, Your Honor, the victim's family was notified that we would have this hearing at noon.

THE COURT: Do we want to wait two minutes? Do you know if they're coming?

MS. CAMPBELL: My understanding from the victim advocate, who I can pull in here and have her let the Court know. She's the one who's spoken to the victim's mother. If I may?

THE COURT: Yes.

MS. CAMPBELL: She's right here.

THE COURT: I just want to make sure. I don't want to leave -- get started and --

MS. CAMPBELL: No, that's fine.

Your Honor, Michelle Granger, the victim advocate from

1 the solicitor's office, can answer your questions.

2 THE COURT: Yes, ma'am. I was just inquiring before we
3 begin whether or not the victims had been notified -- or the
4 victim's family has been notified of the motions today?

5 MS. GRANGER: Yes, sir.

6 THE COURT: Are they planning on attending or do you
7 know?

8 MS. GRANGER: Yes, sir, they do plan on attending.

9 THE COURT: They understand it's supposed to start at
10 noon?

11 MS. GRANGER: Yes, sir.

12 THE COURT: Well, then, we'll be at ease for a minute
13 or two.

14 Mr. Lee, I want to go ahead and give them an
15 opportunity to be here before we commence.

16 (Pause.)

17 THE COURT: Mr. Lee, go right ahead. I'm sorry to
18 interrupt you, but I'm glad we waited a moment. We've got
19 everybody here.

20 Go right ahead, sir.

21 MR. LEE: Judge, on March 25th, the day after this
22 trial, I filed a motion to reconsider sentence with the
23 Beaufort County Clerk of Court. Immediately after filing
24 that motion, again, it was the day after the verdict, I came
25 up to court and spoke with Ms. Hardoon, who is a court

1 reporter, and asked her to please get me a copy of two
2 portions of the trial. I specifically asked her for Ms.
3 Campbell's cross-examination of my client and I asked her
4 for a copy of Ms. Campbell's initial closing argument. And
5 that was on March 25th.

6 On March 26th, I received an e-mail from her, which I'm
7 glad to pass up the e-mail chain, amazingly, she had done it
8 in one day and said she had the transcript from Ms.
9 Campbell's cross-examination of Mr. Burgess. So I said that
10 was fast. Thanks. Can I also get a transcript of Ms.
11 Campbell's first closing argument that would have been on
12 3/24? So that's the 26th of March. This past Saturday at
13 6:15 p.m., I received a copy of the transcript of Ms.
14 Campbell's closing argument.

15 Judge, I purposely waited to get a copy of the
16 transcript before I made any suggestion of prosecutorial
17 misconduct because I take that very seriously as a lawyer
18 and as making it against a colleague, who I consider a
19 friend of mine. We'll get into that in a minute, but just
20 to set up a time table.

21 On Tuesday, May 11th, I filed a motion for a new trial
22 based upon, essentially, prosecutorial misconduct that
23 occurred throughout the trial and so infected the trial with
24 unfairness as to make the resulting conviction a denial of
25 due process. I filed that on Tuesday having the transcripts

1 in hand. I provided the Court and the prosecutor a copy of
2 that.

3 Yesterday, in an abundance of caution, I filed another
4 motion for new trial incorporating by reference my motion
5 for new trial filed the previous day and included as an
6 additional reliance for the motion, South Carolina Rules of
7 Criminal Procedure Rule 29(b). That is the portion that
8 deals with (inaudible).

9 So those are the three motions that have been filed and
10 is my understanding we are here to argue today. I don't
11 know what order you would like to start in. They are, in my
12 opinion, all intertwined. I'll be happy to proceed how you
13 wish.

14 THE COURT: Listen, you prepared the arguments, they're
15 intertwined, so I would defer to you to please proceed as
16 you want to present the arguments.

17 MR. LEE: Okay. Thank you, Judge.

18 So as I was laying out that time table, on the night of
19 the trial, I went home, obviously, disappointed, but
20 concerned about what I had heard particularly in closing
21 argument during the trial. I slept on it. I talked to some
22 people that I know and trust and respect. And, really, when
23 it comes down to it is out of courtesy and deference and
24 respect to Ms. Campbell, who I've known for probably 20
25 years.

1 She, for many years, as you probably know, was in the
2 public defender's office. And I will tell you, she was she
3 backbone and the heart and the soul of that office for many,
4 many years. She handled cases nobody else wanted to handle.
5 She dealt with clients nobody else could deal with. She
6 tried cases and she got great results. So I have the
7 absolute utmost respect for her as a lawyer. And I want
8 that to be clear because these types of motions -- I've been
9 doing general sessions trials, Judge, for 28 years and I've
10 never filed a motion like this. And I've tried cases in
11 general sessions, in municipal court, in magistrate court, I
12 don't know how many. Never filed this before, so I don't
13 take this lightly.

14 And I wanted to make sure that it wasn't an
15 overreaction on my part, it didn't appear to be sour grapes.
16 So, again, the reason that I waited to specifically allege
17 that ground, motion for a new trial, is because I wanted to
18 see what was on the transcripts. I wanted to see it in
19 writing. I wanted to see the official copy of what words
20 were said and I wanted to be able to place them in the
21 proper context.

22 After receiving the transcript for the closing
23 argument, unfortunately, my concerns were rationalized or
24 made more severe. I immediately began working on this
25 order, looking into the case law to see if, indeed, this was

1 something that I wanted to or needed to file.

2 I assure the Court and Ms. Campbell that this is not
3 about me. This is not personal at all. This is about
4 Deavion Burgess and some of his basic fundamental rights
5 under the Constitution that it is my position were ignored,
6 trampled upon, et cetera during the conduct that you're
7 getting ready to hear about that is contained in these
8 motions and these transcripts.

9 Judge, this type of action, the prosecutorial
10 misconduct has been universally condemned by courts. It is
11 absolutely inexcusable. It is violative of public trust.
12 When it happens, it's an easy question for reversal. It is
13 pernicious, which means having harmful effects, especially
14 in a gradual, subtle way. It is obvious and insidious.
15 Insidious means proceeding in a gradual, subtle way, but
16 with harmful effect.

17 Those aren't my words. Those are direct quotes from
18 Fortune vs. State, which I'll be glad to pass up and provide
19 to the solicitor. I also ask that one be marked as a
20 Court's Exhibit.

21 (Court's Exhibit No. 1 marked for identification.)

22 MR. LEE: Fortune vs. State is a 2019 Supreme Court of
23 South Carolina case. It is, thankfully for us lawyers, one
24 of those cases that kind of takes you through the history of
25 certain things and it's really a primer on prosecutorial

1 misconduct. And what is so telling in my opinion about
2 citing Fortune vs. State, which, again, is a PCR case, so
3 it's not State vs. Fortune, is that it is remarkably
4 similar.

5 What we're complaining of in this case is actually
6 worse than what went on in Fortune vs. State. And I think
7 the appropriate way to kind of discuss Fortune is,
8 essentially, go through the facts. It is as close on point
9 as a case of this -- it was a murder case. It was a
10 self-defense defense. It was according to the court a hotly
11 contested self-defense case.

12 As you remember in our case, I would submit to the
13 Court that ours was a hotly contested self-defense case.
14 Ours was on video. There was no question at any time about
15 the identity of Mr. Burgess. It all came down to
16 self-defense. And the jury, nonetheless, took three and a
17 half hours to come back with a verdict.

18 In Fortune vs. State, the court held that the
19 prosecutor engaged in prosecutorial misconduct for certain
20 things that he said during his, particularly his closing
21 argument. He talked about that he had a statutory duty to
22 screen cases and would have dismissed the case if he had
23 determined the defendant was not guilty.

24 And then he went on to say the job of defense lawyers,
25 in general, not the specific, but the job of defense lawyers

1 in general was to, quote, manipulate the truth, shroud the
2 truth, confuse jurors. It's their job to do whatever they
3 have to do without regard for the truth. Then he went on to
4 say if a prosecutor believes someone did something and
5 there's proof that they have a statutory duty to not dismiss
6 and to go forward.

7 So what he did is he mischaracterized his role as the
8 truth teller. He then impugned defense lawyers as a group,
9 saying that they don't tell the truth, that they shroud the
10 truth, they manipulate the truth. So that's basically what
11 Fortune is all about.

12 And I'd like to kind of go through some relevant
13 sections of it. Because what it does is Fortune goes
14 through and goes nationwide and talks about cases involving
15 improper comments by a prosecutor. And so I'm just going to
16 kind of go through the case. It says that in deciding one
17 of these, the relevant question is whether the prosecutor's
18 comments, quote, so infected the trial with unfairness as to
19 make the resulting conviction a denial of due process.
20 That's the standard. Donnelly vs. Dechristoforo, which is a
21 U.S. Supreme Court case. That is at Page 550 in that
22 opinion.

23 It then talks a little bit -- where it talks about he
24 said again, my job is to present the truth, is what the
25 prosecutor is saying. And he talks about he can nolle

1 prosse a case.

2 So the court -- and this is going to be at Page 551,
3 that's the language I just used, we find the comments were
4 absolutely inexcusable. The assistant solicitor told the
5 jury he had a statutory duty to screen cases. He suggested
6 he had already determined Fortune was guilty and he claimed
7 he would have dismissed the case if he had determined
8 otherwise.

9 And then, most importantly, at 552, this court, Fortune
10 court said, Courts have universally condemned comments like
11 this. And then they go on kind of their summary of what
12 courts have done and give certain examples and certain
13 duties of the prosecutor, et cetera.

14 So continuing to read the highlighted portion of
15 Fortune. They're quoting a case Berger vs. United States
16 talking about the prosecutor's duty. He may prosecute with
17 earnestness and vigor, indeed, he should do so, but while he
18 may strike hard blows, he is not at liberty to strike foul
19 ones. It's as much his duty to refrain from improper
20 methods calculated to produce a wrongful conviction as it is
21 to use every legitimate means to bring about a just one.
22 That's Berger vs. United States.

23 The Supreme Court has condemned a prosecutor's closing
24 argument in which he suggest to the jury his, quote,
25 personal impression that the defendant is guilty. And then

1 it talks about the problem with that, about giving your
2 personal opinion about something. And it says, Such
3 comments can convey the impression that evidence not
4 presented to the jury, but known to the prosecutor supports
5 the charges against the defendant and can, thus, jeopardize
6 the defendant's right to be tried solely on the basis of the
7 evidence presented to the jury. And the prosecutor's
8 opinion carries with it the imprimatur of the government and
9 may induce the jury to trust the government's judgment
10 rather than its own view of the evidence. And they cite
11 United States vs. Young.

12 They then go on to quote a 10th Circuit case, where it
13 says it cannot be doubted that statements expressing an
14 advocate's personal belief in the merits of the case are to
15 be deplored as constituting conduct beyond the scope of
16 legitimate party. Furthermore, when such statements are
17 made by a representative of the government, they acquired
18 additional significance because of the position of public
19 trust occupied by the speaker.

20 It goes on to talk about statements to a jury improper
21 because they inject an arbitrary factor in the jury
22 deliberations, i.e., the solicitor's personal opinion. And
23 it said we caution solicitors' arguments of this kind can
24 rarely be harmless.

25 There's a case they cite, State vs. Woomer, we condemn

1 -- South Carolina Supreme Court, we condemn the, quote,
2 solicitor's personal opinion being explicitly injected into
3 the jury's deliberations as though it were in itself
4 evidence. So that's talking about the solicitor giving an
5 opinion of something, a personal belief, anything like that.

6 Then they start talking about the assistant solicitor
7 in this case, in Fortune, also improperly characterized the
8 role of defense counsel. They're talking about defense
9 counsel in general. The entire breed of us. We find this
10 misconduct is also inexcusable. Claiming his role to show
11 the truth, the assistant solicitor told the jury -- and
12 that's the part about the defense attorney's job to
13 manipulate the truth, shroud the truth, confuse jurors.

14 I'm almost done with this case, Judge, but what I'm
15 going to do next is show you how not only are these same
16 things here, but it's actually worse in our case. And
17 that's one of the ways in which it is worse. Again, they
18 say courts have universally condemned this type of statement
19 by a prosecutor. As the United States Court of Appeals has
20 stated from the 9th Circuit has stated, quote, it is not
21 accurate to state the defense counsel in general acted in an
22 underhanded or unethical ways absent specific evidence in
23 the record, no particular defense counsel can be maligned.

24 And that's exactly what we have here. There is no
25 evidence at all -- she called us liars. There is no

1 evidence in the record -- I'll step forward in my motion and
2 I'll show you where it says in the transcript. They say no
3 particular (inaudible) can be maligned.

4 Even though such prosecutorial expressions or belief
5 are only intended ultimately to impute guilt to the accused,
6 not only are they invalid for that purpose, they also
7 severely damage and infuse opportunity to present this case
8 before the jury. It is, therefore, an impermissible strike
9 at the very fundamental due process protections that the
10 14th Amendment has made applicable to ensure an inherent
11 fairness in our adversarial system of criminal justice.

12 This is important, too. Furthermore, such tactics
13 unquestionably tarnish the badge of even-handedness and
14 fairness that normally marks our system of justice and we
15 readily presume because the principle is so fundamental that
16 all attorneys are cognizant of it. An abridgement of this
17 sanctity, that's a strong word, Judge, therefore seems
18 particularly unacceptable.

19 There's also United States vs. Ollivierre, which is a
20 Supreme Court case, emphasizing the -- I'm quoting,
21 emphasizing the importance of ensuring that prosecutors
22 refrain from impugning directly or through implication the
23 integrity or institutional role of their brothers and
24 sisters at the bar who serve as defense lawyers. Everything
25 is exactly what happened in this case and I will show in a

1 minute the transcript where all this stuff happened.

2 There's a specific case in South Carolina, State vs.
3 Parker, 391 S.C. 606, quote: It is generally improper for
4 the prosecutor to accuse the defense counsel of fabricating
5 a defense or to otherwise denigrate defense counsel. State
6 vs. Parker.

7 Fortune then goes on to tell us, Supreme Court goes on
8 to say, which again is relevant, I'm quoting here this case,
9 the Fortune case, however, turn on the question of
10 self-defense. The evidence of who shot first was hotly
11 disputed. The evidence -- ours was more of a was he in
12 danger, was there an imminent threat, but it is an element
13 of self-defense. The State pointed to no element of
14 self-defense when it presented overwhelming evidence. The
15 element did not exist.

16 So, again, it talks about it's even more egregious if
17 the alleged misconduct goes to the essential or a core issue
18 in the case coupled with the very basic structural
19 fundamental rights that it affects, which in these cases,
20 typically due process and the right to counsel.

21 And then they turn squarely to whether the assistant
22 solicitor's misconduct prejudiced Fortune, the Defendant in
23 this case. We find our discussions so far leaves little
24 need for further analysis. Clearly, it was prejudicial in
25 that case and in this case.

1 And then it talks about -- discussing a little bit
2 about saying he's the truth seeker, whatever, you know,
3 finding the truth. And to that, they say, Rather, the
4 assistant solicitor's misconduct was to misrepresent his own
5 role and properly claiming for himself the responsibility to
6 decide truth as though his opinion as to what happened were
7 in itself evidence. And it cites a case called Woomer.

8 It then goes on to say, Whether the assistant
9 solicitor's closing argument was improper in light of the
10 long history of courts condemning the same misconduct is an
11 easy question. The PCR court found it was improper and we
12 wholeheartedly agree. I don't think I've ever seen the
13 Supreme Court say they wholeheartedly agree. But it shows
14 how serious they are about this and what a serious issue
15 that it is.

16 They then go on to talk about the 6th Amendment, the
17 right to counsel. And they're saying look, the 6th
18 Amendment is, perhaps, the most fundamental right the
19 defendant has and as a prosecutor, you need to stay away
20 from that. The attorney/client privilege, Your Honor, is
21 probably the most sacrosanct one that there is, and this
22 cross-examination, this closing goes right to the very heart
23 of that, which, perhaps, is even more fundamental right than
24 due process.

25 They then talk about any comment by a prosecution that

1 disparages a defendant's decision to exercise his 6th
2 Amendment right to counsel is improper. And then they go on
3 to another case, McDonald, which is a 5th Circuit case.
4 Comments that penalize a defendant for exercising its right
5 to counsel and that also strike at the core of his defense
6 cannot be considered harmless error. The right to counsel
7 is so basic to all other rights that it must be afforded
8 very careful treatment. Obvious and insidious attacks on
9 the exercise of his Constitutional rights are atypical to
10 the concept of a fair trial and/or reversible error. That's
11 McDonald, which is a 5th Circuit case. That's McDonald,
12 which is a 5th Circuit case.

13 That's pretty strong language, Judge. And those
14 description that I gave you earlier, all of those were found
15 in State vs. Fortune.

16 So I think that's the proper backdrop to look at the
17 question of prosecutorial misconduct in State vs. Burgess.
18 Again, I talked about some of the similarities, murder case,
19 self-defense, hotly contested, the solicitor saying they are
20 somehow the bearers of the truth or their job is to find the
21 truth, seek justice, maligning defense counsel. All of
22 those are in Fortune and every single one of them is in our
23 case.

24 Ours is even worse because of the -- one of the words
25 they used was pernicious or insidious, which means kind of

1 having a harmful effect, but doing it in a gradual, built-up
2 way. That happened initially and then it became very
3 obvious or a lot more clear as to what was going on.

4 So I will then turn to a motion for a new trial. And
5 I'd like to go through, again, with Fortune as a backdrop
6 where they used the very strong words that there's no
7 question, it was an easy question, that it was atypical to
8 the justice, it was harmful to the system and it was harmful
9 to the brothers and sisters of the bar, et cetera, et cetera
10 and I'd like to talk about that.

11 I have provided two transcripts, transcript number one
12 and number two, which I refer to in my motion. And I'll
13 just kind of go down my motion and kind of tell you where
14 all this started.

15 Do you have a copy of the transcripts, Your Honor?

16 THE COURT: Not in front of me.

17 MR. LEE: May I approach and pass it up?

18 THE COURT: Yes, sir.

19 MR. LEE: Judge, this is the way it started, the very
20 first question --

21 THE COURT: Where are you?

22 MR. LEE: I'm number eight on my motion, and I'll give
23 you the transcript, transcript one, Page 2, Lines 3 through
24 6.

25 THE COURT: Okay.

1 MR. LEE: During cross-examination of the Defendant,
2 the assistant solicitor stated that the defense counsel,
3 quote, gave a lot of testimony, end quote, and, quote,
4 testified during the direct examination of Burgess.

5 Go to Page 2, Lines 3 through 6, this is the first
6 client, this is her first question to my client, if you want
7 to call it a question: You know, I just heard that -- I
8 just heard your lawyer give a lot of testimony and I heard
9 you answer yes and no. Isn't that what we just heard, your
10 lawyer testify and you say yes, sir or no, sir? Isn't that
11 what we heard? That's the first question out of her mouth.
12 He says he is testifying, et cetera.

13 Now, the point that I made in the thing is if she
14 believed that I was testifying during direct examination,
15 there's an easy -- and, of course, I didn't testify -- if
16 that's her opinion, which wasn't right, the solution is to
17 object to the form of the question, say, Your Honor, he's
18 leading the witness.

19 Now, if you remember, Judge, multiple times, multiple
20 times, I objected because she was leading the witness. And
21 you even went so far as to tell her that not only was she
22 leading the witness, but she was leading him on very
23 important issues in the case. So I did it the right way.
24 Her response is to sit idly by and then she wants to accuse
25 me of testifying. That's wrong. If that's her opinion of

1 the way I was asking questions, so be it. But the right way
2 to do it is object to the form of the question and get a
3 ruling from the Court.

4 However, instead, she chose to continue to allege,
5 highlighted, with no evidence to support saying through her
6 carefully crafted, accusatory questions to the Defendant
7 that he had talked with his lawyer and worked with his
8 lawyer to get his answers and testimony, quote, just right.
9 That's transcript one, Page 2, Lines 10 through 12.

10 And here's what it says: And haven't you talked with
11 your lawyer and worked with your lawyer to get your answers
12 and those testimonies from, should say your lawyer, just
13 right? There's a question mark at the end of it, Judge, but
14 that certainly is an accusation. That's not the way to
15 properly ask a question when you are suggesting that
16 something is improper on my part. Again, I didn't object at
17 that point, et cetera.

18 But then she went further, and she doubled down. The
19 assistant solicitor then continued with her accusations
20 suggesting that his lawyer, me, knew exactly what
21 defendant's, quote, just right testimony was going to be.
22 Transcript one, page 2, Lines 21 through 23.

23 So the next highlighted part: So you want this jury to
24 believe that your lawyer put you on the witness stand and he
25 had absolutely no idea what you were going to say? Again,

1 it is that pernicious, that insidious, that gradual build up
2 to a harmful result.

3 So at that point, with those three questions, without
4 explicitly saying defense counsel had tailored untruthful
5 testimony for the Defendant to repeat on the stand under
6 oath, the assistant solicitor suggested through her pattern
7 of conduct, reactions and gestures that she believed the
8 Defendant was testifying untruthfully. Obviously, the
9 transcript does not capture how someone is acting, their
10 mannerisms, et cetera. It's our position that the way she's
11 saying these questions, the way it's being presented is her,
12 essentially, showing her personal opinion about what she
13 thinks about the testimony and her personal opinion
14 unsupported by anything and, hopefully, unsupported by her
15 knowing me for 20 something years.

16 THE COURT: Let me ask you this, Mr. Lee: In regard to
17 Page 2, Line 21, the question, what is it specifically that
18 you state is improper about that question, sir? And I know
19 you've given me a lot, but can you concisely tell me what's
20 improper about that question? That's what I'm asking.

21 MR. LEE: Yes, sir. It is reaching a crescendo. It is
22 continuing to peck away at this -- and I'll show it in a
23 minute. When she -- I hate to use the word mimics, but she
24 comes up with what she believes is a hypothetical or, I
25 guess, real conversation between me and my client where we

1 sit down and come up with this just-right story. In and of
2 itself, that may not be enough in and of itself. If that
3 was the only thing, I agree it may not be enough, but it's
4 building.

5 THE COURT: All right. So then in -- on Page 2, Lines
6 10 to 12, would it be the same building that you're
7 referring to?

8 MR. LEE: Yes, sir.

9 THE COURT: And you're leading up to your point, as I
10 understand it?

11 MR. LEE: Right.

12 THE COURT: I just wanted to make sure.

13 MR. LEE: Yes, sir. Thank you for stopping me and
14 slowing me down a little bit.

15 So that is 21 through 23. So I think that is --

16 THE COURT: So are you telling me at this point you
17 don't know what she's doing, that she's beginning to build?

18 MR. LEE: I think I know at that point. I think it's
19 building up. I think a little bit -- you know, saying yeah,
20 she's going a little bit far, it's not like her to do that,
21 but I'm not -- I have no way to know it at that point. And
22 I'm not thinking any deference to her and respect to her,
23 I'm just like -- -

24 THE COURT: Okay.

25 MR. LEE: So then we go to -- skips a few pages where

1 there's no objection.

2 But next, on the critical self-defense issue on actual
3 and reasonable fear of the alleged victim, Quinton Ventress,
4 the assistant solicitor clearly demonstrated her personal
5 opinion of the Defendant's testimony and that she did not
6 believe his testimony that he was in fear of Ventress. And
7 that's Page 7 in transcript one, Line 11.

8 Okay -- this is her question: Okay. So you've got a
9 situation going on here where your life is in danger.
10 That's what you want us to believe, right? Us, her and the
11 jury? It's not for her to believe or give an opinion about.
12 So she says that's what you want us to believe, like it's
13 her and the 14 jurors that's truth finding. So he says
14 that's the truth.

15 THE COURT: So let me ask you this: If she had just
16 said want the jury to believe, then that would be
17 appropriate?

18 MR. LEE: Yes, sir.

19 THE COURT: Okay.

20 MR. LEE: Yes, absolutely. That's the way it's always
21 done. Was it a slip-up, was it a one-time deal? We'll go
22 down to Line 20. And you want us to believe that you were
23 afraid for your life back in April 2020, right? Two
24 slip-ups.

25 23, question: Okay. Well, self-defense, too. He

1 acted like he was going to shoot you, right? That's what
2 you want us to believe?

3 And I realize, Judge, that the rules of professional
4 conduct are not a basis for a criminal objection or to
5 overturn a criminal case, but I footnoted just for reference
6 Rule 3.4 of the South Carolina Rules of Professional Conduct
7 provide as follows: A lawyer shall not, subsection E, in
8 trial allude to any matter that the lawyer does not
9 reasonably believe is relevant or that will not be supported
10 by admissible evidence or state a personal opinion as to the
11 justness of a cause, the credibility of a witness or the
12 guilt or innocence of the accused.

13 Now, she hasn't so much said that I scripted this for
14 him yet, we'll get to that, but she certainly by saying you
15 want us to believe it. It doesn't matter whether she
16 believes it. She's not on the team with the jury. She says
17 that three times. I put that in there.

18 I also put another footnote that said I believe this is
19 a one-all. I don't believe there's any duty to report this
20 to ODC because I have no question that it doesn't affect her
21 fitness or ability as a lawyer. I just wanted to put that
22 in the record.

23 So now it's gone from you're working with your lawyer
24 to it isn't true and you don't want me and this jury to
25 believe it. We don't believe that. We don't believe any of

1 that stuff.

2 So going on my motion, taking it together, this is just
3 the cross-examination. In reviewing the assistant
4 solicitor's conduct, even giving her the benefit of every
5 doubt, it is readily apparent that the theme -- essentially,
6 the groundwork of the assistant solicitor's
7 cross-examination was one, defense counsel, through his
8 questions had improperly provided, quote, testimony through
9 the Defendant's direct examination. Her words, not mine,
10 testimony, testifying.

11 Two, that said testimony was untruthful. Three times,
12 you want us to believe. She's almost mocking it in the way
13 she's asking the question. She's also saying truth, that
14 ain't the truth, me and the jury don't believe that.

15 Three, the defense counsel had previously given
16 untruthful, in her opinion, testimony to the Defendant with
17 instructions to testify as to same. She says you went over
18 this testimony with your lawyer to get it just right. So
19 there's certainly the implication there that this testimony,
20 number one, she doesn't think it's true. That I had
21 provided testimony and my guy -- I had given him -- and
22 she'll use the word in closing, which is script.

23 And four, she did not personally believe his testimony.
24 That's the groundwork that was laid in cross-examination
25 immediately before closing argument that's out there.

1 And I put in my motions with the benefit of hindsight
2 and these transcripts putting everything in context, it
3 appears the assistant solicitor was, to use a phrase she
4 used throughout her case, quote, building a bridge for her
5 closing argument through her improper cross-examination of
6 the Defendant.

7 So that was the last witness. We went to close and, as
8 you remember, she went first because we had presented a
9 case.

10 So 16, and now we'll go to transcript two, having
11 carefully laid the groundwork in Defendant's
12 cross-examination, the assistant solicitor then doubled down
13 in her closing argument saying to the jury, quote, how many
14 times do you think the defense attorney met with the
15 Defendant to go over that story? That's transcript Page 10,
16 Lines 21 through 23. How many times you think the defense
17 attorney met with the Defendant to go over that story? The
18 same story that she says is untrue, that she doesn't believe
19 carrying the badge of the solicitor's office and that the
20 jury shouldn't believe.

21 At that point, Judge, I stood up and objected
22 immediately. And I said, Judge, I object to that line of
23 testimony. I don't have any way to respond to that. And
24 before I say anything else, you said, Whoa, whoa, whoa,
25 counsel approach. And this is Page 11, Line 2. We

1 approached the bench. Ms. Campbell: I'm just going through
2 his testimony. Again, I say: I don't have any way to
3 respond. Because, again, it has turned into an accusation
4 against me that has been built up. We don't believe you.
5 This isn't true. You're making this up. It's the perfect
6 testimony. We don't believe you. So I said: I don't have
7 any way to respond. That's what all the cases talk about is
8 that's one reason you can't do it because I can't get up
9 there and say this is all BS. I didn't tell him to say
10 anything.

11 But the impression that you get -- I said I don't have
12 any way to respond. You said, Well, I understand, but I'm
13 going to sustain the objection. Then you started to say,
14 but I don't have any problem with the State, she interrupts
15 you and says absolutely. And you say that will be my
16 ruling. Sustaining my objection to her saying how many
17 times you think the defense lawyer met with the Defendant to
18 come up with that story? Objection sustained. Not only
19 sustained, stricken. The jury will disregard that last
20 comment. Proceed, solicitor. Thank you.

21 First question out of the box: Page 11, Line 19, The
22 Defendant told you my lawyer had no idea what I was going to
23 say when I got up there. I don't believe that. I don't
24 believe that. You don't believe that. Nobody believes
25 that. You're going to come in here with absolutely no idea

1 of what they're going to say. No, it didn't happen like
2 that.

3 And she continues, Page 12, Line 1. And this is where
4 it gets objectionable and very much crosses the line. Page
5 12, Line 1, quoting Ms. Campbell, So what you're going to do
6 is -- and, again, if you read this, this is in my opinion, I
7 don't think it can be read any other way, is her trying to
8 get the jury to imagine a conversation that happened between
9 defense counsel and the attorney, okay. There's no other
10 way to read it.

11 What you're going to do is, now, you can't be the jury,
12 the jury is not going to do anything. What you're going to
13 do is you're going to have a script, a script. And the
14 reason that word is important is because there is no
15 unambiguous definition of script. It is something prepared
16 by one person to be read or said by another one. Just like
17 in a movie, a script.

18 You're going to make a story up. You're going to make
19 a story up and you're going to put that story up and that
20 story is going to be -- again, it doesn't reflect the
21 inflection, you're saying oh, my God, you know they got you.
22 Who else could possibly be saying that than me to my client?
23 They got you. Oh, my God, they got you. No question, hands
24 down, that's you. That's me in her mind talking to my
25 client. No question that's you. I guess talking about on

1 the video.

2 What else you got? That's me talking to him. And the
3 Defendant told you what else he had. Well, let me think
4 about this. What do I need to prove to show self-defense?
5 Clearly, an alleged conversation between defense counsel and
6 his client. What do you show I was in fear? I need to show
7 that fear was reasonable. I need to show it was imminent,
8 something was going to happen. Okay. Okay. Okay. Oh,
9 yeah, somebody shot outside the car and somebody was
10 shooting at my -- that is her mimicking, mocking, making up
11 with no basis whatsoever based on evidence, admissible or
12 inadmissible, as well as I would hope her knowledge of me as
13 a lawyer, but it doesn't.

14 So then the script was brought up in Line 2. Seven
15 more times during her closing she used the word script.
16 Page 12, Line 15 -- Page 12, 23. Now, let's look at this
17 script, this script that you got. Page 13, that script
18 fails. And then we go to Page 13, Line 14, let's talk about
19 what was really going on. I asked him, I said, Where did
20 you get that gun? Where did you get that gun? That wasn't
21 in the script. So if you have any doubt -- this is the
22 sixth time she's used it. If you have any doubt about her
23 allegation that it was untrue and that's why she's using the
24 word script, it absolutely is -- any doubt is certainly
25 erased at that point.

1 It wasn't in the script. Suddenly, he's lost his
2 memory. He's dumbfounded. I don't know. Again, suggesting
3 his lawyer fed him that, told him to do it and left that
4 part out. And because it wasn't in her script, that's why
5 he didn't know the answer to where he had gotten the gun.
6 She says that, he was dumbfounded. I don't know.

7 So then the next time she refers to script is Page 14,
8 Line 24 -- 23. The Defendant wants you to take his script.
9 He's wrapped it up in a pretty little package for you.
10 She's showing her disdain and still calling it a script.
11 Don't let him read that script to you, which certainly would
12 suggest it's her opinion or her allegation or her argument
13 that he's reading a script. One that he didn't write, one
14 that isn't true, one that is a lie and one, most
15 importantly, she's suggesting through this, and I see no
16 other way to interpret this, that Deavion Burgess and I
17 conspired to suborn perjury and present fraudulent evidence
18 to the Court. I see no other way to interpret that.

19 And then she goes on, Page 15, Lines 8 through 10,
20 talking about the script, you have to believe the story he
21 told in the artful creative delivery you received it.
22 Again, a suggestion, somewhat subtle, that Deavion Burgess,
23 because it was delivered in an artful, creative delivery
24 that it came from his lawyer and that it is not true.

25 So then it stops for a while and talks about

1 inadmissible stuff. And, perhaps, the whip cream on top,
2 Your Honor, Page 20, Lines 3 through 6, I will submit to you
3 that in courtroom one, as you know, there are two tables,
4 there is a defense table and there is a prosecutor table.
5 The only people that spoke during the entire trial sat at
6 one of those two tables.

7 Line 3: Nobody at this table -- and she's in front of
8 the jury, nobody at this table, her table, nobody at this
9 table is a liar. Nobody is coming in here with lies to you.
10 We're seeking truth and justice. That's the foundation of
11 the prosecution. That is wrong in so many ways I probably
12 can't list all of them. It is exactly on point to what the
13 courts say have been universally condemned. It is calling
14 by inference we're not lying, but they are. We're here for
15 truth and justice, they aren't. The same people that are
16 lying and making things up and suborning supporting perjury,
17 that we know isn't true.

18 So when you combine all of that, it is crystal clear,
19 Judge, that this is problematic in so many ways. It is
20 worse than Fortune. It goes a lot farther than Fortune. It
21 not only says she doesn't believe the Defendant's testimony,
22 not that it matters what she believes, she's inserting her
23 personal opinion into it. She's trying to team up with the
24 jury. We're the good guys, we're not lying, they are.

25 It's suggesting not that criminal defense lawyers in

1 general do things to confuse the truth and whatever, but
2 that this one, me and my lawyer specifically came up with a
3 script that she uses eight times to present false testimony
4 to that jury and that I, as a lawyer, conceived it, prepared
5 it, presented it to my client, it was untruthful, told him
6 to go up there -- and then allowed him to go testify in that
7 manner. That is as egregious and that is as big of an
8 insult for a lawyer that you could ever get. And then she's
9 also saying that while teaming up with the jury as to say I
10 don't believe it, you don't believe it, nobody believes it.

11 So Fortune, I read you the language from that, they
12 said it was an easy question, universally condemned, all the
13 things they talked about. This was pernicious and
14 insidious, which I had to go look up. They mean the same
15 thing, gradual, slow way of bringing about harmful effects.
16 And that's what happened up until she finally, I guess,
17 decided just to be a lot more forward with it. But it's
18 exactly what it is.

19 Listen, I've never seen anything like it. I've
20 certainly never seen Ms. Campbell do anything that I would
21 question. And this isn't personal. I believe this is a
22 one-all, absolutely, but she doesn't get a one-all. Deavion
23 Burgess got one trial and the only thing was guaranteed to
24 him in that trial was it was going to be a fair trial and it
25 wasn't. It wasn't even close to it.

1 So the significance of this is -- and this isn't some
2 little issue. This involves structural, fundamental,
3 inalienable rights that he has, perhaps, the two most
4 important ones are right to counsel and due process. Both
5 of those have been completely shot in this case.

6 To make it worse, to exacerbate it, the complained-of
7 conduct on our part relates to the central core issue in the
8 case, which is self-defense. That's what everything
9 revolves around. So the effect of it is maximized by the
10 fact that it relates to the most important issue in the
11 case. She proved identity ten ways from Sunday. That was
12 never an issue. We never one time said that's not him in
13 that video. He was on video. We never one time suggested
14 well, they haven't ID'd him as the person that did it. That
15 was never an issue.

16 The issue was self-defense. I said that in my opening.
17 We said it throughout. We tried to cast some reasonable
18 doubt on whether or not Mr. Ventress was armed, whether
19 Devon Pope took stuff out of the vehicle that could have
20 been weapons that Mr. Ventress had, and it was the central
21 issue.

22 And not only was it all of those words that I used,
23 excusable, clouded public trust, pernicious, obvious, the
24 problem and the reason we're here today -- and it shouldn't
25 have been this way, but the problem and the reason that

1 we're here today and the problem with the entire thing is it
2 was one thing, it was effective and it worked and he was
3 convicted.

4 So, Judge, for those reasons, I would respectfully say
5 that regrettably for me having to bring the motion, but in
6 fairness to Deavion that the only appropriate remedy because
7 of the -- it gets worse and because it crosses so many
8 lines, so many important issues and so many important
9 defenses that there is no other available remedy at all for
10 the Court to consider other than in granting Mr. Burgess a
11 new trial.

12 THE COURT: All right. Solicitor.

13 MS. CAMPBELL: Thank you, Your Honor. I would direct
14 Mr. Lee and Your Honor to Moore vs. United States. There
15 are a litany of cases in footnote four. I won't list them
16 all. I'm certainly confident that Mr. Lee and the Court can
17 read those matters. I would say at the outset, we rely on
18 all of those cases.

19 Your Honor, the State is compelled by the arguments we
20 have just heard from Mr. Lee for 50 minutes to remind this
21 Court that Mr. Lee in his opening statement to the jury very
22 specifically, very calculated and in very detailed terms
23 told that jury that the State of South Carolina would be
24 lying to them.

25 The defense -- again, thank you for all my many

1 accolades. One of the things I learned to do is to write
2 down phrases that opposing counsel used in their opening
3 statements. And this is what he said -- you may, yourself,
4 recall, Your Honor. He said -- to our jury, he said, The
5 State of South Carolina would be deploring the three Ds
6 during the trial. And the three Ds that I, personally, as
7 the State of South Carolina's attorney would be doing to
8 this jury was darkness, distraction and deception. So he
9 just called me a liar and I'm representing the State.

10 So in defense attorney's opening, he personally
11 attacked me and accuses the State by way of my person of
12 embarking on a trial presentation that would purposefully
13 lead the jury into darkness through distraction and
14 deception. Defense counsel himself set the tone for the
15 entire trial with his accusation that I would, as the
16 assistant solicitor, and that the State of South Carolina
17 are liars. He called us liars.

18 So I'll move right through then to closing argument.
19 The State took the position that being accused by defense
20 counsel in his opening statement of lying to the jury and
21 deploying deception during the trial was just a fancy word
22 for being a liar. And, again, in turn, interpretively, as
23 Mr. Lee has done today, that we would be engaged in
24 committing a fraud upon the jury. And it is right and
25 warranted and permissible for the State to correct defense

1 counsel's accusations that the State is in the business of
2 lying to jurors.

3 And as to the remainder of defense counsel's motion, it
4 does, it all hinges on the fact that the Defendant testified
5 and, thus, became subject to cross-examination on his
6 credibility. When the Defendant took the stand, he became
7 subject to Rule 609 and his credibility and his
8 believability were core issue. The State contends that the
9 State properly cross-examined the Defendant as to that
10 credibility and believability within the rules. The State
11 contends that proper cross-examination entails questions
12 about the number of times that a witness has met to discuss
13 their testimony, to prepare for their trial. Every single
14 State witness, every other witness in the trial are always
15 subjected to this cross-examination of a litany of questions
16 without fail. It is relevant, it is admissible and it is
17 proper cross-examination, Your Honor.

18 The defense counsel takes issue with the assistant
19 solicitor's tone, gestures, expressions and tenure during
20 closing argument and the trial, in general. Essentially,
21 the assistant solicitor's personal style and delivery of
22 questions and closing argument, all of which we submit to
23 the Court as the State is not relevant.

24 The defense counsel confuses the assistant solicitor's
25 use of the term script, which is a term that has much to --

1 I'm sure to the dismay of defense counsel has many meanings.
2 One interpretative meaning of the Defendant planning,
3 discussing, practicing, writing down a story in his mind and
4 then delivering it through his testimony. A script is not
5 exclusively written for one person to be delivered by
6 another person. One may write their own script.

7 In any event, it is all based upon natural and logical
8 inferences and conclusions to be drawn from the evidence and
9 the testimony as it was presented by the defense during the
10 Defendant's testimony. And if it sounded scripted or
11 planned, then that is certainly appropriate argument for the
12 State and a question for the jury to consider when reviewing
13 Defendant's credibility and believability.

14 If the State chose not to object, Your Honor, during
15 the Defendant's direct examination when he testified and
16 allowed the story to be told to the jury without
17 interruption, there is no error or harm by the State. And
18 then the State simply argues correctly and permissibly
19 within the rules the record of the case and the manner in
20 which it happened.

21 Defense counsel's number 24 and 25 is precisely what
22 the kettle did to the pot. As our children, who in middle
23 school might say well, he did it first. The Defendant
24 called the State liars. And in that scenario, he accused me
25 and the State of trading in darkness, that we were going to

1 lie to the jury and deceive them.

2 Any reply to those accusations against myself and the
3 State is proper and allowed to clear up the record. And
4 when I did point at my table in the other courtroom and said
5 nobody at this table is a liar, exactly, Your Honor,
6 directly related to him standing up in his opening statement
7 and pointing to me and calling me a liar.

8 I did not inject -- I'm sorry.

9 THE COURT: Mr. Lee, Mr. Lee, don't interrupt her,
10 okay, sir?

11 MR. LEE: Yes, sir.

12 THE COURT: Go ahead, Solicitor.

13 MS. CAMPBELL: I did not inject my personal opinion.
14 Even if you think what I said was pushing the line of
15 personal opinion or even slightly strayed over the line,
16 it's never reversible error or a basis for a new trial. I
17 don't concede that I injected my personal opinion.

18 And I will direct the Court to the Moore opinion on
19 Page 4 of 6 where the court took great effort to say the
20 following: Common speech patterns in closing arguments are
21 often inadvertently sprinkled with such phrases as I think,
22 I believe, I submit, all of which in context may serve to
23 convey a personal opinion on witness credibility, but the
24 4th Circuit has charitably noted that using the phrase I
25 think in closing argument does not necessarily suggest an

1 attempt to replace the evidence with the prosecutor's
2 personal judgment.

3 And finally, I'll close by saying that the prosecution,
4 Your Honor, well-settled law, I don't need to belabor the
5 Supreme Court cases that say the prosecution has reasonable
6 latitude to fashion closing arguments additionally inherent
7 and this latitude is the freedom to argue reasonable
8 inferences based on the evidence.

9 And lastly, in a case that essentially reduces -- and
10 I'll add this, reduces because of what the defense counsel
11 said in his opening statement, reduces to which of two
12 conflicting stories is true, it may be reasonable to infer
13 and, hence, to argue that one of the two sides is lying.
14 The statement that the Defendant was a liar in United States
15 vs. Burgess and the Laurens case is can be construed as a
16 comment on not the Defendant, but on the evidence. And then
17 that it's neither unusual nor improper for a prosecutor to
18 voice doubt about the veracity of the Defendant.

19 Thank you, Your Honor.

20 THE COURT: Mr. Lee.

21 MR. LEE: If I may respond briefly, Your Honor?

22 THE COURT: Of course.

23 MR. LEE: I'll take a second --

24 THE COURT: You want to take a break?

25 MR. LEE: No, sir, I'm good.

1 THE COURT: I don't mind.

2 MR. LEE: And I apologize for --

3 THE COURT: Go ahead, sir.

4 MR. LEE: I had spoken out of turn and I apologize.

5 I'm beginning to feel like I'm defending myself and I
6 shouldn't have to do that. I apologize to Ms. Campbell for
7 (inaudible).

8 Her first response, justification, whatever you want to
9 call it is that well, they said something in opening
10 statement. First of all, her recollection or her
11 interpretation of that is -- we did use those terms, but if
12 you remember, we were going after the investigation,
13 particularly, the fact that the cops did not -- they didn't
14 bring Devon Pope, the guy that went in the car and that went
15 through the car like three times and disappeared behind the
16 building. That's what that was related to. I mean, that
17 was something that we knew hadn't been investigated.

18 And that was a problem with the case, is that we
19 believed that it was very likely he took a weapon out of
20 that car and that's why they didn't find one in the car.
21 That was in no way suggesting that Ms. Campbell was lying or
22 was going to lie. A hundred percent guaranteed I was not
23 suggesting that at all and I don't think any of the words I
24 used conveyed that.

25 If she takes one three-word trilogy, I apologize, but

1 here's the thing, Fortune, the State tried to do the same
2 thing, haha, they said it, we can say it. And I'll read it
3 to you. Before we conduct this prejudice analysis, we must
4 first address three arguments the State makes to justify or
5 excuse the assistant solicitor's misconduct. And this is
6 right on point, Judge.

7 First, the State seeks to justify the remarks on the
8 grounds they were invited by improper closing argument by
9 the defense attorney. Same argument, well, they said it so
10 we're going to say it back. We then reviewed the defense
11 attorney's closing argument and we do not find it to be
12 improper. Even if it had been improper, the State's remedy
13 is not to retaliate, but to object, which the State did not
14 do. She didn't object. She didn't stand up in opening. If
15 that was a big and she wasn't going to plan to use it
16 against us and build this big case against us, conspiracy,
17 that was the time to it. She could have nipped it in the
18 bud.

19 So saying well, they did this, so we did that is
20 inexcusable. They have special duties as prosecutors. And
21 she went way over the line from some cute, little,
22 three-word phrase that I used to talk about the case. I
23 never accused Trasi Campbell of lying at all, and never
24 would.

25 So Fortune says even if the closing argument had been

1 improper, the State's remedy is not to retaliate, but to
2 object, which the State did not do. It talks about the
3 criminal justice standard and the prosecution function. If
4 the prosecutor believes that a defense closing argument is
5 or was improper, the prosecutor should timely object and
6 request relief from the Court rather than respond with
7 arguments that the prosecutor knows are improper.

8 In addition, quote, the idea that invited response is
9 used not to excuse improper comments, but to determine their
10 effect on the trial as a whole. And then the most important
11 part, quoting, there is no argument a defense attorney could
12 make that could justify the improper remarks by the
13 assistant solicitor in this case. There is no argument a
14 defense attorney could make.

15 So even if her interpretation was reasonable or
16 whatever, there is no argument a defense attorney could make
17 that could justify the improper remarks by the assistant
18 solicitor in the Fortune case. And hers are worse. So that
19 is absolutely not a defense. It's not a justification.
20 It's not even a denial.

21 Sure, on cross, she can go after defendants. You can
22 pretty much say what you want to, but you can't take it to
23 the jury and you can't say his lawyer is lying and he made
24 it up. You can say to the jury, hey, that's a self-serving
25 statement. I mean, of course, he's saying that. But she

1 crossed the line and she continued to cross it and continued
2 to cross it and continued to do it.

3 Her thing about sometimes we slip-up or talking -- I
4 mean, I do it all the time myself. I sound completely dumb
5 because it is -- I agree, it's kind of a spur of the moment
6 type of thing. She's saying it's totally understandable if
7 somebody slips in I think this, I think that.

8 That's not what happened, Judge. This isn't a slip-up
9 or way of speaking. This is specifically saying -- I'm
10 trying to find it. She doesn't say I think. Look at the
11 part where she says, I don't believe that, you don't believe
12 that, nobody believes that. That's not slipping up in a
13 manner of speaking of somebody where somebody is kind of
14 inadvertently talking. That is a specific I don't believe
15 it, you don't believe it, nobody believes it. That's not a
16 slip-up, that is intentional.

17 So to excuse it on one slip-up -- none of us talk
18 perfectly and don't try perfect trials, not even close to
19 it, but that is not -- oh, here it is. She suggested that
20 because I allowed her to continue without interruption that
21 I somehow waived this. You know, if this thing goes any
22 farther, perhaps, that's some error of preservation issue,
23 but I specifically said I object and you sustained it and
24 she still kept on going.

25 I don't know what a trial judge is supposed to do,

1 Judge. She is defying and disregarding an order of you
2 sustaining my objection because she's talking about me and
3 my client. I said I have no way to respond to that. You
4 said sustained. Before I said anything else, continue, Ms.
5 Campbell. The very next question, keeps going. I can keep
6 jumping up, I guess, but I don't think I should have to jump
7 up and keep objecting to a solicitor ignoring a ruling and
8 going down the same path.

9 In addition, the problem that it puts me in, that she
10 puts me in in that is if I keep jumping up saying I'm not
11 lying, I'm not lying, it makes it look even worse. It looks
12 like I've got something to hide. And she put me in that
13 position. She was not allowed to go on without interruption
14 or whatever the language was that she quoted. I mean, she's
15 saying somehow that well, we can do it because he didn't it.
16 He didn't object enough. You know, he let it happen.
17 That's not the question. The question is was there
18 prosecutorial misconduct that so infected the trial to make
19 it an unfair trial.

20 So all of these excuses or reasons that she submitted
21 to you, Judge, I would just again go back to the strongest
22 language saying there was no argument a defense attorney
23 could make that could justify the improper remarks by the
24 assistant solicitor in this case. There's no way to justify
25 it based on anything that I may have said or how she

1 interpreted it. There's no way to justify what -- the
2 bridge that she built gradually, slowly, pernicious,
3 insidious that led up to the final it's a script eight
4 times, I don't believe them, you don't believe them, nobody
5 believes them, three times saying, you want us to believe?
6 I mean, it's everything in there.

7 Individually, I think a lot of those things
8 individually are enough for a new trial. Collectively, the
9 cumulative effect is so much that I can't even describe it,
10 but it certainly is a violation of due process, a violation
11 of 6th Amendment right to counsel. And those actions,
12 despite my efforts to stop them by objecting, by waiting to
13 see this transcript, hoping that it wasn't what I thought it
14 was, there's no question it wasn't a fair trial. And the
15 problem is that it worked and it wasn't fair and Deavion
16 Burgess did not receive a fair trial. It's our position
17 that he should be granted a new trial.

18 THE COURT: Mr. Lee, let me ask you something: You
19 know, I notice that the Fortune case is a PCR matter.

20 MR. LEE: Yes, sir.

21 THE COURT: So why isn't this a PCR matter? Why isn't
22 this a matter where -- because, obviously, there was an
23 appeal. It says that there was an appeal that was denied.
24 I'm assuming this issue wasn't appealed in that case. So
25 then there's a PCR matter where, basically, then they decide

1 that there should have been -- that someone should have
2 objected or objected more or whatever the case may have
3 been.

4 So why shouldn't this be a PCR issue as opposed to an
5 issue for a new trial at this point, sir? Do you understand
6 what I'm asking? I mean, that's what this case is.

7 MR. LEE: This is a PCR case, but the problem --

8 THE COURT: Right.

9 MR. LEE: -- the reason it was affirmed is because trial
10 counsel didn't properly object.

11 THE COURT: Well, then, okay. So my next question is,
12 you objected one time to all of these remarks.

13 MR. LEE: Yes, sir.

14 THE COURT: So --

15 MR. LEE: And you sustained it.

16 THE COURT: And stricken. So my question is, are you
17 saying that the one objection that you made that was
18 sustained, sir, that that one objection is enough to pull
19 that out of a matter of a PCR and to put this for a new
20 trial, where is if you hadn't objected at all, then this
21 would be a PCR matter? Do you understand what I'm asking?
22 You had one objection to all this and I sustained your
23 objection. So what I'm trying to figure out is, why isn't
24 this a PCR matter?

25 MR. LEE: Well, Judge, I don't think that at this point

1 that record preservation is an issue that the trial judge is
2 supposed to address. I think that if you can show that he
3 received an unfair trial because of no due process and
4 because of what we talked about, the question of error
5 preservation is only for an appellate court. And there's
6 all kinds of rules about that and everything else. So I
7 don't -- if I didn't object at all, I still think you could
8 consider whether or not he got a fair trial.

9 And if you're taking the position that well, maybe the
10 reason he didn't get a fair trial is because you didn't
11 object enough, you didn't continue to object to things that
12 are related to your first objection, I don't think that it's
13 your job, respectfully, at this point to determine whether
14 or not this was a proper error preservation occurred at the
15 trial.

16 THE COURT: Okay.

17 MR. LEE: I mean, obviously, the process is trial,
18 direct appeal, PCR. And direct appeal, obviously, will look
19 at error preservation issue if the motion for new trial,
20 which is prerequisite for filing an appeal, if it is denied,
21 that's one of the things that is considered on appeal, is
22 error preservation. But I think your role, Judge, having
23 been there in the front row watching it and then having it
24 (inaudible) is not did the lawyers stand up and object and
25 make the right objections, et cetera --

1 Because I will say this, my objection -- the first
2 thing I said is I can't respond to that. At that point, you
3 said well, come up here. I said, Judge, I can't respond to
4 that. You immediately sustained the objection. Do I have
5 -- I mean, I don't know if I have to make more objections
6 after you've sustained the objection. I don't know how else
7 I could have made a better record at that point because our
8 argument was that -- you know, my initial comment -- we won
9 the argument. But I would respectfully say whether it's a
10 PCR, direct appeal or new trial, at this point, I don't
11 think that should even be a consideration, error
12 preservation.

13 THE COURT: All right.

14 MR. LEE: But I see what you're saying, again, it's a
15 PCR likely because there was an error preservation issue and
16 they said yep -- it was an error preservation issue, but
17 they said look, this is so bad, this is one of those
18 exceptions on PCR where even if there is an error of
19 preservation issue or something isn't levied exactly right,
20 it is so fundamental and so important, we're going to err it
21 anyway to do the right thing, make sure due process and the
22 6th Amendment are preserved and protected.

23 THE COURT: All right. Solicitor, do you have anything
24 else regarding this argument? If you do, I'm happy to hear
25 from you.

1 MS. CAMPBELL: No, Your Honor. The State, again, we
2 handed up the Moore case to Your Honor. Again, in footnote
3 four, the court's holding addresses the entire matter.

4 Thank you, Your Honor.

5 THE COURT: You know, I will say a couple of things.
6 Number one, on Page 2, I remember that. I remember her
7 making comments about the lawyer and conversations with your
8 lawyer. And I will tell you, I had some questions about
9 that as those questions were being asked as to -- maybe not
10 whether that question was improper per se, but it certainly
11 would bump it up very close to a line that every lawyer
12 knows can't be crossed.

13 But then again, you know, everybody's got a right and
14 should be and expect to be a zealous advocate within the
15 bounds of the rules. So I'm not passing judgment on anybody
16 doing anything wrong, but I'm saying those questions, Mr.
17 Lee, you're a hundred percent right. You didn't have to
18 print this out because I remember those.

19 I do believe, Mr. Lee, you make a good point in
20 reference to the us on Page 7, in making it a situation
21 where it's the jury and the prosecutor. The use of the word
22 I. And I'm with you, I don't think any one matter in and of
23 itself, but there may be a cumulative effect here.

24 The script, you know, Mr. Lee, I see where you're
25 coming from on that, but I will also tell you that the use

1 of the word script in putting that together, to me, that's
2 kind of -- I mean, you had a theory of the case, you know,
3 the deception, deceive, the other D I forget --

4 MR. LEE: Darkness.

5 THE COURT: And darkness. I mean, this script was -- I
6 think was kind of the State's. And I think you can infer
7 things from the use of the word script, I do. But I also
8 think -- and I know it's not a back at you, and I've read
9 this case while I was listening and I'm going to read it
10 again, but at the same time, deception also is -- can be
11 perceived as lying or calling somebody a liar. I mean, they
12 just both cut.

13 And then, finally, the -- you know, I did go back on
14 page 19 in Ms. Campbell's closing and she starts talking
15 about done everything possible, there's only one -- only one
16 thing and that person -- one person and that is the
17 Defendant.

18 Now, deception sounds like a fancy word for lying. So
19 really, I think that goes back to what she recalls you
20 saying at the beginning as part of the trilogy of words when
21 it begins with the alliteration. And I think she's trying
22 to explain that they're not lying. I understand it's sort
23 of a back at you that's not allowed, but also, of course, I
24 think using the truth and justice clearly, clearly is
25 inappropriate. There's no way, I don't think there's any

1 justification that's the foundation of the prosecution.

2 All right. I've got to read -- I've got these cases.
3 I'm going to have to think about this a little bit as it
4 relates to your motion. Probably what I'll do is I'll let
5 y'all know via -- I'll let y'all know via some type of
6 e-mail, then have somebody probably prepare an order as it
7 relates to that.

8 Anything further concerning this matter before we move
9 forward?

10 MR. LEE: Not from the defense, Your Honor.

11 THE COURT: Ms. Campbell?

12 MS. CAMPBELL: No, Your Honor.

13 THE COURT: Thank you.

14 What else?

15 MR. LEE: Judge, this will be a little easier. We also
16 had a pending motion for new trial. Obviously, if you grant
17 our motion, that will become moot. I don't know if you'd
18 like to hear that today while he's here or not.

19 THE COURT: I want to hear it today.

20 MR. LEE: Judge, I filed a motion for a new trial
21 following -- the next morning and motion to reconsider
22 sentence. And I put some specific grounds in here. And I
23 will tell you, I can only assume it's kind of the same for
24 the Judge and the prosecutor in that you get all wound up
25 and we're calling each other names and stuff like that and

1 then when the trial is over, all of a sudden, it's like --
2 and from the defense standpoint, that's like (inaudible)
3 because you've been going, going, going and all of a sudden,
4 everything you hoped for and tried for is kind of there. So
5 I never seem to be very good at the immediate sentencing or,
6 really, a lot of post-trial motions just because everything
7 is going through my head.

8 So when I asked for the reconsideration, there were
9 some things that I wish I had said and probably didn't say
10 in a good way and I submit to the Court that it was because
11 we had been fighting for four days and we were disappointed
12 with the verdict and I was talking with his family and that
13 sort of thing.

14 So the first ground is, certainly, as you know, murder
15 carries 30 to life. You had a very wide range. It
16 recognizes the Judge's discretion in deciding. And there's
17 no magic formula for determining for a Judge what somebody
18 should get. I mean, typically, you look at the prior
19 record. He had none. He was 18 when it happened. His age,
20 you know, I believe is in favor of that. He was in college
21 in Columbia for a while. He came back to Beaufort. Quite
22 frankly, he was trying to get out of Beaufort to start over.
23 He's married. He has a couple kids, family that supports
24 him.

25 The one thing that again -- that came up -- and I never

1 want to presuppose or get into what you're thinking about, I
2 know they teach you to disabuse your mind of things you
3 hear, but I submit to you one of the main things the
4 prosecutor pushed in their asking for life -- again, they've
5 made no offer on this case whatsoever. We didn't turn down
6 30 and roll the dice. They offered nothing.

7 During the part of the argument that he was a danger
8 and, therefore, he should get life, the solicitor
9 fortuitously told Your Honor that Mr. Burgess had a pending
10 armed robbery in Richland County and then immediately said,
11 of course, you can't consider that because that's not a
12 conviction. There is no reason at all for that to even be
13 -- to even put you in that position, to even throw that up
14 there to you, Judge. It's like well, he's got all these
15 pending charges, but you can't consider that, so just ignore
16 that. Put the toothpaste back in the tube.

17 So again, not presupposing that affected you, but
18 bringing that point out because that followed by an argument
19 he's dangerous and, therefore, should be locked up for the
20 rest of his natural life, again, it questions due process.

21 Judge, the timing of it, too. Mr. Vintress' parents
22 both stood up and talked a while. I mean, I felt bad for
23 them. I know you listened. It was pretty emotional. And I
24 completely understand and sympathize with that, but what
25 that did -- and, I mean, it should have, is it caused me to

1 back off one thing that I was going to present. One thing
2 that if this case, you know, doesn't get overturned here,
3 doesn't get reversed on direct appeal and goes to PCR, I'm
4 going to be sitting at the table one day, unfortunately,
5 addressing this because I didn't bring it up to the Court.

6 But I didn't bring it up at sentencing because I
7 thought the timing was terrible and I thought it would hurt
8 my case, but what I should have done is probably say can we
9 take a little break or can we have a couple of days. But
10 one of the issues -- and listen, I know the jury found him
11 guilty and I know that -- I don't know what the basis was,
12 but one of the things Ms. Campbell argued for very, very
13 hard was, essentially, that it wasn't reasonable that he was
14 scared of Quinton Ventress. He was portrayed at trial to
15 the jury as just kind of chilling in the front seat smoking
16 some weed. He didn't anything, wrong place, wrong time,
17 that sort of thing.

18 That is the picture that the jury got and they were the
19 ones to determine whether or not Quinton Ventress was either
20 in actual danger, because on self-defense, if someone is in
21 actual danger or someone reasonably believes someone is in
22 danger, they could act with self-defense. That was argued
23 by the State that they had disproved that and we take issue
24 with that, but we respect their decision.

25 But Quinton Ventress -- again, I'm not doing any victim

1 bashing, but I feel like he got a life sentence, it's all
2 out there. Quinton Ventress had a 2012 conviction -- 2011
3 conviction of receiving stolen goods and 2012 conviction for
4 burglary second. As a result, he was a convicted felon. In
5 2013, he was arrested for armed robbery, possession of a
6 weapon during the commission of a violent crime, possession
7 of a weapon by a convicted felon, which is the burglary
8 conviction he had, unlawful carrying -- no, I'm sorry,
9 that's the felon, possession of cocaine and attempted
10 murder. All those charges were nolle prossed by the
11 solicitor's office as a result of some plea bargain. I
12 pulled the dismissals as well as copies of the warrants
13 here.

14 He wasn't a peaceful guy just hanging out smoking weed
15 in the car. He had a violent past. The fact that they were
16 dismissed probably wouldn't keep them from coming in as far
17 as to the issue of whether or not Mr. Burgess was in actual
18 danger, but the Court has never heard that before.

19 And the reason I bring that up is because on a motion
20 to reconsider sentence, we obviously are not -- can't and
21 aren't challenging the jury verdict, but I submit that to
22 you because when you look at the big picture, Judge,
23 lingering residual doubt is, I think, certainly something
24 that you can consider. We're not saying the jury didn't get
25 it right, that they did what they did, but it's mitigating.

1 And that issue was not properly brought up. I don't know if
2 it would be admissible or not as far as Mr. Ventress'
3 potential dangerousness as related to Deavion Burgess.

4 I think lingering residual doubt is significant,
5 particularly, these charges he had involving weapons,
6 involving attempted murder, armed robbery. All those
7 involve weapons. And the State was insistent there were no
8 guns in the car, just doing his own thing, chilling out,
9 never took anything out of the car. They were adamant he
10 was no threat at all. He just, you know, pulled out this
11 gun and shot him.

12 He wasn't who he was portrayed to the jury as. And I
13 don't mean that towards any disrespect towards the dead or
14 towards his family, but he did have five charges involving
15 weapons as recently as 2014 that were dismissed by the
16 solicitor's office. He's obviously presumed innocent of
17 those, but it goes to an element of self-defense that could
18 have made a difference, might have made a difference, I
19 don't know. But, again, as far as the sentencing because of
20 the wide range, you can still respect the jury's decision to
21 say hey, this is a 30-year murder, not a life murder.

22 So I was trying to be delicate in saying that and I
23 hope I didn't offend anybody or anybody take that the wrong
24 way.

25 The next one is what we just heard. I mean, if, in

1 fact -- I mean, you're taking it under advisement, so I
2 assume it's a close question or, at least, you want to think
3 about it. You're not summarily saying hey, I'm completely
4 throwing away your motion for a new trial. I think that
5 should go with reconsideration as well at this point.
6 Hopefully -- or from our point, they both become moot if
7 there's a new trial, but I do think that lingering residual
8 doubt, the jury was out three and a half hours, the fact
9 that Ventress had a record, all being with guns as well as
10 the way in which the conviction was obtained that all
11 gravitate toward the 30-year sentence for murder.

12 And the last ground is total speculation on my part,
13 Judge, but it says, Defendant further asserts that given the
14 emotional environment, the Judge didn't have adequate time
15 to fully reflect on the relevant factors. You took a break
16 and went back there a little bit, but it was a hard-fought
17 trial and was serious and a lot of back and forth. That is
18 total speculation on my part, but if that was something that
19 in retrospect you believe you would have liked to sleep on
20 it, take a little more time, that's why we raised that.

21 We would respectfully ask you to consider the minimum
22 sentence of 30. I will remind you that 30 means 30, day for
23 day. Life means you die in prison. The significance of it
24 is, if he has a life sentence, he's on the level three yard,
25 et cetera, and there are no opportunities for working,

1 education, anything like that if you have a life sentence.
2 If you don't have a life sentence, those things are
3 available to him.

4 So, in fairness and compassion and mercy, I would ask
5 you to consider -- I mean, it's not just -- not the same
6 deal, if you got life, then you have something else, so for
7 that reason, I would ask you to take that into consideration
8 as well.

9 THE COURT: Solicitor.

10 MS. CAMPBELL: Your Honor, I would just stand by your
11 sentence that you pronounced at the end of the trial. We
12 would have nothing to add.

13 THE COURT: Well, you know, I want -- when you get this
14 job, there's no manual as to what you're really supposed to
15 be looking at or how to impose sentence. I think they just
16 kind of rely upon what your good common sense is.

17 Mr. Lee, I practiced criminal law for 20 years. I wish
18 I was the stature that you are as a criminal lawyer when I
19 was practicing, sir. You're a fine, fine, fine lawyer. But
20 if you thought that I felt or would believe that Mr.
21 Ventress didn't have some type of record or that he was an
22 angel sitting there, I mean, I know, I've been there. I've
23 represented folks. I understand that.

24 And I think this is the fourth murder case that I've
25 tried in a year. And, you know, I've given a lot of thought

1 about this sentence. And to the parents, I want to know --
2 let me tell you, you could have just stated this is just
3 garden-variety shooting. I mean, there's so many of these
4 we've got. We're scheduling these things left and right,
5 murder trials. I've tried four of them in less than a year
6 on the bench. It's just a garden-variety murder.

7 But when I heard and listened to the mom, I will tell
8 you, her son went through hell. Six months on a ventilator,
9 completely paralyzed, using a machine to help him talk and
10 communicate, and the only thing he's worried about is her.
11 Dad unable to see him because of Covid, knowing he was going
12 to die. And then, ultimately, passing because of pneumonia,
13 which is, basically, drowning because you can't breathe
14 because your lungs are filling up. So those are some of the
15 things that I took into consideration.

16 But I tell you, I've given so much thought to this.
17 I've discussed it with my clerk countless, countless times
18 as to whether a life sentence is the appropriate sentence in
19 this situation. But I do understand and I do respect the
20 fact that this man doesn't have a record and he's young.

21 I disagree with you, Mr. Lee, I don't think -- I'm not
22 going to take into consideration the whole new trial issue
23 as I go and evaluate this matter. I think they're A and B.
24 They're completely different. Up to this point, one has
25 nothing to do with the other and I'm able to separate that,

1 sir, so I disagree there.

2 But I have thought about this and what I do believe is
3 this, I believe I am going to modify the sentence. And I am
4 going to impose a 50-year sentence in this case. So to that
5 extent, I am going to modify my sentence and I'm going to
6 impose a 50-year sentence. As it relates to -- I don't need
7 to hear -- I don't think I need to hear from anybody else
8 concerning that matter.

9 Is there anything I need to hear from you, Mr. Lee?

10 MR. LEE: No, sir.

11 THE COURT: The State?

12 MS. CAMPBELL: No, Your Honor.

13 THE COURT: So what -- and I'm sorry, I know there's
14 people that may be upset with that or disappointed with
15 that, but I'll tell you, I just can't tell you how much I've
16 thought about this, even before any motion was ever filed,
17 even before a motion was ever filed.

18 But I want the Burgesses to know this isn't the
19 garden-variety. This was their son. And I'm sorry for what
20 he went through.

21 So with that, is there any other matters we need to
22 take up, Mr. Lee?

23 MR. LEE: None from the defense, Your Honor. Thank you
24 for hearing us.

25 THE COURT: From the State?

1 MS. CAMPBELL: No, Your Honor.

2 THE COURT: All right. Well, I'll give you my decision
3 on the motion probably within the next two weeks.

4 MS. CAMPBELL: Thank you, Your Honor.

5 THE COURT: Anything else, Mr. Lee?

6 MR. LEE: No, sir. Thank you.

7 THE COURT: Thank you. We'll be at ease.

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CERTIFICATE OF TRANSCRIBER

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

October 30, 2022

Penny M. Johnson
Penny M. Johnson
Court Reporter III

WITNESSES

Beaufort County Sheriff's Office

Toss Calhoun

ARREST WARRANT NUMBER

2020A0710400161

ACTION OF GRAND JURY

True Bill

Russell Young
Foreperson of Grand Jury

Date: DEC 17 2020

VERDICT

Guilty

Foreperson of Petit Jury

Date: 3/24/22

INDICT

DOCKET NO. 2020GS0701264

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2020

THE STATE

vs.

DEAVION JAHQUWAN BURGESS

Indictment For

Attempted Murder

SC Code: 16-3-29

CDR Code: 3410

847
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.

RECEIVED
AUG 04 2022
SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

INDICTMENT

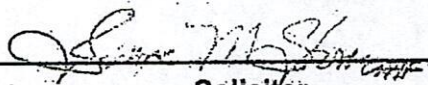
2020GS0701264

At a Court of General Sessions, convened on December 17, 2020, the Grand Jurors of Beaufort County present upon their oath:

Attempted Murder

That in Beaufort County, South Carolina, on or about April 3, 2020, the Defendant, DEAVION JAHQUWAN BURGESS, did, with intent to kill and with malice aforethought, attempt to willfully kill Zachary Wilkerson, to wit: The Defendant did shoot at Mr. Wilkerson while Mr. Wilkerson was a passenger inside a car, all in violation of Section 16-3-29, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Solicitor

Bill

WITNESSES

Beaufort County Sheriff's Office

TOBI CACIVAN

DOCKET NO. 2020GS0702146

The State of South Carolina
County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2020

THE STATE

vs.

DEAVION JAHQUWAN BURGESS

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: 3/24/22

INDICT

849
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.

RECEIVED
AUG 04 2022
SC Court of Appeals

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

INDICTMENT

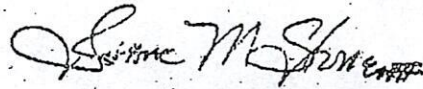
2020GS0702146

At a Court of General Sessions, convened on December 17, 2020, the Grand Jurors of Beaufort County present upon their oath:

Murder

That in Beaufort County, South Carolina, on or about April 3, 2020, the Defendant, DEAVION JAHQUWAN BURGESS, did, with malice aforethought, kill Quinton Ventress and Quinton Ventress did die as a proximate result of DEAVION JAHQUWAN BURGESS's actions, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

118 647

WITNESSES

Beaufort County Sheriff's Office

TODD CALHOUN

ARREST WARRANT NUMBER

2020A0710400162

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: DEC 17 2020

VERDICT

Guilty

Foreperson of Petit Jury

Date: 3/24/22

INDICT

DOCKET NO. 2020GS0701265

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2020

THE STATE

vs.

DEAVION JAHQUWAN BURGESS

Indictment For

Possession of Weapon During
Violent Crime

SC Code: 16-23-490

CDR Code: 0549

851
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.

RECEIVED
AUG 04 2022
SC Court of Appeals

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

INDICTMENT

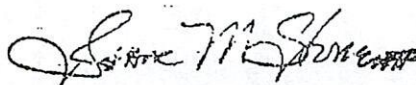
2020GS0701265

At a Court of General Sessions, convened on December 17, 2020, the Grand Jurors of Beaufort County present upon their oath:

Possession of Weapon During Violent Crime

That in Beaufort County, South Carolina, on or about April 3, 2020, the Defendant, DEAVION JAHQUWAN BURGESS, did possess a firearm, visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent crime, to wit: Murder and/or Attempted Murder and DEAVION JAHQUWAN BURGESS was convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, to wit: Murder and/or Attempted Murder, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided:



Solicitor

11/19/20

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA)
v.)
DEAVION BURGESS,)
DEFENDANT.)

2022 JUL 11 AM 11:49

JERRY ANN ROSENE AND
BEAUFORT COUNTY, SC
CLERK OF COURT
INDICTMENTS NO.(s): 2020GS0702146,
2020GS0701264 - 1265

ORDER

This matter came before the Court on May 11th, 2022 upon the Defendant's Motion for a New Trial and Motion to Reconsider Sentencing. The Defendant was present, along with his Counsel, Scott Lee, Esq. Assistant Solicitor Trasi Campbell and Assistant Solicitor Mary Jones were present on behalf of the State.

The Defendant was tried the week of March 21st, 2022 on the above-referenced indictments and a Beaufort County jury found him guilty on all indictments. On March 24th, 2022 this Court sentenced the Defendant to Life without Parole for the charge of Murder (2020-GS-07-2146), 30 years for the charge of Attempted Murder (2020-GS-07-1264), and 5 years for the charge of Possession of a Weapon during the Commission of a Violent Crime (2020-GS- 07-1265). All sentences were ordered to run concurrently.

The Defense timely filed a Motion to Reconsider Sentencing and during the hearing on May 11th, Counsel referenced tactics of the prosecution and mitigation evidence that was not mentioned during the original sentencing. The Court ruled during the hearing that the Defendant's sentence be reduced 50 years and the sentencing sheets have been updated to properly reflect this change.

The Defense also timely filed a Motion for a New Trial after analyzing the transcript of the trial. The Defense argued that the State engaged in prosecutorial misconduct during the Solicitor's cross-examination of the Defendant and closing argument. Specifically, the Defense alleged that

the Solicitor accused the Defendant of "scripting" his testimony with his Counsel, acting out a conversation for the jury that she assumed took place between the Defendant and his Counsel, and giving her opinion on the Defendant's credibility and the credibility of the Solicitor's office. The State argued to the Court that the Solicitor's Office was replying to the Defendant's claims in his opening statement that the State's case was based on "darkness, deception, and distraction."

During the State's cross-examination of the Defendant, Counsel objected only one time. Specifically,

State: You know where you threw [the gun], don't you?

Defendant: I told you. On the back road, Tilford Road. Like there's trees on both sides of the road, I just fling it as far as I could.

State: Two years, you could have took these officers to that gun, couldn't you?

Defense Counsel: Your Honor, I object for trying to get into something about him not saying something or doing something....

The Court, at a side bar, listened to the arguments of Counsel and instructed the Solicitor to move on. Defense Counsel did not object to any other questions or comments made by the State during the Defendant's cross-examination.

Similarly, Defense Counsel only objected one time during the State's closing argument. Specifically,

State: So where do we find ourselves now, because that's your evidence. Those are your materials. Where are we now? I'll tell

you where we are, we're at the story you got yesterday. How many times do you think the defense attorney met with the defendant to go over that story?

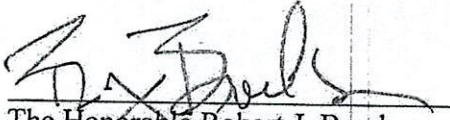
Defense Attorney: I object to that line of testimony. I don't have any way to respond to that.

The Court sustained the objection and told the jury to disregard the last comment. Again, the Counsel did not object to any additional comments made by the Solicitor during her closing.

The Court finds that several of the Solicitor's comments during her closing were inappropriate, however Defense Counsel did not object to the comments, except for one, and his objection was sustained and a curative instruction was given to the jury. *See Cummings v. Tweed*, 195 S.C. 173, 10 S.E.2d 322 (1940) (upholding the denial of the defendant's new trial motion where the defendant's counsel did not timely object to opposing counsel's comments during closing argument); *See also State v. Lunsford*, 318 S.C. 241, 246, 456 S.E.2d 918, 922 (Ct. App. 1995). Furthermore, even if Counsel did object to these comments the Court believes that the Solicitor's comments did not so infect the trial with unfairness as to make the resulting convictions a denial of due process. *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). *See also State v. Hornsby*, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997) ("A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice.").

IT IS THEREFORE ORDERED that the Court grants the Defendant's Motion to Reconsider Sentencing but respectfully denies the Defendant's Motion for a New Trial, as the Solicitor's comments did not result in a denial of the Defendant's due process.

IT IS SO ORDERED!

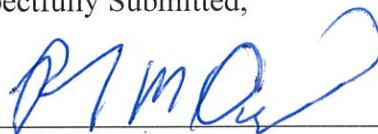

The Honorable Robert J. Bonds
Presiding Judge

Walterboro, South Carolina
July 7, 2022

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,



Robert M. Dudek
Chief Appellate Defender

RECEIVED

Oct 03 2023

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 3rd day of October, 2023.