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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Williamsburg County

Honorable R. Kirk Griffin, Circuit Court Judge

JOHN ARTHUR JAMES, III,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000178

APPENDIX

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

RESPONDENT’S EXHIBIT #1 (PARKING LOT SURVEILLANCE VIDEO CHANNEL 13)

RESPONDENT’S EXHIBIT #2 (PARKING LOT SURVEILLANCE VIDEO CHANNEL 14)

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
STATE,)

v.) TRANSCRIPT OF RECORD
18-GS-45-0022
JOHN JAMES, III,)
DEFENDANT.)

May 29 through 31, 2018
Kingstree, South Carolina

B E F O R E :

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE;
AND JURY

A P P E A R A N C E S:

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EXHIBITS**STATE'S:**

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2	Gun	100/101
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1 MR. ANDERSON: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. ANDERSON: Your Honor, before the
4 Court today is 2018-GS-45-22, the State versus John
5 James, III, an indictment for assault and battery
6 of a high and aggravated nature and possession of a
7 weapon during a crime of violence.

8 THE COURT: Okay. All right, ladies and
9 gentlemen, if you'll give me your attention. We're
10 about to begin the trial of the State versus John
11 James, III. Is there any member of the jury panel
12 connected by blood or marriage, close personal
13 friends, or social relations with Mr. James, if so,
14 please stand.

15 Yes, ma'am.

16 THE POTENTIAL JUROR: I'm not related to
17 him, but I interact with him.

18 THE COURT: What's your number?

19 THE POTENTIAL JUROR: 66 I think.

20 THE COURT: When you, you interact when
21 you're friends with him or family?

22 THE POTENTIAL JUROR: Yes, with his mom.

23 THE COURT: How often do you see them?

24 THE POTENTIAL JUROR: Pretty often.

25 THE COURT: Weekly?

1 THE POTENTIAL JUROR: I will, not like
2 every day.

3 THE COURT: You think you're close enough
4 to them you couldn't be a fair and impartial juror
5 in this case?

6 THE POTENTIAL JUROR: I wouldn't want to
7 jeopardize it.

8 THE COURT: Tell me your number one more
9 time. 66. All right, thank you, ma'am. I'm gonna
10 excuse you for this case. Hang with me, but you
11 won't be sitting on this case.

12 THE POTENTIAL JUROR: Okay.

13 THE COURT: Yes, ma'am.

14 THE POTENTIAL JUROR: You want me to
15 leave?

16 THE COURT: No, no.

17 Yes, ma'am.

18 THE POTENTIAL JUROR: I'm close to, close
19 friend with him. I know him very well.

20 THE COURT: The victim? The victim in
21 this case or the defendant?

22 THE POTENTIAL JUROR: The victim.

23 THE COURT: Okay. What's your number?

24 THE POTENTIAL JUROR: 27.

25 THE COURT: Okay. And you're close enough

1 friends that you don't think you can be a fair and
2 impartial juror to both sides?

3 THE POTENTIAL JUROR: I wouldn't want to
4 do it.

5 THE COURT: Okay, I'll excuse you as well.
6 Thank you for telling me.

7 I'm gonna read out a list of potential
8 witnesses in this case, and I need to know whether
9 you're connected by blood or marriage, close
10 personal friends, social relations with any of these
11 potential witnesses. Yasmine Davis, Illya Dixon,
12 Robert Lee, Carl Scott, Willie Brown, Chief Andre
13 Williams, James Singletary, Josephine James,
14 Jacqueline Day, Squire Cedric, Doctor Mark Reynolds,
15 Doctor John Gause, James Thompson, David Gamble.
16 Any member of the jury panel connected by blood or
17 marriage, close personal friends with any of these
18 potential witnesses, if so, please stand.

19 (There was no response.)

20 THE COURT: I can't read. It's Tompkins,
21 not Thompson.

22 (There was no response.)

23 THE COURT: The attorneys in this case
24 representing the State is Warren Anderson. The
25 Defense is Grant Smaldone. Any member of the jury

1 panel connected by blood or marriage, close personal
2 friends, social relations, or been represented by
3 either two of these attorneys, if so, please stand.

4 Yes.

5 THE POTENTIAL JUROR: My mom works here.
6 I know Mr. Warren Anderson.

7 THE COURT: Okay. And what's your number?

8 THE POTENTIAL JUROR: 47.

9 THE COURT: And the fact that you've known
10 him — have you ever been represented by him?

11 THE POTENTIAL JUROR: No, sir.

12 THE COURT: Would that affect your ability
13 to be fair and impartial to both State and the
14 Defendant?

15 THE POTENTIAL JUROR: No, sir.

16 THE COURT: Okay, thank you.

17 Anyone else?

18 (There was no response.)

19 THE COURT: This incident allegedly
20 occurred on or about July 15th, 2017. Any member of
21 the jury panel know anything about this case at all,
22 if so, please stand.

23 (There was no response.)

24 THE COURT: Any member of the jury panel
25 formed or expressed an opinion about any of the

1 issues or matters involved in this case?

2 (There was no response.)

3 THE COURT: Any members of the jury panel
4 aware of any bias or prejudice either toward the
5 State of South Carolina or this Defendant, if so,
6 please stand.

7 THE POTENTIAL JUROR: I was in the
8 apartment when it happened, but I didn't see
9 anything.

10 THE COURT: What's your number?

11 THE POTENTIAL JUROR: I don't have the
12 number. I don't know the number.

13 THE COURT: You got a number. You might
14 know not what it is, but you wouldn't be here
15 without one. What's your name?

16 THE POTENTIAL JUROR: Howard Edwards.

17 THE COURT: Okay. You don't know any, you
18 said you were present when it happened?

19 THE POTENTIAL JUROR: I was putting
20 groceries ---

21 THE COURT: But you weren't a witness?

22 THE POTENTIAL JUROR: No, I was putting
23 groceries in my trunk when it happened.

24 THE COURT: Okay. Do you think based on
25 what you know about this case, if you know anything,

1 you can be a fair and impartial juror?

2 THE POTENTIAL JUROR: Yeah, I can be fair,
3 yes, sir.

4 THE COURT: You can be fair to both sides?
5 Tell me your number one more time.

6 THE CLERK: Juror number 55.

7 THE COURT: All right, thank you.

8 Any member of the jury panel served on the
9 grand jury that heard this case, if so, please
10 stand.

11 (There was no response.)

12 THE COURT: Any member of the jury panel a
13 member or contributor of any group whose primary
14 concern is promotion of law enforcement or victim's
15 rights? Those groups include MADD and SADD and
16 CAVE, any member of any kind of law enforcement
17 group?

18 (There was no response.)

19 THE COURT: Any member of the jury panel
20 due to religious or moral reasons unable to sit in
21 judgment of your fellow man, if so, please stand.

22 (There was no response.)

23 THE COURT: Any member of the jury panel
24 or member of your immediate family ever been a
25 victim of a crime of violence or violent crime, if

1 so, please stand.

2 (There was no response.)

3 THE COURT: Any member of the jury panel
4 or member of your immediate family ever been
5 employed by law enforcement, if so, please stand.

6 Okay, yes, sir.

7 THE POTENTIAL JUROR: My brother is a
8 highway patrol officer.

9 THE COURT: And what's your number?

10 THE POTENTIAL JUROR: I don't remember.
11 My name is Eric Whetsell.

12 THE COURT: Whetsell?

13 THE POTENTIAL JUROR: Yes, sir.

14 THE COURT: Is he a highway patrolman in
15 South Carolina?

16 THE POTENTIAL JUROR: Yes, sir.

17 THE COURT: He's currently a patrolman?
18 Is he in Williamsburg County?

19 THE POTENTIAL JUROR: Yes, Your Honor.

20 THE COURT: Okay. Would that affect your
21 ability to be fair and impartial in this case?

22 THE POTENTIAL JUROR: No, sir.

23 THE COURT: Okay, thank you.

24 Yes, ma'am.

25 THE POTENTIAL JUROR: I have two brothers.

1 but they are not here. They're one in Columbia and
2 the other one is in Georgia.

3 THE COURT: Okay. And what's your number?

4 THE POTENTIAL JUROR: My number is 169.

5 THE COURT: And will that affect your
6 ability to be fair and impartial in this case?

7 THE POTENTIAL JUROR: No.

8 THE COURT: Thank you, ma'am.

9 Yes, ma'am.

10 THE POTENTIAL JUROR: My husband was
11 assistant chief of Kingstree Police Department. My
12 father-in-law was also a police officer there, and
13 my brother-in-law is a bailiff.

14 THE COURT: Okay. What's your number?

15 THE POTENTIAL JUROR: I think it's 48.

16 THE COURT: Was your — what year was your
17 husband assistant chief?

18 THE POTENTIAL JUROR: He retired in 2011.

19 THE COURT: Okay. So he retired before
20 this case happened?

21 THE POTENTIAL JUROR: Excuse me?

22 THE COURT: He retired before July 15th,
23 2017?

24 THE POTENTIAL JUROR: Yes.

25 THE COURT: Would the fact that you have

1 family members and your husband is in law
2 enforcement, would that affect your ability to be
3 fair and impartial to both the State and this
4 Defendant?

5 THE POTENTIAL JUROR: No.

6 THE COURT: Thank you, ma'am.

7 THE CLERK: Number 44.

8 THE COURT: Okay.

9 THE POTENTIAL JUROR: My uncle is a
10 sergeant of the highway patrol. His wife is a SLED
11 agent. My cousin is a Florence County police
12 officer. My son is also another police officer, and
13 and my stepbrother is a highway patrol. My other
14 stepbrother is a DOT.

15 THE COURT: Would that affect your ability
16 to be fair and impartial in this case?

17 THE POTENTIAL JUROR: No, sir.

18 THE COURT: Thank you.

19 THE CLERK: What's your number?

20 THE POTENTIAL JUROR: 64.

21 THE COURT: Okay. Anybody else?

22 (There was no response.)

23 THE COURT: Any member of the jury panel
24 have any formal legal training such as law school,
25 paralegal school, law enforcement training? Would

1 that apply to anybody?

2 (There was no response.)

3 THE POTENTIAL JUROR: I'm sorry, can you
4 say that again?

5 THE COURT: Any of you ever had any formal
6 legal trainings, law school, paralegal school, a
7 lawyer, any formal training in the law?

8 (There was no response.)

9 THE COURT: Okay.

10 THE POTENTIAL JUROR: I mean, I don't know
11 if the academy, Criminal Justice Academy, I don't.

12 THE COURT: Okay. How long ago?

13 THE POTENTIAL JUROR: It's been five years
14 ago.

15 THE COURT: And what's your number?

16 THE POTENTIAL JUROR: 166.

17 THE COURT: Okay, thank you. Any member
18 of the jury panel ever been a witness in a trial,
19 have you ever testified from the witness stand in
20 any trial, except maybe Magistrate court? In
21 general sessions or common pleas.

22 (There was no response.)

23 THE COURT: Okay. Yes.

24 THE POTENTIAL JUROR: It was civil court
25 and it was back in the '90s, if I'm not mistaken.

1 THE COURT: Okay. And you were number 44?
2 THE CLERK: Yes.
3 THE POTENTIAL JUROR: I think 48.
4 THE CLERK: Juror number 44.
5 THE COURT: They think you're 44.
6 THE POTENTIAL JUROR: Okay.
7 THE CLERK: She's Daniels, she's number
8 44.
9 THE COURT: Any member of the jury panel
10 or a member of your immediate family ever been a
11 victim of a violent crime, armed robbery, or any
12 other crime of violence?
13 Yes.
14 THE POTENTIAL JUROR: My brother
15 Cornelious Fluitt. It's been this year.
16 THE COURT: Okay. And what's your number?
17 THE POTENTIAL JUROR: I don't know my
18 number.
19 THE CLERK: 65.
20 THE POTENTIAL JUROR: Deandra Fluitt.
21 THE COURT: 65, okay. Would that affect
22 your ability to be fair and impartial in this case?
23 THE POTENTIAL JUROR: No, sir.
24 THE COURT: Thank you.
25 Any member of the jury panel know any

1 reason whatsoever why they cannot give both the
2 State of South Carolina or this Defendant a fair and
3 impartial trial, if so, please stand.

4 (There was no response.)

5 THE COURT: Any further questions from the
6 State?

7 MR. ANDERSON: None from the State, Your
8 Honor.

9 THE COURT: From Defense?

10 MR. SMALDONE: None from Defense.

11 THE COURT: Okay, if you'd give me a jury.
12 Madam Clerk, it's five and five.

13 (Pause.)

14 THE COURT: Any objection to them standing
15 up, or do you want them to come up in front?

16 MR. SMALDONE: No objection.

17 THE COURT: Any from the State?

18 MR. ANDERSON: None.

19 THE COURT: Okay.

20 THE CLERK: As your name is called please
21 stand where you are.

22 Juror number 136, Joseph Murray (black
23 male). What says the State?

24 MR. ANDERSON: Please present Mr. Murray.

25 THE CLERK: What says Defense?

1 MR. SMALDONE: Please seat the juror.
2 THE CLERK: If you will come forward,
3 Mr. Murray, have a seat in the jury box.
4 Juror number 64, Karol Ann Floyd (white
5 female). What says the State?
6 MR. ANDERSON: Please present Ms. Floyd.
7 THE CLERK: What says the Defense?
8 MR. SMALDONE: Please excuse the juror.
9 THE CLERK: You may have a seat,
10 Ms. Floyd.
11 Juror number 100, Iva Jordan (white
12 female). What says the State?
13 MR. ANDERSON: Please present Ms. Jordan.
14 THE CLERK: What says the Defense?
15 MR. SMALDONE: Beg the Court's indulgence.
16 Please seat the juror.
17 THE CLERK: If you'll come forward. Bring
18 your belongings, Ms. Jordan. Have a seat in the
19 jury box.
20 Juror number 120, Donte McCrea (black
21 male). What says the State?
22 MR. ANDERSON: Please excuse Mr. McCrea
23 from the trial of just this case.
24 THE CLERK: You may have a seat,
25 Mr. McCrea.

1 Juror number 91, Debra Hickson (black
2 female). What says the State?
3 MR. ANDERSON: Please present Ms. Hickson.
4 THE CLERK: What says the Defense?
5 MR. SMALDONE: Please excuse the juror.
6 THE CLERK: You may have a seat, Ms.
7 Hickson.
8 Juror number 203, Mary Wrenn (white
9 female). What says the State?
10 MR. ANDERSON: Please present Ms. Wrenn.
11 THE CLERK: What says the Defense?
12 MR. SMALDONE: Please excuse the juror.
13 THE CLERK: Have a seat, Ms. Wrenn.
14 Juror number 198, Shante M. Wilson (white
15 female). What says the State?
16 MR. ANDERSON: Please present Ms. Wilson.
17 THE CLERK: What says the Defense?
18 MR. SMALDONE: Please seat the juror.
19 THE CLERK: If you'll come forward, Ms.
20 Wilson. Bring your belongings please.
21 Juror number 163, Shamona Pressley (black
22 female). What says the State?
23 MR. ANDERSON: Please present
24 Ms. Pressley.
25 THE CLERK: What says the Defense?

1 MR. SMALDONE: Please seat the juror.
2 THE CLERK: If you'll come forward,
3 Ms. Pressley. Bring your belongings please.
4 Juror number 32, Eric J. Cooper (black
5 male). What says the State?
6 MR. ANDERSON: Please present Mr. Cooper.
7 THE CLERK: What says the Defense?
8 MR. SMALDONE: Please seat the juror.
9 THE CLERK: If you'd come forward,
10 Mr. Cooper.
11 Juror number 113, Anthony E. Martin (white
12 male). What says the State?
13 MR. ANDERSON: Please excuse Mr. Martin
14 from the trial of just this case.
15 THE CLERK: You may have a seat,
16 Mr. Martin.
17 Juror number 7, Damien Barry (black male).
18 What says the State?
19 MR. ANDERSON: Please present Mr. Berry.
20 THE CLERK: What says the Defense?
21 MR. SMALDONE: Please seat the juror.
22 THE CLERK: If you'll come forward,
23 Mr. Berry. Have a seat in the jury box.
24 Juror number 54, Phillip W. Eaddy (white
25 male). What says the State?

1 MR. ANDERSON: Please present Mr. Eaddy.

2 THE CLERK: What says the Defense?

3 MR. SMALDONE: Please seat the juror.

4 THE CLERK: If you'd come forward,

5 Mr. Eaddy, have a seat in the jury box.

6 Juror number 158, Rebecca B. Powell (white
7 female). What says the State?

8 MR. ANDERSON: Please present Ms. Powell.

9 THE CLERK: What says the Defense?

10 MR. SMALDONE: Please seat the juror.

11 THE CLERK: If you'll come forward,

12 Ms. Powell. Bring your belongings please. Have a
13 seat in the jury box.

14 Juror number 188, Eric Whetsell (white
15 male). What says the State?

16 MR. ANDERSON: Please present
17 Mr. Whetsell.

18 THE CLERK: What says the Defense?

19 MR. SMALDONE: Please excuse the juror.

20 THE CLERK: You may have a seat, Mr.
21 Whetsell.

22 Juror number 194, John C. Wilson (white
23 male). What says the State?

24 MR. ANDERSON: Please present Mr. Wilson.

25 THE CLERK: What says the Defense?

1 MR. SMALDONE: Please seat the juror.

2 THE CLERK: If you'd come forward,

3 Mr. Wilson. Have a seat in the jury box.

4 Juror number 126, Loretta McCutcheon

5 (black female). What says the State?

6 MR. ANDERSON: Please present

7 Ms. McCutcheon..

8 THE CLERK: What says the Defense?

9 MR. SMALDONE: Please seat the juror.

10 THE CLERK: If you'll come forward,

11 Ms. McCutcheon. Bring your belongings, have a seat

12 in the jury box.

13 Juror number 47, Sidney Day (white

14 female). What says the State?

15 MR. ANDERSON: Please present Ms. Day.

16 THE CLERK: What says the Defense?

17 MR. SMALDONE: Please excuse the juror.

18 THE CLERK: You may have a seat, Ms. Day.

19 Juror number 111, Tiiera Major (black

20 female). What says the State?

21 MR. ANDERSON: Please present Ms. Major.

22 THE CLERK: What says the Defense?

23 MR. SMALDONE: Please seat the juror.

24 THE CLERK: If you'll come forward, Ms.

25 Major. Bring your belongings, have a seat in the

1 jury box.

2 Juror number 167, Barbara Scott (black
3 female). What says the State?

4 MR. ANDERSON: Please present Ms. Scott.

5 THE CLERK: What says the Defense?

6 MR. SMALDONE: Please seat the juror.

7 THE CLERK: If you'll come forward,
8 Ms. Scott. Have a seat in the jury box, bring your
9 belongings.

10 We need two alternates, Your Honor?

11 THE COURT: You want one or two
12 alternates, gentlemen?

13 MR. ANDERSON: Whatever your preference
14 is.

15 MR. SMALDONE: One is fine.

16 THE COURT: Okay.

17 THE CLERK: Juror number 199, Shirlean G.
18 Wilson (black female). What says the State?

19 MR. ANDERSON: Please present Ms. Wilson.

20 THE CLERK: What says the Defense?

21 MR. SMALDONE: Please seat the alternate.

22 THE COURT: If you'll come forward,
23 Ms. Wilson, have a seat in the jury box.

24 Any matters of law pertaining to selection
25 of the jury on behalf of the State?

1 MR. ANDERSON: Nothing from the State,
2 Your Honor.

3 THE COURT: Behalf of Defense?

4 MR. SMALDONE: None from Defense.

5 THE COURT: Okay.

6 (WHEREUPON, counsel approached the
7 Bench for an off-the-record discussion.)

8 THE COURT: Ladies and gentlemen, we're
9 not gonna actually be able to start this trial till
10 tomorrow afternoon at 1:15 so I'm going to excuse
11 y'all and ask you to be back at 1:15 tomorrow. That
12 way you won't miss class tomorrow morning. But you
13 can't talk about this case. You can't do any
14 research about this case. I want you, everything
15 you learn about this case you need to learn in this
16 courtroom so you can't talk about it among
17 yourselves and I'll explain all that to you tomorrow
18 when you get back so. But it's important to both
19 sides they have a fair and impartial jury so
20 everything you know about it you need to learn here
21 so don't go Google anybody, don't do any research
22 don't do anything. Now if you have an emergency,
23 you need to call the Clerk's Office, Sheriff Office,
24 somebody, 'cause if you're not here at 1:15 and you
25 haven't called in with an emergency, we can't get

1 started till all 13 of you show up. And if one of
2 you doesn't show up, then I'm gonna send the sheriff
3 looking for to bring you in here to explain to me
4 what happened so. But if you've got an emergency
5 you need to call, you know, but it needs to be an
6 emergency, okay. You have a nice evening. I'll see
7 you at 1:15 tomorrow.

8 (WHEREUPON, the jury was removed from the
9 courtroom at 4:11 p.m.)

10 THE COURT: Anything else I need to do on
11 this case? No legal motions or anything else?

12 (There was no response.)

13 THE COURT: Okay.

14 MR. ANDERSON: Just his bond. We have no
15 objection to him staying out, Your Honor. He's
16 appeared at every appearance.

17 THE COURT: You understand that, Mr.
18 James? This case has been called. They tell me
19 they don't want me to lock you up even though you're
20 on bond, but I can explain to you it'd be to your
21 benefit to show up tomorrow 'cause if you don't
22 we're gonna proceed with this case without you. If
23 the jury convicts you, I will sentence you, seal
24 that sentence, and send law enforcement to look for
25 you. You understand that?

1 THE DEFENDANT: Oh, no.

2 THE COURT: We will proceed whether you're
3 here or not. You understand?

4 THE DEFENDANT: I'll come to court. I
5 will come to court. I ain't never missed no court.

6 THE COURT: I understand that. I'm just
7 explaining to you what will happen.

8 THE DEFENDANT: I'll be here.

9 THE COURT: Okay.

10 THE DEFENDANT: I'll be here.

11 (Court was adjourned and resumed on May 30, 2018.)

12 THE COURT: We're ready?

13 MR. ANDERSON: Yes, Your Honor.

14 MR. SMALDONE: Defense ready, Your Honor.

15 THE COURT: If you'll bring me the jury,
16 please.

17 (WHEREUPON, the jury was returned to the
18 courtroom at approximately 1:34 p.m., and
19 the following proceedings commenced in
20 open court.)

21 THE COURT: Okay, Madam Clerk, you may
22 swear the jury.

23 THE CLERK: Good afternoon, if you will
24 please stand at this time, raise your right hand.

25 (WHEREUPON, the jury was sworn.)

1 THE CLERK: Thank you. You may have a
2 seat.

3 THE COURT: Ladies and gentlemen, we're
4 about to begin the testimony in the trial in this
5 case, the State versus John James, III. He's been
6 indicted for the crime of assault and battery of a
7 high and aggravated nature and possession of a
8 weapon during the commission of a violent crime. At
9 the end of this case I will explain to you, I will
10 charge you on the law as to the definition of those
11 crimes and what your responsibilities are as far as
12 that's concerned.

13 To this indictment he's entered a plea of
14 not guilty; therefore, it casts the burden upon the
15 State to prove each and every element of the
16 indictment to you beyond a reasonable doubt. The
17 indictment in this case is not evidence. It's just
18 simply a formal charge that gets us into court.
19 Your job is to determine, to reach a verdict in this
20 case and determine what the facts are, and
21 throughout this trial you will make that
22 determination based on the evidence. The evidence
23 will come to you in three forms. First of all,
24 through sworn testimony. Witnesses will come
25 forward on the stand and testify under oath as to

1 things they saw, observed, or things they did see.
2 The other way you may receive evidence is through
3 pictures or photographs, exhibits, that our rules
4 are admitted into evidence and you can consider that
5 in determining what the facts are in this case. And
6 the third way that you may receive evidence is
7 through stipulations of the attorneys. In some
8 cases -- I don't know whether it will be in this
9 case or not. But in some cases, if both sides agree
10 on a particular fact or issue and they'll stipulate
11 this fact is not in dispute, we stipulate that this
12 fact is true. So those are the ways you receive
13 evidence.

14 In a few minutes the attorneys will get up
15 and make opening statements to you. Those opening
16 statements are not evidence. They're simply the
17 attorneys are gonna tell you what they think this
18 case is about. Then, at the end of the trial they
19 will get up and argue to you what they think the
20 evidence showed or did not show in this case. Then
21 I will charge you on the law, and you'll go back to
22 the jury room and reach a verdict in which case.
23 It's important for all of you to pay close
24 attention. Both sides are entitled to a fair and
25 impartial jury, and I need you to pay close

1 attention to the testimony as well as the exhibits
2 in the case.

3 I will try to stop every hour,
4 hour-and-a-half, to take a break. And I try not to
5 break in the middle of a witness' testimony, but
6 sometimes I've had witnesses on the stand for days,
7 and so, that is not feasible. Having said that, I
8 need all of you to pay close attention. If for any
9 reason you're uncomfortable and you need a break,
10 raise your hand 'cause if you're uncomfortable you
11 can't pay attention. So if any reason during this
12 trial that you need a quick break, raise your right
13 hand, we'll stop the testimony and take a break and
14 come back and resume that testimony.

15 Now while you're on this trial you can't
16 talk about this case. You can't talk about it to
17 anybody on the street. You can't talk to the
18 lawyers. You can't talk to your family, and you
19 can't even talk to each other. And I know that
20 sounds crazy, but after you heard the testimony of
21 one witness and you go back on a break in the jury
22 room, why can't we discuss what that witness said.
23 And here's the reason I don't want you to do that.
24 Because if you do that, at the end of the trial
25 you're gonna want to defend that opinion you had at

1 the beginning of the trial to your fellow jurors,
2 you know, and that opinion may not be right. I
3 don't want you to start forming an opinion and
4 sharing them with each other until you've heard all
5 the evidence in this case, as well as the law that
6 I'm gonna charge you with, and then and only then
7 will it be proper for you to discuss the case and
8 reach a verdict in this case based on the facts.

9 I'm not allowed to have an opinion about
10 the facts. That is solely up to you. So, sometimes
11 the lawyers will make objections and I have to rule
12 on certain legal things. Sometimes I have to send
13 you out of the room because sometimes I have to
14 discuss factual basis with them based on my ruling,
15 and I don't want you to be misinformed about
16 anything you may think I may have an opinion about
17 the facts. That is solely up to you to determine
18 what the facts are in this case. Just the same way
19 you've got to accept the law as I give it to you
20 whether you agree with it or not, and I'll charge
21 you that at the end 'cause I'm the sole judge of the
22 law in this case and you're the sole judge of the
23 facts. It's important for you to pay attention
24 'cause if you make a mistake it's very hard to
25 correct that mistake. If I make a mistake, at some

1 other time and some other place it will be reviewed
2 and corrected. But that's why we got twelve of you,
3 and you're a cross section of this community to
4 determine what the facts are in this case based on
5 the evidence that comes before you. So if you'd pay
6 close attention and not only to what people say, but
7 how they act and their demeanor on the stand and
8 their body language and everything else. You just
9 use your common sense because you make this
10 determination every day when you interact with
11 people and so, and I need your verdict to be fair to
12 both the State of South Carolina and this defendant
13 'cause that's what your oath is and when that
14 happens the system of justice works as it should.
15 If you'd pay close attention to the attorneys we'll
16 get started.

17 Mr. Solicitor.

18 MR. ANDERSON: May it please the Court.

19 THE COURT: Yes, sir.

20 MR. ANDERSON: Mr. Smaldone, Madam Clerk,
21 ladies and gentlemen of the jury, a person's life is
22 made up of choices, the moments and the choices that
23 they make in those moments. About a half mile from
24 where y'all sit right now on July 15th of 2017,
25 there was a moment going on and I want to talk to

1 you a little bit about it. David Gamble is there.
2 He's at the back of the IGA parking lot. He's
3 talking with some buddies about what they're gonna
4 do that day. As I said, there are some people there
5 that day that get food, both the good and the bad.
6 That's what the victim in this case, James
7 Singletary, he's riding in the parking lot in his
8 little red car. Willie Brown is there. He's doing
9 some grocery shopping with his younger daughter.
10 And as I said, Mr. Singletary is the one in the
11 parking lot and in that moment he makes that choice.
12 What he doesn't realize yet is that he is in
13 terrible danger because there's a man in that
14 parking lot who wishes to do him great harm.

15 We're here to talk about that man's
16 choices, the choices that he makes in the following
17 moments. That man is John James. He's seated at
18 the table right over there. The choices that he
19 made led him to be charged with assault and battery
20 of a high and aggravated nature and possession of a
21 weapon during a violent crime. I'm gonna talk to
22 you a little bit about those choices a little bit
23 more in my opening; but first, we've gotten to my
24 favorite part of the trial. I think it's every
25 attorney's favorite part of the trial. It's

1 probably because they get to talk about themselves.

2 And my name is Warren Anderson. I've been
3 a prosecutor for five years. I'm from Turbeville.
4 It's a pleasure to serve this community. I was put
5 here by your elected solicitor Chip Finney. And I
6 want you to go ahead and in your mind imagine
7 everything you wanted to know about a prosecutor and
8 you throw that in the trash. Forget everything
9 you've seen on TV. Invariably some fella and he's
10 got his top button undone and he's got his tie loose
11 and he's grumbling about convictions, and in South
12 Carolina that's simply not how it works. In South
13 Carolina supreme court says that it is a
14 prosecutor's job -- and that's what a solicitor
15 is -- to seek just results. That's what we're here
16 to do, is to seek a just result. And the way I go
17 about doing that, what my job is, is to convey the
18 evidence to you. And law enforcement finds out a
19 crime is committed, send it to me, and I convey it
20 to you in court just in the way the judge has just
21 described; and that's what I'm gonna do.

22 So what about y'all's role in the process,
23 why are y'all here today? You may notice we took a
24 long time picking y'all out yesterday. We were
25 whispering, looking at paper, and it's not because

1 we're nosy. It's because both sides want the best
2 twelve jurors possible, the people with the most
3 common sense and life experience, 'cause that's
4 what's great about our system is that you can get a
5 group of people together that aren't here to reward
6 friends. They're not here to punish enemies.
7 They're here to apply their common sense and life
8 experience to the evidence they hear in court. Do
9 this for me, you had your common sense when y'all
10 got out your cars and started to come in here. You
11 got it with you when you're sitting in this box
12 right now. Later on y'all will walk up those stairs
13 to make your choice in this case. You just check,
14 common sense right there, 'cause that's all you'll
15 need to make a determination in this case.

16 You may be wondering what's the standard,
17 how much evidence is enough? What if, has the State
18 met its burden, 'cause the burden is on the State.
19 And I'm about to talk to you about the law. If I
20 say something different than the judge says about
21 the law, you throw what I say in the dark and you
22 listen to what Judge Cothran says. But I submit to
23 you he's gonna tell you that the standard, I have to
24 prove the case to you beyond a reasonable doubt.
25 That means you have to have heard enough evidence

1 where you are firmly convicted of John James' guilt.
2 You have to have heard enough evidence that you will
3 not hesitate to act when you find him guilty. I
4 like to point out to jurors you got to have reason.
5 It's right there in the title. What does reasonable
6 mean? It means it makes sense. I have to get rid
7 of the doubt that makes sense, not wild conspiracy
8 theories, not it could have happened. I have to
9 prove it's not beyond a shadow of a doubt, it's not
10 beyond any doubt, it's beyond a reasonable doubt.
11 So that's my job and your job. And your job here is
12 to evaluate the evidence.

13 Now I want to talk to you a little bit
14 about the evidence, the choices that got made in
15 this case. I told you that Willie Brown was in IGA
16 that day, and he was there shopping with one of his
17 daughters. He's walking toward the door and he's
18 gonna tell you from the stand that he heard, bang,
19 first shot. He does what any father would do. He
20 gets his child to safety and then he goes to try to
21 find out what's going on. He puts his cop hat on.
22 And he goes in the parking lot and who does he see?
23 The victim in this case, the defendant in this case.
24 and he sees him, shoot him down. I told you that
25 the victim is gonna testify in this case, and he was

1 in the parking lot that day and he made a choice.
2 He's pulling in in his little red car. He's gonna
3 tell you how he's getting out of his car in the
4 center lane parking. On that bright day on
5 July 15th he is attacked as soon as he gets the door
6 open by Mr. James, struck in the face, his cell
7 phone smashed. And they get into it and they run
8 around the parking lot. And that's part of being
9 the attorney that's representing the State, I have
10 to tell you the good and the bad; and I'm telling
11 you the victim made some bad choices in this case
12 too. You're gonna hear he armed himself. He made
13 threats too with a machete. But then what happens
14 next? As he pulls out the machete that first shot
15 is fired. He begins to run away. Mr. James gets
16 out of his vehicle. He chases down Mr. Singletary
17 and he shoots him twice at close range. Those are
18 the choices you're gonna hear about in this case.

19 You may be wondering. You've heard me
20 talk about these witnesses that will come and
21 testify and you're gonna say, this sounds confusing,
22 an eyewitness could be unreliable, people get their
23 stories mixed up, he's armed too. But the great
24 thing about this case is, that's not going to be too
25 much of an issue because the thirteen of you are

1 going to get to be witnesses as well because the IGA
2 parking lot that day had a camera system that was
3 running, and it captures every single one of those
4 moments. I submit to you after you watch that video
5 of what happened in the IGA parking lot that day,
6 when you go back there and you have your moment in
7 the jury box, the choice that you have to make will
8 be an easy one. The only choice that will make
9 sense is a verdict of guilty.

10 MR. SMALDONE: May it please the Court.

11 THE COURT: Yes, sir.

12 MR. SMALDONE: Ladies and gentlemen of the
13 jury, good afternoon. My name is Grant Smaldone. I
14 have the pleasure of representing Mr. James in this
15 matter. There are so many cases that you see on TV,
16 so many cases you hear about in the newspaper, and
17 it's a whodunit, right, who did what. It's a big
18 mystery, right, trying to solve what happened and
19 who did it. Those are the big questions, what
20 happened and who did it. This case is a little bit
21 unique because I'm gonna agree with the prosecutor
22 on probably 80 percent of what he says, maybe less,
23 we'll see, we'll see how it goes, maybe 80 percent
24 of the evidence. And this case is not a whodunit,
25 right? We're not gonna argue that it was, you know,

1 his twin brother and I'm not gonna sit here and
2 argue that it's a long, lost cousin that came in and
3 gave the cop fake info. It's not whodunit.

4 THE DEFENDANT: Stop showing off. Stop
5 showing off.

6 MR. SMALDONE: It's not whodunit. In
7 fact, in this case it's not even a what happened,
8 it's not even what went on. The issue in this case,
9 the issue in this matter is was this justified.
10 What do I mean by justified? Well, let's back up.
11 Let's back up to the IGA parking lot that day,
12 July 15th, 2017, justification. John's there with
13 his mom. John and his mom are grocery shopping, and
14 John is out there walking back to his car.
15 According to what you heard earlier, John intended
16 to do no harm that day. He's doing the most
17 innocent activity ever, grocery shopping with your
18 mom, right, at the IGA. That's what the IGA is for.
19 So John walked to the car with his mom, hanging out,
20 groceries, all that good stuff. You'll see red car
21 pulls up. John goes up to the red car, and they've
22 explained all this 'cause you're gonna see it on
23 video earlier. It's important to know the kind of
24 context of what's going on before you see the video
25 and you'll know what to look for, right? So I'm

1 gonna tell you, look for the red car. Both sides
2 will agree with me, the red car is where it all
3 happened. And when that red card pulls up John
4 approaches the car. Fair to say John and this guy
5 don't like each other very much.

6 You can't see what happens on the video,
7 but you see John's at the window for maybe seven or
8 eight seconds, right. Then John runs off, what you
9 see on the video. You're gonna see it, I promise.
10 John runs off. He's getting chased by big fella
11 over here way around the parking lot. And then
12 you're gonna see the key moment, and you're gonna
13 see it all fizzle down. You're gonna see everything
14 back to normal, right. You're gonna see everything
15 at peace again for everybody, almost everybody,
16 because you also see on the video after everything
17 fizzled off Mr. Singletary goes and grabs a little
18 ole machete. As you heard earlier, an actual
19 machete, not like a Vincent knife, pocket knife,
20 like a ISIS looking MS-13 machete. And you're gonna
21 see that, that's gonna be introduced in evidence.
22 You'll see. Mr. James is getting chased around with
23 a machete. Not, my client didn't have a machete,
24 just to be clear. They're charging the guy who is
25 chased with a machete. He's chased with a machete,

1 terrified, and he reacts. He reacts the way, I
2 submit to you, that jurors from Williamsburg County
3 with a little bit of common sense would act. He
4 does what he has to do. He grabs his momma's gun.
5 His mom is standing there with a gun. He grabs his
6 momma's gun; he shoots it. Plain as day. Plain as
7 day. He gives a warning shot. You'll see it on the
8 video. Still doesn't drop the machete. He's not
9 charging at him anymore, but he's swinging it
10 around, he doesn't drop the machete. He gets hit.
11 And that's the only thing that made him drop that
12 machete.

13 Ladies and gentlemen of the jury, that is
14 what justified means. That is what self-defense
15 means. Later on at the end of this case Judge
16 Cothran will read to you the law, and it's a little
17 bit more complicated than I've laid out to you so be
18 careful. Be sure to listen clearly. Judge Cothran
19 will weigh out the law. He'll tell you what assault
20 and battery of a high and aggravated nature is.

21 He'll tell you what possession of a weapon during a
22 violent crime is, and then he'll probably tell you
23 what self-defense means in the State of South
24 Carolina. And that's where it all comes together.

25 Self-defense is what John had to do that

1 day. Self-defense is the only reason for that,
2 swinging that machete. So ladies and gentlemen,
3 you'll also hear that if the State of South Carolina
4 does not disprove self-defense, if they don't
5 disprove one of the elements of self-defense, it's
6 not guilty and not guilty is what John is. John is
7 here today seated with me. He's scared. Nobody
8 wants to be on trial. Nobody, you know, has a day
9 off work and they're like, I'll tell you what, I'll
10 go on trial today for assault and battery of a high
11 and aggravated nature. That's, I'm bored, good life
12 experience. John's terrified. But that's okay,
13 that's normal, 'cause at the end of this you're
14 gonna hear the whole entire case and you're gonna
15 see the video and you're gonna have all the evidence
16 to make the right decision for John. And again,
17 that decision is not guilty, clear as day not
18 guilty. That's what I'm gonna ask you to do, and
19 that's what I submit is the only verdict that really
20 makes any sense in this case. Thank you.

21 THE COURT: Mr. Anderson, you may call
22 your first witness.

23 MR. ANDERSON: The State would call James
24 Tompkins.

25 THE COURT: All right.

SW - J. TOMPKINS - DIRECT

1 THE CLERK: Step forward, Mr. Tompkins.
2 Place your left hand on the Bible, raise your right
3 hand.

4 WHEREUPON,

5 JAMES TOMPKINS,
6 having been duly sworn by the Clerk, testified
7 as follows:

8 THE CLERK: You may take your seat. Just
9 watch your step going up.

10 DIRECT EXAMINATION

11 BY MR. ANDERSON:

12 Q Good afternoon, Mr. Tompkins.

13 A Good afternoon.

14 Q Where do you work?

15 A Kingstree IGA.

16 Q Okay. How long have you worked at Kingstree IGA?

17 A Eleven-and-a-half years.

18 Q All right. And what's your role there, what's
19 your position?

20 A Store manager.

21 Q All right. And tell me a little bit about some
22 of your duties as a store manager.

23 A Just daily operations, customer service, employee
24 service, just all the daily work schedules.

25 Q Okay. Does the IGA have a video system?

SW - J. TOMPKINS - DIRECT

- 1 A Yes, sir.
- 2 Q All right. Can you tell the jury a little bit
- 3 about that.
- 4 A It's approximately 40, 41 cameras. We have three
- 5 cameras in the parking lot. The rest of them are
- 6 inside the store.
- 7 Q All right. And how does the system work?
- 8 A It records on movement. It stays on 24 hours a
- 9 day, and it repeats every 30 days.
- 10 Q And was that system operating on July the 15th of
- 11 2017?
- 12 A Yes, sir.
- 13 Q And how do you know that?
- 14 A We daily check that system, make sure all cameras
- 15 are operating, and make sure they're all recording.
- 16 Q All right. And do these recordings have time
- 17 stamps?
- 18 A They do, yes, sir.
- 19 Q All right. And are they accurate?
- 20 A They may be in between three to five minutes.
- 21 Sometimes one will be a little faster than the
- 22 other.
- 23 Q And did you have the opportunity to pull a video
- 24 of this case?
- 25 A Yes, sir.

SW - J. TOMPKINS - DIRECT

1 Q And can you tell us a little bit about how that
2 came about.

3 A Actually, the day of the incident I was at home,
4 my day off, and I was called to be notified that
5 there was a shooting in the parking lot. So,
6 probably about 30 minutes after that call I went to
7 the store and actually made sure everything was okay
8 at the store and then looked at the video and
9 checked the times and everything. And at that time
10 I just, I didn't record anything at that time 'cause
11 it will hold it usually 30 days and just reviewed
12 it, see what went on.

13 Q So it appeared that the system was working
14 correct that day and you stored the video?

15 A Yes.

16 Q And what did you, did anybody come get a copy of
17 the video?

18 A Actually, the next day Officer Davis came and we
19 both looked at the video, and then I made a
20 recording of it and gave it to her.

21 Q So you furnished a copy to who?

22 A Officer Davis I believe it is.

23 Q Do you know where she works?

24 A At the time she was with Kingstree Town Police
25 Department.

SW - J. TOMPKINS - DIRECT

1 Q All right.

2 MR. ANDERSON: I beg the Court's
3 indulgence.

4 (WHEREUPON, State Exhibit No. 1
5 was marked for identification only.)

6 BY MR. ANDERSON:

7 Q All right, Mr. Tompkins, I'm gonna approach you
8 and ask you to take a look at this for me. This is
9 what's been premarked as State's Exhibit 1.

10 A Yes, sir.

11 Q Are you familiar with what that is?

12 A Yes, sir, I am.

13 Q What is it?

14 A It's a DVD or disk of the video that happened
15 that day.

16 Q That's what you gave to law enforcement?

17 A Yes, sir.

18 Q All right.

19 MR. ANDERSON: At this time we seek to
20 move State's Exhibit 1 into evidence.

21 THE COURT: What says Defense?

22 MR. SMALDONE: Without objection.

23 THE COURT: Okay, it's in without
24 objection.

25 (WHEREUPON, State Exhibit No. 1

SW - J. SINGLETARY - DIRECT

1 was admitted into evidence.)

2 MR. ANDERSON: Permission to publish, Your
3 Honor?

4 THE COURT: Yes, sir.

5 (State's 1 was shown to the jury.)

6 BY MR. ANDERSON:

7 Q Mr. Tompkins, have you had an opportunity to
8 review what's in evidence as State's Exhibit 1 on
9 that little screen that's next to you? Is that the
10 video you pulled?

11 A Yes, sir.

12 Q All right, I don't have any further questions.

13 MR. SMALDONE: No questions for this
14 witness.

15 THE COURT: Okay, thank you, sir. You can
16 step down.

17 MR. ANDERSON: Your Honor, may Mr.
18 Tompkins be excused?

19 THE COURT: Any objection?

20 MR. SMALDONE: No, sir.

21 THE COURT: You're excused.

22 MR. ANDERSON: The State would call James
23 Singletary.

24 THE COURT: Okay.

25 THE CLERK: Place your left hand on the

SW - J. SINGLETARY - DIRECT

1 Bible, raise your right hand.

2 WHEREUPON,

3 **JAMES SINGLETARY,**

4 having been duly sworn by the Clerk, testified
5 as follows:

6 THE CLERK: You may take your seat.

7 **DIRECT EXAMINATION**

8 BY MR. ANDERSON:

9 Q Good afternoon, Mr. Singletary.

10 A Good afternoon.

11 Q Will you please just introduce yourself to the
12 jury, tell them a little bit about where you live.

13 A My name is James Singletary. I live in Salters,
14 South Carolina.

15 Q And you were involved in the incident we're here
16 about today?

17 A Yes.

18 Q You were one of those people we saw walking
19 around on the video in State's Exhibit 1?

20 A Yes.

21 Q Let's start before the video starts. Tell me
22 about how your day started that day.

23 A Well, I was coming from home. I was going to IGA
24 to get me something to eat.

25 Q Okay.

SW - J. SINGLETARY - DIRECT

1 A When I pulled in the parking lot ---

2 Q Let's stop -- before we get in the parking lot,
3 you had a limp before this happened?

4 A Yes.

5 Q I just wanted to establish that. All right. So
6 now you pull in the parking lot, what are you
7 driving when you pull in the parking lot?

8 A A red Chevy.

9 Q And I'm gonna take a moment and ask you to point
10 that out to the jury. I'm gonna use the mouse
11 pointer on the screen.

12 (State's Exhibit 1 playing.)

13 BY MR. ANDERSON:

14 Q That red Chevy, that's your vehicle?

15 A Yes, sir.

16 Q All right. And tell me a little bit about what
17 happened once you pulled into the IGA.

18 A Well, I pulled into IGA. I spoke to my deacon,
19 which is David Gamble. He was ---

20 Q Where did you speak to him at?

21 A Well, he was in the parking lot. He's on the far
22 side.

23 Q So he's in the parking lot?

24 A Yes.

25 Q Okay. You spoke to your deacon and then what

SW - J. SINGLETARY - DIRECT

1 happens next?

2 A I pulled over to park right -- 'cause when I park
3 I'm gonna get me something to eat and come back and
4 talk to my deacon. Like, when I pulled in the
5 parking lot I went to open my door. As soon as I
6 open my door I got attacked. I got punched in the
7 face three times by John James.

8 Q Do you know who punched you in the face?

9 A It's John James.

10 Q He's the person sitting on the defense ---

11 A Yeah.

12 Q ---table right there? All right. What happened
13 next?

14 A Well, when I went to step out he hollered, he got
15 a weapon, he got a weapon, right? He ran around in
16 a circle. He came back and kicked my door and broke
17 my door.

18 Q Let me stop you there. You're going a little
19 fast. Did you have a weapon?

20 A No, not at that time.

21 Q All right. And he struck you in the face, and
22 then you tell us you got out of the car?

23 A Yes.

24 Q I believe you said he ran the other direction.
25 Tell us what happens next.

SW - J. SINGLETARY - DIRECT

- 1 A Well, when he ran he ran away from me, came back
2 around, right, 'cause I was far, I couldn't run to
3 catch him, you know. He ran around, came back and
4 start to jump me and kick my door and when he kicked
5 my door he fell down, right. He got up and took off
6 and ran over to his mother's car and told her give
7 me the gun, you know, give me that damn thing out
8 the box.
- 9 Q We're not here -- I don't want you to tell me
10 what people said. I'm asking you about what you
11 observed and stuff, okay?
- 12 A What he said to her was give me that thing out of
13 the box.
- 14 Q I understand. All right, and what happened next?
- 15 A I walked away. I walked over to holler at my
16 deacon. And I came back somebody, he was yelling at
17 me, yelling at me, which it got me a little bit, you
18 know, upset so.
- 19 Q About how long did you talk to your deacon over
20 there?
- 21 A Probably about 30 seconds.
- 22 Q Okay. Now, and your deacon, what's his name?
- 23 A David Gamble.
- 24 Q David Gamble? All right. And what happened
25 after you were done talking to David Gamble?

SW - J. SINGLETARY - DIRECT

1 A I was going back to my car. I was going to get,
2 you know, go get in my car. And that's when they
3 started up yelling at me.

4 Q All right. What happened next?

5 A I got a little upset, got to my car, I grabbed
6 the machete. I was walking towards him and I
7 stopped, and when I stopped I said I'm gonna call
8 the police, it's like this. And I look and seen
9 him, shake my hand, and he was, and the red -- at
10 that time that's when he came out the car with the
11 gun.

12 Q All right, I'm gonna stop you right there 'cause
13 you said quite a bit and it's important. You say
14 you went and got the machete?

15 A Yes.

16 Q From your trunk?

17 A Yes. After I came, 'cause I was getting back in
18 my car at the time.

19 Q And you were walking toward him. Where was he?

20 A He was back over here.

21 Q Okay.

22 A At the car.

23 Q We're fixing to go back through the video, but so
24 you're going toward him with the machete?

25 A Yes. I was going that way, but I stopped.

SW - J. SINGLETARY - DIRECT

- 1 Q Okay. And then what happened?
- 2 A When I stop I told him I'll call the police on
3 you, just like that.
- 4 Q Was the machete in the sheath or out the sheath?
- 5 A It was in the sheath.
- 6 Q Okay. You can continue.
- 7 A Right. After I did that, when I told him I was
8 calling the police he stood out with the gun, right,
9 and then he, pow, shot my car. It came right past
10 me, hit my car, boom.
- 11 Q What did you do next?
- 12 A I moved, I walked away, start walking away.
- 13 Q So you stopped going toward him and you started
14 going in the other direction?
- 15 A Yeah, I had stopped going towards him at the
16 beginning before he shot.
- 17 Q Okay. And you hadn't been hit at that point?
- 18 A No.
- 19 Q Where'd he go?
- 20 A Where did I go? I went back towards where my
21 deacon was, in that direction, but not quite to him.
- 22 Q So you went away from the defendant?
- 23 A Yes.
- 24 Q Tell us what happened next.
- 25 A He came behind me.

SW - J. SINGLETARY - DIRECT

- 1 Q What do you mean he came behind you?
- 2 A Well, he got out the car and came with the gun,
3 you know, following me.
- 4 Q So he got out of the vehicle he was in?
- 5 A Yes.
- 6 Q And then continued toward you?
- 7 A Yes.
- 8 Q Tell me what happened next.
- 9 A Well, when I got around to the corner he shot
10 twice, bam, bam.
- 11 Q And did you get a chance to look at what he shot
12 you with?
- 13 A It looked like a .38.
- 14 Q Okay. And how far away was he from you when that
15 bang, bang happened?
- 16 A I can say about 6-feet, if that.
- 17 Q Okay. So he went from being in his car to 6-feet
18 away from you?
- 19 A Yes.
- 20 Q And you were moving away from him?
- 21 A Yes.
- 22 Q Tell me about that. And so you were shot. Tell
23 us about how it affected your body.
- 24 A What it did to my body?
- 25 Q What happened next, yes.

SW - J. SINGLETARY - DIRECT

1 A Well, I went down, right, and I lay there and
2 that's when the last thing I remember the ambulance
3 was coming to get me.

4 Q Okay. And tell us briefly about your treatment
5 for these injuries.

6 A Well, we had to do surgery on my stomach. They
7 had to remove the bullet from my stomach. They took
8 out 15 inches of intestines.

9 Q All right. And how many times had you been shot?

10 A He shot me twice.

11 Q How many shots were fired in total?

12 A Three.

13 Q Did you ever take the machete out of its sheath?

14 A I don't remember taking the machete out of the
15 sheath.

16 Q Did you ever physically touch John James after
17 his fist left your face in the car?

18 A No, I didn't.

19 Q Tell me, was there anybody else in the parking
20 lot while this was going on?

21 A It was a lot of people, but I just can't remember
22 exactly who all was there.

23 Q Was John James' mother there?

24 A Yes.

25 Q Did you ever lay your hand on her or threaten

SW - J. SINGLETARY - DIRECT

1 her?

2 A No.

3 Q All right. Mr. Singletary, we watched the video
4 without context so I'm gonna ask you to pay
5 attention to State's Exhibit 1 'cause I'm gonna ask
6 you some questions about it, okay.

7 A Okay.

8 (State's Exhibit 1 playing.)

9 BY MR. ANDERSON:

10 Q Mr. Singletary, is that your vehicle?

11 A Yes, sir. Yes, sir.

12 Q What's happening now with your car?

13 A That's when he came over and punched me in my
14 face. And he's walking away. That's, he hollered,
15 he had a weapon. That's when he ran he kicked my
16 car. That's me going to go talk to my deacon.

17 Q Right here where the mouse is pointing, that's
18 you going to talk with your deacon?

19 A Yes. I was going to tell him what happened and
20 asked him did he see it. That's me going back to my
21 car. That's when he started yelling.

22 Q You're getting the machete out the trunk?

23 A Yes. See, that's when he shot the first shot.

24 Q Right there, 15:43:11, the second mark according
25 to the ---

SW - J. SINGLETARY - CROSS

1 A Yes.

2 Q ---time?

3 A He just missed the guy in front of him.

4 Q Is that you moving away from him?

5 A Yes. And that's him coming behind me. That's
6 him shooting the first time and second.

7 Q Mr. Singletary, I'm gonna ask you what seems like
8 a dumb question. If he had stayed in the car could
9 you have hit him with that machete?

10 A No.

11 Q I don't have any further questions.

12 **CROSS-EXAMINATION**

13 BY MR. SMALDONE:

14 Q Mr. Singletary, good afternoon.

15 A Good afternoon.

16 Q All right. My name is Grant Smaldone. I just
17 have a few questions for you, all right?

18 A All right.

19 Q But before that I just want to make sure we're on
20 the same page. I've just got a couple of rules.

21 They're more rules of the Court than my rules. Make
22 sure whenever I answer, whenever I ask you a
23 question, answer it, right?

24 A (No verbal response.)

25 Q See, there you go. That's an example of not

SW - J. SINGLETARY - CROSS

1 answering.

2 A Yes.

3 Q 'Cause we got a court reporter who's a very nice
4 lady, and she needs to write everything we say down.
5 So whenever I shake my head yes or no she doesn't
6 get that. Whenever you shake your head yes or no,
7 she doesn't get that in the record, all right?

8 A That's all right.

9 Q See there?

10 A Yes, sir.

11 Q Okay, so there you go. All right, I just want to
12 make sure everything is there, all right. And let's
13 make sure that we don't talk over each other, okay.

14 I promise to do ---

15 A (No verbal response.)

16 Q There you go, okay? Is that right?

17 A Yes, all right.

18 Q Okay. I just want to make sure we get a yes or a
19 no for an answer so I'm not gonna talk over you,
20 okay?

21 A Okay.

22 Q And then you won't talk over me; is that right?

23 A That's all right.

24 Q All right. So I just want to clear up what
25 happened that day. You drove your car to IGA,

SW - J. SINGLETARY - CROSS

1 right?

2 A Yes.

3 Q Okay. And you were alone in that car?

4 A Yes.

5 Q All right. And when you arrived at IGA you
6 didn't get out of the car right away, right?

7 A No.

8 Q Okay. And you waited in the car for just a quick
9 minute, right?

10 A About five seconds before I can turn the car off
11 and get out.

12 Q Right. And then when you were waiting in that
13 car that's when John approached, right?

14 A Right.

15 Q All right. And it was raining that day?

16 A No.

17 Q All right. Fair to say if the video shows lots
18 of cars with the windshield wipers on, it might have
19 been raining that day?

20 A I didn't see no rain that day.

21 Q Okay. Well, let's go back, all right, 'cause I
22 want to make sure. All right, let's just pick a
23 spot.

24 (State's Exhibit 1 played.)

25 BY MR. SMALDONE:

SW - J. SINGLETARY - CROSS

1 Q All right, let's see. To the right you see those
2 cars passing through right there, windshield wipers
3 on?

4 A Yes.

5 Q Okay. And the other car you see the other car on
6 the right with the windshield wipers on?

7 A I don't think so.

8 Q Sorry, take your time. I'm gonna go back for you
9 just so we're all on the same page. All right.
10 Talking about the car on the right, right? That's
11 got windshield wipers on, right; is that accurate?

12 A Yes.

13 Q All right. And then you see the car, that
14 Explorer, does it have its windshield wipers on?

15 A Yes.

16 Q All right. That's just a minor detail, but I
17 want to make sure we're on the same page, okay.

18 A Uh-huh, yes, sir.

19 Q I mean, do you remember if it was raining that
20 day or not?

21 A No, I don't.

22 Q Okay, and that's fine, that's fine. All right,
23 but you don't, we can say it might have been raining
24 that day, right?

25 A Yes.

SW - J. SINGLETARY - CROSS

1 Q All right, that's fine. So when you rolled up to
2 the IGA did you have your windows down?

3 A Yes.

4 Q All right. And do you have air conditioning in
5 your car?

6 A No.

7 Q All right. And that's why your windows are down;
8 wasn't it?

9 A Yes.

10 Q 'Cause it was July, right?

11 A It was July.

12 Q Last July?

13 A Yes.

14 Q All right. So it's hot that day, right?

15 A Yes.

16 Q Okay. Okay, so your testimony is that John hit
17 you, right?

18 A Yes.

19 Q And you admit that we don't see that on the
20 video, do we?

21 A You see it. You see it. You see the motion of
22 his head coming down.

23 Q All right, let's go back, okay.

24 A Let's go back please.

25 Q All right. So it's your testimony John hit you

SW - J. SINGLETARY - CROSS

- 1 three times, right?
- 2 A Yes. See, one, two, three, and he ran, walked
- 3 away fast.
- 4 Q And then you got out of your car; didn't you?
- 5 A Yes.
- 6 Q And you chased after him?
- 7 A I was walking behind him.
- 8 Q Is it fair to say the IGA is in front of you,
- 9 right?
- 10 A Yes.
- 11 Q All right. I'm sorry, I'm gonna stop the video
- 12 so I don't want everyone to get distracted. 'Cause
- 13 I don't know if you're like me, the jury might be, I
- 14 can only focus on one thing at the time so I want to
- 15 be able to focus. So you chased after John, it's
- 16 fair to say, right?
- 17 A Yes, I walked behind him. I didn't chase him. I
- 18 was going behind him for hitting me.
- 19 Q Right.
- 20 A Yes.
- 21 Q But you were doing, you were pretty angry, right?
- 22 A If someone hit you, sir, wouldn't you be angry?
- 23 Q Oh, I ain't judging, Mr. Singletary. You were
- 24 pretty angry though, right?
- 25 A Yes.

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1 Q Okay. And you were chasing him after, chasing
2 him to the side of the parking lot, correct?

3 A Correct.

4 Q All right. And you've known Mr. James for a
5 while, right?

6 A Yes.

7 Q All right. You know he's not a big fella?

8 A Yes.

9 Q He's about 5'2" probably?

10 A Yes.

11 Q About 140-pounds?

12 A I don't know his weight, sir.

13 Q All right. Fair to say that he's, he's a lot
14 smaller than you?

15 A Yes. But may I speak freely?

16 Q Let's just stick to the questions. We don't want
17 to accidentally get a mistrial. So he's smaller
18 than you, right?

19 A Yes, he's smaller than me.

20 Q Okay. And but you're probably slower than him,
21 right? We can admit that.

22 A A lot slower.

23 Q All right, that's fine.

24 A I'm disabled.

25 Q No, I understand. So he'd probably outrun you,

SW - J. SINGLETARY - CROSS

1 right?

2 A Right.

3 Q But you better not catch up to him 'cause that's
4 when you got the advantage, right?

5 A No, I don't think so.

6 Q Okay, that's all right. Okay. So you're about
7 6'5"?

8 A Yes.

9 Q And you're about 312 pounds, right?

10 A Somewhere up in there, sir.

11 Q All right. And so after this John's running to
12 the other end of the parking lot and as you see on
13 the video you were there that day, y'all kind of
14 group around, right?

15 A Right.

16 Q He's out running, but you're still after him,
17 correct?

18 A Correct.

19 Q And then everything kind of fizzles off; doesn't
20 it?

21 A Yes.

22 Q All right. Everything's -- y'all stop running
23 after each other, right?

24 A Yes.

25 Q Okay. And at first you stop at your car, right?

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1 A Correct.

2 Q And John is in his car, right?

3 A Yes.

4 Q Okay. And he's there with his mom, correct?

5 A Right.

6 Q All right. You know his mom?

7 A Yes, I do.

8 Q Okay, all right. So after he's in his car and
9 after you're at your car you go over to your, to the
10 people you know in the corner of the parking lot,
11 right?

12 A Correct.

13 Q And we all saw it so we're not breaking any
14 ground here, but you go over to that corner of the
15 parking lot, correct?

16 A Correct.

17 Q Stay there for a minute, but then you go back to
18 your car, right?

19 A Yes, I was getting ready to get in my car and
20 leave.

21 Q Right. 'Cause you had your keys, right?

22 A Correct.

23 Q You had everything you needed to leave because
24 you came alone, right?

25 A Correct.

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- 1 Q You open the door, right?
- 2 A Correct.
- 3 Q But instead of putting the key in the ignition
- 4 you pop the trunk; don't you?
- 5 A The key was on my flo-- on my Chevy. I was
- 6 getting ready to stick it in the ignition. I didn't
- 7 get immediately in the car.
- 8 Q Right.
- 9 A Before he start off on me again.
- 10 Q Right. And so you had the opportunity, you were
- 11 in the car with the keys there. And your car works,
- 12 right?
- 13 A Right.
- 14 Q Right. So is it fair to say someone in that
- 15 position could drive the car away?
- 16 A Correct.
- 17 Q Okay. So you open that driver door, but instead
- 18 of putting them in the ignition you pop the trunk,
- 19 right?
- 20 A No, I was getting ready to get in my car and go,
- 21 but they started up on me again.
- 22 Q Right. And rather than drive away you popped the
- 23 trunk, right?
- 24 A Correct.
- 25 Q You popped the trunk, that's okay. And you go

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- 1 into your trunk and you get your machete; don't you?
- 2 A Correct.
- 3 Q All right. When you get that machete you start
- 4 heading toward John; don't you?
- 5 A I took a few steps toward him, yes.
- 6 Q You head toward John with a machete, right?
- 7 A Yes, I did.
- 8 Q And it's a pretty big machete, right?
- 9 A Correct.
- 10 Q And I don't want to sound too sarcastic but, you
- 11 know, you're not, you weren't gardening, right?
- 12 A Not at that time, no.
- 13 Q You weren't, you didn't have a machete to clear a
- 14 trail or anything, right?
- 15 A Correct.
- 16 Q You had the intent to ---
- 17 A No.
- 18 Q ---harm John?
- 19 A No, just to scare him.
- 20 Q You had intent to scare him?
- 21 A 'Cause he had a gun.
- 22 Q You had an intent to scare John?
- 23 A Because he went back to his car and get the gun.
- 24 Q Right.
- 25 A He asked his mother to give him the box, get the

SW - J. SINGLETARY - CROSS

- 1 gun out the box, get that thing out that box.
- 2 Q And guns are scary, right?
- 3 A Yes, they are.
- 4 Q Yeah. A lot of people are afraid of guns, right?
- 5 A Yes.
- 6 Q Pretty normal situation when someone's got a gun
- 7 to go in the other direction, right?
- 8 A Yeah, if you see it at that time.
- 9 Q Right. So your testimony is that when you
- 10 thought he had a gun you went toward him?
- 11 A When you angry you create the same.
- 12 Q I understand you were angry that day, right?
- 13 A Yes.
- 14 Q All right.
- 15 A I had a gun on the side of my face to show it.
- 16 Q So you're going toward him angry with a machete,
- 17 right?
- 18 A Yes, I did not go up the way to him, I stopped.
- 19 Q You stopped 'cause of the warning shot, right?
- 20 A No, I stopped before the warning shot.
- 21 Q Stopped ---
- 22 A It was not a warning shot. He shot at me, but he
- 23 hit my car.
- 24 Q All right.
- 25 A Oh ---

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- 1 Q And you stopped before the shot?
- 2 A Yes, I did.
- 3 Q And you didn't back up though, did you? And it's
- 4 on the video.
- 5 A Went the other way.
- 6 Q Right. You didn't drop that machete; did you?
- 7 A I went the other way.
- 8 Q You went the other way, but not the other way
- 9 toward your car, right?
- 10 A I was getting away. I was going to the closest
- 11 place to get away from the gun, and he came behind
- 12 me.
- 13 Q Right. And you never dropped the machete, did
- 14 you?
- 15 A No, I didn't.
- 16 Q All right. And you never, you had it flailing
- 17 around the whole time?
- 18 A That's when I told him I'd go call the police on
- 19 him.
- 20 Q All right. And -- Court's indulgence, let me get
- 21 back to my notes. All right, so, just to be clear
- 22 the machete was never dropped, right?
- 23 A No.
- 24 Q All right. And you never, you never head toward
- 25 the back of your car, do you? You never head toward

SW - J. SINGLETARY - CROSS

1 your car, do you?

2 A I didn't have a chance to. I got shot before I
3 could.

4 Q Right. But before you could because you said
5 earlier that you did back away, but it was fair to
6 say you did not back away towards your car, right?

7 A No, I did not back away towards, you know, of
8 course, the Chevy ---

9 Q Right. So it's pretty clear the two columns, or
10 two rows or columns of cars, right? You see that
11 and you were there, right?

12 A Uh-huh.

13 Q And you're on one side and he's on the other
14 side, right?

15 A Yes.

16 Q Okay. And no motion was made toward your column,
17 right?

18 A No, I was going away from him. I was closer to
19 them other cars. I went around them other cars.

20 Q Okay. And it's about, what would you say, what
21 would say the distance between those two columns
22 are?

23 A I couldn't tell you.

24 Q You say maybe 15 feet? Is that an estimate? I
25 mean, it's, I'm not trying to be exact, but would

SW - J. SINGLETARY - CROSS

1 that be ---

2 A I couldn't tell you.

3 Q Okay, that's all right. All right. But is it
4 fair to say that the cars that are in the columns
5 are relatively far apart?

6 A Yes.

7 Q All right. So it's a far walk from the corner
8 where you started to your car, right?

9 A Yes, it's further than the next car was to me.

10 Q Right, right. It's a far walk than you made to
11 get to that machete; wasn't it?

12 A When I went to get that machete I was going to
13 get home. I wasn't going to get the machete. I
14 was going to get in my car and go home.

15 Q Right.

16 A And he came after me, you know, he started
17 yelling at me.

18 Q Right. All right. And you were charged in this
19 incident too; weren't you?

20 A Yes, I was.

21 Q You were charged with assault and battery in the
22 first degree, right?

23 A I guess that's what it was.

24 Q Initially when you were served the warrants and
25 that's what your warrants say, right?

SW - J. SINGLETARY - CROSS

1 A I guess, I don't remember.

2 Q Okay. Court's indulgence. Would it -- honestly,
3 if I showed you warrants that you had, would that
4 refresh your rec -- would you remember what you were
5 charged with?

6 A Yes, I would, if you show it to me.

7 Q Okay, I'll show you. It's fine.

8 MR. SMALDONE: May I approach?

9 THE COURT: Yes, sir.

10 BY MR. SMALDONE:

11 Q I'll go this way I guess. All right, it's these
12 two. Do those look like what you were charged with?
13 Is that fair?

14 A Yes.

15 Q So you were charged with assault and battery
16 first degree, right?

17 A Yes.

18 Q And you were charged with possession of a weapon
19 during a violent crime, right?

20 A Yes.

21 Q And throughout this process you've been pretty
22 cooperative with law enforcement and the Solicitor's
23 Office; is that right? Is that -- I'm sorry, go
24 ahead.

25 A Yes, I was honest with them.

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1 Q Okay. You've been cooperative. You've answered
2 their questions, right?

3 A Yes.

4 Q Because you know that they like cooperation,
5 right?

6 A Yes.

7 Q And you know that you were charged with pretty
8 serious stuff, right?

9 A Yes.

10 Q All right. 'Cause you know that assault and
11 battery the first degree is up to ten years, right?

12 A Yes.

13 Q And you know that possession of a weapon during a
14 violent crime, that's five years, right?

15 A Yes.

16 Q And you know that five years, maybe you know,
17 maybe you don't; but that five years is day for day,
18 right? Did you know that?

19 A No, I didn't.

20 Q Okay, all right. So you want to be pretty
21 cooperative, right?

22 A Yes.

23 Q And you want to be helpful, right?

24 A Yes.

25 Q And you don't want to change your testimony from

SW - J. SINGLETARY - CROSS

1 what you told them earlier, right?

2 A Earlier? It's no change in my testimony.

3 Q Okay. Because ---

4 A I told them what happened.

5 Q Right. And you ultimately pled to a lesser
6 charge, right?

7 A I didn't plead to no charge at all.

8 Q All right. Well, would it surprise you to learn
9 that the public index that says you did? So as far
10 as you know your charges are still pending, still
11 out there?

12 A No.

13 Q Okay. All right.

14 MR. SMALDONE: Beg the Court's indulgence.

15 THE COURT: Okay.

16 (Attorney confers with defendant.)

17 BY MR. SMALDONE:

18 Q And just to be clear, you don't remember pleading
19 to anything in this case?

20 A Not really.

21 Q All right. And 'cause you wouldn't plead in this
22 case, would you?

23 A (No verbal response.)

24 Q Okay. Is that a yes, no, maybe?

25 A I didn't plead to anything. That's what I'm

SW - J. SINGLETARY - CROSS

1 saying.

2 Q All right.

3 MR. SMALDONE: Court's indulgence, I need
4 to retrieve a document.

5 THE COURT: Okay.

6 (Attorneys confer.)

7 BY MR. SMALDONE:

8 Q Mr. Singletary, if you'd just bear with me for
9 one minute, all right.

10 (Pause while Clerk prints document.)

11 (WHEREUPON, Defense Exhibit No. 1
12 was marked for identification only.)

13 MR. SMALDONE: May I approach.

14 BY MR. SMALDONE:

15 Q Just a quick question. All right, is that your
16 signature? Right there.

17 A Yes, it is.

18 Q Okay.

19 A Where did I plead?

20 Q Is this your, this is your signature, correct?

21 A Yes.

22 Q And you see what this says, right? You see that
23 this is a Williamsburg Coun-- Williamsburg versus
24 James Singletary, right?

25 A Yes.

SW - J. SINGLETARY - CROSS

1 Q All right. You see there's a box checked, right?

2 You see where it says "pleads" right there?

3 A Uh-huh.

4 Q All right. And you see where it says time
5 served, right, on the corner?

6 A No, sir.

7 Q Do you see where it says -- I'm sorry. Let's
8 make sure we're on the same page, right? You see TS
9 right there?

10 A Yes.

11 Q All right. You see where it says time served in
12 that corner. I know you've got your glasses on. So
13 where my index finger is.

14 A Okay.

15 Q All right. I'm sorry, I should do it on that,
16 but I don't know how to operate it. So it's fair to
17 say that you pled guilty to an offense because of
18 this, according to this, right?

19 A Okay.

20 Q All right.

21 MR. SMALDONE: And Defense offers Defense
22 Exhibit 1.

23 THE COURT: What says the State?

24 MR. ANDERSON: No objection.

25 THE COURT: All right. It's in without

SW - J. SINGLETARY - REDIRECT

1 objection.

2 (WHEREUPON, Defense Exhibit No. 1 was
3 admitted into evidence.)

4 MR. SMALDONE: Beg the Court's indulgence.

5 All right, Mr. Singletary, I have no more
6 questions for you at this time. Thank you.

7 MR. ANDERSON: Just briefly.

8 **REDIRECT EXAMINATION**

9 BY MR. ANDERSON:

10 Q Mr. Singletary, I'm gonna ask you a few followup
11 questions about what Mr. Smaldone asked you about.
12 He asked you a lot of questions about why you didn't
13 go back to your car after the first shot was fired,
14 what he calls the warning shot.

15 A Right.

16 Q And I believe you said that you were going to the
17 closest shelter.

18 A Correct.

19 Q So the reason you didn't go to your car is you
20 were taking cover, right?

21 A Correct.

22 Q You were getting shot at?

23 A Correct.

24 Q Now I want to talk to you a little bit about this
25 warning shot. Did he fire it, was -- do you believe

SW - J. SINGLETARY - REDIRECT

1 the shot was fired at you or in the air?

2 A I believe it was fired at me.

3 Q I'm gonna direct your attention back to State's
4 Exhibit 1. All right, Mr. Singletary, I've got the
5 video in place now. Do you see, this is the part
6 where you grabbed the machete?

7 A I believe so.

8 Q All right. I want to direct your attention over
9 here where the defendant is and you tell me when the
10 shot's fired.

11 A Right there.

12 Q That was the warning shot?

13 A That's what he called it; it's not. He was
14 shooting at me.

15 Q Mr. Smaldone also asked you if you were a
16 gardener. I have a similar question.

17 Mr. Singletary, are you a knife thrower?

18 A No, sir.

19 MR. ANDERSON: I don't have any further
20 questions.

21 THE COURT: Thank you, sir. You can step
22 down.

23 We'll take a ten minute break. Don't
24 discuss the case yet.

25 (WHEREUPON, the jury was removed from the

SW - J. GAUSE - DIRECT

1 courtroom at 2:40 p.m. and a break was
2 taken.)

3 (WHEREUPON, the jury was returned to the
4 courtroom at approximately 2:54 p.m., and
5 the following proceedings commenced in
6 open court.)

7 THE COURT: Mr. Solicitor, you may call
8 your next witness.

9 MR. ANDERSON: Your Honor, we call Doctor
10 John Gause.

11 THE COURT: If you'd come around please,
12 sir, and place your left hand on the Bible and raise
13 your right.

14 WHEREUPON,

15 **JOHN GAUSE,**
16 having been duly sworn by the Clerk, testified
17 as follows:

18 THE CLERK: You can take your seat in the
19 witness box. Watch your step.

20 **DIRECT EXAMINATION**

21 BY MR. ANDERSON:

22 Q Good afternoon, Doctor. Can you tell us where
23 you work.

24 A McLeod Regional Medical Center.

25 Q How long have you worked there?

SW - J. GAUSE - DIRECT

1 A Been there since 1992.

2 Q Okay. Will you tell us a little bit about your
3 education and experience.

4 A I was born in Florence County at McLeod so I went
5 to Francis Marion. I went to pharmacy school at the
6 Medical University of South Carolina. I graduated
7 from pharmacy school in '81, worked as a pharmacist
8 for a couple of years. I went back to medical
9 school at MUSC, graduated in '87. I started
10 residency in general surgery at Medical College in
11 Georgia, finished in '92, and moved home and been
12 here ever since.

13 Q All right. And what's your position currently?

14 A I'm a general surgeon at McLeod Regional Medical
15 Center.

16 Q And did you work back there last year in July?

17 A Yes, sir.

18 Q All right. Have you ever testified in courts
19 before?

20 A Yes, sir.

21 Q Have you ever been qualified as an expert?

22 A Yes, sir.

23 Q And in what field?

24 A General surgery.

25 Q All right.

SW - J. GAUSE - DIRECT

1 MR. ANDERSON: Your Honor, at this time I
2 offer the witness as an expert in general surgery.

3 THE COURT: Any objection?

4 MR. SMALDONE: No objection.

5 THE COURT: Okay, the Court so finds.

6 BY MR. ANDERSON:

7 Q Have you ever treated the victim in this case Mr.
8 Singletary?

9 A Yes, sir.

10 Q All right. And when was that?

11 A He was brought to McLeod Regional Medical Center
12 on 7/15/17. He had several gunshot wounds, and I
13 was called to the emergency room to see him there.

14 Q And did you treat him when he was there?

15 A Yes, sir.

16 Q Can you tell the jury a little bit about his
17 treatment.

18 A So he was shot in the abdomen several times, one
19 in the groin. He was taken emergently to the
20 operating room where he was found to have multiple
21 injuries to his small bowel, a total of six holes
22 that was leaking. The juices in the small intestine
23 medically are called succus interioris. That's the
24 beginning of the stool, and he was leaking stool in
25 his abdominal cavity. That segment of bowel was

SW - J. GAUSE - DIRECT

1 resected. It was about 30 centimeters, about 15
2 inches, and a re-anastomosis was performed.

3 Q And can you tell us what that is.

4 A Hooking the bowel back together.

5 Q All right. So you were putting his organs back
6 together?

7 A Correct.

8 Q And did the entirety of the organs go back
9 together or did you leave some of it?

10 A He lost part of his small intestine.

11 Q And that's an organ inside of his body?

12 A Correct.

13 Q Were any projectiles or bullets or fragments
14 recovered in his body?

15 A I do not recall removing any foreign bodies. I
16 was there to fix the holes that they had created.

17 Q All right. And can you say with a reasonable
18 degree of medical certainty, or in your opinion,
19 would he have survived these injuries if he hadn't
20 been treated?

21 A No, sir, he would have died from peritonitis.

22 Q Can you tell the jury what that is.

23 A That's an infection in the abdominal cavity. If
24 you're leaking basically stool to your abdominal
25 cavity it will take your life.

SW - D. GAMBLE - DIRECT

1 Q So the organs inside the body that hold the stool
2 had been ruptured inside his body?

3 A Uh-huh, several times.

4 Q Did this cause him permanent disfigurement, or
5 will it cause him permanent disfigurement?

6 A He's got a scar on his midline so he has a scar.

7 Q And how about impairment of his organs, any
8 impairment of his organs?

9 A Most people tolerate a resection of a portion of
10 small bowel without much difficulties, but it's
11 something that had to be done.

12 Q But he did lose a portion of that bowel?

13 A Yes, sir.

14 Q All right, I don't have any further questions.

15 MR. SMALDONE: Thank you for coming to
16 Kingstree. I do not have any questions for you at
17 this time.

18 THE COURT: Thank you, Doctor, you can
19 step down.

20 Any objection to the doctor being excused?

21 MR. ANDERSON: None from the State, Your
22 Honor.

23 MR. SMALDONE: None from Defense.

24 THE WITNESS: Thank you, sir.

25 MR. ANDERSON: Your Honor, we call David

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1 Gamble next.

2 THE COURT: Okay. If you'd come around
3 please, sir, and place your left hand on the Bible,
4 raise your right hand.

5 WHEREUPON,

6 DAVID GAMBLE,
7 having been duly sworn by the Clerk, testified
8 as follows:

9 THE CLERK: You may take your seat in the
10 witness box.

11 **DIRECT EXAMINATION**

12 BY MR. ANDERSON:

13 Q Good afternoon, Mr. Gamble.

14 A Good afternoon.

15 Q Were you in the IGA parking lot on July 14th,
16 2017?

17 A Yes, I was.

18 Q All right. So you're familiar with the events
19 that happened in the parking lot?

20 A Excuse me?

21 Q You're familiar with the events that happened in
22 the parking lot?

23 A Yes.

24 Q Do you know the parties involved?

25 A I know James.

SW - D. GAMBLE - DIRECT

1 Q You know Mr. Singletary?

2 A Yeah.

3 Q How do you know him?

4 A He lived in front of me and I know him ever since
5 he moved down south.

6 Q All right. So tell us a little bit, where were
7 you in the parking lot that day?

8 A I was at the, standing at my pickup.

9 Q All right. So you're standing at your pickup.
10 What are you doing?

11 A Huh?

12 Q What are you doing over there?

13 A We came to get something to eat. I had some guys
14 working with me, and we came in to get something to
15 eat from IGA.

16 Q All right. And what kind of job to you do?

17 A I do different stuff. I'm a carpenter, brick
18 mason.

19 Q Okay.

20 A Cement finishing, I'm a lot of things. Then I
21 got a lawn mower service I have as well.

22 Q All right.

23 A But at this time we were doing some carpentry
24 work.

25 Q Okay. And tell me, a difficulty arose. Tell me,

SW - D. GAMBLE - DIRECT

1 what was the first thing you noticed about it?

2 A Well, I was there talking to one of the guys that
3 works with me and we was, one, discussing a job, and
4 I saw when James pull in the parking lot.

5 Q And what was he driving when he pulled in?

6 A A little red car.

7 Q And the parking lot is laid out, what lane or row
8 did he park in?

9 A He was in the row in front of where the row that
10 I was in.

11 Q So he's not in the same row as you?

12 A No, we were not in the same row.

13 Q All right. And what happens after he pulls in?

14 A When he pull in I saw the young man leave the car
15 that him and his mother was in and he went toward
16 James and I just caught that in, you know, from my
17 eye, I saw him walking straight across. And of
18 course, I did not see him struck James.

19 Q Okay.

20 A But I saw where he slid down and I ---

21 Q Well, tell us about that.

22 A Well, he went over to the car. James had his
23 door open. And I, like I said, I didn't see him
24 struck and I'm assuming that James must have grabbed
25 his pants leg and he slid down. And him being a big

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1 fella like he is, he couldn't get out the car as
2 fast as he could've and then the, he did, he ran
3 across the parking lot 'cause to get loose from him,
4 and that's when James came over to me and tell me,
5 he said, he struck me side the head two times so he
6 told me.

7 Q Okay. And then what happens next?

8 A And then after that I saw him circle all the way
9 around and went back to the other, to the car that
10 he was riding in.

11 Q So Mr. Singletary goes back to his car?

12 A And he walked away from me and went to his car.

13 Q And what does he do when he gets to his car?

14 A He popped the trunk.

15 Q He popped the trunk. And what's he get out of
16 the trunk?

17 A He got a machete.

18 Q And what happens next?

19 A And he came back walking back toward this young
20 man, walking toward into the center lane where I
21 was.

22 Q All right. And where was this young man that you
23 referred to? Where was he at while this was going
24 on?

25 A He came back, he was at the tail end of the car

SW - D. GAMBLE - DIRECT

1 where James fall and he was right at the tail end of
2 it and he had a gun. And I heard him said, I shot
3 one warning, and he said, now I'm gonna shoot you.

4 Q Okay.

5 A And that's when he shot him.

6 Q All right, Mr. Gamble. I'm gonna show you
7 State's Exhibit 1 and I'm gonna ask you a few
8 questions about State's Exhibit 1, all right? You
9 got a screen right there. All right, Mr. Gamble,
10 I'm fixing to play -- is this about where you are in
11 the parking lot?

12 A Yeah.

13 Q Where the mouse pointer is?

14 A Right.

15 Q And if you could, just narrate the events as you
16 perceive them on this video.

17 A Yeah.

18 (State's Exhibit 1 is played.)

19 BY MR. ANDERSON:

20 Q Mr. Gamble, do you know whose car that is, where
21 the mouse pointer is?

22 A That's James' car.

23 Q Mr. Singletary?

24 A Mr. Singletary, yes, sir.

25 Q And is that the little fella coming toward him?

SW - D. GAMBLE - DIRECT

- 1 A Yeah.
- 2 Q Is that the little fella walking away?
- 3 A Yes, sir.
- 4 Q And that's Mr Singletary following?
- 5 A Yes, I'm trying to get up. That's him getting
- 6 out the truck.
- 7 Q All right.
- 8 A That's him right there, yeah.
- 9 Q That's the little fella there?
- 10 A That's him.
- 11 Q What did he do there?
- 12 A He slid down, I reckon he slid down.
- 13 Q So he went back to his vehicle here?
- 14 A Yes.
- 15 Q And that's Mr. Singletary going to talk to you?
- 16 A That's when he came to me.
- 17 Q Is that Mr. Singletary running to his car where
- 18 the mouse pointer is?
- 19 A Yes, that's him.
- 20 Q Is that him getting the machete out the trunk
- 21 where the mouse pointer is?
- 22 A That's him. That's what he doing.
- 23 Q Tell me when the first shot's fired.
- 24 A How many shots did I heard fired you was asking
- 25 me?

SW - D. GAMBLE - DIRECT

- 1 Q No, I asked you can you tell me where the first
2 shot was fired. I'm gonna rewind a bit.
- 3 A The first shot that I can remember was fired was
4 when he was standing close to the car where he
5 parked.
- 6 Q Okay. I'm gonna direct your attention to right
7 here. Tell me what you see. Is this Mr. Singletary
8 here?
- 9 A Yes.
- 10 Q And is that the little fella following him?
- 11 A That's him.
- 12 Q What's going on right there?
- 13 A That's when he shot the warning shot, and I
14 thought he shot it in the air, but apparently James
15 Singletary tell me he said that the shot hit his
16 car. And the next shot is when he shot him in the
17 lower part of his stomach, and I think the next shot
18 went in his leg.
- 19 Q All right. So I just want to clear things up
20 where these shots are fired. Where's the little
21 fella when the first shot's fired?
- 22 A He was right at the tail end of the car where he
23 fell.
- 24 Q Where Singletary fell?
- 25 A Right.

SW - D. GAMBLE - DIRECT

1 Q Where is the -- so --

2 A That was not too far from wherever his car was
3 parked. Both of those cars was sitting on the same
4 row.

5 Q So the little fella got out of his car?

6 A He went around to the car. He never got back in
7 it; he went around to the car. I guess he got, he
8 got the gun.

9 Q All right. And he went after Mr. Singletary?

10 A And he walk out in the front. He walk out in
11 the, sort of like this where he at right here, and
12 that's where he gone.

13 Q And what was Mr. Singletary doing when he got
14 shot?

15 A Before he got shot, when he saw the gun he turned
16 with the machete in front of him, he turned. And
17 when he turned, he turned away from him.

18 Q He turned away from the little fella?

19 A Yeah, he turned away from him.

20 Q And what happens next?

21 A And then he, that was, he fired that first shot
22 after he turned. And he said, I done warn you, he
23 said now I'm gonna shoot you.

24 Q And what'd he do after, what did Mr. Singletary
25 do after he said about the warning? What did Mr.

SW - D. GAMBLE - CROSS

1 Singletary do?

2 A He was, he freezed.

3 Q Was he threatening him in any way?

4 A No, he, fr-- Singletary, Mr. Singletary froze.

5 He didn't do anything. He didn't move. When he got

6 the first shot he did not, he just turned. I was

7 looking for him to fall whenever he shot him the

8 first time, and then he, pow, shoot him again and

9 I'm assuming it was in his leg and then that's when

10 he fell on the pavement.

11 Q All right, thank you very much. I have no

12 further questions.

13 **CROSS-EXAMINATION**

14 BY MR. SMALDONE:

15 Q Just a few things to clear up. Now you know Mr.

16 Singletary socially?

17 A I know him well.

18 Q Okay. How long have y'all known each other?

19 A Quite a few years. I can't recall the amount of

20 number of years; but he moved down from up north

21 back down here with the family, and I know him quite

22 a few years.

23 Q Okay. Fair to say, probably more than a decade?

24 Is that ---

25 A No.

SW - D. GAMBLE - CROSS

1 Q If you don't know, you don't know, that's okay.
2 You don't know? That's okay. But you've known him
3 for a few years, right, that is your testimony,
4 right?

5 A I know him more than a few years.

6 Q Okay, all right. And y'all hang out together
7 socially?

8 A I don't hang out. You know, I don't hang out.

9 Q Me neither.

10 A I work.

11 Q I hear that.

12 A Okay.

13 Q All right. And you've talked to him about this
14 before, correct?

15 A Talk to him?

16 Q Yeah.

17 A About what, the accident?

18 Q Yeah.

19 A To be honest with you, I really didn't see him
20 for quite a while after that accident. I really
21 didn't see him.

22 Q All right. Y'all have been friends for a while
23 and you ---

24 A I knew him for a while.

25 Q Right. And y'all, I don't want to say hang out

SW - D. GAMBLE - CROSS

1 again, but you know the same people in the
2 community, right?

3 A Yeah.

4 Q All right. And you've talked about this before,
5 right?

6 A I said, I already told you I did not talk with
7 him for quite a long time before he -- 'cause he was
8 in the hospital for quite a while. And when I did
9 get to, I -- well, he really, when he got out he
10 went home, and I didn't see him for quite a while
11 and I, we didn't talk that much since then.

12 Q Okay. And it's also fair to say that -- let's
13 back up. I'm trying to figure out where he was.
14 Which -- there was a lot of people in that parking
15 lot, correct?

16 A Yeah, quite a few.

17 Q And they all seemed to be, a lot of them were
18 wearing, for some reason, gray shirts and jeans,
19 right. You see it on the video, a lot of gray
20 shirts and jeans so it's hard to tell who is who,
21 right? Which person are you? Are you towards the
22 back of the parking lot in that row?

23 A I, let's see. Right now the thing is ---

24 Q I can play it.

25 A ---not very clear that I can really pick myself

SW - D. GAMBLE - CROSS

1 out; but when James came walking over to me, you can
2 probably see, if you back it up you can see when he
3 came walking up where I was.

4 Q Okay. Where did you park your car? Did you
5 drive there?

6 A I drive a pickup.

7 Q Okay. And did you park in the same row as James
8 or the ---

9 A No. No.

10 Q All right. Did you park in the same row as John?

11 A I was in the same row that they were parked on,
12 yeah.

13 Q Okay. So you didn't see the very beginning of
14 this incident?

15 A I saw the very beginning.

16 Q All right. But you never saw John punch James,
17 right?

18 A I did not see what they were doing 'cause I saw
19 him going across to Bo. We call him Bo. And I saw
20 Bo going cross toward him, and he went, he went with
21 a little speed. And I saw that and then the next
22 thing I saw was when James open his door, he must
23 have walked in and then I guess he punched him then
24 'cause that's when James got out -- when he did get
25 out his car he came over to me and said that little

SW - D. GAMBLE - CROSS

- 1 fella just punched me side my head two, twice.
- 2 Q And ---
- 3 A And that was the word he tell me. And I didn't
- 4 see that, no.
- 5 Q All right. So I want to be clear, you didn't see
- 6 it, right?
- 7 A I didn't see that, you know, but I take it that
- 8 he wasn't lying.
- 9 Q Right, right, 'cause you've known him for a
- 10 while, right?
- 11 A Yeah, I known him for quite a while.
- 12 Q All right. Court's indulgence, let me just see.
- 13 And just to be clear, I wish I had this -- let me,
- 14 I'm trying to think of the best TV to use that I can
- 15 use. I'll use this one. Can you see me way back
- 16 here? I'm sorry, I don't have it accessible. You
- 17 probably can't see, can you?
- 18 A See what?
- 19 Q Where I'm pointing.
- 20 A Yeah, that's, this screen is in front of me.
- 21 Q Okay. Yeah, I know it's in front of you. I want
- 22 you to see me, not the TV. I just want to see where
- 23 you're at?
- 24 A Yeah, I see you.
- 25 Q Okay, all right. And you see, are you one of the

SW - D. GAMBLE - CROSS

1 people back here? You see where I'm pointing?

2 A No, I can't see where you're pointing because
3 this thing is in front of where you're pointing.

4 Q All right.

5 A All right.

6 Q Does this show up? It does show up, all right.
7 Are you back here? I'm just trying to figure out
8 where you're at. You're back here, right, this
9 area?

10 A I'm right, I'm right in that, if you can barely
11 see a black truck.

12 Q That's back there?

13 A No, not that far.

14 Q Okay.

15 A No, probably right in that area.

16 Q All right. So you're in that area, right?

17 A Yeah.

18 Q Okay, I just want to know where you're at.

19 MR. SMALDONE: Court's indulgence just a
20 moment, let me see what else we got.

21 All right. And thanks for coming out. I
22 don't have anything else for you.

23 THE COURT: Any further questions from the
24 State?

25 MR. ANDERSON: No redirect, Your Honor.

SW - Y. DAVIS - DIRECT

1 THE COURT: Okay, thank you, sir. You can
2 step down.

3 MR. ANDERSON: The State calls Yasmine
4 Davis.

5 WHEREUPON,

6 YASMINE DAVIS,
7 having been duly sworn by the Clerk, testified
8 as follows:

9 THE CLERK: Take your seat in the witness
10 box.

11 **DIRECT EXAMINATION**

12 BY MR. ANDERSON:

13 Q Good afternoon, Ms. Davis. Can you tell us where
14 you work.

15 A I currently am employed with the Federal Reserve
16 in Baltimore at this time.

17 Q All right. And did you formerly work in law
18 enforcement?

19 A Yes, sir.

20 Q Where did you work?

21 A At Kingstree Police Department.

22 Q All right. Did you work at the Kingstree Police
23 Department in July of last year?

24 A I did.

25 Q In what capacity did you work there?

SW - Y. DAVIS - DIRECT

- 1 A At that time I was detective sergeant.
- 2 Q And what were your duties?
- 3 A I was a investigator at that time.
- 4 Q So you investigated crimes?
- 5 A Yes.
- 6 Q All right. And were you on duty that day?
- 7 A Yes, I was on duty that day.
- 8 Q Did you investigate this incident?
- 9 A Yes. I was actually on patrol as well.
- 10 Q And how did it come to your attention?
- 11 A We were actually dispatched.
- 12 Q All right. And where were you dispatched to?
- 13 A We were dispatched to t he IGA which is located
- 14 right over on Main Street.
- 15 Q And is that Main Street IGA in Williamsburg
- 16 County?
- 17 A It is.
- 18 Q All right. And what was the, what was going on
- 19 in the parking lot when you arrived at the IGA when
- 20 you arrived?
- 21 A During that time we were called I was the first
- 22 officer that had arrived. Upon making entrance into
- 23 the, I would say I believe the entrance closer to
- 24 the parking side where you would probably see John
- 25 James right in the video. I came in through that

SW - Y. DAVIS - DIRECT

1 side. And I pretty much circled around to the front
2 of the store to find the exact vicinity where the
3 victims were located. Once I got to the store,
4 front of the store, that's when I saw the commotion
5 and drove my vehicle halfway up to that point down
6 the aisle and made contact with Mr. John James.

7 Q All right. And you say you saw Mr. James, was
8 Mr. Singletary there as well?

9 A Yes, Mr. Singletary was.

10 Q And what was Mr. Singletary doing when you
11 arrived?

12 A Mr. Singletary was actually on the ground next to
13 a Toyota Camry, a silver in color Toyota Camry. He
14 was laying on his stomach.

15 Q What condition —

16 A He was conscious. He was alert, however, you
17 could tell that he was in pain. It wasn't until a
18 later time it was determined that he was struck in
19 the abdomen/groin area.

20 Q All right. And can you just walk us through your
21 investigation from that point on.

22 A Yes. Once I arrived on scene I remember speaking
23 with Mr. John James. He was identified as the
24 shooter. He came over to me; he was very
25 forthcoming. I walked Mr. John James over to my

SW - Y. DAVIS - DIRECT

1 vehicle. I patted him down for any additional
2 weapons. He was later placed into the vehicle, the
3 marked unit, which was a Charger you'll probably
4 later see arrive on scene.

5 Q Did y'all process the crime scene?

6 A Yes, we secured the scene.

7 Q Did you find anything significant in the parking
8 lot?

9 A We did find, we found a 380 gray black in color
10 Kel-Tec which was the firearm that was used to shoot
11 Mr. Singletary. That was in the driver's seat of
12 the Dodge silver in color which belongs to
13 Ms. Josephine James, the mother of the subject, Mr.
14 John James.

15 Q All right. And that was a lot you said.

16 A Oh, sorry.

17 Q Is that a pistol?

18 A Yes.

19 Q All right.

20 A It is a small firearm. It was black at the top
21 where the slide would be; and the handle portion
22 that you would hold, it was a light gray in color.
23 That was found in the driver's seat of Ms. Josephine
24 James' vehicle. The scene was secured at ---

25 Q Investigator, tell us how you processed that

SW - Y. DAVIS - DIRECT

1 piece of evidence.

2 A Well, let me just back up. That piece of
3 evidence was actually obtained by Officer Dixon. He
4 was able to secure it, and it was stowed away in,
5 into his vehicle at that time. I had Mr. John James
6 in my vehicle. The medic unit was called for
7 Mr. Singletary so that they could render aid with
8 his current situation at the time.

9 Q All right. And did EMS take Mr. Singletary?

10 A Yes, they did.

11 Q All right. And what'd y'all do with the gun?

12 A We secured it. It was secured and later taken
13 back to the police department along with Mr. John
14 James and placed into evidence.

15 Q All right. And tell the jury a little bit about
16 what it means to place something into evidence.

17 A Okay. Typically I would receive evidence from,
18 whether it be myself if I was working patrol that
19 day or from another officer. From that point it
20 pretty much goes from the scene to me, from me to
21 the evidence room.

22 Q All right. And how does one typically keep track
23 of which gun is which, or how do you guys do that,
24 or any piece of evidence?

25 A Okay. Well, the box, it has a log which show the

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1 case number that the weapon belong to. It shows
2 that defendant, you can also put the suspect on
3 there as well, along with the type of firearm. It's
4 a place where you can provide description; and as
5 stated before, it was a 380 Kel-Tec so that would
6 have been written on whether the -- it would have
7 been written on the box as far as the case number it
8 belonged to.

9 Q All right.

10 A Yes, sir.

11 MR. ANDERSON: Your Honor, may we
12 approach.

13 (WHEREUPON, counsel approached the
14 Bench for an off-the-record discussion.)

15 (WHEREUPON, State Exhibit No. 2 and 3 were
16 marked for identification only.)

17 BY MR. ANDERSON:

18 Q All right, Ms. Davis, if I approach I'm gonna
19 show you what has been premarked as State's Exhibit
20 2.

21 A Yes.

22 Q Can you take a moment to examine that and tell me
23 what it is.

24 A Okay. Like I said, upon looking at it you'll see
25 that it has the case number along with the offense,

SW - Y. DAVIS - DIRECT

1 and it's a short description of what's in here.
2 Right here is the chain of possession, chain of
3 custody form. It'd gone from the scene to me, from
4 me to the evidence room. You can also document the
5 date and the time. On opening it I see a .380
6 Kel-Tec, black and gray in color with three spent
7 casings that you'll be able to see, and those three
8 casings were collected from the crime scene on that
9 day.

10 Q All right.

11 MR. ANDERSON: At this time the State
12 seeks to move State's Exhibit No. 2 into evidence,
13 Your Honor.

14 MR. SMALDONE: No objection.

15 THE COURT: It's in without objection.

16 (WHEREUPON, State Exhibit No. 2 was
17 admitted into evidence.)

18 BY MR. ANDERSON:

19 Q All right, Investigator Davis, tell me what
20 further investigative steps did you take?

21 A After we were able to get Mr. Singletary medical
22 attention, we were also assisted by County and
23 Mr. John James was transported to the Kingstree
24 Police Department.

25 Q All right. Before we get to the police

SW - Y. DAVIS - DIRECT

1 department I want to talk to you about whether was
2 video evidence recovered? I know it was.

3 A Yes, it was recovered from Mr. Tompkins from, and
4 he's the manager of IGA.

5 Q When did you collect that?

6 A That was collected the next day after. I
7 actually physically made contact with Mr. Tompkins
8 on that particular day 'cause he was able to get to
9 the IGA. And we agreed that we would meet up on the
10 next day which would have been 16th to retrieve the
11 video footage, at least review the video footage to
12 insure it was there, and in fact, was.

13 Q And that's the video we've been watching all day?

14 A Yes.

15 Q And we're gonna watch that again together in a
16 minute. Let's talk about the machete.

17 A Yes.

18 Q Where did y'all -- did you find the machete in
19 the parking lot?

20 A That machete was located in the parking lot.

21 Q Where was it located?

22 A It was actually in the vicinity of Mr. James
23 Singletary. Like I said, he was, it was pretty much
24 in between him and the vehicle that he was lying
25 down face down.

SW - Y. DAVIS - DIRECT

1 Q And I'm gonna approach you, approach you with
2 what's been premarked as State's Exhibit Number 3.

3 A All right.

4 Q Take a look at that. Does that appear to be the
5 same machete?

6 A Yes, it is.

7 Q All right.

8 MR. ANDERSON: At this time the State
9 seeks to move State's Exhibit 3 into evidence.

10 MR. SMALDONE: Without objection.

11 THE COURT: Okay. It's in without
12 objection.

13 (WHEREUPON, State Exhibit No. 3 was
14 admitted into evidence.)

15 BY MR. ANDERSON:

16 Q All right. Investigator Davis, were you able to
17 identify the cars that the parties in this case were
18 driving?

19 A Yes. The silver Dodge Dart was driven by
20 Ms. Josephine James along with her son John James.
21 Mr. Singletary, he had a 2004 Chevrolet Aveo. It's
22 red in color. It's very distinctive because it has
23 a black hood, and that was his vehicle.

24 Q And I'm fixing to walk through the video. I want
25 you to, ask you if you'd identify the parties in the

SW - Y. DAVIS - DIRECT

1 video as observing?

2 A Yes, uh-huh.

3 Q I'm gonna ask you to point the parties out and
4 narrate what you observe as you watch the video.

5 A Okay. At this point you can see Mr. James
6 Singletary pulling into the IGA. At this point
7 Mr. John James and his mother are over at the Dodge
8 Dart, the silver Dodge Dart.

9 Q All right. And I'm gonna take a moment. Can you
10 see the mouse pointer?

11 A Yes.

12 Q Whose vehicle is that?

13 A That is Mr. James Singletary's vehicle.

14 Q And can you see the mouse pointer?

15 A Yes.

16 Q Whose vehicle is that?

17 A That is Ms. Josephine James' vehicle.

18 Q And she's the mother of the defendant?

19 A She is the mother of the defendant John James.

20 Q All right.

21 A At this point going back side of that vehicle
22 that is Mr. John James wearing a gray T-shirt, gray
23 shorts. He's approaching the vehicle. At that
24 point you can see Mr. Singletary getting out of the
25 vehicle. Of course, they're probably saying

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1 something to each other, we can't tell. He's making
2 his way across the parking lot talking about John
3 James. You see Mr. Singletary pursuing him walking.
4 I'm assuming that words are still being said. Mr.
5 John James runs and he falls, and at that time Mr.
6 Singletary attempts to catch up with him and he
7 makes his way back to the Dodge Dart. At this time
8 this is when Mr. Singletary goes over to Mr. Gamble.
9 Q Is that where the mouse pointer is?
10 A Yes.
11 Q That's where Mr. Gamble is?
12 A Uh-huh. And I believe he talks with him for a
13 short while. And you see Mr. Singletary making his
14 way back across the parking lot. Mr. John James and
15 his mom are at the vehicle. Looks like Mr.
16 Singletary goes to the vehicle for whatever reason
17 and he goes to the trunk, and at this time this is
18 when he's gonna retrieve the machete from the trunk
19 and you see Mr. John James fire a shot at that time.
20 Q All right. Now I heard you say you see Mr. John
21 James fire a shot. I'm gonna rewind it a little bit
22 so you can point that to the jury. Tell me when you
23 see him fire the shot.
24 A Okay. It's gonna be during the time where you
25 see him come to a complete stop and he redirects his

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1 direction of travel from going towards him to going
2 away from him. So right now he's grabbing the,
3 grabbing the machete, boom, at that time.

4 Q I'm gonna go back just a few frames. That
5 movement here?

6 A Yes.

7 Q That's where you believe the first shot was
8 fired?

9 A That is my belief, yes, sir.

10 Q What happened next?

11 A We see Mr. Singletary retreat back to Mr. John
12 James. Apparently they're having some kind of
13 conversation, and Mr. John James goes around two
14 vehicles away from his vehicle while Mr. Singletary
15 is on the side. That's where the Camry, and he
16 fires two more shots striking Mr. Singletary in his
17 abdominal area, along in his groin.

18 Q All right. Investigator Davis, I have a few more
19 questions for you. I appreciate going through this
20 video with us.

21 A Uh-huh, no problem.

22 Q After that first shot which direction did you
23 observe Mr. Singletary going in?

24 A Okay. If, as we see, this is the Dodge Dart, the
25 silver Dodge Dart. There's a vehicle actually

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1 parked in between the vehicle that Mr. Singletary
2 was actually found laying on the side of so it's a
3 dark in color vehicle. I want to say it was gray in
4 color. And he's going in the direction of the gray
5 car which would be away from IGA. It would be in
6 the same direction that Mr. David Gamble would be
7 because they were technically parked on the same
8 side. So he's making his way in that direction and
9 he goes on the side of that light gray colored,
10 silver vehicle, and that's when the two shots are
11 fired.

12 Q So he's going away from Mr. James and toward Mr.
13 Gamble?

14 A Yes. In the direction of, I would say.

15 Q Did y'all search Mr. Singletary's car?

16 A Yes, we did.

17 Q Did y'all find a weapon in the car?

18 A No, we did not. The only weapon that was
19 recovered was the machete.

20 Q And the pistol?

21 A You said Mr. John -- you said Mr. John James or
22 Mr. James Singletary? Sorry.

23 Q There's two weapons, right?

24 A Yes, there's two weapons.

25 Q There's not a weapon in the red car?

SW - Y. DAVIS - CROSS

1 A The two weapons that were recovered was the 380
2 Kel-Tec that was found in the Dodge Dart driven by
3 Ms. Josephine which is the mother of John James and
4 the machete came out of the red vehicle that belongs
5 to Mr. James Singletary.

6 Q Okay. All right, all this happened in
7 Williamsburg?

8 A Yes, it did.

9 Q All right. I have no further questions.

10 **CROSS-EXAMINATION**

11 BY MR. SMALDONE:

12 Q Good afternoon.

13 A Good afternoon.

14 Q You were one of the first active duty officers on
15 scene?

16 A That's correct.

17 Q Were you, you were the first active duty officer
18 on scene, correct?

19 A That's correct.

20 Q All right. So you got there faster than just
21 about anyone, right?

22 A I was the first one there, yes, sir.

23 Q Okay, I just want to take sure. So when you
24 arrived, you said earlier you searched
25 Mr. Singletary's vehicle?

SW - Y. DAVIS - CROSS

- 1 A Yes.
- 2 Q All right, that was you personally?
- 3 A No, we actually, we actually ran the vehicle
4 information for that car and that car was later
5 taken to the Kingstree, it was taken to Kingstree
6 police.
- 7 Q All right, so you heard that it was searched?
- 8 A No, we — me, me.
- 9 Q You searched it, okay.
- 10 A Yes, I was a part of the search, yes.
- 11 Q I want to make sure I know who searched it. So
12 you searched it?
- 13 A Yes, sir.
- 14 Q And earlier I want to clear it up, 'cause it
15 sounds like the machete was found in the red car.
16 That's not accurate, is it?
- 17 A No, I said that the machete came from the trunk
18 of the red car.
- 19 Q Right, I just want to make sure. You didn't find
20 it in the trunk of the red car?
- 21 A No, no, no, sir.
- 22 Q All right. In fact, in your police report you
23 state that you found it over the last place we saw
24 Mr. Singletary on the video, right?
- 25 A Correct.

SW - Y. DAVIS - CROSS

- 1 Q And to your knowledge no one had touched it or
2 anything like that?
- 3 A No, no.
- 4 Q And you found it unsheathed; didn't you?
- 5 A Yes, uh-huh.
- 6 Q It was not in its sheath?
- 7 A It was not.
- 8 Q Okay. So as the first person to arrive, did
9 you -- you were the actual arresting officer for
10 Mr. Singletary?
- 11 A Yes, for --
- 12 Q I'm sorry, Mr. James.
- 13 A Yes.
- 14 Q And Mr. Singletary was arrested later, right --
- 15 A Yes.
- 16 Q ---after the hospital?
- 17 A Yes.
- 18 Q So Mr. James was arrested on scene, right?
- 19 A Yes.
- 20 Q And he stayed around; didn't he?
- 21 A Yes.
- 22 Q He didn't try to hide from you?
- 23 A No.
- 24 Q He didn't try to run from you?
- 25 A No.

SW - Y. DAVIS - CROSS

- 1 Q He didn't resist?
- 2 A No.
- 3 Q He came, he probably, I think he came towards
- 4 you, right?
- 5 A Yes.
- 6 Q Okay, I just want to clear that up.
- 7 A Yes.
- 8 Q You found how many shell casings in the parking
- 9 lot?
- 10 A There were three spent casings.
- 11 Q All right. Two towards the shooting, right?
- 12 A Two of which was towards the shooting.
- 13 Q I'm sorry, two around the area where
- 14 Mr. Singletary was shot, right?
- 15 A Yes.
- 16 Q And then you found one that was, I believe, in
- 17 the car?
- 18 A Yes.
- 19 Q In Mr. James' mother's car?
- 20 A Yes.
- 21 Q Right?
- 22 A Uh-huh.
- 23 Q And that was a spent casing, right?
- 24 A Yes.
- 25 Q Which means it's what's left over after the

SW - Y. DAVIS - CROSS

1 bullet is shot, right?

2 A Right.

3 Q I just want to make sure they ---

4 A Okay.

5 Q Okay. I know -- all right, two shell casings by
6 the car by Mr. Singletary, right?

7 A Uh-huh.

8 Q Right by the unsheathed machete, right?

9 A Yes.

10 Q And then one by Mr. James' car, right?

11 A It was in the vehicle.

12 Q In the car, right? Okay. The entire, the entire
13 parking lot wasn't searched for shell casings
14 though?

15 A No, it was the immediate area which the incident
16 occurred.

17 Q All right. So over towards Mr. Singletary's car
18 there was no -- y'all didn't search for shell
19 casings?

20 A No, we didn't, I wouldn't say we directly were
21 looking for shell casings, but we did search the
22 area for any signs of a weapon or because it was
23 stated by Mr. John James that he, assuming he had a
24 weapon, so that's why, that's what prompted us to do
25 the search. We weren't able to locate anything that

SW - Y. DAVIS - CROSS

- 1 would be associated with a ---
- 2 Q Firearm?
- 3 A Yes, firearm.
- 4 Q Because he, he indicated that he thought there
- 5 was a gun, right? He didn't just say machete. He
- 6 was talking about a gun, right?
- 7 A Yes.
- 8 Q Okay. I want to show you on the video. Let's go
- 9 back ---
- 10 A Uh-huh.
- 11 Q ---just a bit. All right, can you see the mouse?
- 12 I don't work inside the courthouse so I don't know.
- 13 A I can see it.
- 14 Q You can see the mouse?
- 15 A Yes.
- 16 Q All right. So I just want to make sure so I'm
- 17 not running around all over the courthouse trying to
- 18 point to stuff you can't see.
- 19 A Yes.
- 20 Q You can see my mouse, right?
- 21 A Yes.
- 22 Q Okay. All right. So we've seen this before,
- 23 you've seen this before. Did you see, were you
- 24 looking at Mr. Singletary right there?
- 25 A Yes.

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1 Q Fair to say that looks like someone shooting a
2 gun; doesn't it?

3 A No, it looks like he might have gestured,
4 pointed, you know, pointed at him or talking I would
5 say.

6 Q Right.

7 A I don't think -- there's no audio so we don't
8 know exactly what they're saying to each other, but
9 it's a clear indication that a conversation is being
10 had.

11 Q Okay. But let's go back one more time.

12 A Okay.

13 Q Not here, but...

14 A Uh-huh.

15 Q Right there, right?

16 A Uh-huh.

17 Q You would agree with me that's a pretty sudden
18 movement forward, but sort of like someone with a
19 gun, right?

20 A I can't say I agree with that.

21 Q And that doesn't mean he has a gun, does it,
22 right ---

23 A Right.

24 Q ---'cause he probably didn't from your
25 investigation, right?

SW - Y. DAVIS - CROSS

1 A Right.

2 Q Would it be fair to say a reasonable person might
3 think that, right?

4 A It's a possibility.

5 Q As an officer, if you were intense situation
6 where someone did that, that would frighten you,
7 right?

8 A As an officer?

9 Q Yes.

10 A If someone, if I was Mr. John James and someone
11 did that to me?

12 Q Yes.

13 A I think that it depends on the circumstances
14 because if it's a conversation and this person
15 speaks with gestures, gesturing with their hands,
16 then probably not. It would have just been maybe
17 just some gesturing with their hands.

18 Q Okay. But you would, as an officer you would
19 rather have them not do something like that?

20 A I would rather not, yes, uh-huh.

21 Q So it would probably scare you if it was already
22 intense situation, right?

23 A Yeah.

24 Q All right. And as an officer, and I've never
25 been to the police academy so you're the

SW - Y. DAVIS - CROSS

1 knowledgeable one here. As an officer typically, at
2 least we see on TV, the first thing an officer does
3 to someone with a weapon is say, drop the weapon,
4 right?

5 A Correct.

6 Q Right. You don't want them holding around the
7 weapon, do you?

8 A Absolutely no.

9 Q As an officer you're gonna draw guns on them that
10 time, at least have them out, right?

11 A Yes.

12 Q When someone has a weapon out?

13 A Once you have a weapon, once you've been readily
14 identified there's a weapon, yes, yeah.

15 Q All right. And you consider a machete a weapon,
16 right?

17 A Yeah, yes.

18 Q Pretty scary one?

19 A Yes.

20 Q All right. And as an officer the threat doesn't
21 go away until that machete is dropped, right?

22 A You said as an officer?

23 Q As an officer, as a police officer you're trained
24 that the threat doesn't go away until that machete
25 is dropped, right?

SW - Y. DAVIS - CROSS

- 1 A Yeah. I'm giving you verbal commands to place
2 the weapon down, place the weapon down.
- 3 Q Right.
- 4 A Place the weapon down.
- 5 Q Right. Because they could hurt anybody with that
6 machete; can't they?
- 7 A Yes.
- 8 Q Anyone who is around, right?
- 9 A Right.
- 10 Q Okay. After Mr. James was arrested, let's talk
11 about that.
- 12 A Okay.
- 13 Q Did you come back for -- did you take photos and
14 process that scene like, I believe you said you did
15 that, was that after you arrested him?
- 16 A All of that was done while myself and Officer
17 Dixon were on scene. Once we left, we left.
- 18 Q All right.
- 19 A Yeah.
- 20 Q So you were in charge of that investigative
21 process?
- 22 A Yes.
- 23 Q All right.
- 24 A You can say that.
- 25 Q There are a few photos taken. You took pictures

SW - Y. DAVIS - CROSS

1 of shell casings, right?

2 A Yes, there were pictures taken. Did I actually
3 take the pictures, no.

4 Q Oh, okay.

5 A Again, like I said, I had Mr. John James in
6 custody at the time; however, my partner Officer
7 Dixon, he took, he took pictures.

8 Q Okay, all right. So you're not the picture
9 taker?

10 A I mean, I took some pictures, yes.

11 Q Okay.

12 A But I mean, we do what we can. We all take
13 pictures.

14 Q All right, I understand.

15 A Yeah.

16 Q And now you charged, you're the one that signed
17 off the warrants on Mr. James, right?

18 A Yes.

19 Q You're also the one that signed the warrant off
20 on Mr. Singletary, right?

21 A Yes.

22 Q All right. Court's indulgence. And when you
23 sign a warrant off to someone, describe that process
24 for the jury.

25 A Well, first the report is put together with all

SW - Y. DAVIS - CROSS

1 the supporting facts and that is then taken over to
2 the judge, the magistrate, and we sit down and we
3 swear to the events took place. Let me back up, get
4 to the warrant first. So before that an affidavit
5 is actually done and we pretty much get it approved
6 and the warrant is completed by our clerk, or which
7 would be our court clerk, our secretary. Once that
8 is done, physical warrant is then taken over; and me
9 being the affiant, I will swear to the judge that,
10 you know, such and such happened on this particular
11 date and time, these are the events that led to this
12 particular charge and he would then sign off on it.
13 At that point in time, once it's signed off by the
14 judge it's served on the individual if they're
15 accessible.

16 Q Okay. And so basically you swear in front of a
17 magistrate judge that you're telling the truth,
18 right?

19 A Yes.

20 Q And then you give a brief fact pattern and then
21 the magistrate swears the warrant, or sorry, he
22 writes, he signs the warrant?

23 A Yes.

24 Q All right.

25 A Breaking of the law.

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1 Q All right.

2 MR. SMALDONE: Court's indulgence for just
3 a minute.

4 (WHEREUPON, Defense Exhibits 2 and 3 were
5 marked for identification only.)

6 MR. SMALDONE: All right. May I approach?

7 THE COURT: Yes, sir.

8 BY MR. SMALDONE:

9 Q You remember signing, swearing off on these facts
10 for Mr. Singletary?

11 A Yes.

12 Q Is that your signature on them?

13 A Yes.

14 Q All right.

15 A On both.

16 Q Both, all right. And what were -- sorry, what
17 were those offenses that you signed?

18 A It was for possession of a weapon during a
19 violent crime, and it was assault and battery first
20 degree.

21 Q All right. And those are true and accurate
22 copies of what the warrant was --

23 A Yes, for Mr. James Singletary, correct.

24 MR. SMALDONE: And at this time Defense
25 would offer Exhibit 2 and Defense Exhibit 3.

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1 MR. ANDERSON: No objection.

2 THE COURT: Okay, in without objection.

3 (WHEREUPON, Defense Exhibits Nos. 2 and 3
4 were admitted into evidence.)

5 BY MR. SMALDONE:

6 Q And so, do you read, do you read these facts in
7 front of the magistrate judge?

8 A Well, he reads them.

9 Q Okay.

10 A I swear to and basically give my testimony as to
11 the facts that are.

12 Q Okay. And the main testimony and you'd admit --
13 you say on this warrant that this states, one James
14 Singletary did produce a black handled 18-inch
15 machete knife during the commission of assault and
16 battery first degree charging at John James, victim,
17 causing him to fear for his life. Is that right?

18 A Yes.

19 Q Okay. And that's Mr. James that is referenced
20 fearing for his life, correct?

21 A Correct.

22 Q Not Mr. Singletary?

23 A No.

24 Q Mr. Singletary had his own -- basically there
25 were two sets of warrants in this case; is that

SW - Y. DAVIS - REDIRECT

1 right?

2 A Yes, they were both charged.

3 Q They were both charged. All right, thank you.

4 Glad to clear that up.

5 MR. SMALDONE: Court's indulgence.

6 BY MR. SMALDONE:

7 Q No more questions for you at this time. Thank
8 you.

9 A Okay.

10 MR. ANDERSON: The State calls Willie
11 Brown.

12 THE COURT: You don't have anymore
13 questions?

14 MR. ANDERSON: Oh, I'm sorry.

15 THE COURT: All right.

16 **REDIRECT EXAMINATION**

17 BY MR. ANDERSON:

18 Q Ms. Davis, I do have some questions for you. I
19 want to talk to you a little bit about the areas
20 where you found the shell casings at. I didn't talk
21 to you about that. Mr. Grant Smaldone asked you
22 about it. You said you found one in Ms. Josephine
23 James' vehicle?

24 A Yes.

25 Q And based on your investigation is that

SW - W. BROWN - DIRECT

1 consistent with that warrant shot we talked about?

2 A Yes.

3 Q And you found two over there where the victim was
4 laying on the ground?

5 A Yes.

6 Q How far away were those two shots from the car to
7 where the victim was found laying?

8 A I'd say maybe about, I don't know, more than,
9 more than 10-feet for sure because, like I said,
10 we're looking at two parking spaces.

11 Q Give me a ball park estimate.

12 A Two parking space distance. I'm not, I'd say
13 more than 10-feet. It was well more than 10-feet,
14 maybe 15 to 20 maybe.

15 Q Mr. Smaldone asked you a lot of questions about
16 Mr. Singletary's warrant. Is he on trial today?

17 A No.

18 MR. ANDERSON: No further questions.

19 THE COURT: You may step down.

20 THE WITNESS: Yes, sir.

21 MR. ANDERSON: I was getting ahead of
22 myself. Now I call Willie Brown.

23 WHEREUPON,

24 **WILLIE BROWN,**

25 having been duly sworn by the Clerk, testified

SW - W. BROWN - DIRECT

1 as follows:

2 **DIRECT EXAMINATION**

3 BY MR. ANDERSON:

4 Q Investigator Brown, where do you work?

5 A Williamsburg County Sheriff's Office.

6 Q All right. How long have you worked there?

7 A Going on 24 years now.

8 Q All right. On July 15th, 2017, were you working
9 that day?

10 A No, sir.

11 Q Where were you at?

12 A IGA.

13 Q What were you doing at the IGA?

14 A Me and my girl were doing some shopping, two
15 young girls and a niece of mine.

16 Q All right. What time of day was it?

17 A I do not remember the exact date, but around the
18 time, it was daylight.

19 Q It's around the time of this incident?

20 A Sir?

21 Q Are you familiar with the incident in this case?

22 A Oh, yeah.

23 Q All right. And tell us what happened shopping at
24 the IGA that day.

25 A When, as we got to the parking lot we was exiting

SW - W. BROWN - DIRECT

1 the vehicle, went to walk to the store. I saw Mr.,
2 Ms. Josie and Mr. John James, spoke to him. I
3 believe he spoke back, I can't remember. We went
4 in.
5 Q And that's John James in the courtroom?
6 A Yes, sir.
7 Q All right.
8 A As we was leaving out the store we got to the
9 what they call, I guess, the breezeway to the door.
10 The automatic doors was opening up and I heard a
11 shot and I looked around. Is someone shooting
12 firecrackers or something? My daughter then said
13 that was somebody shooting. I said what? So I
14 hesitated at the door. We waited for a minute. I
15 said, well, let's hold tight. I heard another
16 gunshot. I think there was a second gunshot right
17 behind it. About that time I heard a third shot I
18 just saw, looked out in the parking lot and saw I
19 think it was John James and, James Singletary,
20 actually I think were standing feet from each other.
21 And I'm like -- I'm gonna say what -- oh shit, you
22 know, got to do something with my girls 'cause now I
23 got to, you know, find out, you know, find out
24 what's going on. I look out in the parking lot I
25 saw my dad. He had pulled up in the handicapped

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1 parking lot area so I got them to him and at that
2 point ---

3 Q So you hand him your daughters?

4 A My daughters. I got on the phone and called
5 9-1-1 for backup. I was in plain clothes, had no
6 weapon, no badge, no anything, just regular clothes.
7 I called and got them on the phone and tried to give
8 them a little heads up of what was going on. And as
9 I talk to them on the phone I was trying to find out
10 what people was at that was involved 'cause I didn't
11 see them at that time. And I kind of eased through
12 the parking lot and I think I might have saw John
13 first, and I asked him what was going on and that's
14 when somebody directed me to where Mr James was at.
15 And I told John to stand right there. I went over
16 to Mr. James to check to make sure everything was
17 good. I asked him if he was okay, and he said no.
18 Q What condition was he in when you saw him?
19 A He was laying on the ground beside the vehicle
20 between two vehicles.

21 Q What happened next?

22 A I approach him. John was standing to the rear,
23 to the rear of me, which would have been over to,
24 you know, back toward his red car. And I said just
25 stand right there, John, let me check and make sure

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- 1 everything good. So I checked him, I said, you
2 okay? He said no. I didn't see any blood or
3 anything so I said, okay, well, he must have thought
4 he might not have got hit or something. And I roll
5 him over. That's when I saw, you know, the wounds
6 to his body. I think it was his lower stomach right
7 at his belly button.
- 8 Q All right. Did you see a machete?
- 9 A Yes, sir. When I rolled him over -- no, I asked
10 him if had any weapons or anything? He said, yeah,
11 he said it's under me. I was like, well, I rolled
12 him over and that's when I saw the machete under
13 him.
- 14 Q And you've seen State's Exhibit 3, right?
- 15 A Yes, sir.
- 16 Q I'm not gonna hand it to you. That's the
17 machete?
- 18 A That's the machete.
- 19 Q And that was under Mr. Singletary?
- 20 A It was.
- 21 Q And he told you it was under him when you talked
22 to him?
- 23 A He did.
- 24 Q What else did you do?
- 25 A I talked to him a little bit and asked him, you

SW - W. BROWN - CROSS

1 know, what happened. He said John shot him. And of
2 course, John was still saying that, John was telling
3 me some things. He was like, yeah, I gave him a
4 warning. And I'm trying, you know, to keep him
5 calm, keep everybody else calm. And at that point
6 John goes, where's the weapon. John said it's in
7 the vehicle with my mom. So I stood up and looked
8 to see where the vehicle was at which was parked on
9 the other side of my vehicle, or right beside my
10 vehicle. And I told Mrs., I think I asked Ms. Josie
11 to either get out the vehicle and leave the weapon
12 where it was at and she said no problem, she did.
13 And I think she left it in the front seat of the
14 vehicle on the driver's side. I think that's where
15 the officer located that weapon at that time.

16 Q All right. Beyond containing the scene did you
17 participate in the investigation of this case?

18 A No, sir.

19 Q Did you see who fired the shots?

20 A I saw John fire the last shot.

21 Q All right. And what was going on? Describe
22 that, what was going on when the last shot was
23 fired.

24 A I just saw them standing feet from each other and
25 heard the last shot went off and I saw the weapon in

SW - W. BROWN - CROSS

1 his hand. I didn't actually saw who he shot; but I
2 saw somebody went down and, you know, 'cause one
3 plus one equal two.

4 Q All right. I don't have any anything further.

5 **CROSS-EXAMINATION**

6 BY MR. SMALDONE:

7 Q Good afternoon.

8 A Hey, how are you doing?

9 Q I'm all right. So you weren't on duty that day?

10 A I wasn't on duty.

11 Q All right. And you never told, just to clear it
12 up, you never told John to stay there, right?

13 A No, he stayed there. He was trying to tell me
14 what was happening. I was like, John, hold tight,
15 I've got to deal with this situation, let me make
16 sure everything good.

17 Q Right.

18 A And he was just trying to tell me what happened
19 and, you know what, I mean, he was trying to
20 explain.

21 Q Right. He wasn't trying to get away or anything
22 like that?

23 A No, sir.

24 Q Okay. And to be sure, when you saw that machete
25 you didn't move it, did you?

1 A No, sir. I actually rolled him back over on it
2 'cause I know he wasn't able to get the machete. I
3 was trying to secure it so make sure the weapon is
4 here and make sure I can keep an eye on the gun, to
5 make sure nobody don't use the gun.

6 Q You used him to secure the machete?

7 A More or less, yeah.

8 Q Okay, I understand. And that is really all I
9 have for you today. Thank you.

10 A All right.

11 THE COURT: Any further questions?

12 MR. ANDERSON: No further questions, Your
13 Honor.

14 THE COURT: Thank you, sir. You can step
15 down.

16 MR. ANDERSON: No further witnesses, Your
17 Honor. The State of South Carolina rests.

18 THE COURT: Okay. Ladies and gentlemen, I
19 need to send you to the jury room for a minute. Let
20 me take up a matter of law. You've heard all the
21 evidence that the State intends to introduce in this
22 case. Don't discuss the case. I'll get you back
23 out in a few minutes. Thank you.

24 One other thing, while you're back there
25 pick the foreperson. It's got to be out of the

1 original twelve. I don't know any of you. Y'all
2 have spent at least some part of the day together.
3 The foreperson has no greater vote than anyone else.
4 They simply sign the verdict form, okay. I'll get
5 you back out in a few minutes.

6 (WHEREUPON, the jury was removed from the
7 courtroom at 3:45 p.m.)

8 THE COURT: Okay.

9 MR. SMALDONE: Thank you, Your Honor. At
10 this time the Defense makes a motion for directed
11 verdict. Your Honor, just briefly, I believe the
12 State has not met their burden, particularly in the
13 assault and battery of a high and aggravated nature,
14 the statutory elements. And I did not anticipate us
15 getting done this fast so my charge book is in my
16 car, but I happen to know the elements of assault
17 and battery of a high and aggravated nature. I do
18 not believe that the level of bodily injury has
19 risen to the state of a high and aggravated assault
20 and battery. Your Honor, I believe there was
21 testimony from the doctor basically saying, well, it
22 wasn't -- I don't want to put words in his mouth --
23 he basically said it wasn't really that complex
24 surgery. He was not permanently disfigured other
25 than a scar. There was some, I believe that

1 surgery, removing parts of the intestine. I know
2 that surgery, Your Honor. I think one of my cats
3 had that at one point, Your Honor, so it's a pretty
4 much surgery I would say. Certainly, he was shot.
5 Certainly I think the State can probably prove a
6 lesser offense, although I will get to why they
7 might not be able to later. I just believe that the
8 assault and battery of a high and aggravated nature
9 elements, the degree of injury has not been met with
10 any sort of evidence from the State.

11 THE COURT: Okay.

12 MR. ANDERSON: Your Honor, I respectfully
13 disagree. Being shot at least twice causes
14 substantial risk of death. I asked the doctor if he
15 had not been treated would he have died, and the
16 answer was yes. I think that gets us past it.

17 THE COURT: Okay, and I agree. I think
18 there's sufficient evidence in this record and I
19 respectfully deny your motion. Okay.

20 MR. SMALDONE: All right. And Your Honor,
21 at this time also I make a motion for directed
22 verdict on other grounds. I didn't know whether to
23 make them alternately or at the same time. And I do
24 not believe the State has met their burden to
25 disprove, to provide any evidence to disprove

1 self-defense. Your Honor, I believe all the
2 elements are there. All of them have been, all of
3 them have been met by, you know, both the video,
4 through witnesses through the State's own case.
5 Clearly the State has not disproven it at all, and
6 you know, I know there is case law saying that is an
7 issue for directed verdict so I would raise that
8 issue at this time.

9 MR. ANDERSON: Your Honor, I agree that is
10 an issue, but not in this case. I asked multiple
11 witnesses what he was doing when he got shot the
12 second time. The defendant is not without fault in
13 bringing about the difficulty according to the
14 victim's testimony. That's one of the elements. He
15 loses one, he loses it all. I think that we've got
16 ample evidence in the record that gets us past
17 directed verdict on self-defense.

18 THE COURT: Okay. I respectfully deny
19 your motion. I think there is sufficient evidence
20 in this record. Based on the video the jury has a
21 pretty clear view of what happened. They don't have
22 any audio, but on the video he's the aggressor.
23 Your client is the aggressor that started this whole
24 altercation, that the victim was retreating when he
25 got shot. I think that the State met its burden so

1 I deny your motion. Anything else?

2 THE DEFENDANT: Yes.

3 (Attorney confers with defendant.)

4 MR. SMALDONE: Defense has nothing else at
5 this time other than inquiries about scheduling.

6 THE COURT: Okay. I got one thing I need,
7 Mr. James, how about stand up and raise your right
8 hand.

9 WHEREUPON,

10 **JOHN JAMES, III,**
11 having been duly sworn by the Court, testified as
12 follows:

13 THE COURT: I'm gonna ask you a few
14 questions and explain some rights to you. The State
15 has finished their case. You have a right to put up
16 evidence. You have a right to testify, but you also
17 have a constitutional right not to testify. It is
18 your right and your decision. Your lawyer can only
19 advise you as to what he thinks you should or should
20 not do. If you don't testify I will instruct the
21 jury that they cannot consider that against you in
22 any way. You have a constitutional right to remain
23 silent and exercising that constitutional right
24 cannot be held against you in any way whatsoever.
25 They can't even discuss that in the jury room.

1 However, if you do decide to testify, then
2 you'll be subject to cross-examination and possibly
3 impeachment just like any other witness. I don't
4 know whether you got a criminal record or not,
5 whether it qualifies, but if you do your lawyer can
6 advise you you can be impeached on that. You have a
7 right to talk with your lawyer and make a decision
8 whether you want to testify or not testify. He can
9 advise you as to what he thinks you should or should
10 not do, but it is your constitutional right and it's
11 your decision. He can only advise you. You
12 understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. You got any questions
15 you want to ask me concerning your constitutional
16 right to testify or not to?

17 THE DEFENDANT: Yes, I would like to know
18 my constitutional rights.

19 THE COURT: I just explained them to you.
20 You got a Fifth Amendment right to remain silent.
21 You don't have to testify. You don't have to prove
22 anything. But if you decide to testify, they can
23 cross-examine you and potentially impeach you.
24 You'll be treated like any other witness.

25 THE DEFENDANT: Oh, I would like to be

1 able to give my testimony to the people because I
2 know exactly what I did. I can start from the
3 beginning.

4 THE COURT: You have certainly have a
5 right to do that. I just wanted to explain to you
6 if you choose not to they cannot hold that against
7 you.

8 THE DEFENDANT: Them not telling the
9 truth, the same story this record here.

10 THE COURT: I understand. If you want to
11 testify you certainly can.

12 THE DEFENDANT: Yeah.

13 THE COURT: I'm not, I'm just explaining
14 to you if you do decide to testify you may be
15 impeached. I don't know whether you got anything to
16 impeach you from or whether you got a record or
17 anything else.

18 THE DEFENDANT: Yes, I have a record. I
19 have a terrible record. The whole courthouse knows.

20 MR. SMALDONE: Actually, I'd like to
21 settle his record at the time. I believe if I
22 recall correctly I don't think there's anything
23 within the timeline.

24 THE COURT: The State?

25 MR. ANDERSON: He has an absolutely

1 abysmal record, and almost all of it is
2 extraordinarily similar to this. There's cases that
3 say they'd be unfair and prejudicial to bring those
4 same kind of cases up on impeachment. It's all
5 ABHANS and attempted murders.

6 THE COURT: So you plan on bringing this
7 up or not?

8 MR. ANDERSON: I don't plan on bringing
9 any of his prior history up. I do plan on using his
10 prior statements against him to impeach him.

11 THE COURT: Okay. You understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. All right. Now from a
14 scheduling standpoint, you have any idea how long
15 you're gonna -- we'll probably, I'm not gonna argue
16 and charge this afternoon 'cause every time I've
17 done that after 4:00 I've regretted it. So if you
18 need a few minute break to decide whether you're
19 gonna offer any evidence or not we can, or if you're
20 ready to go right now we can.

21 MR. SMALDONE: I just need a few minutes
22 break just for maybe some coaching and last minute
23 advice so I'll, with Your Honor's permission.

24 THE COURT: We'll take 10 or 15 minutes
25 then.

1 MR. SMALDONE: All right, thank you.

2 (WHEREUPON, a recess was taken from the
3 proceedings.)

4 THE COURT: The next witness has got, in
5 all probability it'll be substantially long. It's
6 4:30 and I hate to break a witness' testimony up at
7 night so we're gonna probably just quit for the day
8 and start back in the morning, then that way the
9 testimony won't be broken and nor cross-examination
10 based on the information I've gotten. Anything else
11 then before I bring the jury in and send them home?

12 MR. ANDERSON: I just, that I'd ask
13 Investigator Davis, Your Honor, needs to get back to
14 Baltimore, if she can be dismissed.

15 THE COURT: Sure.

16 You got any objection to her going back to
17 Baltimore?

18 MR. SMALDONE: No objection.

19 THE COURT: Okay, bring the jury.

20 THE DEFENDANT: Excuse me, sir.

21 THE COURT: What -- hold on a minute.

22 THE DEFENDANT: Excuse me, sir, I had
23 already advised my attorney that I feel ineffective
24 in my assistance because of so much we have already
25 not argued and so much I have not seen as far as my

1 motion of discovery, as far as my Rule 5 isn't
2 concluded. Pursuant to evidence is, there's a lot
3 of things I have not yet seen. I told him that
4 these things can't come out. I'm scared fully, I'm
5 afraid to go any further. I can't go through this
6 thing with him telling me just trust him, and I'm
7 not being shown nothing. He not showing me how
8 we're going to present this case. Already I have
9 seen two elements that he went in and had already
10 been denied in front of my face, and he's wanting me
11 to just relax. I cannot go through with my own
12 assistance. He's not effective enough for me.

13 THE COURT: Well, I mean ---

14 THE DEFENDANT: I told him maybe we could
15 have talk later on tonight, something like that, he
16 and me a little more, but right now he just got a
17 lot on me. One of the burden, I'm just trying to
18 know, understand, what this is gonna be like, and so
19 far to me it doesn't look good. It doesn't look in
20 my favor. Only thing I can do is just appreciate
21 you, but right now I can't trust you like I can
22 trust him.

23 THE COURT: Well, I mean, you got, you got
24 overnight to talk to your lawyer.

25 THE DEFENDANT: Right.

1 THE COURT: You can't, you either -- he's
2 your lawyer. He's either going to represent you or
3 you got to represent yourself. You've done gone too
4 far to get another lawyer.

5 THE DEFENDANT: I told him, I told him if
6 you can't argue, not arguing these things that I ask
7 you, coming at and you asking you to present,
8 because to my understanding these are the best ways
9 I can see myself explain something. I can't go on
10 make my testimony based upon what he's arguing and
11 then I open up grounds on something else. But if he
12 would argue, argue what I was asking, then we would
13 already go and it would be okay because it's the
14 same testimony, it's the same things that I'm
15 speaking and which I'm fighting. And if you're
16 gonna prove to be ineffective for me, I might as
17 well be representing myself. Why would I now I can
18 represent myself, but then I couldn't represent
19 myself in October?

20 THE COURT: I mean, I don't know, you
21 gotta ---

22 THE DEFENDANT: This is what I'm saying, I
23 ---

24 THE COURT: You don't, you don't get to
25 pick your lawyer if you're gonna get a state

1 appointed.

2 THE DEFENSE: No, no, not pick my lawyer.

3 THE COURT: But you can represent
4 yourself.

5 THE DEFENDANT: I think he's good.

6 THE COURT: He is a good lawyer.

7 THE DEFENDANT: I think he's good. I just
8 think he's not gonna get ---

9 THE COURT: He's got a lot of experience.

10 THE DEFENDANT: I just don't believe he's
11 gonna give me all that's going on. That's exactly
12 what I told him.

13 You're good, I can hear you, but stop
14 showing off. This is my life.

15 Here's what I'm saying. We got in front
16 of, I have to have another hearing to go by because
17 he has his way of doing things and I don't see that
18 way is getting us anywhere.

19 THE COURT: So what are you asking of me?

20 THE DEFENDANT: I'm asking you to give me
21 this week, give me, would you allow me to find
22 somebody to represent me 'cause I can't come to
23 courtroom without being ---

24 THE COURT: No, this case has been called,
25 jeopardy is attached, and we're gonna finish it. I

1 can't stop mid trial and give you another lawyer.
2 We're gonna finish this case. Now you've got
3 overnight to talk to him about your testimony and
4 put up whatever evidence you want to.

5 THE DEFENDANT: He refusing to ---

6 THE COURT: You don't have to put up any
7 ---

8 THE DEFENDANT: What do I do if he says he
9 refuse, then I can go through with the same thing?
10 He's refusing I'm telling you ---

11 THE COURT: He's a lawyer. He understands
12 the rules of evidence, and there are certain things
13 that are not admissible and certain things may not
14 work, he understands that.

15 THE DEFENDANT: All I'm asking him to
16 argue for me is just a few things that I know that's
17 gonna be called forward. He's telling me it's not
18 the time for it. But then it seem that the time has
19 come to a closing to where I'm stopping, where I'm
20 not gonna be able to speak; but yet, he saying we
21 just have to hold on before we argue that point,
22 not he telling me that's not a good point to argue.
23 It's a very wealthy weight of a point, has much
24 weight it to, has much value.

25 We come in here earlier today he talk

1 about a conduct of a man. Yeah, a conduct of a man
2 is about as governing as anything. People who have
3 a conduct of a individual run together. You run
4 with attorneys. You run with lawyers. Doctors run
5 with doctors. Gangsters run with gangsters. That's
6 what he said. But you come out here and you acting
7 outside of conduct in which you can't fit, see what
8 I'm saying. If I'm a blind man I ain't getting
9 behind a wheel and drive; I already know better.

10 THE COURT: Okay.

11 THE DEFENDANT: If I'm a disabled man, I'm
12 out here just trying to put fear in your life, just
13 trying to scare you, I'm not gonna jump out there
14 and do that because of my conduct. You know, I have
15 to have to be liable to stand on my conduct. My
16 conduct show that I was negligent. My conduct show
17 that -- your conduct show that you more liable to
18 the situation than me; but then you're not gonna
19 argue that point as far as a man conduct? You a
20 man. You gonna carry yourself and you gonna govern
21 yourself like a man. I said to him a week ago, I
22 said, I ain't been fishing or hunting in almost 20
23 something years and I hear you say you're gonna have
24 to give up your license, give up your license
25 that's what I'm gonna give up 'cause I can't go get

1 a gun.

2 THE COURT: I understand, but ---

3 THE DEFENDANT: But when you can't carry
4 yourself, a man got to carry hisself in a objective
5 manner.

6 THE COURT: A trial ---

7 THE DEFENDANT: If he carry hisself in a
8 subjective manner it make you think what is this
9 child gonna do next. If somebody come at you with a
10 knife and you about to destroy, you say what is
11 next.

12 THE COURT: You got a right, I don't, I'm
13 not gonna decide your guilt or innocence, that jury
14 is, and you got a right to get on the stand and tell
15 them anything you want.

16 THE DEFENDANT: I can't, I can't do it
17 without that, like, without the proper guidance
18 through the courts. I understand this courts has
19 rules. I don't know nothing about them. I don't
20 know half of what information that the court have or
21 what the court shared with my attorney. I don't
22 know none of it.

23 THE COURT: I don't have any information.
24 I hadn't shared anything with your attorney. I just
25 got the law.

1 THE DEFENDANT: Yeah, I understand. My
2 attorney don't even know that you sentenced the man
3 with the same offender here.

4 THE COURT: He does know that. He's the
5 one that pulled the sheet out.

6 THE DEFENDANT: But he's asking the
7 questions. When it comes to that point, well, I
8 guess that don't mean nothing, you know what I'm
9 saying.

10 THE COURT: I mean, everybody heard that.

11 THE DEFENDANT: Well, the jury hear it.

12 THE COURT: They heard it.

13 THE DEFENDANT: They heard that ---

14 THE COURT: And you got ---

15 THE DEFENDANT: ---'cause he's sitting
16 there looking for it.

17 THE COURT: It is in evidence, and they'll
18 get to read it.

19 THE DEFENDANT: They'll get to read it,
20 but has not comment yet. He start telling me to
21 hold on. They start making allegation make me
22 impatient when you're scared of your life.

23 THE COURT: I understand that. And you
24 can either follow his advice or not follow his
25 advice. And he's a seasoned attorney, he's know

1 what he's doing; but you can, you can follow his
2 advise or not follow his advice. You're gonna get a
3 chance to tell this jury anything you want to
4 tomorrow when you're on the stand as long as it's
5 within the rules of evidence.

6 THE DEFENDANT: Yes, sir. All my evidence
7 done slipped out the window right before me. Then,
8 you know what I'm saying, started about high and
9 aggravated nature stands.

10 THE COURT: Well, you — this is one
11 unusual case in that the whole thing happened on
12 videotape.

13 THE DEFENDANT: I asked him, I said, do I
14 have a preliminary. I came in here, I turn my
15 papers in to the clerks of court. They advise me
16 what to do; I did that. I haven't had a preliminary
17 hearing, but my case done went up to grand jury. I
18 just got appointed a lawyer, what, 24 days ago, 26
19 says ago? My case has already been in grand jury
20 long before.

21 THE COURT: I understand.

22 THE DEFENDANT: But I don't understand,
23 that's where the problem comes in, but I don't
24 understand.

25 THE COURT: Well, once it's indicted by

1 the grand jury, you know, that's ---

2 THE DEFENDANT: With no representation.

3 THE COURT: A preliminary hearing is to
4 establish probable cause to get it to grand jury.

5 THE DEFENDANT: I wanted to be there. I
6 wanted to attend that. That's why I signed up for
7 that.

8 THE COURT: I understand that.

9 THE DEFENDANT: Because I know at the same
10 time we got preliminary hearings. We could have
11 been bypassed this point.

12 THE COURT: Only if the judge had thrown
13 it out.

14 THE DEFENDANT: It might have been a
15 different judge.

16 THE COURT: And even if the judge had
17 thrown it out at preliminary hearing they can indict
18 you directly.

19 THE DEFENDANT: Okay, 'cause -- the duties
20 of a prosecutor they say that there, they should not
21 pursue a case.

22 THE COURT: I understand --

23 THE DEFENDANT: He should make a
24 conviction for a case; but to pursue a case under
25 his own due diligence, no, he's gone too far. You

1 ain't really no more than investigator. So you
2 don't actually pursue a case when we speak about
3 lawyer conduct. You don't pursue a case because if
4 I had a preliminary hearing and I was able to go to
5 that preliminary hearing and we brought this same
6 evidence out, we argue these things, you wouldn't be
7 pursuing attempt murder as you said last week. Then
8 you come in in front of Judge Newman and you change
9 it and say you're not going to attempt murder. Now
10 we're back at this point. Where are we going with
11 this? It's all on video. It's all on Facebook.

12 THE COURT: I know. Well, you've been
13 indicted by the grand jury for assault and battery
14 of a high and aggravated nature and possession of a
15 weapon during the commission of a violent crime.
16 That's why ---

17 THE DEFENDANT: I can't get none of that
18 from my attorney, docket number, none of that.

19 THE COURT: It's on the ---

20 THE DEFENDANT: I ain't never seen that.

21 THE COURT: It's on the indictment.

22 THE DEFENDANT: That's what I'm saying.
23 It's a true bill. It's a certificate, true bill
24 certificate for me. It's indicted for me. It's
25 denying my representation.

1 THE COURT: I'll see you get a copy of it
2 tonight, and in the morning you can put up whatever
3 evidence you want to or you don't have to put up
4 any. Okay.

5 THE DEFENDANT: All right, appreciate it.
6 You say I'm gonna get that, I'll be able to get it?

7 THE COURT: Copy of the indictment?

8 THE DEFENDANT: All portions of it.

9 THE COURT: That's all I got is the
10 indictment.

11 THE DEFENDANT: That's all you got? They
12 say that they turn over all portions of my -- it was
13 on the 26th of last month they say they turn over
14 all portions of my rule 5. I'd like to see it
15 sometime or the other.

16 THE COURT: What do you think?

17 THE DEFENDANT: You know, I'm entitled to
18 it.

19 THE COURT: You know, they presented
20 evidence against you. They got a gun, they got
21 bullets, they got a machete, they got a videotape.
22 Your lawyer's put in the victim's, that he pled
23 guilty. I mean ---

24 THE DEFENDANT: Judge, breach of peace.
25 She never been, my mother, she never been, really, a

1 victim? The court never honor her as a victim.
2 That's what got me so upset and so disturbed about
3 the whole situation. That's my mom, no more than
4 his mom, her mom, or anybody else mom in here.
5 Honor my mom, that that man is gonna kill my mom.
6 Send me to jail honoring my momma, 'cause that's who
7 he was gonna kill.

8 THE COURT: Your momma's got a right to
9 testify.

10 THE DEFENDANT: She has already done did
11 that.

12 UNIDENTIFIED PERSON: I got a paper ---

13 THE DEFENDANT: She already did that.

14 UNIDENTIFIED PERSON: ---to come to court.

15 THE COURT: Hold on a minute. Only one
16 can talk at a time. She's got to get it down.

17 THE DEFENDANT: My mother has already did
18 that. My mother has also been down there a number
19 of times during the investigation 'cause my mother
20 said this is who you contact, more other people out
21 here. Facebook, on the Christian News, they got
22 over a thousand-- 1400 peoples. Over 20 something
23 people say, this man is right. Where is all these
24 witnesses?

25 THE COURT: I don't know, I don't get to

1 draw witnesses. You get, you can put up whatever
2 evidence you want to ---

3 THE DEFENDANT: I motioned for ---

4 THE COURT: ---tomorrow morning.

5 THE DEFENDANT: I motioned for, I made a
6 motion for the court when Newman, when the time
7 Newman was here, he said on the 29th -- because the
8 holiday was the 28th -- on the 29th there was a rule
9 to the court to move through this motion. I'm
10 asking about my motion; there is no motion. Where's
11 my proper filing for these things?

12 THE COURT: What kind of motion?

13 THE DEFENDANT: What kind of motion? Do
14 you remember?

15 MR. ANDERSON: I definitely do not
16 remember.

17 THE DEFENDANT: We can call Christian News
18 in the morning.

19 THE COURT: Huh?

20 THE DEFENDANT: We can watch it on
21 Christian News in the morning. I can pull up the
22 Christian News or the guy who films it, filming it,
23 from the Christian News. We can pull it up on the
24 website and get everybody who say -- although nobody
25 that come in this courtroom say they know anything

1 about the allegation, about the shooting, but it's
2 media attention. 1400 viewers.

3 THE COURT: Well, I asked the jurors if
4 any of them knew anything about this case or seen
5 any of it. None of them had.

6 THE DEFENDANT: None of them -- and they
7 may not.

8 THE COURT: They didn't know it.

9 THE DEFENDANT: They may not. I'm not
10 saying ---

11 THE COURT: They told me they didn't.

12 THE DEFENDANT: They ---

13 THE COURT: Everything they know about
14 this ---

15 THE DEFENDANT: On social media they say
16 they didn't. How can they say on social media they
17 did not see it. They did not, on social media.

18 THE COURT: I don't know.

19 THE DEFENDANT: I'm gonna have to argue
20 that, that the things I'm telling you.

21 THE COURT: Okay. In the morning you got
22 a right to testify. If you choose not to, I'll tell
23 them they can't hold that against you. You got a
24 right to put up any evidence you want to and any
25 witnesses you want to. Okay?

1 THE DEFENDANT: Okay.

2 THE COURT: Bring me the jury.

3 THE DEFENDANT: Thank you, sir.

4 THE COURT: Yes, sir.

5 (WHEREUPON, the jury was returned to the
6 courtroom at approximately 4:39 p.m., and
7 the following proceedings commenced in
8 open court.)

9 THE COURT: Okay, ladies and gentlemen. I
10 try to get you out here by 5 or 5:30 every day, and
11 if I continue this trial we won't get out of here
12 anywhere close to that time so we're gonna stop for
13 today, come back in the morning, and we should
14 finish this tomorrow. Don't talk about this case
15 yet. I know when you get home tonight your family
16 is gonna want to know what you've been doing all
17 day. If they're anything like my family, if you
18 tell them, they're gonna have an opinion as to what
19 you ought to do; but I — they hadn't been here so
20 you can't tell them yet. If we finish this case
21 tomorrow you'll be able to tell anybody you want to,
22 but how about don't talk about it yet. Don't do any
23 research. I don't know if there's any press
24 coverage on this. You can't read it, don't Google
25 anybody, don't get on Facebook, if anybody knows

1 anything about this case. Both sides of this case
2 needs a fair and impartial jury that's gonna find a
3 verdict based on the evidence and facts in this
4 courtroom.

5 I'll see you at 9:30 in the morning. If
6 you have an emergency, call us 'cause I can't do it
7 till all of you show up. You have a nice evening.
8 I'll see you in the morning.

9 (WHEREUPON, the jury was removed from the
10 courtroom at 4:41 p.m.)

11 THE COURT: Anything else before we quit
12 for the day?

13 MR. ANDERSON: Nothing from the State,
14 Your Honor.

15 MR. SMALDONE: Nothing from Defense.

16 THE COURT: All right. I'll see y'all at
17 9:30 in the morning.

18 (WHEREUPON, the proceedings were concluded
19 for the day to be reconvened on May 31,
20 2018.)

21 THE COURT: Both sides ready for the jury?

22 MR. ANDERSON: Yes, Your Honor.

23 MR. SMALDONE: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. SMALDONE: At this time Defense calls

DW - J. JAMES - DIRECT

1 Mr. John James.

2 THE COURT: Okay. Come around, place your
3 left hand on the Bible, raise your right.

4 WHEREUPON,

5 JOHN JAMES,
6 having been duly sworn by the Clerk, testified
7 as follows:

8 THE CLERK: State your name for the
9 record.

10 THE DEFENDANT: John James.

11 **DIRECT EXAMINATION**

12 BY MR. SMALDONE:

13 Q Mr. James.

14 A Yes, sir. How are you doing?

15 Q Good morning.

16 A Good morning.

17 Q You doing all right today?

18 A Yes.

19 Q All right. You a little nervous?

20 A Of course.

21 Q Okay, I understand. Mr. James, tell me a little
22 bit about yourself. Where were you born?

23 A I was born here in South Carolina.

24 Q Where in South Carolina?

25 A Williamsburg County.

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- 1 Q In Williamsburg County?
- 2 A Yes.
- 3 Q All right. Where'd you grow up?
- 4 A I grew up here in Williamsburg County, Salters.
- 5 Q Salters?
- 6 A Lincoln community.
- 7 Q All right. How far did get in school?
- 8 A I graduated.
- 9 Q Graduated high school?
- 10 A Graduated high school.
- 11 Q Okay. And you're currently employed?
- 12 A Yes, sir.
- 13 Q Where do you work?
- 14 A I'm working at Davis, Davis Construction.
- 15 Q All right, I'm sorry, I can't quite -- maybe it's
- 16 a little early in the morning, I can't quite hear
- 17 you. Just speak a little bit slower.
- 18 A I work at Davis Construction, as well as I
- 19 contract several jobs for myself, do a lot of home
- 20 improvement.
- 21 Q Okay. And where were you working in July of last
- 22 year?
- 23 A In July of last year, neighborhood community
- 24 work, function a lot in the neighborhood in the
- 25 community with most people.

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1 Q Okay. And just a little bit more about yourself.

2 Do you have any children?

3 A Yes, sir.

4 Q All right. How many children do you have?

5 A I have one biological son.

6 Q Okay.

7 A I raised another one to, say, seven.

8 Q All right. Okay. So taking your mind back to
9 July of last year, that's the day we've heard a lot
10 about in this court. You remember July of last
11 year, right?

12 A Yes, sir.

13 Q All right. Did you know Mr. Singletary?

14 A I have run in around him a few times. I think I
15 first ever been around him was, was Valentine's Day.
16 I think it was my friend's mother's birthday as well
17 as Valentine Day when we wanted to spend valentine's
18 with her mother; and her brother, well, he was the
19 one that come and pick me up and that's when the
20 first time I encountered him. Once I had met him
21 there I realized that this was the guy that used to
22 accompany my mother home late nights from a bar that
23 she works at, and I looked up highly to him for
24 that, making sure that my mother would get home
25 safely at times.

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1 Q And what bar is that?

2 A That's 52 Lounge on 52 Highway, a club run by a
3 guy name Barn (ph) Salters.

4 Q Is that in Williamsburg County?

5 A Yes, sir.

6 Q All right. So you, your testimony is you knew
7 Mr. Singletary beforehand, right?

8 A I only knew him just as well as I know you or the
9 judge here.

10 Q Okay.

11 A Nothing personal, never like really, really
12 entertain one another. We never even sit at a round
13 table eat dinner together although I was 'cause
14 invited to have dinner at his home, he never
15 accompanied us at the table.

16 Q All right. So July of last year, July 15th,
17 what'd you do that morning?

18 A I got up sore, sick, crying, hurt.

19 Q On July 15th?

20 A Yes, sir.

21 Q Okay.

22 A I wasn't aware if my friend life was in danger,
23 whether she ran off, whether she got hurt. She just
24 disappeared for quite a while. And I woke up that
25 morning and I'm thinking about when you love

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1 somebody, care for somebody, you wake up, that's the
2 first thing you think about in the morning so I'm
3 thinking about her. And I think later on that
4 evening she called me up around 1:30 or something
5 like that, I'm not sure. I was getting excited just
6 hearing her voice, you know, knowing she's all
7 right, knowing she's back in Williamsburg County,
8 she's close.

9 Q So fair, you had a friend that was missing, is
10 that what you said?

11 A Yes.

12 Q All right. So it was rough day, a rough morning
13 it sounds like?

14 A Rough week.

15 Q Rough week.

16 A Yes.

17 Q All right. And that was before July 15th?

18 A Yes.

19 Q That week. So that morning you wake up in a bad
20 mood. Is that what your testimony is?

21 A No, actually my waking up is in a good mood. I
22 actually heard from her that morning.

23 Q Okay.

24 A Got her home.

25 Q All right.

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- 1 A Can we talk, how's your whereabouts, you all
2 right, you know, what you, this and that. We, we
3 discussed several issues and. At that time, you
4 know, we planned that evening, you know, we would
5 see each other. My monna yells, you know, like, you
6 like, you ready? I was like, naw, I'm getting ready
7 to go shopping, grocery shopping, like, you coming
8 over. You know, we put everything behind us. She
9 coming over. I was, do you want anything for
10 dinner. I told her what I would get the dinner, I
11 would help with dinner. That Sunday, it was a
12 Sunday I believe that day was and she was like she
13 would come on over, just come into town.
- 14 Q Okay, so I'll stop you there. You went to the
15 IGA, right?
- 16 A Yes, sir.
- 17 Q All right, that's -- and who did you go with?
- 18 A I went with my mother.
- 19 Q All right.
- 20 A Normally we go shopping every month together.
- 21 Q Okay. And y'all were, were y'all getting the
22 food there or were you getting groceries?
- 23 A Groceries.
- 24 Q Groceries?
- 25 A Grocery shopping, yes, sir.

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1 Q All right. How long were y'all inside the IGA?

2 A Well, my mom knew everybody in town. I know we
3 probably shopped for about an hour, hour-and-a-half.

4 Q Is that 'cause she was saying hi to people?

5 A It's everybody.

6 Q Okay. All right. So you're there for an hour,
7 hour-and-a-half. You remember walking out?

8 A Yes, sir.

9 Q All right. You walk, or did you walk out with
10 your mother or was she behind you? Do you remember?

11 A My mother was out before me out in the parking
12 lot. I'm gonna say just as the prior witness said,
13 just left, I know him from Mr. Johnny Gamble. You
14 know, people just entertain one another. You know,
15 community people, we entertain one another. All
16 this at the grocery store. Hey, how are you doing
17 sit out, we speak, we talk, just a small southern
18 town like it used to be, this nice, quiet, peaceful
19 Sunday.

20 Q And that's in the parking lot of IGA?

21 A Oh, yeah.

22 Q All right. So were you there for, you know, a
23 few minutes after you put the — were the bags in
24 the car at this point when you're talking to people
25 or?

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- 1 A Yes. Yes, we loaded the bags in the car. My
2 mother ex-friend came over. They were conversating
3 and, like I said, a couple of other people just
4 conversating with one another in the parking lot.
5 Q All right. And were, where'd you put the
6 groceries? In the trunk or back seat?
7 A In the trunk in the back seat.
8 Q Both?
9 A Both.
10 Q Wherever they fit?
11 A Yeah, we had groceries.
12 Q All right, a lot of groceries. Did y'all go, you
13 say you went once a month?
14 A We went once a month. We shopped once a month.
15 Q All right. You're, as you're there in the
16 parking lot you see the red car pull up, right?
17 A Yes, I do.
18 Q And we've, you've seen the video, right?
19 A Yes, I have.
20 Q All right. So you see that red car, and I assume
21 you know who it belongs to.
22 A Right.
23 Q All right. And you've seen the video. You head
24 right over there on the video, right?
25 A Say again.

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- 1 Q And you head over to that red car on that video?
- 2 A Yeah, I went over to the red car.
- 3 Q All right. What did you, why did you go to that
- 4 red car?
- 5 A To let him know my good news.
- 6 Q Okay. And you're there at the car for just a
- 7 second. What happened when you got up to the car?
- 8 A He reached in the glove compartment.
- 9 Q The glove compartment?
- 10 A Yes.
- 11 Q And what did you do?
- 12 A I run.
- 13 Q All right. And how long did that interaction
- 14 take?
- 15 A That interaction didn't take no more than five,
- 16 six seconds.
- 17 Q All right. Now did you speak any, did you say
- 18 anything to him?
- 19 A I was gonna say, hey, man, reach for it, reach.
- 20 Q And y'all, and you've had bad interaction with
- 21 him before?
- 22 A Not really, just, with him I'd say it was
- 23 miscommunication. He might have did the same thing
- 24 that anyone would do in an act of a sister or a
- 25 brother. I say that when I would describe this

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1 interaction it was like we ain't really had no
2 interaction, no disagreement, we barely even spoke.
3 What happened is this thing came up about my car,
4 some problems going on with my car. And that day I
5 took my injectors and whatnot down out the car and
6 try to flush out my gas lines; I was gonna put them
7 back in. My ex, she call me. She said, you know,
8 she was around. So like I said, come pick me up. I
9 said, well, right now I can't make it there to pick
10 you up. And in fact, that wasn't on the Sunday I'm
11 talking about now 'cause I went to George Cooper.
12 That's where I do all my shopping. I went to George
13 Cooper. I told her, I said, I got to try to come
14 down there and see you before 6:00, you know, before
15 George Cooper close at 6:30. However, it took me
16 quite a while to get there, but I did got there. I
17 got there not late; I got there early. I put the
18 injector and stuff back in the car and went down,
19 which give me, bring me to another reason why I went
20 to his car. On that day that he attacked me, his
21 sister attacked me from just being late, just being
22 late only. It upset her pretty much pretty well.
23 Q So your testimony is that you and Mr. Singletary
24 have had at least one physical altercation before?
25 A Well, his sister jumped on me, and he just aided

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1 his sister and he was beating me with his cane and
2 whatnot. It was nothing.

3 Q Right, right.

4 A It was nothing. I called up, talked to Officer
5 Monte. He came by. He took pictures, he examined
6 me. He asked me do I want to prosecute charges; I
7 said, no. I said I just don't want him threatening
8 me to this point, to that point. And Mr. Shady,
9 (ph) Esquire, you know, he might even have a
10 shotgun. He had a misunderstanding that I was
11 fighting Jackie when he came out. However, I wasn't
12 fighting her. She admits that she jumped on me
13 because she was already upset because I said I might
14 not be able to make it.

15 Q So that's a yes?

16 A A yes?

17 Q That's a yes, right? You've had a physical,
18 you've had issues with him in the past, right?

19 A No, sir.

20 Q All right. So your testimony is he beat you with
21 a cane, but there's no issue?

22 A No. Someone I wanted to work things out with and
23 somebody I wanted to be with, you know, just Mr.
24 James is a good person.

25 Q Right.

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1 A A good person at heart. He ain't kill me. I
2 didn't have no open wounds, no stitches.

3 Q Okay.

4 A I done got beat before. I got beat down plenty
5 of times.

6 Q All right. Well, he reaches for a gun -- well,
7 he reaches for his glove box when he sees you is
8 your testimony, right?

9 A Right.

10 Q So it's fair to say he probably wasn't happy to
11 see you?

12 A He wasn't happy to see me.

13 Q All right. And so as he reaches for the glove
14 box what happens?

15 A I ran.

16 Q You ran. And you've seen that on video, right?

17 A Me running, yes.

18 Q Yeah, okay. Now as you run which direction are
19 you looking?

20 A All direction, there's traffic coming within the
21 parking.

22 Q All right.

23 A I'm looking. When someone reaching and pulling
24 from you, and you got knowledge of how the streets
25 is -- I'm sorry to say this in the courtroom -- but

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- 1 we understand there is a difference out here in the
2 streets, and you know, just about being in society.
3 It's a totally difference than the courts. We have
4 that and we accept that socially or not.
- 5 Q All right. So you're looking everywhere?
- 6 A I'm looking.
- 7 Q Back.
- 8 A Back over my shoulder.
- 9 Q So you're looking at him too?
- 10 A I ran back over back of my shoulder. I want to
11 see what's going on here, there, as I look over my
12 shoulder anyway. I glance at him in a certain -- I
13 saw a pose we all can recognize.
- 14 Q What do you mean?
- 15 A Well, he jumped out the car. He did like that
16 over with the gun.
- 17 Q Uh-huh.
- 18 A Over the hood of the car, look better than any
19 police in Williamsburg County, on the Kingstree
20 Police Department, he'll have much better, much
21 training, more professional that any one of them.
22 He threw it out like this.
- 23 Q All right.
- 24 A This is what I see over my shoulder.
- 25 Q That's what you saw over your shoulder?

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1 A That's my point of fear. He looked better than
2 any officer on the Kingstree Police Department, and
3 I'll say that again. He look better than any man
4 trained in the military.

5 Q All right. What's your reaction when you see
6 that?

7 A I spot the gold, I spot the gold Taurus pull in
8 there from the northern parking lot, the northern
9 entryway to IGA. When I saw that car, I kind of
10 used that car for my shield, when I saw the car,
11 because now I'm saying to myself if I get shot it's
12 open. And when I saw the lady that was driving the
13 car, she was a elderly lady; and although I wanted
14 to use the car, can I demonstrate as my ---

15 Q Sure.

16 A I didn't want to risk the shot towards the old
17 lady car so I changed my movement and direction and
18 circle around because if he had a shot, he could
19 have missed me, he could have hit that lady in the
20 car because I ain't used that lady in that car.
21 That lady ain't know what's going on. It was just a
22 regular person running through the parking lot.
23 That settled in my conscious quickly.

24 Q Were you scared?

25 A Yes, I was scared.

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1 Q All right.

2 A At times I'm still afraid.

3 Q Now you've seen the video and we'll probably play
4 it in just a minute, but you kind of look back
5 towards your side of the car. You've seen that,
6 right? Or your side of the parking lot?

7 A No, sir, I, I, just as the officer said yesterday
8 during his statement, he said he ran all the way
9 around the parking lot. I'm back on the highway
10 side here, and I'm running around coming back around
11 the parking lot from where the witness them stated
12 they were standing at the near far end of the truck.

13 Q You eventually got back to your side of the
14 parking lot is what I'm getting at?

15 A Right. And when I was running, when I was
16 running, the only way I could get a more deeper
17 depth cut to get back to my car is when I ran nearly
18 back into the rims of him. I ran into the rims of
19 him, whether the camera show it or not, this guy
20 here was actually like this with the gun jammed, the
21 gun jammed, the hammer is jammed back. I knew guns,
22 I know guns, been around guns.

23 Q Uh-huh.

24 A That was my moment to get cross his path, get
25 back to my car because his gun is jammed.

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1 Q All right.

2 A That's when I ran through that and that's when I
3 slip and fell. When I slip and fell right there,
4 the reason he couldn't do nothing 'cause he was down
5 here struggling with a jammed gun, at least what
6 appeared to be a gun since we found no gun.

7 Q All right. So you thought that this gentleman
8 had a gun?

9 A Pretty sure he had a gun.

10 Q All right. Now you walked back, as seen on video
11 you walked back to your car or the car that you came
12 in, right?

13 A Yes, sir.

14 Q And who was there at that car?

15 A My mother, the same guy, David, her ex-boyfriend,
16 they were at the car.

17 Q All right.

18 A And several other people in the parking lot,
19 that's the one they talk to.

20 Q Okay. And your mom was there?

21 A My mother was there.

22 Q All right. What happened when you got back
23 there?

24 A He jumps in the car. And this is what I told on
25 the statement where I got mad about the laughter;

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1 and it wasn't funny, but seem, it's some humor
2 behind it. I went over there, disturbed the
3 sleeping giant, ran back to the car and she ain't
4 got no key.

5 Q She didn't have keys or she couldn't find them or
6 what was going on?

7 A She couldn't find the keys. We just put almost
8 four hundred dollars worth of groceries in the car
9 and she don't know where the keys at. So she
10 searching and searching and searching for the car,
11 for the keys for the car. I jumps out of the car
12 'cause of his conduct. I ran, actually. It's on
13 the film a little better. I ran to the trunk of the
14 car. I ran to the trunk of the car, something say,
15 no more than that lady in that gold car you're not
16 gonna leave your momma either. I return and went
17 back to the car, I sat in the car. The yellow file
18 is just basically on the medical condition. I'm not
19 walking in here trying to act like I know it all or
20 walking in here like I'm leading or preparing
21 anything. That yellow folder, that just my medical
22 history.

23 Why I didn't stay in that safe car, why I
24 had to get out that safe car is something we all
25 probably wanting to know? Why he just couldn't stay

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1 in that car? We understand why he couldn't run, but
2 he couldn't stay in that car? With my medical
3 history that have not been passed along, have not
4 been spoken of his disability, I had histoplasmosis.
5 This is like bird flu.

6 Q It's what?

7 A Like bird flu. Hiptoplasmosis. That's what I'm
8 diagnosed with. What that is is a lung disease.
9 Upon that disease you can't breathe. As I talk you
10 can look at me and see I lose my breath, talking.
11 Running is a different thing. I have to work at my
12 own place; I can't work as a team. I sat in that
13 car in July the 15th after a rainy day. It was hot,
14 it was muggy, it was humid, and I could not sit in
15 that car without suffocating.

16 Q 'Cause air conditioning, fair to say air
17 conditioning won't work with no keys?

18 A No, without no keys. The windows don't work
19 without no keys.

20 Q So at what point do you get out of the car?

21 A I got out the car, and he fumbled through his
22 trunk and he turned around. And when he first, not
23 360 turn. He went 45-degree turn from his trunk,
24 and I knew he had a sword. The camera is only
25 showing a 360-degree turn this way to me. I saw the

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- 1 sword here. I shot a warning shot in the air.
- 2 Q And you, and did you, at what point did you fire
- 3 that shot?
- 4 A That point that I fired that shot at him is after
- 5 he had unleashed it and took several steps, several
- 6 yards, to the direction of my mother's side of her
- 7 front of her car while her friend was holding her.
- 8 I shot. Everyone said that's the first shot.
- 9 Second shot. Shot down.
- 10 Q Okay. Now let's back up a little bit. When you
- 11 walked over to the red car did you have a gun?
- 12 A No, sir, I hadn't have a gun to my possession in
- 13 almost 20 years.
- 14 Q Did you ---
- 15 A Along with that story about my guns ---
- 16 Q Let's stick to this story 'cause I think that's
- 17 what the jury wants to hear.
- 18 A It's pretty important that I acknowledge my fact
- 19 about a gun.
- 20 Q Did you have a gun?
- 21 A I don't, I never have -- never own a gun. Don't
- 22 have guns. No guns is in the home.
- 23 Q All right. So you walked over to the car without
- 24 a gun. That's your testimony, correct?
- 25 A Right.

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1 Q All right. At what point did you get a gun?

2 A When I got the gun is when David held my mother

3 down and the victim was approaching her. He was

4 nearly 6-feets away from my mother's, from my

5 mother's car. That's, they said it's 6-feets. We

6 want to be precise. Can you tell a machete? The

7 closer you are with that machete, you can use that

8 machete to damage it. If you don't stab with a

9 machete, you can throw it and hit you. If I take a

10 pencil and throw it and hit you, it ain't no more so

11 than coming to a pistol whip you, hitting you with a

12 machete, stab you, it's the same thing.

13 Q You're scared of the machete?

14 A Am I scared of a machete?

15 Q Yeah.

16 A I'm not scared of a machete. No, I'm not scared

17 of a gun. Sometimes you have to look at it and say

18 it's the hands of the person that it's in based on

19 that person's character, based on the person

20 negligence, based on the way the person conduct

21 themselves. I'm not gonna get in the boat.

22 Q Were you scared that day?

23 A Of course I'm scared that day. I'm scared to

24 this day. I was scared on yesterday, the day

25 before. Just being amongst him I'm scared.

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1 Q All right. Now let's get back to the gun 'cause
2 I don't think we ever determined when the exchange
3 took place. You said your mother had the gun out?

4 A My mother had the gun.

5 Q All right.

6 A During her process of looking for keys in,
7 however he says that he accepted that the gun was in
8 the box, I don't know right now to this day where
9 the gun come from. I know we'll have no guns in our
10 home. Every officer in here know that for a fact
11 that AK-47, SK, another SK, 11 shotguns, 5 rifles, 9
12 handguns has all been taken from out of my
13 possession because I was a riot child.

14 Q That happened a long time ago?

15 A No, sir. This just happened within a few years
16 of my dad's death, every gun that was in my
17 household. Watson, Watson did this case.

18 Q And that was what, that was before this, right?
19 At the time there were no guns?

20 A This is no guns. For all I know, how can I tell
21 my mother to get a gun when I know that ain't no gun
22 in my home. I know I can't even go hunting. You
23 talking about you're being -- I can't go get a gun.

24 Q All right. So your mom has a gun. What point
25 did you take it from her?

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- 1 A I took it from her when David held her and I see
2 that he was gaining ground on my mother.
- 3 Q All right. Were you scared for your mother?
- 4 A Of course I was, that's my mother I'm only gonna
5 have.
- 6 Q All right. Did you think that she was in danger?
- 7 A I knew she was in danger. I say that I was in
8 danger because, because of the victim intent. The
9 victim on yesterday stated clearly before the
10 courts, you asked him, you said if he'd have
11 remained in that car would you go over there and
12 shot him, no. Why did you get the weapon? What was
13 you gonna do for it? I wanted to scare him, I
14 wanted to scare him, I wanted to put his life in
15 immediate danger. No more than if I come in your
16 house and crawl in your window late night at 11:00,
17 12:00 at night, I even walking around your house and
18 I shift your window up and I look at you and tell
19 you I just want to scare you, I wasn't going in
20 there and try to rape your daughter.
- 21 Q So you were scared of the machete for your own
22 life?
- 23 A I was scared of the gun.
- 24 Q Scared of the gun?
- 25 A I was scared of the gun at first. This is what,

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1 my point of fear did not come when he grabbed the
2 machete. This is just what we have led to believe.
3 My fear didn't come from that.

4 Q And what was the fear from?

5 A My fear came from that (pointing).

6 Q So you're referring to what, not your mother's
7 gun. You're referring to what you perceived as a
8 gun that Mr. Singletary had?

9 A Yes, that's when my moment of fear. Once my
10 intimate death came right then. My moment of
11 danger, my most piercing moment was right there. I
12 have never been so much scared to see a gun pointing
13 at me, and I have had a gun pointed at me. But I
14 was much scared looking back at that gun pointing at
15 me. Now I understand how people feel. Now I
16 understand why people justify it and what they do,
17 that's scary. I deal with that every day of my
18 life. Right now today because I finally, finally,
19 had a gun pointed back at me. That's when every one
20 of you other guys in here know that's when it's time
21 for you to give up whatever you're doing, leave it
22 alone, put it to the side. Because when you getting
23 at that age that you cannot perform it no more, you
24 cannot do that no more, now you want to get right.

25 Q All right, so let's go back to that day. Your

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1 testimony is you fired a warning shot at one point.

2 A Yes, I did.

3 Q All right. What happened around that time? Why
4 did you fire the warning shot?

5 A I fired the warning shot because he unleashed the
6 weapon.

7 Q Okay. And did you want him to go — what did you
8 want to accomplish by a warning shot?

9 A By a warning shot, by a warning shot it has been
10 taken in a document amongst us, that a warning shot
11 clearly give you information that this is the point
12 that you have me at intimate death. I don't want to
13 harm you, not out of moral rights; but now,
14 subjectively I'ma have to harm you if the intimate
15 fear continues to come. If you continue to put on
16 this fear, continue to put the threat and the danger
17 towards this, yeah, I'ma, it'll scare any of us.
18 Not that I would want to shoot him, I shot in the
19 air.

20 Q And did you want to shoot him?

21 A No, I didn't want to shoot him. That's why I
22 shot in the air. 'Cause normally, normal people,
23 he, he, he been a man. He admit that he was too
24 aggravated, he was too upset, he was aggressive, his
25 conduct was negligent. He didn't act like a prudent

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1 man. He admit that. He say I want to create fear
2 in his life, I wanted him to feel like I was gonna
3 to kill him. But what happens when I get to that
4 point that I do feel like I'm dead, did you plan a
5 second hand strategy that if I do frighten him what
6 might happen.

7 Q You didn't want to shoot him?

8 A No, I shot in the air, let me know I had a gun.
9 He continue to say, well, you know what, I'm gonna
10 keep fear in him, I'ma keep fear in him, I'ma pull
11 on this.

12 Q Did he say anything?

13 A He said a whole lot. I mean, some of the things
14 that he said don't even come out of my mouth on a
15 frequent day-to-day basis. I don't even want to say
16 some of the things that he has been saying.

17 Q All right. So it wasn't, fair to say he was not
18 silent during this entire time?

19 A No, no, no, no. He, everything that he stated he
20 act out. Everything he stated he act out. He
21 stated, well, he stated that he gonna get her, I'm
22 gonna get that bitch, I'ma show you. He proceeded
23 and went, moved forward with a sword against my
24 mother. I'm not that mad. I'm not that mad. I'm
25 not mad with none of y'all. I ain't get that mad

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1 with you. You pull a gun on me, I ain't get mad at
2 you no more. Everything is all right, I'll back
3 down, I'll coward down. Ain't nothing wrong with
4 being a coward, I'ma live my life. I'ma live
5 another day. I learn to run.

6 Q So back to the warning shot, what happened after
7 the warning shot? What did you see Mr. Singletary
8 do?

9 A Continue to approach.

10 Q And what was your response?

11 A What was my response?

12 Q Yeah, what did you do?

13 A Things happen, reacting so fast, the only thing I
14 could do is protect my mother, protect myself. I
15 mean, as far as what could I do, what am I thinking?
16 I just, just living, the natural instinct. Basic,
17 the basic law of nature is it says that, the basic
18 law of nature is that we save ourselves first.

19 Q And you wanted to protect your mother?

20 A Yeah, I want to protect my mother.

21 Q And did you have a reason to think that she was
22 in danger?

23 A Yeah.

24 Q Why?

25 A 'Cause he'd been citing the same situation, the

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1 same what he's gonna do. Everything he's saying
2 he's gonna go he's actually acting it out. He
3 confessed on yesterday that he act this out to the
4 fullest, but at what point did I know he was acting.
5 This ain't no movie. It's not a movie. This is a
6 real life, this happened in real life. Just as
7 well, he said that he turned around in the middle,
8 in the instance the bullet was all, the trigger was
9 already fired and the bullet going through the gun
10 and he turn around and retreat, that's what we see.
11 But I can't reach back out and stop that bullet.
12 This ain't TV. This ain't the matrix. We watch a
13 lot of that. I can't stop that. You retreated at
14 the moment, it's too late out of your fear, how do
15 you act? I can't stop that at this moment. You
16 ask, you ask, you said, all right, at what point did
17 you retreat? At what point did he retreat? He
18 don't know what point he retreated. Y'all have to,
19 the jury have to understand, the court has to hear
20 this. At what point did you retreat? Did you
21 retreat? Uh, well, no, uh, not quite, not quite
22 retreat. He partially retreated.
23 Q And are you talking about Mr. Singletary or you
24 talking about ---
25 A I'm talking about Mr. Singletary. He said that

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1 he not quite retreat. He did not quite retreat so
2 what I, what he could have been, what this could
3 have been to me is from what I see is that this
4 could have been strategy. This is his strategy
5 'cause he was going in the direction to go around
6 the other vehicle to my mother's car. This is a
7 strategy. Now I stop. So now I put my gun down and
8 then I go back around to my mother. Now I stop.
9 When are you gonna stop and start, retreat, go back
10 to your car, put the weapon down. Go ahead, I'm
11 giving you a lot of time to just stop, man, go
12 ahead. I ran.

13 Q Now you, explain that a bit. Did you still, did
14 you ever stop thinking that your mother's life was
15 in danger or your life was in danger and at what
16 point did you think that?

17 A I didn't -- he was still on the ground with the
18 sword in possession, and my mother still running her
19 mouth, hollering, screaming. I was still scared up
20 to that point to answer the question. I was scared
21 up to that point 'cause we ground there. I grab my
22 mother while he was on the ground. He still got the
23 knife. He still got the knife because we know his
24 strength. We don't know his physical strength to
25 get back up and swing or cut her 'cause she right

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1 there and got 9-1-1 on the phone. I'm like, I know
2 that's where we got the phone from. I'm like, mom,
3 don't go to him, don't go to him, he got the knife
4 because at first he put the knife up under the gray
5 vehicle. That's the last thing he did. Told
6 somebody else to grab the knife, another witness
7 that was in here, he spoke. I don't know why he's
8 not here, but he spoke and he said that he was not
9 gonna move that weapon 'cause that weapon was a part
10 of a gun. He actually tried to get somebody that
11 was over there with Mr. John with him to move the
12 knife. He said I'm not gonna move the knife. So he
13 reach back on the girl car. I knock on the girl
14 window. I said, don't be alarmed. I had the gun,
15 there just been a shooting by her car. I got the
16 gun and let her know saying, hey, don't be alarmed,
17 don't be alarmed, everything is all right 'cause
18 don't frighten other people in the act of
19 foolishness. You're okay, I'm letting her know
20 that, you're not in jeopardy of your life. You're
21 not in a hazardous situation. Don't move because
22 he's partially under her car.

23 Q All right, so, back up a bit I suppose. Well,
24 who are you talking about? You say you talked to
25 the lady. Who is the lady? You know the lady?

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1 A I don't know the female.

2 Q Don't know the lady?

3 A She maybe stay there. She couldn't move.

4 Q Right.

5 A She stayed there long enough for the State, for
6 the investigators to speak with her.

7 Q So you, you tried to calm her down?

8 A I tried to calm her down 'cause, yeah, somebody
9 just did a shooting at your window on us.

10 Q Okay.

11 A She's afraid. She was afraid that she could have
12 actually back over him. I'm letting her know, you
13 know, everything is all right, everything is all
14 right, just, you know, calm down, be patient, we're
15 calling the police, we got the police on the phone,
16 like that. Then I seen Mr. Brown walk away, gave my
17 mom the gun, went to Mr. Brown. I was just trying
18 to, like, keep the people sanity there because a lot
19 can happen when people start getting in the midst of
20 it, the chaos and fear. It got chaotic out there.
21 He would not lay on that ground, not in the Food
22 Lion parking lot with shooting going on. Somebody
23 gonna run him over. The car he was under would have
24 run him over. I stopped that.

25 I was cooperating. They say I was

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1 cooperating. He goes, I don't know how cooperated
2 he is. I was cooperating with Willie Brown done
3 told you and Officer Davis. I was out there in that
4 parking lot, free agent, with a gun. They was able
5 to tell me, stop, Mr. James, stand right here. On
6 your own recognizance with a gun. Mr. James, stop
7 right here, let me tend to this victim here, let's
8 get him emergency service, let's get him emergency
9 service.

10 If my conduct wasn't reacting to him
11 getting emergency service he could not make it, he
12 would not been here that day with emergency like
13 that. I allowed them to give him some medical
14 attention. I went to the officer to get medical
15 attention.

16 Q Did you, were there more, did you know if there
17 were more rounds in the chamber of the gun?

18 A I don't know my mother's gun. I never seen a
19 gun. Actually after this happened I found out when
20 she got it and where she got it. It was -- one of
21 her friends came up to me and said it's TJ McRay.
22 He said, JJ, you ain't even had that gun, that Josey
23 gun. I say, yeah. He say how do you, he say you
24 know how I know that? I said, no. He say because
25 when Josey and my wife Yvonne McCray went out of

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- 1 town, Josey just got that gun a couple of days ago.
- 2 Q So again, you didn't even know the gun was even
- 3 there?
- 4 A I can't have a gun in my home.
- 5 Q Okay. Now you shot how many times?
- 6 A I shot three times, one warning shot. I shot
- 7 when he first came in front of the vehicle and when
- 8 I came between the window. Then when I ran around
- 9 there and talk to him, hey, chill, chill, chill,
- 10 hold that sword up, that's when I shot to the chest.
- 11 Q All right. And you didn't try to shoot anymore
- 12 times?
- 13 A No, no, no, no. Once he fell and dropped the
- 14 weapon, I mean, that's what the retreat is. I mean,
- 15 when you retreat you raise a flag, that's it.
- 16 That's a retreat.
- 17 Q Right.
- 18 A That's, we adopt that, that's a retreat.
- 19 Q And did you ever see that sort of signal?
- 20 A Sir?
- 21 Q Did you ever see that sort of signal?
- 22 A No. On the film he still have the sword up when
- 23 the shot was fired.
- 24 Q Yeah, he didn't drop it until it was fired?
- 25 A Right. Well, until yeah, he was ---

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- 1 Q Until he was ---
- 2 A Until he was fell.
- 3 Q Right. He didn't drop it after the warning shot?
- 4 A No, sir. He continued to approach after the
- 5 warning shot. He continued to follow through with
- 6 his threats, his bodily harm. He continued to
- 7 follow through after the warning shot.
- 8 Q Did he continue yelling or talking or anything
- 9 like that?
- 10 A Yes, yes.
- 11 Q You remember what he said after?
- 12 A I'm gonna kill you, I'm gonna get that bitch,
- 13 that mother fucker, I'm gonna get that bitch, got my
- 14 name all out in the skreets spreading my name all
- 15 over Facebook, I'm gonna get that bitch, it ain't
- 16 been me.
- 17 Q And you felt threatened after that?
- 18 A What, with him on the ground?
- 19 Q No, before he was on the ground.
- 20 A I felt threatened as long as he had, as long as
- 21 he approached me with a weapon. I think felt
- 22 threatened as long as he continued to carry out his
- 23 acts. I felt threatened as long as he continued to
- 24 make the threats, the verbal threats. I felt
- 25 threatened. I felt threatened because of, because

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1 of, because of his demeanor. You know, like I said,
2 I feel with a child conduct, you can almost look at
3 anything that go on with a child. Because a child
4 is not fully mature unto level to carry itself in a
5 professional conduct as an adult. That's why we
6 call them children. I'm pretty sure we all
7 understand that. But when you got a grown up out
8 there and you can't relate to that manner of conduct
9 in which he's doing, it becomes questionable to you,
10 what is his intent.

11 For instance, if I'm walking around in your
12 yard, your yard, back out there at dark, 11 p.m. at
13 night, I'm fumbling around your yard, all up under
14 your car porch, everything, I ain't doing nothing to
15 you. Do you feel threatened? Do you feel harm?
16 Q Well, let's talk about that day 'cause I'm not
17 sure anyone cares about hypotheticals.

18 A I'm trying ---

19 Q The day is very important.

20 A ---to make sure everybody can understand what I'm
21 saying. Hypothetically sometimes is the only way we
22 can explain things outside the court because we
23 can't explain it in law because I'm not an attorney.

24 Q Well, let's talk about what happened that day.

25 When did you feel, when did you start feeling

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1 threatened?

2 A Again, I felt threatened when I realized that he
3 pointed a gun at me over that car. That's the first
4 moment of being threatened. From that moment on he
5 carried out 14 to 15 minutes throughout the whole
6 film. For 15 minutes I was being fought. I was
7 being provoked into this situation. I was being
8 bashed and beaten up. In other words, this man
9 continued to come at me and threaten me for 15
10 minutes.

11 Q Is that what it felt like?

12 A Yes, all moments, the 15. I sit in the car over,
13 over nine or ten minutes looking for some keys that
14 we never find. I ran through the parking lot for
15 the next, for prior four minutes. That's ten
16 minutes. When a man sit down and got ten minutes to
17 think in his mind, man, this is premeditated action
18 going on and I just, I just don't allow, don't see
19 how the court can allow, don't allow the
20 premeditation point of this to come in. This man
21 actually walked away, went over there. That mean
22 that wasn't, that was there, that incident was over
23 with. He went over there.

24 Q Let's talk about, let's back up. You thought the
25 incident was over with when he was back in the

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1 corner, right?

2 A The incident is over with.

3 Q Right.

4 A It's not thought is over with. Any time you walk
5 from a scene or an event and you coming back and you
6 discontinue a bit and you come back, when you pick
7 up and went back that same event, I ain't gonna come
8 at you and say something with what you did last
9 year. We left that alone last year. I'm not gonna
10 bring that back to you today. We talked about that
11 yesterday; we ain't gonna talk about that again
12 today. That's over with. We left that on
13 yesterday.

14 Q We're talking about -- he's at the corner of the
15 parking lot, you're at your car, and everything is
16 done.

17 A Right.

18 Q Is that right? And did you walk toward him after
19 that?

20 A When he was --

21 Q When he was in the corner did you walk toward
22 him?

23 A No, I never, like I said --

24 Q Did you do anything to re-start this process?

25 A I never knew he walked away until the film.

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- 1 Q Did you think he was just gone?
- 2 A No, I don't know where ---
- 3 Q You weren't sure where he was?
- 4 A I don't know where I was or where he was.
- 5 Q Okay.
- 6 A I mean ---
- 7 Q That makes sense.
- 8 A At this moment it's not like, like how, a
- 9 judicial, judicial believer see it. At this moment
- 10 I don't know why, why I didn't know he walk away, I
- 11 don't know. I don't know. I mean, I don't know. I
- 12 don't know if he went and dropped the gun off or
- 13 went over there to get a gun, or went over there to
- 14 arm himself or I don't know where he went at. He
- 15 might have went over there and got prayer, I don't
- 16 know. That's what I said, he went to talk to his
- 17 deacon. He went over there and talked to his
- 18 deacon. Whatever his deacon said it fried him up
- 19 even more, he came back and got a sword. From the
- 20 moment he walked away it was over with. Why I ain't
- 21 leave? If we could have find them keys I would have
- 22 been back in Saint Lawrence in my bed waiting on my
- 23 dinner and waiting on my date.
- 24 He pursued me for 15 minutes. I talked to
- 25 a lot of people, man. You know, there ain't a lot

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1 of older guys than me. They ain't gonna be doing
2 all that running around. I got to run for 15 or 20
3 minutes there before somebody come and save me? I
4 don't think I'm gonna run no more; I think I'm gonna
5 stop right here.

6 Q So again, it was over and you, just to be clear,
7 you didn't have the gun. There was no gun that you
8 had ---

9 A There was no gun ---

10 Q ---until you saw -- hold on.

11 A There was no gun at the scene.

12 Q There was no gun that you had until you saw the
13 machete?

14 A No. Yeah, yeah, till I saw the machete. That's
15 when I, hold my mom's around her waist like that and
16 I got up, reach right over the seat and snatched the
17 gun down. When I cocked that gun a bullet jump out,
18 a whole bullet.

19 Q A live round?

20 A A live round, not a discharged round. So the
21 only thing I did with that gun was cock that gun,
22 like I said. And we all know that's the only way to
23 make a gun shoot, nor more than you got to cut a
24 light on, and it's blank. So when you cock it
25 that's what allows you to know that it has already

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1 been previously engaged.

2 Q Right.

3 A You understand me?

4 Q I suppose. Did you, you never had the gun before
5 the machete, right? The machete came out first.

6 That all we need to know.

7 A Yes, the machete came out first.

8 Q All right.

9 A The machete came out. I don't need a gun when I
10 ain't got nothing -- ain't got nobody visible in
11 sight for me to have anything going on. The man was
12 not there. I didn't even know he walked away from
13 in front of this car. There was no gun. No need
14 for no gun, he's gone. We looking for keys. We
15 looking for keys. It sound like, it sound
16 fabricated, but sound like it ain't the truth. This
17 been the truth from day one. She couldn't find her
18 keys. To this day I don't even know where she found
19 her keys at. To this day I don't know where she
20 retrieved the gun from, I don't know.

21 Q Okay.

22 A I don't carry no gun. I don't be around no guns.
23 I don't be around people with guns. I done had my
24 thing with guns, and that ain't done me no good,
25 none.

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1 Q All right.

2 MR. SMALDONE: Court's indulgence.

3 Mr. James, please answer any questions
4 that Mr. Anderson may have.

5 **CROSS-EXAMINATION**

6 BY MR. ANDERSON:

7 Q Mr. James, good morning.

8 A Good morning. How are you doing?

9 Q I'm gonna ask you a few questions about your
10 testimony today and about what happened in that
11 parking lot. I want to start off with -- I'm gonna
12 ask you about your mother's car. Will you tell the
13 jury a little bit about your mother's car? Does it
14 have all four of the doors?

15 A Yeah, it have four doors.

16 Q Do those doors lock manually or electronic?

17 A I don't know. You can hit the button to lock the
18 door.

19 Q So you hit the button and it locks the door?

20 A I don't know. That's what I'm saying. It's her
21 car.

22 Q Okay.

23 A I'm pretty that all cars, the model that she has
24 you can lock the door from the inside, you can lock
25 it from the switch.

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1 Q Okay. Does that door have, the car have windows?

2 A All cars, yes.

3 Q And is it crank or is it a button?

4 A It's a crank.

5 Q All right. When y'all got out of the vehicle at
6 the IGA that day to go shopping were those windows
7 up or down?

8 A Up.

9 Q They were up?

10 A Yes. She always lock her vehicle.

11 Q Would it help ---

12 A Like I said, she came out minutes before me ---

13 Q I'm sorry I interrupted you, go ahead.

14 A Like I said, she came out the store minutes
15 before me, but her windows was up.

16 Q Okay. And before I get into your testimony I
17 want to ask you about your fear level, how afraid
18 you were when all this is happening. You said to
19 Mr. Smaldone that you were afraid through the entire
20 ordeal after you saw the victim pull out his gun or
21 what you perceived to be a gun, and you're afraid
22 all the way to today?

23 A Yes.

24 Q And you were afraid for your life?

25 A Yeah, I'm always like that.

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1 Q You were afraid for your life the entire time in
2 the parking lot? That wasn't one moment where you
3 weren't?

4 A No.

5 Q Okay. Is terror too strong a word?

6 A Huh?

7 Q Terror? Abject horror, is that too strong? Is
8 that the emotions you were experiencing?

9 A No, can you use another terminology for me?

10 Q Okay. You were really, really afraid?

11 A Yes, sir.

12 Q All right. Now I'm gonna ask you some questions
13 about your testimony with Mr. Smaldone. You said
14 you don't know the victim Mr. Singletary so well.

15 A No, I don't.

16 Q And that you went to the IGA with your mom. And
17 you told Mr. Smaldone that you don't have any bad
18 blood between Mr. Singletary and you initially.

19 That's what you said, right?

20 A I don't have any bad blood for him.

21 Q Okay.

22 A And in fact, I went to the car like I said for
23 one more reason. I had owed the man six dollars.

24 Q You owed him six dollars as well?

25 A I had owed him six dollars. I had six dollars

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1 for him. He loaned me the six dollars when we got
2 into the fight at that house. He gave me the six
3 dollars. I really said that I thank the man, I
4 appreciate the man. He rides home with my mother
5 late nights from the club. He makes sure she gets
6 in the door. I said I appreciate him. Ain't no bad
7 blood in appreciation.

8 Q All right. So I don't want to lose track. You
9 told Mr. Smaldone you were going to give him some
10 good news; isn't that right?

11 A Yes.

12 Q And you were going to tell him something about a
13 car. I think I caught that as well in your
14 testimony.

15 A No, I ain't say nothing about a car.

16 Q You didn't say anything about fuel pump in your
17 car and going to talk to him about that, okay.

18 A No, I ain't gonna tell him nothing about my car.

19 Q You didn't say that. But you were gonna give him
20 six dollars?

21 A No, I said that's another that I had. He had
22 loaned me six dollars on that date that we got into
23 that infraction.

24 Q And so when we ---

25 A I didn't say if I was ---

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1 Q Go ahead, I'm sorry, I keep interrupting.

2 A I never said I had six dollars. That was another
3 thing I went to him about.

4 Q Okay.

5 A 'Cause he had tell me he didn't need it. He told
6 me before I can hold it. I would have probably kept
7 it.

8 Q So when we watched State's Exhibit 1 we've all
9 seen that video 20 times. You get out of the car
10 and you make a straight line for his vehicle; don't
11 you? You agree that's what the video shows?

12 A I ain't seen it.

13 Q Okay. Well, we're gonna watch it again in a
14 minute.

15 A You say I made a straight line to his vehicle?

16 Q You go straight. You disagree with that, but you
17 go over to his vehicle?

18 A When he got the machete?

19 Q No, I'm talking about when he pulls in the
20 parking lot ---

21 A Yeah, I went to his car. Of course, I went over
22 to his car. I went over to his car, like I said,
23 let him know I had good news. I just said that.
24 What you ---

25 Q I want to get it straight.

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1 A We're here. Let's go to next point.

2 Q We don't have -- I'll be first to make the
3 points; I'm asking the questions.

4 A All right.

5 Q So we don't have any bad blood. There's no, I
6 mean -- but then after that, that was your first
7 statement with Mr. Smaldone, we were just talking on
8 the stand. I think you told him there was some
9 prior incident between y'all; didn't you? You said
10 that.

11 A Yeah.

12 Q He struck you with a stick.

13 A Yes, it was a walking cane.

14 Q So you kind a changed the story over there;
15 didn't you?

16 A No, I didn't change my story. I said I don't
17 have no bad blood with him. Have I had any
18 altercation with him, I said, yes, this happened. I
19 ain't acting like that didn't happen. I'm the one
20 that tell the courts that this happened. I'm the
21 one that told the investigators that happened. You
22 can't come and ask me something that I already put
23 in the statement that happened.

24 Q So you're not upset about the fella hitting you
25 with the stick?

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1 A Objection. I won't even go for that. I'm
2 telling you what's already in the statement.

3 THE COURT: I understand, but he gets to
4 ask the questions. You need to answer them.

5 BY MR. ANDERSON:

6 Q Again, you didn't answer my question. You were
7 not upset about the fella hitting you with the
8 stick?

9 A No, sir.

10 Q Supposedly hitting you with a stick?

11 A No, sir, I told the officer that. I told Officer
12 Crimson that. I told several different officers. I
13 told Officer Monte that. I didn't want to press
14 charges. I told these things to them. I'm not
15 upset about that.

16 Q All right. And now let's go to the moment you
17 approached the car about the six dollars with no bad
18 blood.

19 A No, I didn't really approach about the six
20 dollars. I had some good news to tell him ---

21 Q Good news, but didn't ---

22 A I heard from Jacqueline ---

23 Q It's great news, all right. And you get there
24 and the first thing you notice ---

25 THE COURT REPORTER: Whoa.

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1 THE COURT: Hold on a minute. She can't
2 take both of y'all talking. You got to talk one at
3 a time.

4 THE COURT REPORTER: Slow down.

5 THE WITNESS: Jacqueline, he usually, the
6 only time that I really known him is when he comes
7 and drop her off at my house a lot. Sometimes he
8 picks her up, or sometimes Ms. Betty does. And I
9 know more than I see her I know him, just that on
10 that notion. Ain't like I know him and we hung
11 together, we done party together. I don't know him
12 to that extent. I don't know him like I know my
13 mother or Norma Jean. I don't know him like that.
14 Q All right. And so when you got to the car you
15 told Mr. Smaldone that you saw him go into the glove
16 compartment; isn't that right?

17 A I saw him reach for the glove compartment.

18 Q Okay. You agree that's very important 'cause you
19 say after that you ran away?

20 A I ran.

21 Q You ran away. And you had an opportunity to talk
22 to law enforcement in this case; didn't you?

23 A Yes.

24 Q And is that what you told them happened at the
25 car?

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1 A No.

2 Q What'd you tell them?

3 A They asked me about people saying that I punched
4 him.

5 Q Did you punch him?

6 A Yeah, I punch him. I sit here and tell you,
7 yeah, I punch him. When he's coming back and
8 telling the law enforcement all kind of other things
9 that's fabricated, then I threw that out there just
10 like that 'cause I know one thing, how I had punch
11 him. Whoever seen me punch him should come forward
12 and say I punched him. He had the doctor here
13 yesterday. The doctor should have said, make that
14 statement and show in the medical report that he had
15 these infractions and these punches, that these was
16 excluded in our evidence.

17 Q All right.

18 A Just as well as that disk been excluded from my
19 motion of discovery.

20 Q Did you mush him when you were at the car?

21 Mr. Singletary?

22 A No, never. How did, I mean, I don't know what
23 you mean. Maybe you should question the witness who
24 brought all that about, maybe that witness who —

25 Q You're the witness that I'm questioning.

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1 A That mushing?

2 Q That's the question I asked you?

3 A I told you I punched him.

4 Q Okay. And did you kick his phone any time while
5 you were there?

6 A I ain't try to kick his phone when I been
7 running. Try to break it really, not kick it.

8 Q I'll gonna allow you to listen to what you said
9 to him that day.

10 A Yeah, I try to how to break it.

11 THE COURT: What you fixing to do? You
12 fixing to put something in evidence that's in
13 evidence?

14 MR. ANDERSON: I'm sorry, I need to
15 pre-mark it.

16 (WHEREUPON, State Exhibit No. 4 was
17 marked for identification only.)

18 THE COURT: What is that?

19 MR. ANDERSON: Mr. Smaldone, you want to
20 approach?

21 MR. SMALDONE: Yeah.

22 (WHEREUPON, counsel approached the
23 Bench for an off-the-record discussion.)

24 BY MR. ANDERSON:

25 Q Mr. James, I'm gonna ask you a few followup

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1 questions about what happened at the car. Did you
2 tell law enforcement that you mused him?

3 A No, I'm not familiar with that. I think I told
4 them I punched him. When they asked me about it I
5 said yeah, just yeah.

6 Q Did you tell them that he tried to push you when
7 you first approached the car?

8 A That's what he did did, reach for his gun, when
9 he reach for his glove compartment.

10 Q So he reaches in the glove compartment ---

11 A When a man, when a man nods you off from his car,
12 the only thing you supposed to do is leave his car.
13 Ain't nothing to that. If you come to my window, I
14 pull up in a spot and you came to my window, I like
15 go ahead, that knowledge right there to go ahead or
16 go ahead and leave me alone, that's exactly what
17 that means, go ahead and leave me alone. Don't
18 shake no nod. Don't try to use your intelligence as
19 who you are as a prosecutor to come in here and turn
20 a simple nod around to me hitting and fighting that
21 man. That ain't what that mean. If I come in your
22 face and you say, look, enough is enough. Sometimes
23 if you going to have what we call the Martin, and we
24 understand that, what the Martin is. That mean
25 enough is enough. That's just like a mush. I'm

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1 finished, okay, I gave you your space. That's what
2 that means, my space.

3 Q Did you tell law enforcement when you approached
4 his car that he pushed you? That's my question.
5 Yes or no question.

6 A He nods. He mushed at me from in his car. How
7 could he shove me fully in his car?

8 Q I'm not asking you what happened. I'm asking you
9 if you told law enforcement that.

10 A I'm not sure. Your Honor, that's what I'm
11 telling you, prosecutor. I'm not sure did I tell
12 them that. I did tell them I did punch him. That's
13 what I said. You asking me the same thing I already
14 told you. I said I punched him.

15 Q So you're not sure if you told him that ---

16 A I'm not sure about no nodding mush.

17 Q So if you got to listen to it it would refresh
18 your recollection?

19 A No. We can just go, we go on with that. If you
20 said I nod him, I push him or whatever, let's go
21 on ---

22 Q You're admitting you told him you punched him?

23 A I did tell him that.

24 Q You didn't tell them that he reached in his glove
25 compartment, did you?

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1 A Yeah, I did told the police officers he reached
2 for his glove compartment.

3 Q All right. I'm gonna give you an opportunity to
4 listen to what you said.

5 A I want to know if that's a recorded statement
6 because all our statements it was not recorded.
7 That's only one incident where you bringing us
8 sitting down talking on recorded statement. I
9 talked to both. I talked to Lieutenant Davis twice.
10 I talked to Lieutenant Lee maybe once. All
11 statements has not been recorded. The statements in
12 which you are being used, you speaking of, I'm
13 familiar with that. I'm familiar with that.

14 Q When you spoke with Yasmine Davis you told her
15 that she ---

16 A She asked me the simple question just like this
17 so you know I don't have to hear it. She say, did
18 you punch him? People say that you have punched
19 him. I said, well, yeah, I punch him, 'cause if
20 that's what y'all doing take a punch when a man
21 coming at you with a machete behind a punch, you can
22 not take, no you can cannot take a punch or somebody
23 spit on you, then you charge that with deadly use of
24 a weapon by law. You state the law.

25 Could you state the law for me, Your Honor,

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1 so I can say it to them?

2 THE COURT: I'll charge the jury on the
3 law at the end of the case.

4 THE WITNESS: Okay.

5 THE COURT: I'm can't give you legal
6 advice; that's your lawyer's job. I'll tell them
7 the law ---

8 THE MOTHER: No, no, no. But I already
9 know ---

10 THE COURT: I'll tell them the law.

11 THE WITNESS: In any situation if a man
12 come to you in a nonviolent act, he come to you in a
13 nonviolent and non-deadly act with no use of no
14 weapon and if he punch you, slap you, piss on you or
15 anything, you cannot return and result to the use of
16 a deadly weapon by law. You got to come in here and
17 undergo the law just like that ---

18 BY MR. ANDERSON:

19 Q Well, the judge is going to tell the jury the
20 law. I've got another question for you, though.
21 You say if you run away from the car after this
22 interaction it's so pretentious.

23 A It's on the film I ran away from the car.

24 Q You say you're looking over your shoulder.

25 A Yes, it's on the film.

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1 Q Do you say anything to him while you're looking
2 over your shoulder?

3 A No. Maybe man don't do that.

4 Q And you're looking at him -- I'm asking you some
5 questions about what I think is significant. When
6 the jurors watch this video they're gonna see him do
7 this motion where he dropped, jumps out of his car
8 and drops down and points the firearm at you?

9 A Are they gonna see it?

10 Q Yeah.

11 A Yeah, they have seen it, but what I'm saying is
12 camera time, camera time is not our time. Just as
13 well as it look like he walked over and turn around
14 and went like that, that's not the way it went, see.
15 I'm sitting there, I realize what's going on. He
16 went to his car, he dig in his trunk. For a matter
17 of five to ten minutes he looked in his trunk.
18 Camera time look like he went in his trunk, get it
19 and came back out; that's camera time. Now we can
20 go and get somebody to do this camera time. In
21 fact, I think that's a good thing for us to do.
22 Let's find camera time. Let's find out exactly how
23 long this camera time. Let's find out exactly how
24 long he reaching in the trunk. Let's find out
25 exactly how many times he had walked over there and

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1 stand over there away from the scene. 'Cause camera
2 time does not explain everything to us, it's camera
3 time.

4 Q Mr. James, you appear to have been confused by my
5 question.

6 A I'll go with camera time, sir.

7 Q All right. So the camera time, the jurors are
8 not gonna see you pulling out -- it's camera time
9 why they're not gonna see that?

10 A It's camera time. The camera time is not
11 identifying the act as the way it is. If the camera
12 time identify the act the way it is, then you
13 wouldn't have to ask me how long did this happen or
14 how long he was there or how long, you should have
15 known that.

16 Q Okay.

17 A See, you can't go on camera time 'cause this took
18 over 15 minutes. Camera time is showing, what, 15
19 minutes or so. This happened way longer than 15
20 minutes. Let's go back and let's see how many
21 without ---

22 Q I promise, we're gonna watch the video together.

23 A Let's watch it.

24 Q I have a few more questions for you.

25 A Let's watch it without camera time. Let's do

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1 everything within camera time. See, there's blind
2 spots in this camera that you aren't identifying to
3 the jury.

4 Q All right. Mr. James ---

5 A On the Wilkerson test ---

6 Q I'm asking ---

7 THE COURT REPORTER: Hey, whoa, guys.

8 THE WITNESS: Okay, I would like to have a
9 Wilkerson test now.

10 THE COURT REPORTER: A Wilkerson test?

11 THE WITNESS: A Wilkerson test. On this
12 test of the strength of handling of the evidence.
13 Let's test this. We need a Wilkerson test in order
14 for us to go further.

15 BY MR. ANDERSON:

16 Q All right, Mr. James, I'm gonna ask another
17 question.

18 A No, sir, I'm not gonna go any further. I would
19 like to have a Wilkerson test.

20 Q Okay. And again, I think at this point in your
21 testimony you pointed out to Mr. Smaldone you were
22 still afraid, you're still very afraid?

23 A Naw.

24 Q And then y'all make a loop or whatever and you
25 told Mr. Smaldone that you saw him clearing a

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1 firearm, is that right, ejecting a shell trying to
2 fix a malfunction? That was your testimony to
3 Mr. Smaldone just a moment ago?

4 A That was my testimony to the court.

5 Q And they're not gonna see that on the video
6 because of camera time as well; is that the case?

7 A If the film is on there, if you got the entirety
8 of the film, then it will be on there. If you don't
9 have the entirety of the film, then you can only put
10 just so much of evidence into the box. Now if you
11 let me know that you don't have the whole entire
12 film entirely, then say that. Let's don't go on and
13 prolong it that you have the whole film. Do you
14 have the whole film? I'm asking a question.

15 Q You can't ask questions. I asked you ---

16 A I will ask that question ---

17 Q ---when you saw him clear the firearm and you
18 gave an answer about ---

19 A Can I speak with my attorney?

20 Q ---about you'll ask a question.

21 THE COURT: While you're on the stand you
22 can't talk to your attorney.

23 BY MR. ANDERSON:

24 Q Did you see him clear a firearm?

25 A Yes. It appeared to have been a firearm to me,

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1 sir.

2 Q It appeared to be a firearm to you. And you're
3 pretty sure because you said that you're very
4 familiar with firearms in your testimony with Mr.
5 Smaldone; didn't you?

6 A Yes, yes, yes.

7 Q All right. So you're pretty sure it was a gun?

8 A Yeah, I'm pretty sure it was a gun, at least
9 that's what it appeared to me to be, see.

10 Q All right.

11 A See, the only thing about what I perceive, you
12 can presume, mister, your perception is not my
13 perception. You can't prove that my perception that
14 I did not think he have a gun. You can't prove
15 that. You smart, but you ain't that smart. You
16 ain't that smart. You're not gonna prove to me
17 nothing that you are saying as far as to what I have
18 presumed that he had, my perception. Now the only
19 thing that you can do is put the burden on me to
20 prove my perception wrong. Now that's what we're
21 gonna go at. If we have to go at that we're gonna
22 appeal it. It's on docket. That's all they want to
23 do, get it on docket. I know you want to see me up
24 the road. I'm coming back, I'm gonna fight it, I'm
25 gonna appeal it. 'Cause you think you're smart, and

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1 you think you're gonna blackmail the system. You
2 think you're gonna do that crookedness. You're
3 gonna send another one of us up the road and you go
4 ahead and move on up, be a next senator. Maybe you
5 ain't. No, you're not. No, you're not.

6 Q You're rambling and you didn't answer my
7 question. Why ---

8 A I'm not gonna answer. I just said I'm not gonna
9 answer till I can speak with my attorney. I have a
10 right to that.

11 THE COURT: You can't, you have ---

12 THE WITNESS: Well, then ---

13 THE COURT: Once you get on the stand ---

14 THE WITNESS: I can't talk to my attorney?

15 THE COURT: They put you on the stand. He
16 asks you questions. He gets to cross-examine you.

17 THE WITNESS: Okay.

18 THE COURT: Then your attorney can ask you
19 some more questions.

20 THE WITNESS: He's cross-examining me.

21 THE COURT: Right. So when he asks you a
22 question you answer it.

23 THE WITNESS: Right, I answered that
24 question a hundred times.

25 THE COURT: I understand.

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1 THE WITNESS: But why, he cannot keep
2 going on to the same question. We can't sit in here
3 and ask the same question him.

4 THE COURT: If your attorney makes an
5 objection I will rule on the law.

6 THE WITNESS: My attorney don't make an
7 objection ---

8 THE COURT: You just need to ---

9 THE WITNESS: I don't want to move forward
10 with this case with that attorney. As I stated on
11 yesterday when the jury wasn't present, there's too
12 much that has not been going forward. It's too much
13 of the sitting back, too much is not being talked
14 about, it's too much not coming out. I will not,
15 with ineffective counsel I will not sit back and
16 allow it to happen to me this day.

17 THE COURT: You have a right to put up any
18 evidence that you think is pertinent.

19 THE WITNESS: And right now nothing that I
20 asked about.

21 THE COURT: Well, right now you're on
22 cross-examination. You don't ---

23 THE WITNESS: I will not continue this
24 jury trial like that. This is my life.

25 THE COURT: You don't have an option.

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1 THE WITNESS: I have an option whether I'm
2 gonna carry through with this.

3 THE COURT: You -- he asks you the
4 questions.

5 THE WITNESS: Your Honor, I respect you, I
6 have a option as whether I'm gonna use that
7 attorney. If I feel my attorney is ineffective it's
8 not no use to go through with this. If I'm going to
9 court with an ineffective assistance, then I might
10 as well just go ahead and throw myself to the mercy
11 of the court and go up the road and go to prison the
12 rest of my life if my attorney gonna stand there and
13 don't object to nothing.

14 THE COURT: He ---

15 THE WITNESS: If my attorney is not going
16 to put in effect every evidence that I spoke to him
17 about, everything that I wanted to challenge. If he
18 don't do this, then we're gonna object to everything
19 else and I'm not going through with it. I rather
20 be -- as a matter of fact, I spoke on that
21 yesterday. That's what we discontinued at yesterday
22 when the jury was dismissed. I don't want to go
23 forward with this, with this attorney.

24 THE COURT: I understand. You're on the
25 stand. He asked you questions.

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1 THE WITNESS: I'm not gonna go forward if
2 I'm not represented. I'm not being represented
3 fairly. There's nothing in the court of law that
4 makes me go forward with this.

5 THE COURT: You, you're on
6 cross-examination. He asks you questions.

7 THE WITNESS: But I'm not gonna go through
8 with it.

9 THE COURT: Let me finish what I'm saying.

10 THE WITNESS: I'm not gonna go through
11 with it.

12 THE COURT: He, the only thing he can
13 object to is if the solicitor asks a question that's
14 objectionable. He has not asked a question that's
15 objectionable. It's your answers that you are —

16 THE WITNESS: I answered his question.

17 THE COURT: And he's trying to ask you
18 another one.

19 THE WITNESS: Do, and do I, did I perceive
20 that he had a gun? I said yes. He's continuing to
21 go on about with what I had perceived. Next thing
22 you know what he's gonna do is he's gonna take what
23 I perceived and turn it around and make it like for
24 me to prove the burden of it; I'm not gonna do that.
25 He got to prove the burden of my perception is. You

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1 tell them did I see a gun. That's what you supposed
2 to do.

3 THE COURT: I will charge the jury on the
4 burden of proof.

5 THE WITNESS: Okay. I saw a gun, I saw a
6 gun, I'm confident he had a gun. Now you prove to
7 me he ain't had a gun. Prove to me he ain't walk up
8 to that car and get that gun, that same man that
9 been back there as this witness. You can't prove
10 that, smartie.

11 THE COURT: He only has to prove ---

12 THE WITNESS: He gonna prove, he's gonna
13 prove to you. I'll be here waiting here.

14 THE COURT: Okay. You ask his questions,
15 answer his questions.

16 THE WITNESS: When I talk to my attorney.

17 THE COURT: Answer his questions.

18 THE WITNESS: When I talk to my attorney.

19 BY MR. ANDERSON:

20 Q Mr. James, when you were speaking to Mr. Smaldone
21 you said that your mother's car was a safe space and
22 you went to it, it was a safe space?

23 A Yes.

24 Q All right. And then you said that the reason you
25 got out of the car -- I think I caught this right --

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1 is your medical condition. You got something akin
2 to the bird flu, and that's why you got out of the
3 car?

4 A I can't breathe, sir.

5 Q That's -- so that day when you get out of the car
6 it wasn't because you chased the fella down and you
7 felt threatened. It was because you were
8 suffocating from the bird flu? That's your
9 testimony to the jury?

10 A I was suff-- I can't say confined within the car.
11 That's my story to the jury. Don't twist the way I
12 tell it to the jury, I say, I tell the jury. You
13 making it your way so you can go make it look like
14 it true. Here's what it is. Do anybody understand
15 the terminology when you're claustrophobic? Do
16 anybody understand that when you have renal failure,
17 kidney failure, heart failure, well, high blood
18 pressure, sugar diabetes, breathing. I had
19 histoplasmosis. Under this condition my oxygen
20 level is cut down way beyond 70 percent. When I'm
21 stuck in a car in the humid conditions like July
22 after that rain and it's very, very, very, very,
23 very, humid, -- we all know what South Carolina like
24 after a rain. I cannot breath in that car and I
25 doubt that anyone of y'all could breathe in that car

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1 sitting in the middle of July. That's why he riding
2 with the windows down in the rain 'cause he can't
3 breathe in the car. That's what he said, didn't he,
4 Mr. Smaldone?

5 Q My name is Mr. Anderson.

6 A Mr. Anderson, that's what he said, why his window
7 was down?

8 Q Uh---

9 A Because it was raining and it was hot and it was
10 humid.

11 Q You didn't answer my question. I asked you if
12 got out of the car because of your bird flu or you
13 were afraid?

14 A I got out of the car because I can't breathe in
15 that car.

16 Q Okay.

17 A That's why I didn't stay in the car. And what
18 I'm saying is ---

19 Q That's not the question ---

20 A What I'm saying ---

21 Q ---that I asked you.

22 A What I'm saying is why I didn't stay in that car
23 is why I couldn't run, why I couldn't stay in that
24 car in a safe spot, why did I have to get out of
25 that car. What that car really got safe of a spot

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1 come up under medical condition like that. What car
2 have a safe spot when I can't breathe. What am I
3 —

4 THE COURT: You answered that question.
5 You answered that question. Let him ask the next
6 question.

7 THE WITNESS: No, I didn't answer the
8 question. I didn't fulfill that question. Here's
9 what he's trying to entertain, the question if I ran
10 I got out the car to protect my mother. I got out
11 the car to protect my mother when that happened; but
12 why I didn't remain in the car or why I couldn't
13 stay in the car until he got to my car. I couldn't
14 stay in the car till you can turn the car because I
15 could not breathe. When he went on my mother's side
16 of the car to attack my mother, that's when I fired
17 the shot.

18 Q All right, not to cut you off, let's go on to the
19 next question.

20 A That's why I fired the shot.

21 Q You said that the warning shot's not on camera.
22 Is that because of the camera time too?

23 A The warning shot gonna be on the camera, but can
24 you identify -- as a matter of fact, just tell us
25 where it's at.

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1 Q I promise we're gonna watch the video in a moment

2 ---

3 A No, you tell me where it's at. Prove to where
4 it's at. Prove that's where the warning shot at.
5 Don't let nobody come up here and tell you that's
6 when the shot been shot. You prove that's when the
7 shot been shot.

8 Q All right.

9 A I want to see you prove at.

10 Q And you agree you told Mr. Smaldone that he
11 grabbed your mother or was about 6-feet away from
12 her and that's when you sprung to action?

13 A He grabbed my mother?

14 Q That's what you said. So that's a no or yes?

15 A Objection to the question. That's not in my
16 statement. And the judge is the Court. They can
17 probably find that. If I stated that they should be
18 able to go find that right now unless you
19 fabricating a story.

20 Q All right. And when we watch the video we're
21 gonna see ---

22 A We're gonna, we're gonna, ---

23 Q ---him ---

24 A ---we're gonna speak on my statement you asked.
25 We're not gonna go into that question. We're not

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1 gonna go into that question. That question states,
2 he state to the jury, to the courts, that I said
3 this man grab my mother.

4 THE COURT: Is that right or wrong? He
5 just asked you that question. Is that right?

6 THE WITNESS: That's the story that he put
7 to the jury. I'm not gonna answer that question.

8 THE COURT: Just answer that question.

9 THE WITNESS: I'm not gonna answer that
10 question.

11 THE COURT: All right, ask him another
12 question.

13 BY MR. ANDERSON:

14 Q All right. And you did, but you did tell Mr.
15 Smaldone that he got within 6-feet of your mother?
16 You did just say that?

17 A 6-feet was the condition in which they called
18 yesterday. You wasn't listening yesterday?
19 Yesterday they say it was about 6-feet.

20 Q You didn't just say that just now?

21 A Yesterday they said about 6-feet. That's why I
22 used that. I said, on yesterday they said about
23 6-feet. At least that's what they rounded about.
24 They rounded it about, not me round it about. They
25 round it about 6-feet on yesterday.

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- 1 Q So you're saying you didn't just say that? You
2 need to answer the question.
- 3 A I said that based on what they said yesterday.
- 4 Q I didn't ask you why you said it. I asked if you
5 said it.
- 6 A It was based on what they said yesterday. I only
7 using what they said. That's your witnesses. They
8 said 6-feet. Your witnesses said 6-feet. I went
9 along with 6-feet.
- 10 Q Okay. So you went along with my witnesses?
- 11 A Yeah, I went along with your witnesses. They
12 said 6-feet; I said 6-feet.
- 13 Q All right.
- 14 A Did I say he grab my mother? Did I say that man
15 grab my mother? How many of us aware of what's
16 being said in here?
- 17 Q Mr. James ---
- 18 A That's a fabricated story on you.
- 19 Q Are you done? All right, I'm gonna ask you
20 another question. I'm gonna ask you about the
21 machete. You agree with me a machete, if it's being
22 used as a weapon is a hand-held weapon, a close
23 range weapon?
- 24 A No, I don't.
- 25 Q You don't agree with that statement, okay.

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1 A What's close range, sir? I mean, your range of
2 close range it might be 6-feet; it might be within
3 6-feet. What is your range? What is it? 11,
4 12 feet? What is close range?

5 Q So you think ---

6 A I shouldn't get to make up what close range is.

7 Q You think a machete is dangerous at 11-feet?

8 A That's, I tell you what, you think it ain't?

9 Q I'm asking the questions.

10 A Machete is dangerous just being a weapon in a
11 public place it's dangerous. You know ---

12 Q Well, let me ask you this ---

13 A It's outside of a public ordinance makes it
14 dangerous. The law states any kind of concealed
15 weapon or any patent weapon with a patent number
16 that's outside in a public ordinance and during a
17 disturbance in the process of disturbance makes that
18 weapon becomes what? A deadly weapon, a dangerous
19 weapon. Not that it don't endanger my life, that
20 endangered Willie Brown all his life. Everybody
21 else ---

22 Q Well, I didn't take that in law school so I'm
23 gonna move on to the next question.

24 A Tell me what you learned in law school. What is
25 it, what is it? If we're not ---

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1 Q I'm asking you the questions, Mr. James, ---

2 A But you asking me the question about that---

3 Q ---now tell me which weapon has a greater range.

4 A You ask it right. You ask the question right.

5 THE COURT REPORTER: Hey, if y'all want a
6 good record y'all need to slow down.

7 THE DEFENDANT: Yeah, he need to ask the
8 question right.

9 THE COURT REPORTER: And I got to write it
10 so please, y'all slow down and one at a time.

11 THE DEFENDANT: Hey, you the most
12 important to me.

13 THE COURT REPORTER: I'm trying.

14 THE DEFENDANT: You the most important to
15 me.

16 THE COURT: Mr. James, he gets to ask the
17 question. Whether he's right or wrong you just
18 answer it if you know the answer, and then you have
19 a right to explain your answer.

20 THE WITNESS: But what he's doing, what
21 he's doing, see, he's leading the jury. He's
22 leading the jury by throwing in this and throwing in
23 that. He's using words that I have not yet stated.
24 I never say that that victim had grab my mother. I
25 never stated that that victim had reached in his

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1 glove compartment. I never stated these things.

2 He's misleading the jury.

3 THE COURT: He's asking the questions and
4 if he's, if he's wrong you ---

5 THE WITNESS: He is wrong when you
6 misleading the jury.

7 THE COURT: All you have to do is answer
8 ---

9 THE WITNESS: Any time you mislead the
10 jury you're wrong because you're putting, you're
11 putting thoughts in the jury head to go your way.

12 THE COURT: Okay. He's gonna ask the
13 question. Y'all do not talk over each other. We're
14 gonna have a record. He asked the question. You've
15 paused a second. You answer the question, okay.
16 And if he asks you a yes or no question, you answer
17 it yes or no. You have a right to explain your
18 answer, but you got to answer it first, okay.

19 THE WITNESS: I went to explain the answer
20 just a moment ago, prior ago, and you know what he
21 said? We're gonna move right along with the next
22 question.

23 THE COURT: I understand, but ---

24 THE WITNESS: But I wanted to put
25 influence on my question, my answer, and he said

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1 we're gonna move right ahead, we're not gonna ask
2 the question no more. If he gonna keep continuing
3 that throughout the process of court and we cannot
4 see that is just being that is not being held,
5 somewhere somehow it got to be stopped somewhere
6 into that because that it's such a thing called
7 railroad and it's been up the railroad.

8 THE COURT: Okay. He's gonna ask you
9 questions, you answer them.

10 MR. ANDERSON: Madam court reporter, I
11 apologize, I'll go slower.

12 BY MR. ANDERSON:

13 Q All right, next question is, which weapon has a
14 greater range, a pistol or a machete?

15 A Neither one of them when ain't being used.

16 Q So let's say someone wanted to harm somebody with
17 a pistol and a machete, which one would have a
18 greater range?

19 A Okay. If you go and get a permit to carry a
20 pistol and you get training to carry a pistol, you
21 get use and no hard experiences the knowledge to be
22 able to handle and use this pistol and comes out
23 here with a man that's rational with a distorted
24 mind, a man who, who, who, who is out to create and
25 cause danger, harm, conflict in your life, tell me

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1 which one is safer. A fool with a hand, with a
2 machete, a civilized individual, a moral individual,
3 a prudent individual, a reasonable individual with a
4 gun, tell me which one is more dangerous. That's
5 like a man with no driver's license with driving
6 under the wheel versus a man with driver's license
7 and driving drunk.

8 THE COURT: Do you know the answer to —

9 THE WITNESS: Which one is more dangerous?

10 THE COURT: Mr. James, he asked you a
11 question and you never answered it.

12 THE WITNESS: I wasn't, I'm answering it.

13 THE COURT: No, you're asking questions.

14 THE WITNESS: What I'm saying, what I'm
15 saying is I believe that the man with the most
16 prudent conduct and character has the better
17 advantage in carrying any kind of weapon. In this
18 state I would say the gun was not deadly as the
19 machete at the point before it was disarmed, before
20 it was fired. The machete was more dangerous
21 because it was in the hand of a rational or a
22 riotous behavior individual who wasn't thinking
23 clearly who states that he was aggravated, he was
24 frustrated, and he's out here. I believe that the
25 pistol was in the better hand than the machete in

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1 the hands of a aggravated man. No more than I feel
2 a man with no license and driving sober is in a
3 better condition ---

4 THE COURT: We're not -- we're not talking
5 about driver's license right now.

6 THE WITNESS: ---than a man with no
7 license.

8 THE COURT: All right, you've answered the
9 question. Next question.

10 BY MR. ANDERSON:

11 Q All right. And you talked to Mr. Smaldone, you
12 said, you can't stop a bullet; is that right?

13 A You can't stop a bullet once it's discharged.

14 Q So you said that?

15 A Yes, sir, I said that.

16 Q Okay. And so, and you're talking about when he
17 turned away at that point, right, when you were
18 talking to Mr. Smaldone, when Mr. Singletary turned
19 away from you?

20 A When he turned away?

21 Q Yeah.

22 A I don't know the point where he turned away. He
23 definitely don't know no point of where he turned
24 away. On yesterday he came in here and said that he
25 didn't turn away. On yesterday he came in here and

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1 said he turn away but not quite. What is a partial
2 turn away? What's a partial retreat? Once I done
3 break in your house and crawling through your window
4 and you cut the light on and I shut the window and
5 jump out, that's a partial retreat? He partially
6 retreated. You asking me questions he answered you
7 yesterday. He said he not quite retreated. You're
8 not gonna give him a point that he retreated.
9 You're not gonna make him say or think the court
10 think him that he retreated, that way you throw me
11 off from self-defense. See, I know the elements of
12 self-defense 'cause I done study. Now I knew that
13 element of self-defense because this man retreated,
14 then I knew self-defense. In order for self-defense
15 you got to feel the level of being in imminent
16 danger which prove that this man has to have a
17 weapon at that time to put my life in imminent
18 danger. He said he wanted to make me fear my life.
19 He said he wanted to make danger in my life. Right?
20 So after he did that, made danger in my life, he's
21 trying to come back and say now he retreated. When
22 the question was asked did you or did you not
23 retreated, he said I don't know, I was so aggravated
24 and so confused, that this and that, he said he
25 don't think he quite retreated. That mean he did

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1 not retreat. Retreat is in full. Retreat is not in
2 partial. You can make a retreat in partial? Then
3 it's not a retreat.

4 THE COURT: Okay, you've answered that
5 question.

6 THE WITNESS: I answered that one. I know
7 I answered that question. Let's go to the next one.
8 Come in here and try to throw something out there
9 like you got all the sense around here.

10 BY MR. ANDERSON:

11 Q So it was a partial retreat? That means he's
12 just, he's not moving away from you on the camera
13 because of the camera time you talked about?

14 A I'm don't know what I'm going — you can forget
15 the camera. And I'm going by what is in the mind of
16 this man. What you doing right now is you trying to
17 lead the jury. You trying to make the jury put him
18 in the right of saying he retreated. This is what
19 he want y'all to believe. From what y'all believe
20 and from the testimony of that individual there, Mr.
21 Singletary, he said he did not retreat. If y'all
22 allow him to say that to throw himself out there and
23 say that he retreat and let this man show him how to
24 get off on his sentence, then so well it be. But
25 when it show up on your doorstep the same situation?

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1 THE COURT: You got to answer the
2 question. You can't talk to the jury.

3 BY MR. ANDERSON:

4 Q All right. So I asked you a yes or no question.

5 A I answered that.

6 Q It's not on there because of the camera time, yes
7 or no?

8 A Show it. I want to see what everybody else —

9 Q Yes or no.

10 A You see it, you know if it's on there. The whole
11 courtroom see it. We know it's on there. If y'all
12 can't see it, I want to see it.

13 Q All right.

14 A We should not be asking that question already.

15 Q Okay.

16 A That question been answered yesterday. We
17 watched the film three times. You still asking me
18 what's on it. Did you not have time to see it?
19 This is my first time seeing the film a couple of
20 weeks ago. I'm pretty sure the film came through
21 your possession and the court possession and the
22 State possession first. You had time to analyze
23 that film longer than any of us. You can go watch a
24 movie and done miss the same part three times.
25 Y'all saw that movie four times. Y'all can't tell

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1 me y'all watched that film one time. Y'all show it,
2 then we answer the question. Show it.

3 THE COURT: Ask the next question.

4 THE WITNESS: Yes, let me show where the
5 gun stop at like y'all did everybody else. Let me
6 stop the film. Let me explain the film.

7 BY MR. ANDERSON:

8 Q We're gonna do that in a second, I promise, ---

9 A Well, let's go ---

10 Q ---but you fired three shots, right? Three?

11 One, two, three?

12 A How many shots you have?

13 Q How many shots did you fire? I'm asking the
14 questions.

15 A Three.

16 Q Okay. Where did you fire those shots?

17 A One in the air.

18 Q One in the air. Where were you at when you fired
19 that shot in the air?

20 A On the passenger side of my mother's car.

21 Q Where were you at when you fired the second shot?

22 A On the passenger side of my mother's car.

23 Q So there's two shell casings by your momma's car?

24 A I don't know.

25 Q Okay. Where was the third shot?

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1 A Where was the third car [sic]? In front of the
2 other car.

3 Q Where Mr., he was laying on the ground, where he
4 was found laying on the ground?

5 A Where he was -- in front of that car, but not in
6 that spot.

7 Q Okay. You said to Mr. Smaldone the video ---

8 A I don't know what's ---

9 Q ---is 15 minutes long and during that 15 minutes
10 you were bashed and beaten. Is the jury gonna see
11 that?

12 THE COURT: Whoa, whoa, let him ask the
13 question. She can't get it down when both of y'all
14 are talking.

15 Ask the question.

16 BY MR. ANDERSON:

17 Q You said, you will agree with me you said to Mr.
18 Smaldone during the 15 minute video you were bashed
19 and beaten?

20 A Here's what I'm saying, the camera time on the
21 film is showing me 14.52, something like that, so
22 I'm saying 52, 15 minutes. That's why I'm saying 15
23 minutes. For me to be accurate and say how long
24 this was carrying on, I guarantee it was over 15
25 minutes. That's accurate enough to answer your

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1 question? I know it took him more than five minutes
2 searching through his truck. It took him more, it
3 took him more than three minutes probably search
4 through his trunk. When he walked over there in the
5 crowd near his witness, he was over there for a
6 period of time. So with the camera reading 15
7 minutes we have to come and find out and put the
8 camera in the right prospective for us to understand
9 that camera. You ain't gonna come and tell me that
10 film, that camera was just that, don't believe it.

11 Q Were you bashed and beaten?

12 A What do I mean by bashed and beaten?

13 Q I didn't ask you what you meant. I asked you
14 were you bashed and beaten. Yes or no.

15 A I mean, I mean being terrorized, that's what that
16 bashed and beaten mean. I mean, that doesn't
17 physical, mean physical, that somebody is beating on
18 you. But when somebody is constantly bashing you,
19 they constantly torting you, they constantly
20 provoking you, they constantly trying to scare you.
21 He sitting there admitting that this what he was
22 doing. This was his intention. Why you justifying
23 his intention and he already said that this is his
24 intention. I think you're going too far as a
25 prosecutor. He said this is what he's doing. Now

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1 you're gonna justify it and change it and say this
2 is what he's not doing, but he said, your client
3 said this is what he was doing so how you going ever
4 prove he wasn't doing that, he said he was. 'Cause
5 you knowledgeable enough to know that the film,
6 study the film, and use your education and your
7 schooling around what you see and where you is what
8 you gonna pull a veil over our eyes 'cause we're not
9 on that level where you are.

10 Q All right. You ready for the next question?

11 THE COURT: Ask it.

12 THE WITNESS: You ---

13 BY MR. ANDERSON:

14 Q You were talking about the victim
15 Mr. Singletary's motives and you mentioned the word
16 premeditation and Mr. Smaldone cut you off. What
17 were you gonna say?

18 A What I was gonna say?

19 Q Yeah, I want to know.

20 A I saying I think he premeditated it all 'cause
21 when you discontinue from this event and came back
22 and bring about something else, that's a
23 premeditated state of mind.

24 Q All right. And tell us what premeditated means.

25 A I just explained it, sir.

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1 Q Can you give me a definition.

2 A Objection. I don't know the legal terminology of
3 it, but I'm pretty sure that somebody in here can
4 pull up Black dictionary and give us the terminology
5 or maybe you're professional enough to give us that.

6 Q All right. And before I switch ---

7 A I mean, maybe you're professional enough to give
8 us that. I mean, you want the terminology. I said
9 I can't give the terminology, but no need to leave
10 that void. Explain to these people what it is.
11 That's what we're here for. That's what you in here
12 for.

13 THE COURT: Ask the next question.

14 BY MR. ANDERSON:

15 Q You would agree with me that you told
16 Mr. Smaldone the story about you looking for the
17 keys in the car and why you couldn't leave sounds
18 fabricated? You would agree with me you said that
19 just now on the record?

20 A It does sound like that. You won't believe it.

21 Q Okay. Mr. James, I'm gonna ask you, you've been
22 asking for us to watch the video together. That's
23 what I want to do next. We're gonna take a look at
24 State's Exhibit 1 and I'm gonna ask you a few
25 questions about it, okay. And I'm not shouting at

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1 you, I just have to make sure the jury can hear me
2 over there while I'm at the video, okay? If you
3 have any questions about what I'm saying or you're
4 uncertain, please don't just ramble on, just say I
5 don't understand you. And lastly, I'm gonna point
6 out to you what I want you to look at with the mouse
7 pointer. You understand?

8 A Yes, sir.

9 (State's Exhibit 1 was played.)

10 BY MR. ANDERSON:

11 Q All right. Mr. James, let me start, you see this
12 on your screen, State's Exhibit 1?

13 A Yes.

14 Q There's a red car pulling in. Is that
15 Mr. Singletary's car?

16 A Yes.

17 Q And you're over here ---

18 A No.

19 Q ---where the mouse pointer is?

20 A No, sir, I'm further back than that.

21 Q So you're farther back than that. You come from
22 that direction, right?

23 A Right.

24 Q That's you walking that way?

25 A Right.

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- 1 Q Who is that walking with you?
- 2 A I don't know that fella right now.
- 3 Q What's he doing? Looks like y'all are having a
- 4 little interaction there. What'd you say to him?
- 5 A Probably telling him to leave me alone, I don't
- 6 know. I probably telling him to leave.
- 7 Q Why you think he was over there messing with you?
- 8 A I probably ain't never told him nothing.
- 9 Q You want to see it again?
- 10 A I probably never told him anything.
- 11 Q All right, let's watch it again.
- 12 A That's David.
- 13 (State's Exhibit 1 was re-played.)
- 14 BY MR. ANDERSON:
- 15 Q You said something to him. What'd you say?
- 16 A Tell him, no, go ahead, I got it.
- 17 Q You got it? You spread the good news? Said, you
- 18 got that.?
- 19 A What you got, yeah, I can talk to him. Yeah,
- 20 that's what I told him. I can talk to him.
- 21 Q All right.
- 22 A We don't have any problems.
- 23 Q So now you're spreading the good word at the car
- 24 about your date? That's what's happening there?
- 25 A I went to talk to him. You asking me what did I

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1 say to this individual guy right here. What are you
2 trying to say I said to him. You make an assumption
3 of what I said to him? I don't know exactly what I
4 said to him. I could have tell him to leave me
5 alone, get out of my face, anything. You tell me
6 what he says. He's a witness, bring him in here.

7 Q All right, let's move on.

8 A He's a witness. We asked for him to come into
9 court. I subpoena him to come here. I asked him
10 can the witness come here. He's not coming in here,
11 then you gonna ask me what I said to him? Would it
12 be honest for you to bring him in here and ask him
13 what did I say to him.

14 Q And again, I ask you, just answer my question ---

15 A I asked for him to be in my motion of discovery,
16 in my Rule 5. I asked for him as a witness to be
17 there as a witness. I would ask for him, for this
18 to be in my motion. You can ask me questions about
19 him; but you will probably stating you can't include
20 this in my, in my Rule 5? You being partial with my
21 motion of discovery as well as that videotape?

22 Q You ready for the next question?

23 A No, I'm not. I'm not gonna go forward with this
24 thing. I can't go through this and there's no
25 objection in this.

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1 Q All right, the next question is ---

2 A Objection, sir.

3 Q What happened to the ---

4 THE WITNESS: Your Honor, I cannot go
5 further with this. I cannot go further with this.

6 THE COURT: You got to answer his
7 questions. You don't have ---

8 THE WITNESS: I can't answer his questions
9 ---

10 THE COURT: ---any options.

11 THE WITNESS: ---'cause I have no attorney
12 here with me.

13 THE COURT: He's sitting right there.

14 THE DEFENDANT: I'm not prepared for this.
15 He's sitting there. I mean, he's sitting there.
16 And that's not what he's ---

17 THE COURT: He can't, he ---

18 THE WITNESS: I'm not gonna go through
19 with this, no.

20 THE COURT: The prosecutor has not asked
21 ---

22 THE WITNESS: No, ---

23 THE COURT: ---a question.

24 THE WITNESS: ---the prosecutor got this
25 sewed up in here.

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1 THE COURT: Ask him the next question.

2 THE WITNESS: I'm not answering.

3 BY MR. ANDERSON:

4 Q Is that you walking away right here?

5 A I don't know.

6 Q Right there?

7 A I don't know.

8 Q You don't know?

9 A I'm not paying any attention. I'm not gonna go
10 further.

11 Q So they ---

12 A I need legal representation. I need legal
13 representation. A man cannot come in this courtroom
14 and stand in here -- I could have do exac-- I could
15 have come in here by myself. I could have come in
16 here and do this in October. I'm not.

17 Q All right, I'm gonna rewind ---

18 A 'Cause you know being disfair. You know that.
19 You know that, Mr. Anderson. You know that. You
20 know that. I'm not gonna answer these questions and
21 keep misleading this jury and keep misleading this
22 trial. I'm not gonna sit myself in a conviction
23 just because of your self, for you. I'm not gonna
24 do it. Now we're gonna get me a better attorney in
25 here or something or somebody here gonna be able to

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1 represent me, but I'm not gonna go standing here and
2 continue to go through this.

3 Q Okay. I'm gonna rewind it. I want you to show
4 the jury ---

5 A I'm not gonna speak anymore. You can't make me
6 say something, see.

7 MR. ANDERSON: Your Honor, I ask you to
8 admonish Mr. James for interrupting me.

9 THE COURT: He gets to ask questions and
10 you get to answer them.

11 THE WITNESS: I'm not gonna answer him.

12 THE COURT: Okay. He's still gonna ask
13 the questions.

14 THE WITNESS: And I'm not gonna answer.

15 THE COURT: And that's fine.

16 THE DEFENDANT: Okay.

17 THE COURT: Ask the questions and show the
18 jury what you want to see.

19 BY MR. ANDERSON:

20 Q All right. Mr. James, I'm gonna rewind it a
21 little bit. I want you to say, stop, solicitor,
22 when he performs the police maneuver where he puts
23 it up on there of where the camera time is. I want
24 you to say, just stop, solicitor, so I can show that
25 to the jury because that's important, okay. I'm

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1 rewinding, just say stop. Tell me when it happens.

2 (State's Exhibit 1 re-played.)

3 THE WITNESS: Stop, Solicitor.

4 BY MR. ANDERSON:

5 Q So that moment we just saw was him jumping out of
6 the car and putting the gun on the hood like you
7 described ---

8 A Stop, Solicitor, you didn't stop it.

9 Q All right. We're gonna rewind it and watch it
10 again.

11 A And this might not be the first film.

12 Q All right.

13 A We might not even have that portion of the film.

14 Q Are you ready?

15 (State's Exhibit 1 played.)

16 THE WITNESS: Stop, Solicitor.

17 BY MR. ANDERSON:

18 Q So he jumped out, that was what we just saw, him
19 jumping out of the car and performing a maneuver
20 like a police officer?

21 A If you can stop that film. If you can stop that
22 film and get that angle to that film, I'm telling
23 you what it was. You don't have that, you don't
24 have that direction of film to even be able to stop
25 it and show that because the film is moving too

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1 fast. That's what I'm trying to tell, this is
2 camera time. He ain't did like this. He ain't did
3 like that (indicating). That's camera time. He
4 ain't went in his trunk and did like this. That's
5 camera time. He went in his trunk, he did like
6 this. When he did this he ain't did this, he did
7 this (indicating) on camera time. That camera is
8 running. It making everything looking to appear
9 faster. When he walk over there to the car to them
10 people, he didn't walk over there and walk over
11 there and turn around and come back; he didn't do
12 that. He walk over there to them people. He stood
13 over there for approximately minutes. It looks like
14 he walked over there and walked right back. The
15 camera is not showing us this. The camera is not
16 showing us this, but they can get this camera to
17 show the camera time. All they got to get is the
18 right proper people in here to do it. There's
19 people out here that didn't do that.

20 THE COURT: Okay.

21 THE WITNESS: And that's what we need in
22 here, but I don't even have a lawyer that can get
23 that in here.

24 THE COURT: The camera ---

25 THE WITNESS: The man did like this.

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1 THE COURT: The camera has the time on it.

2 THE WITNESS: The camera has the time on
3 it, but it's moving as — it's not moving, it's
4 moving at what they camera time. There's a
5 difference between camera time and actual timing.

6 THE COURT: I understand, but you see —

7 THE WITNESS: If we understand that, then
8 let's get — Your Honor, you just said that you
9 understand that there's a difference between actual
10 time and camera time.

11 THE COURT: Hold on.

12 THE WITNESS: If there's a difference —

13 THE COURT: Hold on.

14 THE WITNESS: —between actual time and
15 camera time, Your Honor, then maybe we should get
16 somebody in here that can control camera time.

17 THE COURT: All right, hold on, listen to
18 me. The numbers on that camera show 7/15/2017,
19 Saturday, 15:41:32.

20 THE WITNESS: Uh-huh.

21 THE COURT: 15 is the time. It's military
22 time.

23 THE WITNESS: Military time, okay.

24 THE COURT: Okay. 41 is the minutes and
25 32 is the seconds.

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1 THE WITNESS: How long do we, how long is
2 the film exactly?

3 THE COURT: You will watch the seconds go
4 off in time.

5 THE WITNESS: Okay. And we try to say
6 that camera time, although ---

7 THE COURT: The actual time.

8 THE WITNESS: Although, Your Honor,
9 remember, this camera is doing this like the man
10 explain, Mr. Thomas explained yesterday
11 (indicating).

12 THE COURT: Well, you'll be able to tell
13 that from the seconds.

14 THE WITNESS: It's doing this
15 (indicating). It's doing this, and it's keeping the
16 same timing.

17 THE COURT: You see the seconds click off.
18 That will tell -- that was the actual seconds. You
19 watched that.

20 THE WITNESS: Okay.

21 THE COURT: All right, Mr. Solicitor, play
22 whatever you want.

23 BY MR. ANDERSON:

24 Q All right, Mr. James, I'm gonna go forward a bit.
25 Let's just watch State's Exhibit 1 together.

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1 A Is anything cuffed in his hands? Is anything
2 cuffed in his hands?

3 Q Mr. James, I'm asking the questions.

4 A I want you to stop. Well, stop the video.

5 Q I'm gonna ask you a question in a moment. Until
6 then you can be silent.

7 A Anything there in his hands? Is anything in his
8 left hand? Is anything in his left hand?

9 THE COURT: You don't get to ask the
10 questions.

11 THE WITNESS: I'm not asking any really,
12 just focusing on the left hand.

13 THE COURT: You just answer the questions.

14 THE WITNESS: Is he putting the gun away?

15 BY MR. ANDERSON:

16 Q Mr. James, I'm asking the questions.

17 A I'm just putting it out there. Is he putting ---

18 THE COURT: No, you can't do that.

19 BY MR. ANDERSON:

20 Q You don't get to ---

21 A ---the gun away?

22 Q ---put things out.

23 THE COURT: No, you can't ---

24 THE WITNESS: Oh, I'm sorry, I didn't
25 realize ---

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1 THE COURT: You need to answer his
2 questions.

3 THE WITNESS: I can't, I didn't realize I
4 couldn't say that, Your Honor, I'm just...

5 THE COURT: You can answer his questions.
6 That's all you can do.

7 BY MR. ANDERSON:

8 Q Is that the victim going back toward his car?
9 Right here, this figure where the mouse pointer is,
10 is that the victim going back to his car?

11 A Yes.

12 Q Yes or no?

13 A Yes, sir. Whether I punched him or not, at this
14 point this should be over with.

15 Q All right. He has armed himself with that
16 machete. You agree with me with that, about that?

17 A I can't even see the machete at this point.

18 Q Okay. He doesn't have the machete ---

19 A That's not an issue.

20 Q ---in his hand? So are you testifying to the
21 jury he didn't get it out of the trunk?

22 A Naw, I'm not saying that. I said I couldn't see
23 it from where the film was at, man.

24 Q All right.

25 A Don't change it up, man. Let's go through with

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1 it because every time you try to stick something in
2 you gonna upset me 'cause you're trying to get up
3 and try to lead me and lead the jury. You know you
4 are. And you're taking this as a joke and this is
5 my life, man.

6 Q I'm not trying to upset you.

7 A My life more important than your life, man.

8 'Cause your life all beat up and jacked up. You
9 think my life is like that.

10 Q Mr. James, this is the most important question

11 ---

12 A I mean, you can't ---

13 Q ---I'm fixing to ask you.

14 THE COURT: You got to answer his
15 question.

16 THE WITNESS: But he's being wrong. He's
17 laughing, snickering, and grinning, and everything.

18 THE COURT: You're a whole lot better off
19 if you'd just answer his questions, okay.

20 Ask the next question.

21 BY MR. ANDERSON:

22 Q I'm going to ask you to say, stop, Mr. Solicitor,
23 when the warning shot gets fired.

24 A That's warning shot. That warning shot happened
25 before you stopped right here. The warning shot is

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1 before where you got it at right here.

2 Q It's right before that so the jury can —

3 A No. This right here, when you let this film go
4 watch him jerk when he get hit.

5 Q All right, we'll go back. And I'm gonna direct
6 your attention to right here 'cause that's where you
7 are, right?

8 A Right.

9 Q All right. Tell me when the warning shot
10 happens, when you fire in the air. Right here,
11 right?

12 A There. I said there already. You took it from
13 9. Put it back on 9.

14 Q All right, we can go back to 9. Just say when,
15 I'll stop. I'm going back frame by frame. Say when
16 the warning shot happens.

17 A Go on back.

18 Q I'm going. Still?

19 A You go back. All right.

20 Q Now? This is the warning shot. So if I go back
21 a few frames and let the jury watch we're gonna see
22 you fire the warning shot.

23 A That wasn't the warning shot I don't think. That
24 wasn't the warning, that wasn't the warning shot. I
25 know what angle I shot, that I shot him at. That's

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- 1 not the warning shot angle.
- 2 Q Okay.
- 3 A I'm telling you it's not the warning shot angle.
- 4 I know where I shot him at.
- 5 Q You ready to continue?
- 6 A Yes.
- 7 Q So you agree you fired a shot there too, right?
- 8 A I shot at him there.
- 9 Q That's the second shot?
- 10 A Yes.
- 11 Q Okay. And I want you to describe for me what
- 12 Mr. Singletary does after that second shot, okay.
- 13 Tell me ---
- 14 A No, no.
- 15 Q I don't want you to describe it, take that back.
- 16 I want you to say whether he's moving towards you or
- 17 away from you, okay. Just answer that question.
- 18 Did he move towards you or away from you?
- 19 A Neither/or. He's speaking. He's speaking. He's
- 20 gonna go around his mother. That's the second shot.
- 21 See how he limped. That's when he hit.
- 22 Q Is that you that got out of the car there?
- 23 A Yes.
- 24 Q You got out of the car because of your bird flu?
- 25 A Yes. He's going, he's talking about going and

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- 1 talking in his direction of going around there.
2 He's telling David get out his face, I'm gonna get
3 that bitch, I'm gonna kill that bitch, I'm gonna
4 show this bitch. He's talking to David, the same
5 guy that was in front of him in the move when I shot
6 the warning. He's going around. See, that's his
7 intention. You trying to explain his intent, but
8 you can't explain his intent because he already
9 established himself with his intentions. His
10 intentions was what he was gonna do. You trying to
11 give an intent. You trying to establish some
12 grounds to prove his intentions, but this man speak
13 his intentions already.
- 14 Q Okay. Were you afraid at that moment?
- 15 A I was afraid from the jump ---
- 16 Q All right.
- 17 A ---knowing he have a gun.
- 18 Q All right. We're gonna go forward frame by
19 frame. I want you to just tell, you tell me, if you
20 say at any point in this you stop being afraid,
21 okay. You agree you're moving closer to him, right?
- 22 A Yes, he's moving closer. He's going around to my
23 mother. Where's my mother?
- 24 Q He's going towards your mother?
- 25 A Where's my mother?

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1 Q I'm asking ---

2 A Where is my mother on the film?

3 Q You're gonna see it in a minute, just keep -- are
4 you going towards him?

5 A He's gonna go ---

6 Q Yes or no, are you going toward him?

7 A He's -- I'm going towards him. He's going
8 around.

9 Q So you're going towards the machete?

10 A He's going around towards, no, he's going around
11 that car. He's talking to my momma.

12 Q You didn't answer my question. You're going
13 towards the machete?

14 A He's talking to my mom about his intentions.

15 THE COURT: Whoa, whoa, answer the
16 question.

17 THE WITNESS: I'm going behind him 'cause
18 he's telling me, telling my momma what he's gonna do
19 when he's circling around that car. He's telling my
20 momma what's gonna happen.

21 THE COURT: He didn't ask you what he was
22 telling your momma. He asked you ---

23 THE WITNESS: That's all that is in that
24 same threat. That's all in ---

25 THE COURT: He didn't ask you ---

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1 THE WITNESS: ---that same threat.

2 THE COURT: ---that.

3 THE WITNESS: That's what my fear is.

4 THE COURT: Hold on a minute.

5 THE WITNESS: This is my fear. He's
6 telling my momma what he's gonna do.

7 THE COURT: I know, but answer his
8 question. He didn't ask you what you was telling
9 your momma. He simply asked ---

10 THE WITNESS: Where's my fear. I said my
11 fear is there because he's going around to my
12 mother.

13 THE COURT: I understand. But he asked
14 you ---

15 THE WITNESS: But what more can I say?

16 THE COURT: The question is whether you're
17 moving toward him.

18 THE WITNESS: Yes, I'm moving towards him,
19 but he's moving -- the threat is towards my mother.

20 THE COURT: I understand. He didn't ask
21 you about the threat.

22 Ask him the next question.

23 MR. ANDERSON: All right.

24 BY MR. ANDERSON:

25 Q So you're moving toward, are you still moving

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1 toward him? That's you in the white T-shirt there
2 and that's him?

3 A Going towards, going around to my mother. He's
4 threatening my mother. He's speaking to my mother.

5 Q He's going towards your mom right now?

6 A He's threatening going around my mother. My
7 mother is on the other side of this car. And you go
8 around that car, you come around that car my mother
9 is back there.

10 Q All right.

11 A Calling 9-1-1 on her phone which that evidence
12 never was reported. She called 9-1-1 on her phone
13 first. That information is down there, but nobody
14 seems to want to go get this information. The man
15 is running behind myself with a gun -- with a
16 machete. This is what's being called. All you go
17 to do to get the information that I'm asking you ---

18 THE COURT: Hold on. He's not asking you
19 a question. You're just talking.

20 THE WITNESS: They refuse to give me any
21 kind of evidence. I can't prove evidence if they
22 don't ask no questions or say nothing.

23 THE COURT: You got to answer his
24 questions. You have a chance to put your evidence
25 up.

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1 THE WITNESS: How?

2 THE COURT: It's your case. You got on
3 the stand.

4 THE WITNESS: My, he refusing to bring it
5 up.

6 THE COURT: He can't ask you questions
7 'cause it's not his turn.

8 THE WITNESS: Not — I'm talking about my,
9 my, my, my, my, my, my, my attorney. These are
10 things my lawyer having in effect.

11 THE COURT: Okay, you just answer. At
12 this point you just answer the prosecutor's
13 questions.

14 THE WITNESS: After this point in time
15 where do I need to go to be able to get to the jury
16 to have my motion to have these things, this
17 evidence that I asked.

18 THE COURT: You do that later. Answer his
19 question.

20 BY MR. ANDERSON:

21 Q I've only got three more questions, I promise.
22 Just answer yes or no and it will be over. Tell me
23 when you shoot him. So you didn't just shoot him?

24 A No.

25 Q All right, let's go back. I want you to pay

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1 careful attention right here. Tell me if you see a
2 little puff of smoke. You see it? What's he doing
3 now?
4 A He's falling.
5 Q He's falling, all right. Keep watching.
6 A Hold up, hold up. Right there, right there, why
7 you ain't stop the film.
8 Q Did you shoot him then?
9 A No, right there. Why ain't you stop the film
10 where he had the machete up?
11 Q Let's go back.
12 A Right there. Right there.
13 Q He's slumped against the car, right?
14 A No, go back.
15 Q Pop, you shot him? You ready?
16 A All right, play it.
17 Q So you shoot him.
18 A Right there, right there. All that is sword.
19 All that is sword. All that is that silver blade
20 ---
21 Q Okay.
22 A ---that he has in his hand. His blade is still
23 up.
24 Q Blade is still up. All right, tell me when you
25 shoot him again. You see that second puff of smoke?

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1 A Is that the blade?

2 Q Your arm is not extended. One of the blunt
3 pointing gestures that Mr. Smaldone talked about
4 yesterday?

5 A My arm is up when I talk with my hands.

6 Q Okay, you were talking with your hands?

7 A We all do that.

8 Q Okay, I have no further questions.

9 A We all talk with our hands. That's the sword
10 that he has up there. I don't think we settled on
11 the rest on there. That's the sword.

12 THE COURT: Okay.

13 THE WITNESS: I would assume you seen this
14 this film.

15 THE COURT: We're not asking you
16 questions.

17 You got anymore questions?

18 MR. ANDERSON: No, Your Honor, I'm done.

19 THE COURT: You got any questions?

20 MR. SMALDONE: No further questions for
21 this witness, Your Honor.

22 THE COURT: Okay. You can step down.

23 And we're gonna take a break. All right,
24 ladies and gentlemen of the jury, we're going to
25 take a ten minute break.

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1 (WHEREUPON, the jury was removed from the
2 courtroom at 11:26 a.m.)

3 THE COURT: We'll be in recess ten
4 minutes.

5 (WHEREUPON, a recess was taken from the
6 proceedings.)

7 THE COURT: If the jury is ready we're
8 ready for them.

9 (WHEREUPON, the jury was returned to the
10 courtroom at approximately 11:40 a.m.,
11 and the following proceedings commenced
12 in open court.)

13 THE COURT: Okay. Mr. Smaldone, you may
14 call your next witness.

15 MR. SMALDONE: Defense calls Ms. Josephine
16 James.

17 THE CLERK: Step forward, Ms. James.
18 Place your left hand on the Bible, raise your right
19 hand.

20 WHEREUPON,

21 **JOSEPHINE JAMES,**
22 having been duly sworn by the Clerk, testified
23 as follows:

24 THE CLERK: You may take your seat in the
25 witness box.

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1 MR. SMALDONE: Come on up here. Have a
2 seat.

3 **DIRECT EXAMINATION**

4 BY MR. SMALDONE:

5 Q Ms. James.

6 A Yes.

7 Q Good morning.

8 A How are you doing?

9 Q I'm all right. How are you today?

10 A All right, sir.

11 Q All right. Ms. James, tell me a little bit about
12 yourself. Where were you born?

13 A Where was I born?

14 Q Yes.

15 A Born in West Philadelphia, Pennsylvania.

16 Q Okay. And I hate to ask this of any young lady
17 such as yourself but, what year were you born?

18 A To be honest with you, you can't turn your back.
19 I read lips also.

20 Q Oh, I'm sorry.

21 A I have a hearing problem.

22 Q I'm sorry. What year were you born?

23 A I'm born in Philly.

24 Q And what year was that?

25 A '56.

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- 1 Q '56, okay. So I'm gonna talk a little slow just
2 because you said you have trouble hearing?
3 A Right.
4 Q All right.
5 A Right.
6 Q So you're born in 1956. When did you move to
7 South Carolina?
8 A I moved down here August 21st, 1969.
9 Q 1969.
10 A Right.
11 Q All right. Are you currently employed?
12 A I am retired.
13 Q All right. When did you retire?
14 A I retired, well, really actually I did have a
15 little part-time job working at a bar as a
16 bartender.
17 Q Okay.
18 A Yes, I was, but not now.
19 Q All right. And did you know Mr. Singletary
20 through working?
21 A Yes, I do.
22 Q All right. How many kids do you have?
23 A I am a mother of four.
24 Q Four?
25 A Right.

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- 1 Q All right. And you just ---
- 2 A John James, III, is my baby boy.
- 3 Q Is he the youngest?
- 4 A No. Well, no, he's the youngest boy.
- 5 Q Okay.
- 6 A Yeah, boy, yeah.
- 7 Q All right.
- 8 A I got two girls.
- 9 Q Two girls, two boys? All right. You, you've
- 10 been here the whole time, right, in this courtroom?
- 11 A I've been in the courtroom one time during jury
- 12 duty, you know.
- 13 Q Okay, jury duty. I'm talking about this week.
- 14 You've been ---
- 15 A Yes, I'm in court to support my son. Plus, I am
- 16 the witness, I am the victim.
- 17 Q Okay.
- 18 A I'm the victim.
- 19 Q Let's talk more about that in a second. You said
- 20 you know Mr. Singletary here.
- 21 A Yes.
- 22 Q All right. And, you know, you heard testimony.
- 23 You were at IGA that day, right?
- 24 A Say again.
- 25 Q Were you, you were at IGA that day?

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1 A Yes, I was.

2 Q All right. So, what happened? Tell me -- were
3 you with John when he walked out of the parking lot?

4 A Well, I have seen him in the store and when he
5 come back I was over here talking to a friend of
6 mine, it's a couple of guys.

7 Q Let me stop you right there 'cause when you say
8 him and her and stuff like that we don't know who
9 you're talking about so what do you mean by "him"?
10 When you said "him," you saw him in the store who is
11 "him"? Is that John or is that the judge, or is who
12 is that?

13 A Well, he was coming out the grocery store. I was
14 outside waiting on him.

15 Q Right, but who's "him"? You said he and him.
16 Are you talking about Mr. Singletary?

17 A I didn't see Singletary at the time.

18 Q All right. Well, you said -- who did you see at
19 the grocery store?

20 A Say again.

21 Q You said you saw him at the grocery store. Who
22 do you mean?

23 A Well, okay, you asked me a question. You asked
24 me about my son.

25 Q Okay. You saw your son at the grocery store?

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- 1 A John is my son.
- 2 Q Right.
- 3 A I was outside talking to some guys.
- 4 Q Okay, all right.
- 5 A To people I know.
- 6 Q Okay. And what happened after you, what happened
- 7 when, what did you witness when you were talking to
- 8 those guys?
- 9 A When my son came out with the buggy he stand out
- 10 there and talked to the guys. I got the buggy. I
- 11 said I'll get the buggy and put the stuff in the
- 12 car. A friend of mine, a good ole friend of mine
- 13 was with me at the moment, and he come with me. So
- 14 the next thing I know, you know, like I said, I have
- 15 a hearing problem. So it wasn't, we were just
- 16 standing around talking.
- 17 Q All right. Now you're standing around talking.
- 18 Did you witness the red car that Mr. Singletary
- 19 drove, did you witness the red car pulling up?
- 20 A I did not pay no attention, I was talking.
- 21 Q Okay. When did you first, when did your
- 22 attention first shift over to the area where
- 23 Mr. Singletary was?
- 24 A Well, some reason I know something like I saw him
- 25 trying to get out and run behind my son. I didn't

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- 1 know what was going on.
- 2 Q All right. You didn't -- and that's the first
- 3 time you looked over there?
- 4 A Hmm, that the first time I noticed that, yeah.
- 5 Q Okay. What did you see when he was trying to get
- 6 out of the car?
- 7 A He was already out the car.
- 8 Q Oh, so you saw him already out of the car?
- 9 A Yeah.
- 10 Q All right.
- 11 A He was already out the car.
- 12 Q And you've seen this on video too, right?
- 13 A And somewhere down the line I see him cross there
- 14 trying to run so I walk up to him and I asked him, I
- 15 say, don't even try it. Your Honor, excuse my
- 16 language, if I can tell you exactly what he tell me.
- 17 He said out loud.
- 18 Q It's okay.
- 19 A I say, Bo -- I call him Bo -- don't even try
- 20 that. Fuck you. So when he went to get, go to the
- 21 car, all he know is he carry a weapon 'cause we ride
- 22 together to work. He know I got a weapon and I know
- 23 he got a weapon. He show me his.
- 24 Q He showed you --
- 25 A So what he thinking --

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- 1 Q Sure.
- 2 A What make me run to my car because he going to
- 3 his 'cause I know he don't like my son from day one.
- 4 Q Okay.
- 5 A Because my son dated his sister.
- 6 Q Okay. So ---
- 7 A He's been a lot of problems. He's been
- 8 following, he's been a picky person.
- 9 Q All right.
- 10 A Yeah.
- 11 Q Now you, so were at, you're back, you run back to
- 12 your car; is that what you said?
- 13 A I went, I run back to my car.
- 14 Q All right.
- 15 A That's the person y'all saw running. That was me
- 16 running back to my car.
- 17 Q Okay, and we've seen it. What happened after
- 18 you're back to your car?
- 19 A Well, I was trying to get my gun which I did had
- 20 in my hand, but a friend of mine grab me from my
- 21 back.
- 22 Q Who is your friend?
- 23 A I couldn't, you know how a man grab a woman from
- 24 the back, she can't move her arm. The next thing I
- 25 know my other door been opened, the passenger side

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1 door snatched open. That when my son run to the
2 car. So he snatched the gun 'cause Mr. Singletary
3 was coming to my car with this -- say it, the thing.

4 Q The machete?

5 A Yeah.

6 Q Is that what you witnessed?

7 A So I believe self-defense because any time a
8 person come to your car -- that this is the bumper.
9 And I'm standing right here, but the guy grab me
10 from the back. This is my car bumper, the front.
11 Any time somebody come close to your car trying to
12 get your son, or really after on my side, I couldn't
13 do nothing. My son snatched it. My son give a
14 warning shot.

15 Q All right. Well, let's back up a little bit.

16 A A warning shot up in the air.

17 Q One shot in the air. Let's back up a little bit
18 to when you first got, when you first started
19 fumbling for the gun or trying to get the gun. Was
20 that before you saw the machete or after?

21 A I saw the thing Mr. James first.

22 Q You saw what?

23 A No, no, no, I was run to my car to get my gun. I
24 had a feeling he was getting his, which he did had
25 his.

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1 Q Did you witness that?

2 A When he walk over to the group where some people
3 been he hand them the gun.

4 Q Okay.

5 A Now I'm not for sure that man that he had
6 yesterday testify for him, I'm not for sure that's
7 the man that put the gun in his hand, but he put the
8 gun in somebody hand. That's when I told him don't
9 even try that. Then he opened up the trunk. That's
10 why I run to my car. When he open up the trunk he
11 come out with that (indicating).

12 Q Now did you, earlier you mentioned that you had
13 seen his gun before this day. You had seen him with
14 a gun before?

15 A Have we seen him with a gun before?

16 Q Yeah.

17 A Plenty of times, yeah.

18 Q You know, do you remember what it looks like?

19 A We worked together at the club.

20 Q Okay. So y'all know each other reasonably well?

21 A I mean, he's a person who want to try to play
22 around with it, you know, try to show somebody what
23 he got. But me, as for me, I don't show nobody what
24 I got because when it come down to trouble and I
25 feel I've been, you know, somebody try to jump me,

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1 that's the only time you can see mine.

2 Q And is that what happened that day?

3 A Yeah, because I know he was going to the car to
4 get something.

5 Q All right.

6 A And he carry the gun to somebody, but he opened
7 up the trunk but something else had to be in the
8 trunk. The next thing I know he come out with the
9 machete. But when you come 100-feet from your car
10 to my car where he at, what you asking, you asked
11 for it, right?

12 Q All right. Now ---

13 A So I told him don't go there so that mean turn
14 around and leave us alone.

15 Q Okay. Now I think we stopped before this. You
16 heard a warning shot, right?

17 A Well, it -- right. I was at my car. My son was
18 standing up, you know, lean up on the door.

19 Q Uh-huh.

20 A The door was open.

21 Q All right.

22 A You know, with the lean up on the door, hold the
23 gun up in the air, fire it one time.

24 Q I understand.

25 A Okay.

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1 Q Now was there a time that your son was in your
2 car during all this?

3 A Do what?

4 Q Was your son ever in your car during all this?

5 A My son opened my car door to snatch my gun 'cause
6 I being hold by somebody.

7 Q Okay. And was there a time that you lost your
8 keys? Was there a time that you lost your car keys
9 or couldn't find them?

10 A My keys? I couldn't get to my keys at the
11 moment. Somebody held me from the back.

12 Q Okay, I understand.

13 A How can, and then I have to search for the keys.
14 But even though I could get to my key I couldn't
15 because I been hold from the back.

16 Q All right. And just a few more questions, I know
17 it's almost lunch time. Did you see the other
18 shot -- did you see the warning shot, or did you
19 just hear it? Did you see the gun fired?

20 A I'm right here by my son. I'm on the driver's
21 side standing up. My son was on the passenger's.
22 My son was leaning on the door, my car door, fire.
23 During that time he was looking for the third
24 bullet, when they say three shots, that shell was
25 down on the side of my passenger side on the floor.

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1 Q All right, so there was a empty shell in your
2 car?

3 A Yes, but we carry it to the police department.

4 Q When did you do that ---

5 A The day after I got him out I did not know I was
6 riding around in my car with that empty shell till
7 he come out and judge, he was talking to a judge.
8 He called the judge toward my car and I was
9 wondering why he called the man to my car. He
10 opened the door and he showed the man that; and I
11 did not know, I did not know I was riding around
12 with that.

13 Q Okay. And so that was how long after the
14 July 15th? How long after the incident date was
15 that?

16 A You mean how long been driving?

17 Q Yeah. How long were you driving with the empty
18 shell in the car?

19 A I must have been driving -- how many days was it?
20 Three, four days, three or four days.

21 Q All right. I understand, okay. All right, so
22 did you see, did you ever see Mr. Singletary before
23 the end of -- I'm gonna withdraw that and back up.
24 You saw the machete earlier, right?

25 A I saw it come toward us with it.

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1 Q And how'd you feel when you saw the machete
2 coming towards you?

3 A How I feel?

4 Q It seems like —

5 A I don't be scared of nothing, I tell you that.

6 Q Okay.

7 A But when I, how I feel, if it wasn't for my son
8 to grab that gun he would never heard the first
9 warning shot because me, I don't, I don't give no
10 warning shot, but I learn now. But if I had chance
11 to fire him he would be more than just two bullet.

12 Q Okay. So you're saying that you were wanting
13 something worse to happen?

14 A All I know he's a picky person. He picks all the
15 time. He follows behind us. It's something about
16 my son that he don't like my son being with his
17 sister.

18 Q Okay.

19 A He treat her so bad she come to my house crying.

20 Q Okay. Now who was the person that held you back?
21 Do you know who that was?

22 A A good ole friend of mine, his name is David
23 Graham.

24 Q All right. It wasn't Mr. Singletary that ever
25 held you back or anything, was it?

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1 A Huh?

2 Q Mr. Singletary wasn't the one behind you holding
3 you ---

4 A Oh, he wasn't even come close to me like that,
5 no. He, 'cause if I would have done had it before
6 he get to me.

7 Q All right. So he wouldn't have been able to get
8 that close to you?

9 A Trust me, I would have had it before he could get
10 to me.

11 Q All right. And 'cause you don't fire warning
12 shots?

13 A (There was no response.)

14 Q All right. And again, I only have a few more
15 questions. I just want to make sure that we get
16 everything out 'cause it's fair to say that you were
17 on the ground there, right? I mean, you were there
18 that day through, you saw everything through your
19 own two eyes.

20 A You mean me?

21 Q Yes, ma'am.

22 A Like I say, this car door, I mean, I'm not
23 standing at my car trying to get my gun
24 (indicating). David Graham grab at me, so when he
25 grab me I can't move my gun.

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1 Q Do you know why he grabbed you? Did he say? Did
2 you find out why he grabbed you?

3 A I wish he didn't grab me because when a man like
4 that come 100-feet from the car to my bumper
5 swinging with that thing, you can't really see good.
6 I think it was self-defendant [sic].

7 Q All right.

8 MR. SMALDONE: Court's indulgence for just
9 one moment.

10 THE COURT: Okay.

11 THE WITNESS: Yes, Lord, wait on your
12 question now.

13 BY MR. SMALDONE:

14 Q Were you, when you saw, you talk about that
15 blade, the machete, the sword, whatever you want to
16 call it, was that in a case or that was out?

17 A He already took out the case.

18 Q All right. So when he had it, it was, it was the
19 threatening ---

20 A I can't do that motion, but you know when you
21 took the sword out and you coming out like that, you
22 coming -- I'm like this. It'll be me, it'll be you
23 or anybody. It's not gonna wait till that person
24 get close enough for you, but he was close enough
25 and got to my bumper. That's close enough. But

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1 when my son fired the first time up in the air he
2 never stopped, he was coming. I don't know where
3 the first shot went toward him, but I feel somebody
4 shoot me one time, I'm gonna drop this thing here
5 down, I'ma back up and quit. But you got fire one
6 time, you feel it, you know you feel it; but you
7 still coming, come on, be for real.

8 Q And after the warning shot did he, did
9 Mr. Singletary say anything to you or did he yell
10 anything out?

11 A The one shot, the shoot up in the air.

12 Q Right.

13 A The second shot goes somewhere on him.

14 Q All right.

15 A But he still been coming.

16 Q And did, and did he, was he saying?

17 A So you still coming after your first shot, you
18 asking for your next shot.

19 Q So he wasn't saying anything ---

20 A Just like the police, the police firearm expect
21 you to put it down. But if you don't put it down,
22 what the police do? If a police see you with a
23 weapon, what do they do, okay.

24 Q All right. And I do not have any further
25 questions for you and I'm just gonna ask that you

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1 answer whatever questions Mr. Anderson has, all
2 right? And I thank you for coming.

3 THE WITNESS: Come close enough where I
4 can hear you.

5 **CROSS-EXAMINATION**

6 BY MR. ANDERSON:

7 Q I'll speak up, Ms. James. Good afternoon. I'm
8 gonna ask you a few questions. I'm gonna start off
9 with some easy ones. I want to ask you about your
10 car. What kind of car you drive?

11 A I drive a 2013 Dodge Dart, silver/gray.

12 Q Does it have all four doors?

13 A Four doors, right.

14 Q All right. And do those lock with a button?

15 A Right.

16 Q Was that, were those working that day?

17 A No, my button, I don't mash no button. I got to
18 mash the button on the side of the door.

19 Q Okay. It had windows?

20 A Huh?

21 Q The vehicle has windows?

22 A Do I have windows?

23 Q In the car?

24 A Yeah, automatic windows go up and down.

25 Q So they go up and down when you press the button?

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1 A How do you let it work if you ain't got the keys
2 in the ignition?

3 Q I'm asking you.

4 A Uh-huh.

5 Q So were they up when you guys went in the store,
6 the IGA, to go shopping? Were the windows up when
7 you went into the store to go ---

8 A Car windows was up.

9 Q Okay. And they were up when you guys returned?
10 They were up when you returned to the car? Still
11 up?

12 A Yeah, they was up when I returned to the car to
13 get my gun.

14 Q Okay. You came to get your gun. I do have a few
15 questions about the gun. It's your gun, correct?

16 A It is my gun.

17 Q All right. Where do you keep your gun in the
18 car, or where did you keep it in general?

19 A You mean in my car?

20 Q I want to know where you keep your gun.

21 A Oh, I can't tell that now because everybody been
22 try to take a chance to break in my car, but I tell
23 you I usually keep it in the glove compartment.

24 Q All right.

25 A But I'm not gonna put it in the trunk unless it

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1 daytime.

2 Q So where was it that day?

3 A No, no, I don't keep it in the trunk. I keep it
4 in the glove compartment or, what we call that thing
5 on the side under ---

6 THE COURT: Console?

7 THE WITNESS: Right, right.

8 BY MR. ANDERSON:

9 Q Where was it at that day?

10 A Where was it that day?

11 Q Where was it that day?

12 A On the side.

13 Q What do you mean by in the side? I need the jury
14 to know where you had the gun.

15 A You know the thing by your seat.

16 Q The console?

17 A Yeah.

18 Q It's true that you don't have a concealed carry
19 permit in the State of South Carolina; isn't it?

20 A A what?

21 Q It's true that you do not have a concealed carry
22 permit in the State of South Carolina ---

23 A Well, I had just got the gun, and I usually don't
24 carry with me on the side.

25 Q All right.

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1 A But I was trying to get my license, get that to
2 carry it on the side; but me as a woman, I carry my
3 gun for my protection.

4 Q Okay. So you carry your gun without a concealed
5 carry permit?

6 A I don't carry it with me. What you talking about
7 is allow carry on you. I ain't carry on me. I
8 don't wear it on me.

9 Q All right. And you've heard, the defendant John
10 James is your baby boy, right?

11 A That's right.

12 Q How old is he?

13 A How old he is?

14 Q Yes, ma'am.

15 A 44 or 43. 43 years old.

16 Q And you cared for him and loved him and educated
17 him for 43 years, right?

18 A Huh?

19 Q You've taken care of him for 43 years, right?

20 A I haven't had -- I mean, he 43 years old now.

21 Q And you still take care of him and help him,
22 right?

23 A Yes.

24 Q A mother's guidance ---

25 A I have helped ---

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1 Q ---you never stopped being a mom; is that right?

2 A ---all four of my children.

3 Q And you help him when you can?

4 A Huh?

5 Q You help him when you can?

6 A I help him with the case?

7 Q No, I asked, when you can help him, do you?

8 A I, well, we help each other. That's what family
9 is for.

10 Q Right. And y'all spend a lot time together?

11 A He -- yes, we spend a lot of time together. He
12 helps me out a lot.

13 Q Y'all go shopping together?

14 A Yes.

15 Q You want to take care of him, right?

16 A Huh?

17 Q You want to take care of him, right?

18 A Well, he, we take care of each other.

19 Q You don't want anything bad to happen to him?

20 A I don't want nothing to happen to him.

21 Q I don't have any further questions.

22 MR. SMALDONE: No questions.

23 THE COURT: Thank you, Ma'am, you can step
24 down.

25 Any further witnesses?

1 MR. SMALDONE: Defense rests at this time.

2 No further witnesses.

3 THE COURT: Okay. Any reply?

4 MR. ANDERSON: Nothing from the State,
5 Your Honor.

6 THE COURT: All right, ladies and
7 gentlemen, you've heard all the evidence you're
8 gonna hear in this case; but it's lunch time, so
9 we're gonna go to lunch 'cause once I charge you
10 with the law you don't get to leave till you get the
11 verdict. So we'll go to lunch. I'll ask you to be
12 back at 1:45, and at that time the lawyers will
13 give you closing arguments, I will charge you on the
14 law, and give you this case to decide. In the
15 meantime, you can't talk about it yet, allow anyone
16 to talk with you about it. And I'll see you back in
17 the jury room at 1:45.

18 (WHEREUPON, the jury was removed from the
19 courtroom at 12:05 p.m.)

20 THE COURT: Any motions or anything I need
21 to deal with before ---

22 MR. SMALDONE: Yeah, I just renew all my
23 previous motions, objections, renew my motions
24 specifically for directed verdict.

25 THE COURT: Okay. And I think there's

1 sufficient evidence in this record that the jury can
2 reach a verdict, I'll deny your motion.

3 MR. SMALDONE: Thank you, Your Honor. And
4 I'll just put on the record that I have discussed
5 pretty in depth with my client about his right to
6 testify. I believe Your Honor gave the colloquy on
7 his right to testify ---

8 THE DEFENDANT: He did not ---

9 MR. SMALDONE: ---and to not testify, and
10 we discussed that in detail and made that decision
11 together.

12 THE COURT: Okay. Your client wants to
13 say something. You want him to say something?

14 MR. SMALDONE: I, I'll ask that he tell me
15 and then maybe we'll -- I think that might be
16 better.

17 (Attorney confers with defendant.)

18 MR. SMALDONE: And Your Honor, my client,
19 I'll just put on the record the discussion is that
20 my client has a concern and I've addressed the
21 concern, but just to reiterate, you know, he --
22 there seems to be a little bit of misunderstanding
23 about the nature of the preliminary hearing and I've
24 explained that once, you know, I'm relatively new to
25 the case before, I believe I was appointed after the

1 case was true billed. I've explained that once a
2 case is indicted, and Your Honor has explained that
3 also, once a case is indicted there's no such thing
4 as a preliminary hearing because there's already
5 been probable cause found by a grand jury whose
6 heard lots of evidence and made a calculated
7 decision to either true bill it or no bill it. I've
8 explained that to the client, and I believe he now
9 understands.

10 THE COURT: Okay. Anything else?

11 THE DEFENDANT: Not quite because I put in
12 for a preliminary, but they said I didn't have a
13 lawyer, I could not go pro se. That's in October
14 when Mr. Anderson allowed you to know that I came to
15 court, I made all my appearances. But I had hired a
16 lawyer. When I realized after it was a gun charge,
17 he wanted more, I couldn't afford it. So I came to
18 court then without a lawyer, but I came to let you
19 know at the time that I didn't have a lawyer. So
20 anyway, I plan for a lawyer and everything. I did
21 want to have my preliminary. They tell me that
22 already went to grand jury; therefore, we beyond
23 that point. However, me being beyond that point is
24 in recognition that it's something that I requested
25 to have.

1 THE COURT: Okay. And you ---

2 THE DEFENDANT: As far as that motion for
3 rule for my Rule 5, I have not yet to actually get
4 my motion of discovery. I haven't reviewed my
5 motion of discovery. We only sat down and talked
6 about the film. As far as the witness and things
7 that was involved and the witnesses that was on the
8 scene, over half of these people are not around;
9 they're not, they're not here in the courtroom. And
10 these people were more, they're very valuable to my
11 case for more people in reference to say this
12 involve him, this is him, this is what he did, you
13 know, this is what the victim did. There's other
14 people that's there that's not in the courtroom. In
15 my motion for this entirety, I asked for medical
16 records, 9-1-1 records, these things like this. I
17 hadn't received these things, never reviewed these
18 things and here we are in the middle of court. I'm
19 stating that I would rather be relieved from my
20 counsel than till he can able to effectively,
21 effectively represent me. On last week when we was
22 in here before Clifton Newman he allowed Mr. Newman
23 to know that he don't really have the preparation
24 time being the time he was placed on the case on the
25 16th of August. He, it was ten days after when

1 Newman really appointed him. And a week later when
2 we was in court he said he don't think he can be
3 ready within a week, and then he say I don't know,
4 then Mr. Newman said, no, it'll be a week. And he
5 mentioned it, I don't think I'll be able to prepare
6 for this in a week.

7 THE COURT: And when was that?

8 THE DEFENDANT: This was ---

9 THE COURT: 16th of August?

10 MR. SMALDONE: No, that was ---

11 THE DEFENDANT: The 20---

12 MR. SMALDONE: It was in mid April, if I
13 recall correctly.

14 THE COURT: Okay.

15 THE DEFENDANT: On the 26th.

16 THE COURT: Okay.

17 THE DEFENDANT: And it's actually on film,
18 you know. They said he's not prepared for it.

19 We're not prepared for it 'cause we never sat down,
20 we never talked, we never discussed this. There's
21 other, there's over evidence that need to be
22 entered. There's other witnesses. There's other
23 statements.

24 THE COURT: And you, do you know who those
25 witnesses are? Have you subpoenaed any of them?

1 THE DEFENDANT: I have never get to talk
2 to my lawyer but only once, but I keep saying the
3 same thing that we need to subpoena these people and
4 let them, send them subpoena. We have to research
5 these people and find out who they are, that these
6 people yet were on the scene of the crime. I sat in
7 the car with this officer (indicating) on the scene
8 of the crime, and we know the people that they
9 talked to and what they saying because like officer
10 Mr. Willie Brown said, the first officer that was on
11 the scene, he was in uniform as first officer, we
12 can take the statement. They asked me to be, you
13 know, stand here, let's, let us tend to this medical
14 situation, this and that. Everybody said that he's
15 been cooperative. There's no way, and this means
16 nobody says anything about my behavior, my conduct
17 as being cooperative in the situation. But maybe if
18 we sit down and think, maybe his life is safe. If
19 it was that much of a threat, maybe his life was
20 saved because I cooperated because any harassment I
21 would do at that moment will kill time on
22 preparation on saving his life. And I maintain
23 sobriety.

24 THE COURT: Willie Brown testified to
25 that, that you cooperated, and he said that you

1 cooperated.

2 MR. SMALDONE: Just ---

3 THE DEFENDANT: And I'm just ---

4 MR. SMALDONE: I have an ethical conflict
5 here, but I'll, I don't want to disagree with my
6 client on certain things, but I just want to be
7 clear for my own sake. My understanding is, you
8 know, my client has indicated that he received
9 his --- and I think, I understand the
10 misunderstanding. The discovery in this case is
11 actually quite small as far as a paper file. In
12 fact, Your Honor, and the jury has heard the State's
13 case in chief. I don't believe any paper evidence
14 was submitted. You know, basically it's a video and
15 I know my client has concerns about that. That's a
16 lot, you know, as Your Honor knows, that's why a lot
17 of these cases go so it's not a voluminous file.
18 The client's received it. If, I believe he received
19 it pro se. We've additionally we've reviewed it in
20 detail several times. We watched the video multiple
21 times. I watched the video probably at least 100
22 times by myself and also many times with the client.

23 THE DEFENDANT: I watched it once with you
24 upstairs with my mother.

25 MR. SMALDONE: Okay.

1 THE DEFENDANT: On yesterday.

2 MR. SMALDONE: You remember watching it
3 with me a lot of times though, right?

4 THE DEFENDANT: No, sir.

5 MR. SMALDONE: Okay.

6 THE DEFENDANT: No, sir, I watched it
7 yesterday with my mother for the first time when we
8 picked the jury yesterday.

9 THE COURT: All right. We ---

10 THE DEFENDANT: That was not, that's not
11 enough time for nobody to really look over that
12 film. We hadn't really discussed it. We just
13 watched it, came in here and picked a jury. I feel
14 that is not, that's, it's not fair; not that I feel
15 it's not fair, it's not fair.

16 THE COURT: I understand. Let your client
17 ---

18 THE DEFENDANT: I need more time to
19 prepare to ---

20 THE COURT: I mean, let your lawyer finish
21 telling me what he wanted to on the record. You
22 interrupted him.

23 MR. SMALDONE: And Your Honor, I'll just
24 clarify the record. I received discovery, I've been
25 over discovery. You know, at times it can be

1 difficult sometimes relaying information to this
2 particular client, but we've had meaningful
3 conversations and I feel that I prepared. Again,
4 it's on video; it's just a matter of, you know, the
5 law.

6 THE COURT: Okay.

7 MR. SMALDONE: Arguing the correct
8 elements and things of that nature. I have not
9 heard anything about additional witnesses. In fact,
10 I think there's no additional witnesses that are
11 even mentioned in any incident report because, and
12 going outside of the record; but there's an
13 indication in the incident report that all witnesses
14 at the scene just about were not very cooperative.
15 But you know, we've had probably five eyewitnesses
16 on each side so.

17 THE COURT: Okay. Thank you.

18 THE DEFENDANT: I would like them to be
19 present 'cause whatever statements can be, they need
20 to be cross-examined.

21 THE COURT: I understand, but ---

22 THE DEFENDANT: But us going through with
23 this, Your Honor ---

24 THE COURT: ---I've given this jury all
25 the evidence we got.

1 THE DEFENDANT: Your Honor, but us going
2 through with this I feel that I have lack of
3 evidence because I still yet have not seen anything
4 other than a partial film.

5 THE COURT: I understand, but that's what
6 I got and that's what's here and you're, and your
7 concerns are covered on the record.

8 THE DEFENDANT: I ask, I ask the Court can
9 we have any kind of hearings, anything preliminary
10 and address -- I asked these things on Newman here
11 and he said, yeah, we can have this. And all of a
12 sudden we come back the following day we fixing
13 trial. It's other things that, issues that, that's
14 bothering me that just doesn't fit contrary to the
15 charge. This is a very serious charge. This charge
16 could take me away from my family for the rest of my
17 life just about. I probably don't have no more than
18 20, 10, 15 years of living, you know, with my
19 condition. I asked for ---

20 THE COURT: I understand.

21 THE DEFENDANT: ---my medical file to be
22 submitted to the courts. That have not been
23 submitted to the courts. I asked ---

24 THE COURT: How is that relevant to this
25 case?

1 THE DEFENDANT: Because of his disability
2 being relevant -- in my situation because they
3 wouldn't bring it up. What they were saying ---

4 THE COURT: You brought it up. The jury
5 heard all about it.

6 THE DEFENDANT: No, they brought it up and
7 said, you know, as far as his health and his
8 conditions and this and that like, you know -- at
9 the same time, I don't want nobody to undermine ---

10 THE COURT: Well, you could have brought
11 your own medical records in here.

12 THE DEFENDANT: I do, and I can't submit
13 them 'cause my attorney feel that this is something
14 we don't need, this is something we don't need. Any
15 time we can't see eye to eye, then we should not
16 proceed through with this, through with it because
17 we're not communicating or seeing eye to eye based
18 on the law that's not permissible.

19 THE COURT: I understand.

20 THE DEFENDANT: We have to be able to see
21 eye to eye to be able to contact and have some type
22 of strategy or have some kind of communication. On
23 last night, yesterday, when you dismissed us
24 yesterday, you, Judge Cothran, you dismissed us.
25 You said, well maybe he supposed to call us last

1 night. And we got to talking about, you said call
2 him tonight and y'all talk. Well, coming back in
3 here this morning and asking me about the same
4 thing. We ain't got that communication. If we
5 don't have that communication how is my
6 representation so to be said to be fair. These are
7 questions that we have to ask and these are very
8 important questions. I hate to have to, I have to
9 go up to -- in other words, this is what I see. I
10 don't want to bad mouth myself. I got to go up the
11 road and get an appeal and fight for the next three
12 or four years to come back to court and I done give
13 up the time. Then get out there and get back the
14 time, then which I see where this went wrong, that
15 case went wrong, this went wrong, but I done throw
16 my life away again.

17 THE COURT: I understand. You're covered
18 for the record; that's all I can do. We're gonna
19 finish this trial. You'll get, your lawyer gets to
20 argue to the jury, the State gets to argue, and I'm
21 gonna charge on the law and see what they do.

22 THE DEFENDANT: Another thing, Your Honor.
23 I understand where my attorney was going yesterday
24 and we started talking about the victim, although he
25 brought about this I had asked him to, you know,

1 that he can argue self-defense maybe we should argue
2 provocation. I asked for him to argue that as my
3 defense that this was a provoking situation.

4 THE COURT: The jury's got your side of
5 the story.

6 THE DEFENDANT: But he's coming with
7 self-defense, and I want to argue for provocation.

8 THE COURT: You don't think it's a
9 self-defense case?

10 THE DEFENDANT: I want to fight under the
11 grounds of self-defense.

12 THE COURT: I mean, it's pretty — you
13 admitted shooting him.

14 THE DEFENDANT: I want to go up on
15 self-defense.

16 THE COURT: What do you think you need to
17 go under then?

18 THE DEFENDANT: Provocation, that it was
19 provoked, it was a tort charge. He was, you know,
20 that's better than —

21 THE COURT: That's civil court.

22 THE DEFENDANT: But however, by high,
23 however, breach of peace or high and aggravated
24 nature, that has also same jurisdiction.

25 THE COURT: I understand.

1 THE DEFENDANT: That's civil.

2 THE COURT: I'll charge him on that.

3 THE DEFENDANT: It became a criminal ---

4 THE COURT: Okay. That's all I can do.

5 THE DEFENDANT: And Your Honor, I just ---

6 MR. SMALDONE: Your Honor ---

7 THE COURT: Hold on a minute.

8 THE DEFENDANT: You say you will?

9 THE COURT: I'll charge them on the
10 appropriate law.

11 THE DEFENDANT: On?

12 THE COURT: Do you want me to charge him
13 on self-defense or not?

14 THE DEFENDANT: Self-defense as well as
15 provocation, I mean, these grounds right here.

16 THE COURT: Okay.

17 MR. SMALDONE: And Your Honor, I've
18 explained that, to my client, that provocation is
19 sort of basically incorporated in self-defense. A
20 specific charge on provocation would mean that the
21 client would be dead and we'd be arguing about
22 voluntary manslaughter. And fortunately for
23 everyone here, ---

24 THE DEFENDANT: And Your Honor ---

25 MR. SMALDONE: ---one thing we can agree

1 on, we're glad that that is not what we're here for.

2 THE DEFENDANT: However, on assault and
3 battery high and aggrated nature, in order for us to
4 anoint the case we may end up still going into that
5 realm of describing manslaughter, assault and
6 battery, you know, murder, because the paper said,
7 the paper even said, you know, had he was dead today
8 this trial would been over and I went home if he was
9 dead. I hope that's just what you read in the law.
10 We know that to be a fact.

11 MR. SMALDONE: I would ask Your Honor not
12 to charge murder to the jury.

13 THE DEFENDANT: I would ask him not to
14 charge murder, you see what I'm saying. I'll ask
15 you not to charge murder. I'm just speaking to you.

16 THE COURT: I understand.

17 THE DEFENDANT: It's easier on a murder
18 charge if the victim was dead than ---

19 THE COURT: In most murder charges the
20 victims are dead.

21 THE DEFENDANT: This is ---

22 THE COURT: I haven't tried one yet that
23 wasn't.

24 THE DEFENDANT: No, what I'm saying to
25 you, what I'm saying to you is, when you anointed

1 you being charged with this I rather not fight
2 against self-defense being -- it's harder to fight a
3 self-defense than us fighting that he provoked a
4 situation. He just about confessed to bringing on
5 and bringing about the situation. He just about
6 confessed to putting me in any danger of harm. He
7 just about confessed that he never did try to
8 retreat. He just did it in partial, not quitely
9 [sic]. But what I'm asking is why we can't fight
10 provocation. Provocation would end up better for
11 this case. Right now I don't feel free and never
12 did felt free about assault and battery in fighting
13 this case.

14 THE COURT: I understand.

15 THE DEFENDANT: I mean, not assault and
16 battery ---

17 THE COURT: I will quote -- I'll charge on
18 the law. I can't fix that.

19 THE DEFENDANT: Well, I have something
20 done and I just have questions to raise or not.

21 THE COURT: I understand, but you -- I've
22 done all I can do. We're gonna stop on this right
23 now, and I'm gonna go something on another case.
24 Okay.

25 (Whereupon, a lunch break was taken.)

1 THE COURT: Are we ready for the jury?

2 MR. ANDERSON: State is, Your Honor.

3 MR. SMALDONE: Defense is ready.

4 THE COURT: All right, bring them in.

5 THE BAILIFF: We're missing one, Judge.

6 THE COURT: We're missing one?

7 (Pause.)

8 THE COURT: Okay, we got all the jury now.

9 (WHEREUPON, the jury was returned to the
10 courtroom at approximately 2:10 p.m., and
11 the following proceedings commenced in
12 open court.)

13 THE COURT: Okay. Mr. Solicitor.

14 MR. ANDERSON: May it please the Court.

15 THE COURT: Yes, sir.

16 MR. ANDERSON: Mr. Smaldone, Madam Clerk,
17 ladies and gentlemen of the jury, good afternoon. I
18 think we, I'm not gonna show you that video again.
19 Instead, I'm gonna do it a different way. As I said
20 in my opening, this is a case about moments, moments
21 that make up peoples' lives, and you've seen some
22 pretty interesting moments this week here in court.
23 And I'm not gonna show you the video again. I'm
24 just gonna talk to you about what we all kind of
25 agree the video shows. Mr. Smaldone says we agree

1 on about 80, about 90 percent. Well, let's talk
2 about the 80 and 90 percent that we agree on.

3 We see the red car pull in with the victim
4 inside of it. We see Mr. James leave where he is
5 with his mother and make a line straight for that
6 red car. And what do we see on the video? We see
7 some movement; we see some struggling. And then we
8 see Mr. James do his loop around, and we do see the
9 victim get out and chase him. We're not running
10 from the fact that the victim doesn't have clean
11 hands in this case; he did do wrong. We're not
12 hiding that. So he loops around and runs to his
13 momma. And the victim goes and talks to his deacon
14 who happens to be at the back of the parking lot.
15 And then Mr. Singletary goes and he arms himself,
16 and he was wrong for that; and as Mr. Smaldone
17 pointed out, he pled guilty to that in this
18 courtroom. And then what happened next is the next,
19 is the most important series of moments. We see him
20 begin toward the car that they're in. And what
21 happens? You can clearly see someone pop up and
22 fire a shot. Whether it's the warning shot or it's
23 the second shot, we're gonna talk about that in a
24 second; but that's clearly on the video. As the
25 door opens someone pop up and shoots, an abrupt

1 pointing like the one Ms. Smaldone was talking about
2 yesterday.

3 All right. So that's what the video
4 shows. That's what the 80 or 90 percent we can
5 agree on. We don't agree on about what happened at
6 the car, but I want to talk to you about what
7 happened at that red car and how do we do that
8 because we're gonna talk about Mr. Singletary. He
9 came to court to testify about what happened at the
10 red car. He says that John James ran up to him as
11 he's trying to get out of his car to go buy some
12 lunch and punched him three times in the head. And
13 you heard his testimony. And then you heard what
14 John James had to say about what happened in the
15 car. What did he say? He said he went to give him
16 some good news and give him six dollars that he
17 owed. In my opening I asked you to apply your
18 common sense and life experience. If he'd gone up
19 there and given that man six dollars, the good news,
20 would he have gotten out the car and chased him
21 around the parking lot and armed himself? No.
22 Apply your common sense.

23 Who else did we hear from? We heard from
24 Mr. Gamble. Mr. Gamble gave us some important
25 information as well. Mr. Gamble tells us that

1 Mr. Singletary was not threatening Mr. James right
2 before he was shot. He tells us something really
3 important to you. We don't have audio in the video,
4 do we, but he fills in one little thing, one thing
5 that somebody said. He says that John James said, I
6 fired a warning, I'm gonna shoot you now. Does that
7 sound like a man that's afraid for his life?

8 We heard from Yasmine Davis and she gave
9 us some important information as well; didn't she?
10 She talked to us about the shell casings. Where did
11 she say they were? One, at the car with him and his
12 mother. And two, where the victim laid bleeding at
13 the ground. So one shot fired where they are and
14 two fired where the victim lay bleeding on the
15 ground. That's called corroboration. Their
16 testimony is backed up by what you saw in the video.

17 And I want to take a moment to talk to you
18 about the defense in this case. And don't take any
19 of this as a slight on Mr. Smaldone, he and I are
20 good friends, I enjoy trying cases with him; but I
21 do want to point out some of the things that he
22 tried to point out to you. In his opening he said
23 that you were gonna see on the video that
24 Mr. Singletary charged toward the victim. Y'all
25 have seen how he gets around and y'all see how he

1 gets around the video. He ain't built to charge at
2 anybody. That man can barely walk.

3 And let's talk about something
4 Mr. Smaldone didn't mention in his opening
5 statement. He didn't talk about how his client got
6 out of the car and prowled after Mr. Singletary, did
7 he? He kind of just stopped talking after the shots
8 got, started getting fired; didn't he? Ask
9 yourself, why didn't he talk about that? Apply your
10 common sense to that. Why didn't he talk about
11 that? Oh, and he talked a lot about justification,
12 was it justified. We're gonna have a chat about
13 that in a moment, but first I want to talk to you
14 about the credibility of the Defense's witnesses.
15 You heard from the defendant in this case,
16 Mr. James, and you heard him talk about the video
17 time. You heard him talk about bird flu. You heard
18 him talk about things that happened that are
19 objectively not in the video. So do you believe his
20 statement about what happened or do you believe the
21 witnesses whose statements match what happened in
22 the video. You're allowed to judge a witness'
23 credibility. Ask yourself, do you find that
24 testimony credible, his explanation of the events
25 encountered that day.

1 I want to talk to you about briefly his
2 mother's testimony. And what I want to point out to
3 y'all is, one, I wouldn't want to be at the other
4 end of a barrel of a gun drama; but two, she loves
5 him. Y'all can tell that. The mother's love. She
6 might come in here and say something that ain't
7 quite on the up and up, help her son out. She said
8 she wanted to help him; didn't she? All right.

9 Now I want to talk to you about
10 justification. That's kind of the Defense's theme
11 in their opening; wasn't it? Was it justified?
12 Well, everybody has in their mind what self-defense
13 means to them. I bet all 13 of you have a different
14 opinion about it, and that would be confusing if you
15 went back there and you all 13 said 13 different
16 things about what it means to be defending yourself.
17 Well, thankfully the legislature in South Carolina
18 has given us four things a person has to do to be
19 defending themselves. They got to get a perfect
20 score, four out of four. We strike one out, he's
21 not defending himself, he's not justified. Let's
22 talk about it.

23 Number one, Mr. James has to be without
24 fault in bringing about the difficulty. You heard
25 his testimony. You saw the video. You saw him

1 leave the car and go straight forward. You heard
2 Mr. Singletary said he punched him in the head. You
3 heard Mr. Gamble said Mr. Singletary said he punched
4 him in the head. He started this entire mess so he
5 cannot be without fault in bringing about the
6 difficulty. He caused the entire difficulty.
7 Strike be the first one. And as I said, we could
8 stop right there. He's not defending himself. Got
9 three out of four.

10 I want to continue. I want to talk to you
11 about the rest of it. He has to actually believe
12 that he is in imminent danger of losing his life or
13 serious injury. And y'all heard him out there, and
14 I couldn't get him to admit that he was going toward
15 the fella or Mr. Singletary, and Mr. Singletary was
16 backing away and then Mr. Singletary is retreating.
17 But you can clearly see that's what happening in the
18 video after the warning shot, that he is moving
19 away, and Mr. James is moving toward the danger as
20 we talked about. The machete is a hand weapon and a
21 380 semi-automatic pistol is a distance weapon. He
22 was in his car. He chose to get out, get out, and
23 pursue the man. If he actually believed he was in
24 imminent danger would he have gotten closer to the
25 machete? Does that make sense? Getting closer to

1 the danger? Did he actually believe it was so
2 imminent? That doesn't make sense.

3 All right. And that a reasonable person
4 of ordinary courage would have felt the same way.
5 And it's impossible to define what a reasonable
6 person is. Lawyers hate that 'cause there's no such
7 thing in this world. We're all unreasonable in our
8 own way. But I submit to you —

9 THE DEFENDANT: Objection.

10 THE COURT: Go ahead.

11 THE DEFENDANT: Come on, man.

12 MR. ANDERSON: I submit to you since
13 there's no reasonable people just kind of think
14 about what force, I guess -- kind of a normal
15 person, your granddad, what would your granddad do?
16 That's a good reasonable person. And I asked the
17 momma what seemed like silly questions about that
18 car, does it have locks, does it have a window. So
19 what a reasonable person in that situation after
20 that first shot has been fired is inside the car,
21 how dangerous is a machete to a person inside of a
22 car with locked doors and locked windows even if
23 they don't got a semiautomatic pistol. And we saw
24 how close he got, it's not that close. He's not
25 Crocodile Dee. He's not a knife thrower. I submit

1 to you that a reasonable person of ordinary courage
2 would not have felt the same way. They wouldn't
3 have got out the car. They wouldn't have pursued
4 him.

5 And lastly, and probably most importantly,
6 is there's no other probable means of avoiding the
7 danger. I just talked about six or seven. He's got
8 a pistol. That man has a machete. That man is
9 going the other direction. Even if the cars are
10 missing, and he says that's unbelievable, even if
11 the keys are missing, he says that's unbelievable,
12 they could have sat there. His momma could have
13 looked for the keys while he looked out with a
14 pistol and they could have driven on out of there.
15 There were other possible means of avoiding the
16 danger.

17 So what do we know? He's got a zero out
18 of four and you need a perfect score. So what do we
19 know if he didn't pass the test. What do we know if
20 he's not justified. He's simply a man who gunned
21 another man down on video in the IGA parking lot.
22 Ladies and gentlemen, I ask you to return a verdict
23 of guilty.

24 MR. SMALDONE: Good afternoon. I know
25 it's been a long few days. I'll try to be as short

1 as I can, but I ask that you pay close attention to
2 everything I have to say, just like you paid close
3 attention throughout this trial. We've been here
4 for what seems like quite a while. We've heard a
5 lot of testimony and we've probably played that
6 video more times than you've ever seen a single
7 video in your whole life. And later on you could
8 ask to see the video again during your deliberations
9 so there's some good news. I thought about playing
10 the video for y'all again, but I'm gonna skip that
11 'cause I think you know it all 'cause I think you've
12 seen what's important. I think you've seen the
13 evidence, and I think you've seen what really
14 happened 'cause it's on video.

15 You heard testimony this week from the
16 State's witnesses. You heard from the IGA man, and
17 that's the guy, all he did was bring in the video so
18 that's the video. But then you heard from Mr.
19 Singletary. You know that Mr. Singletary's a big
20 fella. You know that Mr. Singletary drove there in
21 that red car and then what do you see on the video?
22 What do you see on the video? He's clearly, when he
23 gets out of that car he's doing something, right?
24 He hesitates. He's grabbing something, he's doing
25 something, it's right on the video. And it's

1 corroborated, right? We'll talk about that a little
2 bit later, but that's what you see. And then what
3 do you see when he gets out of the car? Y'all paid
4 close attention to that so I'm not gonna show it
5 again. But as soon as he gets out of the car, he
6 really does do the gun motion. You can't see 'cause
7 the resolution, he actually had a gun or not, but
8 it's pretty reasonable to believe that after some
9 sort of altercation, that if a guy gets out of the
10 car and you're running from him and he's going like
11 that, you might not stop and look and, you know,
12 take out your binoculars and see, oh, is that a gun,
13 is it a real gun, does it have a metal barrel, is
14 that a squirt gun. He really thought he had a give
15 gun, and you know how I know that? Because when
16 Detective Davis, remember the lady who moved up to
17 Baltimore, nice, short lady, detective, she said as
18 soon as she got there Mr. James said he had a gun,
19 the other guy had a gun. Keep in mind, use your
20 common sense, we could determine from the evidence
21 that Mr. James had never seen that video, right?
22 That's on the scene. You haven't seen the video.
23 He had no idea what the video is gonna show or not;
24 but he actually said that and it corroborated
25 believe it or not. He's right. He does that own

1 motion. So we got Mr. James running around the
2 parking lot being chased by a big fella twice his
3 size and yet, he moves pretty slow; but like I said,
4 when he catches up to you, that's when things go
5 south. So we got him chased by him, he thinks he's
6 got a gun. That's what the detective said, law
7 enforcement, that's what he said to you, heard it
8 sort of. So he thinks he has a gun. They're
9 chasing each other around the parking lot. And then
10 what happens is on video, right? And you can
11 determine that, you can see that. I hate to like
12 sit here and narrate a video you've seen a million
13 times, right. And if you hold that against me, hold
14 it against me, don't hold it against Mr. James.
15 This is the last time we're gonna talk about the
16 video probably ever so just enjoy that. But it's
17 real important that you see it, and not only see it,
18 but think of it not through that camera 'cause that
19 camera is a cold dead fixture. That's a piece of
20 metal and probably with glass around it, maybe a SD
21 card somewhere sort of thing, I don't know, it's a
22 camera. This happened on the ground; it didn't
23 happen in the camera. This happened on the ground.
24 These are real people. This happened through
25 people's eyes. And I think that's what my client

1 didn't so eloquently say. I think that's what he
2 means when he repeats camera time. Maybe he's not
3 Shakespeare, but that's what he means, I submit to
4 you, by that, his experience. He said 15 minutes,
5 right, but that video is about three minutes long.
6 Does that mean he's lying? No, 'cause I submit to
7 you, no, 'cause obviously, you know, we think video
8 is video, we just started about video. That's
9 really how long it felt, 15 minutes. Altercation
10 with a guy twice your size that later comes back
11 with a machete, that's serious business, that's
12 serious stuff. I don't know about y'all, but I
13 think a machete is way more, way scarier than
14 anything else out there. If I could think of one
15 nightmare I would have, it'd be some 300-pound guy
16 with a machete. That means business. If a guy
17 comes after you with a machete, good God, he ain't
18 playing. If he's waving a gun around, a little 380
19 around; but a machete, they don't play. That's how
20 he felt. That's how he felt that day.

21 So Mr. Singletary talks and, you know, we
22 hear his side and, you know, he'd be, downplays the
23 machete business and stuff like that. But one key
24 thing that you did hear that you also heard, what
25 hurt my case, it hurts their case. You heard

1 Mr. Singletary say that they had a gun. You heard
2 them say something about getting a gun, right, get
3 it out of the box, and you know, whatever he said.
4 Remember, that's before he went to get the machete
5 according to his testimony. That's before that. So
6 we're supposed to believe that he thought he had a
7 gun and so his response to the gun was to go get a
8 handheld weapon, which even the State admits is a
9 short range weapon. It's still scary as hell, but
10 it's a short range weapon according to them so we're
11 supposed to believe that he thought that and he went
12 back to his car to get the machete. That did not
13 make sense. That does not make sense. They said it
14 doesn't make sense. I can't remember, I don't want
15 to misquote him so I apologize if I'm wrong and I
16 think the State might have a response later on. But
17 I believe they said it doesn't make sense that
18 someone would get a gun after a machete is coming
19 out. Maybe I'm wrong, again, I got a lot going on.
20 And it makes a lot less sense to get a machete when
21 you think there's a gun out there 'cause there
22 wasn't a gun out there at that point, there wasn't.
23 We heard it from everybody. Pretty much everyone
24 agrees that was that momma's gun, right. So that's
25 what you heard from Mr. Singletary; yet,

1 Mr. Singletary couldn't admit that he was wrong, he
2 couldn't take any responsibility. He said he didn't
3 plead, he wasn't -- he didn't say he was charged,
4 nothing ever happened, he didn't plead anything. I
5 got y'all the sentencing sheet with his signature on
6 it pleading to a charge. Then I get the warrants
7 that he was charged with that literally say on its
8 face causing Mr. James to fear for his life and
9 safety. That's what the cop said, the detective. I
10 don't think they like me to call them cops. I'll
11 call her a detective, what the detective, nice lady
12 said, right. So that's what you heard from him.

13 And then you heard from Mr. Singletary's
14 friend. He says he's known him a long time, right.
15 They'd been knowing each other, they hang out. He
16 saw him. He was in the corner of the parking lot,
17 didn't see any punches. Then comes back and said he
18 was punched twice even though the testimony
19 yesterday was that he punched three times; that's
20 what he said. Pretty big deal, pretty specific
21 about that, right. So, and then he talks about, you
22 know, what his point of view and that's all on
23 camera, you see it. So that's what the State's
24 witnesses say.

25 And then you heard from the State's other

1 witness, remember Willie Brown that was the off duty
2 police officer, nice fella. He said he got there,
3 he didn't see much. He said it, victim and, or --
4 depends on what you mean by victim -- but the guy
5 who got, Mr. Singletary and Mr. James, he said they
6 were pretty close to each other when they are
7 shooting, right. So does that mean, again, does
8 that mean the video is wrong? It means two things.
9 It means, one, pretty tough to tell the distances on
10 that video when you're not there on the ground. I
11 think that's fair to say. And two, it means pretty
12 scary when there's a machete around. I don't have a
13 comfort zone with a machete. I don't have like a,
14 yeah, you can have a machete around me; but if
15 you're within eight-and-a-half feet with a machete,
16 then I get upset. No one says that. I'd rather no
17 one have a machete around me, any vicinity. I do
18 not have a comfort range for a machete. There's no
19 buffer zone. You heard the detective say, yeah, if
20 it's an officer, someone has a weapon we're trained
21 to do what we do until that weapon is gone, dropped,
22 or gone, or the threat's eliminated. That's what
23 happened that day.

24 And you heard from the detective. But a
25 lot of evidence that was collected, right, remember

1 pictures taken, remember the car was searched, all
2 that stuff. Do y'all have any, do we get any, y'all
3 see any pictures? I don't remember any pictures
4 now. You see any, like, reports about the car, any
5 inventory about the car? No.

6 Key things missing. Here's the big one,
7 all right. There's a lot of dispute over the angle
8 of the warning shot, right. Was it in the air, was
9 it to the side, did he intentionally shoot the car?
10 I submit to you that he probably had a right to
11 shoot wherever he wanted to. Like, honestly, if he
12 shot at that point that's, you know, no one wants
13 that to happen. Again, we're not, no one is happy
14 to be here, probably especially y'all but, you know.
15 I submit to you it doesn't really matter; but if it
16 did hit the car, assume y'all believe take a picture
17 of the bullet hole to prove something, right. Like,
18 doesn't that, wouldn't that be something that one
19 would do if one had the burden to prove beyond a
20 reasonable doubt that one's case was right? Doesn't
21 make sense. Missing evidence, stories that don't
22 line up, a lot wrong.

23 So that's what you heard. That's what you
24 heard from the State, the State with the burden to
25 prove beyond a reasonable doubt that John's guilty.

1 That's what they came to battle with. They went to
2 their arsenal and got those tools, battle the way
3 out. That's what they chose to give to you. It's
4 in your hands, but that ain't much, ain't much.
5 They did not meet their burden.

6 So the State, that's the core of their
7 case, right, that's what they had to do. What do I
8 have to do? John James, we could prove beyond a
9 reasonable doubt -- Mr. James, you know, he's a nice
10 fella, talks a lot, maybe has some interesting
11 ideas. Some people, you know, they see someone like
12 that, he's fighting for his life, he's nervous, he's
13 talking. They say, oh, that guy, he talks, he's
14 crazy. Crazy isn't what we're here to decide.
15 Guilty or not guilty is what we're here to decide.
16 And here's the thing about him, right, you heard
17 him, right. He's all over the place, whatever. All
18 the details that he gave to you, all the major ones,
19 somehow were right, I couldn't believe it. When he
20 talks about Mr. Singletary getting out of the car,
21 that gun motion, you saw it. I'm gonna do y'all a
22 favor and not show it to you. I mean, I think y'all
23 saw it, you paid attention. Again, if you need to
24 see it later you absolutely can, but you saw it.
25 Sure enough you saw it. As soon as he gets out of

1 the car, can't believe it. The details about the
2 car being locked, can't find the keys. That makes
3 perfect sense. That's what the momma said too.
4 They didn't have an opportunity to leave. They did
5 not have an opportunity to go 'cause they couldn't
6 find the keys. They're getting chased around like
7 the big ole boy with a machete. They didn't have
8 the opportunity to get out of there. One person did
9 though, one person did. Mr. Singletary, remember,
10 again in that video, what does he do? Walks to the
11 corner. When he's in that corner is he getting
12 provoked, is he getting attacked, people yelling out
13 or not? I submit to you that, no, nothing is on
14 video, no evidence that would suggest that, okay.
15 He even said that. Everyone, right? So he's
16 hanging out. He's hanging out. Who brings on the
17 difficulty? And we're not in a he said, we're not
18 in a which-side-do-you-believe case. I'll explain
19 that later. We're in a they got a burden to prove
20 everything beyond a reasonable doubt type case; it's
21 criminal. But even if it is which side do you
22 believe -- which it's not -- which side is right,
23 which side is wrong, it's not that; he goes back to
24 his car. He doesn't just go back to his car, he
25 opens that door. Y'all saw it. I'm gonna do y'all

1 a favor and not show you unless you want to see it.
2 But he gets back to his car and he opens up that
3 door. Instead of getting in that door and turning
4 that car on and getting out of there, he makes that
5 call, he pops the trunk. That's the difficulty. He
6 pops that trunk and he gets that blade.

7 Madam court reporter, is that exhibit
8 here?

9 THE COURT REPORTER: Which one?

10 MR. SMALDONE: The machete.

11 He gets that blade unsheathed in a parking
12 lot at the grocery store with the mom. Y'all saw
13 that 380 too. Y'all decide. Y'all decide. I don't
14 know, it's up to you, I'm not a juror. Y'all
15 decide, okay. This testimony was that it was found
16 unsheathed, this parking lot with his mom -- you
17 heard from her. So I would submit to you that this
18 is pretty, this is what we call provocation. This
19 is what we call you're mad 'cause you brought a
20 knife to a gun fight. This is what you call, you
21 call intimidation. This is a deadly weapon. I'm
22 like, I'm kind of like scared holding it to be
23 honest with you, but I'm gonna do it 'cause I owe it
24 to my client. This is scary. This is what he chose
25 to do.

1 Who armed themselves first? This came
2 first. Or possibly according to some evidence,
3 Mr. Singletary's gun came first 'cause, remember, he
4 said he thought it was a gun. Police officer said
5 we don't know, we didn't find a gun. Again, there's
6 no reports or anything detailing that, but she said
7 no gun found on him, which is fine. And I'm not
8 saying he definitely had a gun or didn't have a gun;
9 but remember, he did walk off to that corner for a
10 while. This.

11 So, everything, if you filter out what
12 really matters for Mr. James, you know, he had a
13 hard time. He doesn't want to be here. He's
14 probably, you know, not quite, you know, 18 pack;
15 but, you know, he, everything he really said that
16 matters is true, is corroborated by the video: That
17 gun gesture, that machete, everything else.

18 And what else did he say? Well, remember
19 you heard that his mom got the gun first, right.
20 She was the one who brought out the gun. We're not
21 blaming her. She's a sweet old lady, not that old,
22 but she's a sweet, medium lady. She got the gun out
23 first. And what else? Well she said, she's like,
24 well, everyone's lucky that I didn't, I didn't, that
25 they restrained me and grabbed the gun because if I

1 had that gun, we're sick, I don't do warning shots.
2 I don't do warning shots. And okay, I'ma scare her
3 but, nice lady, she doesn't do warning shots. And
4 you know, you'll hear the law in a few minutes. The
5 judge will charge you on the law. No one is
6 entitled to a warning shot. Listen to the judge.
7 No one is entitled to that warning shot. He got it.
8 Now what else do you see? The State is
9 gonna certainly argue that he was retreating, he was
10 coming back, all that stuff, he was walking back.
11 What else did you hear? He never dropped that
12 machete. You heard Mr. James say he's still
13 swinging it around a little bit. I don't know if
14 he's, you know -- see, it makes y'all comfortable
15 (indicating). Right? Is this an okay distance to
16 have a machete? How about back here, is that okay?
17 Is everyone comfortable right now (indicating)?
18 That's a pretty far distance. Imagine if I'm not a
19 friendly lawyer, and I think I'm friendly. Imagine
20 if I'm not me and I'm someone that doesn't like you,
21 or not, is this an okay distance for someone who
22 doesn't like you? Like, how far would you go here?
23 Is this -- everybody happy now (indicating)? Maybe
24 we're all safe, we feel safe. I don't want to make
25 y'all really feel unsafe, but I, it's important to

1 know that crazy camera time stuff is actually real.
2 Like, that is, that means what happened through his
3 eyes, what he saw being on that ground, not being a
4 camera, being on that ground he did not feel safe.
5 And he didn't, you heard, he thought his mom was in
6 danger. He thought that when that guy backed up a
7 bit, he was going around to his mom. When that guy
8 backed up a bit not dropping the machete, he was
9 going towards his mom; and mom doesn't have a gun
10 anymore, remember, he took it, so she can't do her
11 whole no warning shot nonsense. Not nonsense, but I
12 don't think it's a good idea, but she can want do
13 that whole I shoot to kill stuff. I'd still be
14 scared of her, she's still bad now, but against
15 this, she's not. So he, like him/not like him, I'm
16 not saying he's up for Mr. Kingstree, Mr.
17 Williamsburg County, he's not in a pageant. We're
18 not here to decide that though. We're here to
19 decide if this is a self-defense case. I submit to
20 you that it is.

21 I submit to you that, we heard -- no one
22 is happy to be here. He's not, you didn't hear him
23 brag about shooting. He's clearly not excited to
24 come here and testify in front of y'all. That's an
25 understatement. But he had a right to defend

1 himself. He had a right to do what he did for
2 himself, for his mom. That's what justified means.
3 That's what happens when you bring a knife to a gun
4 fight. Can't act surprised once this comes out.

5 So ladies and gentlemen of the jury, what
6 do you do? What is self-defense? What happens if
7 you figure out self-defense, which I submit to you
8 it absolutely is but, what comes next? The judge
9 will charge you on the law, will charge you that
10 self-defense what we call, what us lawyers call a
11 complete defense. And what that means is, if you
12 find that the State has not disproved self-defense
13 beyond a reasonable doubt, that you must find John
14 not guilty. See, again, it's not about which side,
15 which side has 51 percent, which way, what you're
16 thinking, like which one do you believe more. It's
17 not about, it's not even about Mr. Singletary versus
18 Mr. James. It's about whether or not the State of
19 South Carolina can prove to you beyond a reasonable
20 doubt that John's guilty of assault and battery of a
21 high and aggravated nature and whether or not
22 they've disproven, again, beyond a reasonable doubt
23 that John did not act in self-defense.

24 So what is beyond a reasonable doubt? I
25 promise I'm almost finished. What is beyond a

1 reasonable doubt. And maybe I talk too much.
2 Again, if you think I talk too much blame me, go
3 tell everyone I'm sorry or ineffective or whatever;
4 but I think it's a lot more important, I think it's
5 a lot better to talk too much than not talk enough
6 because this is about his life. And again, whether
7 or not you like him or want to hang out with him,
8 grab a beer with him real quick, maybe you do — you
9 might not though, that's not what this is about.
10 Beyond a reasonable doubt, that's their burden.
11 What is that? The judge will read to you that it's,
12 you know, there's different phrases we use,
13 different things, different methods. He'll tell you
14 that it's not mathematical. It's not 97 percent.
15 It's not 90 percent. It's not 99 percent. It's
16 what it means to you. It's the highest level of
17 proof that's required in the American legal system,
18 right? If we're here, if Mr. Singletary was suing
19 Mr. James, if John and Mr. Singletary, if they were
20 suing each other, then you would decide what's
21 called a preponderance of the evidence, 51 percent.
22 Which side do you believe a little bit more, right?
23 You got those scales of justice, which one tips to
24 one side a little bit more, right. That's a civil
25 case. That is absolutely what we're not here for so

1 don't get confused. That's about, you know, if he
2 sues him. Again, it's not about Mr. Singletary
3 versus Mr. James. This is about the State of South
4 Carolina commencing a criminal action against Mr.
5 James. This is about whether or not they've proven
6 beyond a reasonable doubt their case. The highest
7 level in the American judicial system, I think the
8 highest level in the world what we're here for, if
9 you have doubt you must find him not guilty,
10 reasonable doubt.

11 I submit to you this machete is a lot more
12 than what you need. I submit to you this machete, I
13 don't even want to say it's reasonable doubt 'cause
14 it a whole lot more than reasonable doubt. This
15 machete, it's a machete, deadly weapon. So in just
16 a second you're here to decide, you're gonna go back
17 there and decide if they've proven beyond a
18 reasonable doubt not self-defense.

19 Ladies and gentlemen, this is a — I'm a
20 defense attorney. I try cases, this is what I do.
21 This is the sad part, the happy part for y'all, this
22 is hard for me because in a few seconds, in a few
23 minutes I'm about to stop talking, right. I'm about
24 to stop. I'm about to sit down and then my mind is
25 gonna race and say what I forgot to tell y'all,

1 right; it's just life. And for the past, you know,
2 and the recent future, I'm sorry, the recent past,
3 John's been my client, right, I protected him. Not
4 physically obviously, I don't carry this around; but
5 I've been his kind of legal shield and so, you know,
6 I give him advice and most of the time he doesn't
7 take it but, you know, I've been his lawyer, right.
8 So for that period of time he's been in my hands,
9 right. I felt good about that. Most of the time
10 he's been in my hands, but just a few seconds I
11 promise, that's not gonna be the case anymore. He's
12 gonna be in your hands. I'm not gonna be able to do
13 anything anymore. I'm gonna sit down, I'm gonna
14 shut up, and hopefully John is too. He's gonna be
15 out of my hands. I won't be able to talk. And any
16 question you have, too late. So ladies and
17 gentlemen of the jury, if you have reasonable doubt,
18 have it now; tonight's gonna be too late. Next week
19 is gonna be too late. This is here and now. That's
20 why I'm asking you to find the only verdict in this
21 case that makes sense. Doesn't mean you like him,
22 it doesn't mean you don't like him, it doesn't mean
23 you he's crazy. It means the State hasn't proven
24 their case beyond a reasonable doubt. And that
25 verdict -- I used to say it with me, but I got in

1 trouble -- so don't say it with me, that verdict,
2 not guilty. Thank you.

3 THE COURT: All right, Solicitor.

4 MR. ANDERSON: Mr. Smaldone, Madam Clerk.

5 I just have a brief reply, y'all, the
6 points I want to talk to you about, Mr. Smaldone.
7 We talked about reasonable doubt. It means you
8 heard such proof that you're firmly convinced of his
9 guilt. A perfect example of proof beyond a
10 reasonable doubt is you see the defendant shoot the
11 man on the video. That's beyond a reasonable doubt.
12 I'll give you some examples of unreasonable doubt.
13 That the facts that are good for him aren't on the
14 video because of camera time, that he got out of the
15 car because of the bird flu. Those are examples of
16 unreasonable doubts.

17 Mr. Smaldone talked about camera. He
18 called it a cold, dead fixture. Well, I'm thankful
19 for that. It's objective, it doesn't have an
20 opinion, it doesn't have a side to take. What's the
21 camera show? It doesn't show what the defendant
22 said. He said he mostly agreed, that he mostly got
23 it right. I strongly disagree with that. Did y'all
24 see him -- this is pretty much, I think it's a
25 direct quote, correct me if I'm wrong -- him jump

1 out of the car like a police officer, an army man,
2 and point a firearm at Mr. James? Did y'all see
3 that? No. It's camera time. Didn't see him clear
4 a weapon either. And Mr. Smaldone, I'm not gonna,
5 he's big enough, went on and on about terrifying
6 this machete. There's no comfort zone in a machete.
7 He walked back and forth and waved it around; but if
8 it is so terrifying, why did John James get out of
9 his car and prowl after the man that had it in his
10 hand. Thank you.

11 THE COURT: Okay, ladies and gentlemen,
12 you've heard all the evidence in this case. You've
13 heard the arguments of the attorneys, and now I'm
14 going to charge you on the law that you will apply
15 in this case. Under our Constitution and Code of
16 Laws you, the jury, are the finders of the facts in
17 this case. I am not allowed to have an opinion
18 about the facts in this case so if I've said
19 anything or done anything in this trial, you think I
20 have an opinion about the facts, you're to disregard
21 that 'cause you, only you, determine what the facts
22 are in this case and you determine the guilt or
23 innocence of this man based on the evidence that's
24 been presented before you. The same constitution,
25 the same Code of Laws that makes you the exclusive

1 judge of the facts makes me the exclusive judge of
2 the law so if you have an idea of what you think the
3 law is or what the law ought to be and it's
4 different from what I now tell you the law is,
5 you're to disregard your idea and accept the law
6 exactly as I give it to you.

7 The fact that this defendant was arrested,
8 charged, and indicted in this case is not evidence
9 in this case and cannot be considered by you as
10 evidence of guilt in this case; nor does it create
11 any presumption or inference in the case. The
12 indictment is simply a formal, written instrument
13 which contains the charges made against this
14 defendant and serves as a formal document that gets
15 us into the court system.

16 The defendant has entered a plea to this
17 indictment of not guilty and that casts the burden
18 upon the State of South Carolina to prove each and
19 every element of this indictment to you beyond a
20 reasonable doubt. A person charged with a criminal
21 offense in South Carolina is never required to prove
22 himself or herself innocent. It is an important
23 rule of law in this country that a defendant in a
24 criminal trial will always be presumed innocent of
25 the crime for which he or she is indicted unless and

1 until his guilt has been proved by evidence that
2 satisfies you of that guilt beyond a reasonable
3 doubt. The presumption of innocence is not a mere
4 legal theory. It is not just a legal phrase. It is
5 a substantial constitutional right to which every
6 defendant is entitled. This presumption of
7 innocence accompanies the defendant throughout the
8 time he's charged and the trial until you reach a
9 verdict of guilty based on evidence that satisfies
10 you of that guilt beyond a reasonable doubt.

11 A reasonable doubt is a doubt which makes
12 an honest, sincere, conscientious juror in search of
13 the truth to hesitate to act. Proof beyond a
14 reasonable doubt must be proof of such a convincing
15 character that a reasonable person would not, would
16 not hesitate to allow upon it the most important of
17 his or her own affairs. Proof beyond a reasonable
18 doubt can also be described as proof that leaves you
19 firmly convinced of a defendant's guilt.

20 Now there are very few things in this
21 world we know with absolute certainty, and the law
22 does not require proof that overcomes every possible
23 doubt. If based on your consideration of the
24 evidence you're firmly convinced the defendant's
25 guilty of the crime charged, you must find him

1 guilty. If on the other hand you think there's a
2 real possibility that he's not guilty, you must give
3 him the benefit of that doubt and find him not
4 guilty.

5 Now in determining what the facts are in
6 this case you must necessarily pass upon the
7 credibility which simply means believability of the
8 witnesses and the value of weight to be given to
9 their testimony. You, alone, must decide the force
10 and effect of the truth of that testimony. In
11 making these decisions there are many things that
12 you may and should take into consideration such as
13 the appearance or manner of the witness on the stand
14 sometimes referred to as the demeanor of a witness.
15 Was the witness forthright or hesitant. Was the
16 witness' testimony consistent or did it contain
17 discrepancies, what was the ability of the witness
18 to know the facts about which he or she testified.
19 Did the witness have cause or reason to be biased or
20 prejudiced in favor of their testimony? Was the
21 witness testimony corroborated or made stronger by
22 other evidence and testimony, or was it made weaker
23 or impeached by such other evidence or testimony.
24 As jurors you have a right to believe a small
25 portion of the witness' testimony and disregard the

1 larger, or vice versa. You may believe all of a
2 witness' testimony or none. You may believe the
3 testimony of a single witness against that of many,
4 or the other way around.

5 Now there are two types of evidence which
6 are generally presented during a trial, direct
7 evidence and circumstantial evidence. Direct
8 evidence directly proves the existence of a fact.
9 It does not require deduction. Circumstantial
10 evidence is proof of a chain of facts and
11 circumstances indicating the existence of a fact.
12 Crimes may be proven by circumstantial evidence, and
13 the law makes no distinction between the weight or
14 value to be given to either direct or circumstantial
15 evidence. However, to the extent that the State
16 relies on circumstantial evidence, all the
17 circumstances must be consistent with each other and
18 when taken together point conclusively to the guilt
19 of the accused beyond a reasonable doubt. If these
20 circumstances merely portray the defendant's
21 behavior as suspicious, the proof has failed. The
22 State has the burden of proving the defendant guilty
23 beyond a reasonable doubt and this burden rests with
24 the State regardless of whether the State relies on
25 direct evidence, circumstantial evidence, or a

1 combination of the two.

2 Now criminal intent is a necessary element
3 that the State must prove beyond a reasonable doubt.
4 Criminal intent is always a matter that must be
5 determined by the jury from the circumstances
6 surrounding the situation. There's no way to prove
7 intent to a mathematical certainty. There's no way
8 medical science can dissect a person's brain and
9 determine what he or she had in mind so the law
10 states criminal intent may be inferred from
11 circumstances shown to have existed both before and
12 after the fact. This is how you, the jury, make a
13 determination of whether or not the element
14 requiring intent was present. Criminal intent is a
15 state of mind that operates jointly with an act or
16 omission in the commission of a crime. Criminal
17 intent is a mental state or conscious wrongdoing.
18 It is up to you to determine what the defendant
19 intended to do based on the circumstances shown to
20 have existed; and I tell you the State must prove
21 criminal intent beyond a reasonable doubt just as
22 the State must prove each element beyond a
23 reasonable doubt.

24 Now the defendant in this case has been
25 charged with the offense of assault and battery of a

1 high and aggravated nature. A person commits the
2 offense of assault and battery of a high and
3 aggravated nature if the person unlawfully injures
4 another person and great bodily injury to another
5 person results or the act is accomplished by means
6 likely to produce death or great bodily injury.
7 Great bodily injury means bodily injury which causes
8 a substantial risk of death or which causes serious
9 permanent disfigurement or protracted loss or
10 impairment of the functions of a body member or
11 organ.

12 Now, if you feel that the State has failed
13 to prove the defendant guilty of assault and battery
14 of a high and aggravated nature, you may consider a
15 lesser included offense of assault and battery first
16 degree. A person commits the offense of assault and
17 battery first degree if the person unlawfully
18 injures another person and the act either -- injures
19 that person, I'm sorry. Is accomplished by means
20 likely to produce death or bodily injury. Great
21 bodily injury means the same thing I just gave you
22 in assault and battery of a high and aggravated
23 nature.

24 Now the defendant is also charged with the
25 crime of possession of a weapon during the

1 commission of a violent crime. The State must prove
2 beyond a reasonable doubt the defendant was in
3 possession of a firearm or visibly displayed that
4 which appeared to be a firearm during the commission
5 of a violent crime. A firearm means any machine
6 gun, automatic rifle, revolver, pistol, or any
7 weapon, which will or is designed to and may be
8 readily converted to expel a projectile. In order
9 for the defendant to be guilty of possession of a
10 weapon during the commission of a violent crime you
11 must first find the defendant guilty of committing a
12 violent crime or attempting to commit a violent
13 crime, and I charge you that assault and battery of
14 a high and aggravated nature is a violent crime.
15 Now assault and battery first degree is not a
16 violent crime.

17 Now the defendant has raised the defense of
18 self-defense. Self-defense is a complete defense;
19 and if it is established, you must find the
20 defendant not guilty. The State has the burden of
21 disproving self-defense by proof beyond a reasonable
22 doubt. If you have a reasonable doubt if the
23 defendant's guilty after considering all of the
24 evidence including the evidence of self-defense,
25 then you must find the defendant not guilty. On the

1 other hand, if you have no reasonable doubt of the
2 defendant's guilt after considering all of the
3 evidence including the evidence of self-defense, you
4 must find the defendant guilty.

5 The following elements are required to
6 establish self-defense. First, the defendant must
7 be without fault in bringing on the difficulty. If
8 the defendant's conduct was the type which was
9 reasonably calculated to and did provoke a deadly
10 assault the defendant would be, would be at fault in
11 bringing on the difficulty and would not be entitled
12 to an acquittal based on self-defense.

13 Now the second element of self-defense is
14 that defendant was actually in imminent danger of
15 death or serious bodily injury or the defendant
16 actually believed he was in imminent danger of death
17 or serious bodily injury. If the defendant was
18 actually in imminent danger it must be shown that
19 the circumstances would have warranted a person of
20 ordinary firmness and courage to strike the fatal
21 blow to prevent death or serious injury. If
22 defendant believed that he or she was in imminent
23 danger of death or serious bodily injury, it must be
24 shown that a reasonable prudent person of ordinary
25 firmness and courage would have had the same belief.

1 In deciding whether the defendant actually
2 was or believed he was in imminent danger of death
3 or serious bodily injury, you should consider all
4 the facts and circumstances surrounding the crime
5 including the physical condition and characteristics
6 of the defendant and the victim. The defendant does
7 not have to show that he or she was actually in
8 danger. It is enough if the defendant believed that
9 he was in imminent danger and a reasonable prudent
10 person of ordinary firmness and courage would have
11 had the same belief. The defendant has a right to
12 act on appearances even though the defendant's
13 belief may have been actual or perceived. Now even
14 if it was a mistake, if you decide, you must decide
15 whether defendant's fear or imminent danger or
16 serious bodily injury or death was reasonable and
17 would have been felt by an ordinary person in the
18 same situation.

19 Now evidence of prior difficulties between
20 the defendant and the victim may be considered in
21 deciding whether a threat existed, whether the
22 defendant had a reason to believe a threat existed
23 and how serious the threat was. The relative size,
24 age, and weight of the defendant and the victim may
25 be considered in deciding the apparent or actual

1 need for force on self-defense and the amount of
2 force needed. Threats made by the victim may be
3 considered in determining whether the defendant
4 actually was or believed that he or she was in
5 imminent danger.

6 In the third offense, in the final element
7 of self-defense is that the defendant had no other
8 probable way to avoid the danger or death of serious
9 injury other than to act as the defendant did in
10 this particular instance, in this particular
11 circumstance. And in normally that means if at all
12 possible unless the defendant is in his own house,
13 in his own business, he had a duty to retreat. If
14 defendant has no duty to retreat, if by doing so
15 would have placed him in more danger of being killed
16 or suffering serious bodily injury if he had
17 retreated if he didn't have an opportunity to
18 retreat.

19 A person cannot be required to make an
20 exact calculation as to the degree, amount of force,
21 that may be needed to avoid death or serious bodily
22 harm; therefore, in self-defense the defendant has a
23 right to use the force needed to avoid death or
24 serious bodily harm. The force used in self-defense
25 does not have to be limited to the degree or amount

1 of force used by the victim. The defendant has a
2 right to use such force as appeared to be necessary
3 for self-defense protection in which a person of
4 ordinary reason and firmness would have believed to
5 be needed to prevent death or serious bodily injury.

6 Now under the law of self-defense the
7 defendant may take, may act in defense of others.
8 The defendant may take another's life in defense of
9 their own or others. The right to intervene to
10 protect another person is subject to the same rights
11 and limitations of the rights of self-defense. The
12 defendant may take the life of another person who
13 assaults a friend, relative, or bystander if that
14 friend, relative, or bystander would have had the
15 same rights of self-defense. To show that a person
16 being defended had the right of self-defense, it
17 must first be shown that the person being defended
18 and the defendant were both without fault in
19 bringing on the difficulty. If the conduct of the
20 person defended or the defendant was the type which
21 a reasonable, which reasonably calculated to and did
22 provoke a deadly assault the person be at fault in
23 bringing on the difficulty and will not have a right
24 to self-defense; therefore, the defendant would not
25 have the right to use deadly force in defending that

1 other person. The defense of another person is
2 excusable if the defendant had reasonable grounds to
3 believe and acted in good faith if that person
4 bringing on the difficulty was the, person who did
5 not bring on the difficulty was in imminent danger
6 of death or serious bodily harm.

7 In deciding whether a person defended
8 actually was or that defendant actually believed the
9 person was in imminent danger or serious bodily
10 injury, you should consider all the facts and
11 circumstances shown to have existed including the
12 physical condition and characteristics of a party.
13 The defendant does not have to show that the person
14 the defendant defended was actually in danger. It
15 is enough if the defendant believed the person was
16 in imminent danger. The defendant has a right to
17 act on appearances even though the defendant's
18 belief may have been mistaken. The defendant must
19 show that under the circumstances as they appeared
20 to the defendant, the defendant believed that the
21 person defending was in danger and a reasonable
22 person of ordinary firmness and courage would have
23 had the same belief. Evidence of prior difficulties
24 between the persons defended and the person may be
25 considered in deciding whether a threat existed and

1 whether the defendant had a right to self-defense.

2 Now ladies and gentlemen, you are not
3 partisans of the State of South Carolina and this
4 defendant. You'll not serve as jurors to punish
5 your enemies or reward your friends. That system of
6 justice simply would not be tolerated. You have
7 been selected by both the State and this defendant
8 to be fair and impartial jurors, and it is your duty
9 then through your joint deliberation to determine
10 the facts in this case and apply the law that I've
11 given you and reach a verdict in this case.

12 Now Madam Foreman, I've had my law clerk
13 type up a possible verdict form in this case and I'm
14 just gonna go over it with you. It's a little
15 complicated. It is simply the caption of the case,
16 State of South Carolina, County of Williamsburg, the
17 State versus John Arthur James, III. On count one
18 on that indictment, as to the charge of assault and
19 battery of a high and aggravated nature, we, the
20 jury, unanimously find the defendant guilty or not
21 guilty. If you think unanimously that the State has
22 proven beyond a reasonable doubt the defendant's
23 guilty of assault and battery of a high and
24 aggravated nature, you will check that. If you find
25 that they have not met that burden you would go to

1 number two, the lesser included offense of assault
2 and battery of high -- of assault and battery first
3 degree. If you think the State has proven that
4 beyond a reasonable doubt, your verdict would be
5 guilty. If you think they have failed, the verdict
6 would be not guilty.

7 Now, the third offense is possession of a
8 weapon. You can't -- the only way you can consider
9 the third offense if you state, think the State has
10 proven beyond a reasonable doubt count one is guilty
11 because count one is a violent offense under the
12 law. Number two, assault and battery in the first
13 degree is not so he could be guilty of possession of
14 a weapon if you only found him guilty on the second
15 'cause. If you find him, you know, not guilty of
16 the first, you can't consider the third. The only
17 way you consider the third, if y'all unanimously
18 find him guilty on the first of offense. But the
19 State has the burden of proving each one of them.

20 If you find him guilty of the first you'd
21 skip number two and go to three and determine
22 whether you think they've proved beyond a reasonable
23 doubt that he possessed a weapon during the
24 commission of a violent crime. You understand that?
25 I know it's a little confusing. So your verdict

1 will either be guilty or not guilty on one. If
2 that's the case you consider number two. You won't
3 consider three. If you find him guilty on one, then
4 you go down to number three and see if they proved
5 beyond a reasonable doubt guilt or innocence on
6 that, okay.

7 When you've reached a verdict, and it must
8 be unanimous, all twelve of you must agree, you're
9 to check the appropriate box, date it and sign your
10 name and knock on the door and we'll bring you out
11 to receive the verdict. Now I've got to go over
12 what I've charged you with these lawyers to be sure
13 I hadn't left anything out. If I've forgotten
14 something and left something out, I'll bring you
15 back out and charge you further. If I've covered
16 everything I'll send the verdict form along with the
17 evidence to the jury room. As soon as you get this
18 form in the jury room that'll mean you can start
19 your deliberations. During your deliberations if
20 anybody needs to be excused or they need to go to
21 the restroom or anything, you got to stop talking
22 about the case 'cause you can only talk about the
23 case with all twelve jurors present in the room.
24 And the verdict must be unanimous, all twelve of you
25 must agree.

1 If you have a question you have to write it
2 down on a piece of paper and give it to the bailiff.
3 I can only answer questions of law. If you have a
4 question about the law I've given you, I can bring
5 you back out and clarify that. If you have a
6 factual question, I can't answer that 'cause you
7 heard all the evidence you can hear and I can't
8 re-open the case. Now you will get to carry all the
9 evidence back in the jury room with you. There's a
10 video in this case that y'all have seen. If you
11 want to watch it again, unfortunately we don't have
12 any way to play it back there. They don't have any
13 system that we can play it so if you want to watch
14 it again, you can watch it as many times as you
15 want, but I got to bring you back out here and play
16 it on these machines. So you have to come look at
17 it and then go back there and discuss it, I'm sorry.
18 They just don't have that capability. If you'll go
19 to the jury room. My alternate needs to stay with
20 me though. Which one is my alternate?

21 Who's the alternate?

22 THE CLERK: It should be Mr. Cooper.

23 THE COURT: Wilson.

24 THE CLERK: Okay.

25 THE COURT: You stay with me. The only

1 reason I will need you is if somebody got sick. It
2 looks like everybody is gonna make it so I can go on
3 and send the twelve back there to deliberate so if
4 you will just hang with me. Y'all go to the jury
5 room, and I'll either bring you back out in a few
6 minutes or send the paperwork in there to you, okay.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 3:18 p.m.)

9 THE COURT: Any exceptions or deletions on
10 behalf of the State?

11 MR. ANDERSON: Nothing from the State,
12 Your Honor.

13 THE COURT: Defense?

14 MR. SMALDONE: Your Honor, I just -- that
15 at a Bench conference we discussed lesser included,
16 I just renew my request that the ---

17 THE COURT: Second?

18 MR. SMALDONE: For the -- I'll just let
19 the record, ask for the record to reflect I did
20 request the assault and battery second degree.

21 THE COURT: Okay. And you did it at Bench
22 conference and the record will so reflect, but I
23 don't think the facts of this case warrant that.
24 It's either going to be ABHAN or first degree or not
25 guilty. Okay, if y'all will get the evidence

1 together, be sure you and the court reporter all
2 agree on what the evidence is.

3 THE COURT REPORTER: Are you going to send
4 this back, and the gun?

5 THE COURT: Yeah, the gun is secure. The
6 gun is locked. My bailiff is going to the jury room
7 and tell them to begin.

8 (WHEREUPON, the jury began their
9 deliberations at 3:20 p.m. and a recess
10 was taken.)

11 (Court's Exhibit Number 1 was marked
12 and made a part of the record.)

13 (WHEREUPON, the jury was returned to the
14 courtroom at approximately 4:28 p.m., and
15 the following proceedings commenced in
16 open court.)

17 THE COURT: Madam Forelady, I got a note
18 that y'all want me to re-charge you on assault and
19 battery high and aggravated, assault and battery
20 first degree; is that right?

21 THE FORELADY: Yes, sir, please.

22 THE COURT: Assault and battery of a high
23 and aggravated nature. A person commits the offense
24 of assault and battery high and aggravated nature if
25 the person unlawfully injures another person and

1 great bodily injury to another person results or the
2 act is accomplished by means likely to produce death
3 or great bodily injury. Great bodily injury means
4 bodily injury which causes a substantial risk of
5 death or which causes serious permanent
6 disfigurement or protraction, or protracted loss or
7 impairment of the function of a body member or
8 organ.

9 Now assault and battery in the first
10 degree. A person commits the offense of assault and
11 battery in the first degree if the person unlawfully
12 injures another person and the act either -- well,
13 that doesn't apply 'cause it wasn't. A person may
14 also commit the offense of assault and battery first
15 degree if the person unlawfully offers or attempts
16 to injure another person with the present ability to
17 do so and the act is accomplished by means likely to
18 produce death or great bodily injury.

19 I know those definitions are very close.
20 The greater and more aggravated one is assault and
21 battery high and aggravated nature. And in assault
22 and battery high and aggravated nature there must be
23 an injury. In assault and battery in the first
24 degree there doesn't necessarily have to be an
25 injury as long as it's an offer or attempt to do

1 injury. That's the only two difference in the two.
2 One is a greater and more serious offense than the
3 other. Assault and battery of a high and aggravated
4 nature is more serious than assault and battery in
5 first degree so the State has to prove beyond a
6 reasonable doubt either one of those. Okay. And I
7 know that's close, but that's really the only
8 difference and I complained to the legislature
9 'cause they wrote that law and it is so close. It
10 is difficult to ascertain between the two. One is
11 more serious than the other. Assault and battery
12 involves an injury, a great bodily injury. And the
13 assault and battery first degree either involves an
14 injury or an attempted injury. Okay?

15 All right, you got any other questions?
16 If not, go back to the jury room. Let me know.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 4:31 p.m.)

19 THE COURT: All right, we'll just wait
20 till we hear from the jury panel.

21 (Court was in recess.)

22 THE COURT: I just received a verdict from
23 the jury. Bring them in.

24 (WHEREUPON, the jury was returned to the
25 courtroom at approximately 4:46 p.m., and

1 the following proceedings commenced in
2 open court.)

3 THE COURT: Madam, I received a copy of
4 your verdict. Is it unanimous?

5 THE FORELADY: Yes, it is.

6 THE COURT: Okay. Madam Clerk, you may
7 publish the verdict.

8 THE CLERK: In case number 2018-GS-45-22,
9 the State of South Carolina versus John Arthur
10 James, III, as to the charge of assault and battery
11 of a high and aggravated: We, the jury, unanimously
12 find the defendant guilty. As to the charge of
13 possession of a weapon during a violent crime: We,
14 the jury, unanimously find the defendant guilty.
15 Date of 5/31/18, signed by foreperson Rebecca
16 Powell.

17 THE COURT: Anything before I release the
18 jury on behalf of the State?

19 MR. ANDERSON: Nothing from the State,
20 Your Honor.

21 THE COURT: On behalf of Defense?

22 MR. SMALDONE: We ask that Your Honor poll
23 the jury.

24 THE COURT: Madam Clerk, would you poll
25 the jury.

1 THE CLERK: Yes, sir.

2 Mr. Joseph Murray, would you please stand
3 at this time, raise your right hand. Is this your
4 verdict, is it still your verdict?

5 JUROR MURRAY: Yes, it is.

6 THE CLERK: You may be seated.

7 Ms. Iva Jordan, please raise your right
8 hand. Is this your verdict, is it still your
9 verdict?

10 JUROR JORDAN: Yes, it is.

11 THE COURT: Okay, you may be seated.

12 Shante Wilson, raise your right hand
13 please. Is this your verdict, is it still your
14 verdict?

15 JUROR WILSON: Yes, it is.

16 THE CLERK: Okay.

17 Shamona Pressley, raise your right hand
18 please. Is this your verdict, is it still your
19 verdict?

20 JUROR PRESSLEY: Yes, it is.

21 THE CLERK: Okay.

22 Mr. Damien Berry, is this your verdict, is
23 it still your verdict?

24 JUROR BERRY: Yes, it is.

25 THE CLERK: Okay.

1 Mr. Phillip Eaddy, raise your right hand
2 please. Is this your verdict, is it still your
3 verdict?

4 JUROR EADDY: Yes, ma'am, it is.

5 THE CLERK: Okay.

6 Ms. Rebecca Powell, is this your verdict,
7 is it still your verdict?

8 JUROR POWELL: Yes, ma'am.

9 THE CLERK: Okay.

10 Mr. John Wilson, is this your verdict, is
11 it still your verdict?

12 JUROR WILSON: Yes, ma'am.

13 THE CLERK: Okay.

14 Ms. Loretta McCutcheon, is this your
15 verdict, is it still your verdict?

16 JUROR MCCUTCHEON: Yes, it is.

17 THE CLERK: Okay.

18 Ms. Tiera Major, is this your verdict, is
19 it still your verdict?

20 JUROR MAJOR: Yes, it is.

21 THE CLERK: Ms. Barbara Scott, is this
22 your verdict, is it still your verdict?

23 JUROR SCOTT: Yes.

24 THE COURT: And Mr. Eric Cooper, is this
25 your verdict, is it still your verdict?

1 JUROR COOPER: Yes, it is.

2 THE CLERK: Your Honor, the jury has been
3 polled and the verdict is still unanimous.

4 THE COURT: Thank you, Ma'am.

5 Ladies and gentlemen, I want to thank you
6 for your service in this case. You've been very
7 attentive throughout this case. I've been telling
8 you the whole week you can't talk about it. Now you
9 can talk to anybody you want to. You don't have to
10 if you don't want to. You don't have to do this
11 again for three years. I appreciate your service.
12 You have a great weekend.

13 (Jury was excused.)

14 THE COURT: Okay, you got the sheet?

15 MR. ANDERSON: Yes, Your Honor. If I can
16 have a brief moment with Mr. Smaldone.

17 THE COURT: Yes.

18 (Pause.)

19 THE COURT: Tell me about his record.

20 MR. ANDERSON: Your Honor, Mr. James'
21 record is the most frightening part of this case.
22 It starts back in 1992 he has a possession of crack
23 cocaine charge; '93, he has a assault and battery
24 with intent to kill, as well as possession of a
25 weapon during a violent crime.

1 THE COURT: In '90 what?

2 MR. ANDERSON: 3, Your Honor.

3 THE COURT: A conviction?

4 MR. ANDERSON: Yes, Your Honor. 2002, he
5 has a possession of crack cocaine with another
6 assault and battery with intent to kill, Your Honor.
7 2004, he has a simple assault. 2005, he has a
8 possession of cocaine and possession of marijuana.
9 2006, he has possession of crack. 2008, he has a
10 possession of cocaine. We'd ask the Court to hear
11 from the victim at the appropriate time.

12 THE COURT: He's got two prior assault and
13 battery with intent to kill?

14 MR. ANDERSON: Yes, that's what Mr., me
15 and Mr. Smaldone were conferring about.

16 THE COURT: Okay. And I'll be glad to
17 hear from the victim if he wants to tell me
18 anything.

19 MR. ANDERSON: You want to address the
20 Court? You want to tell him anything? He said I
21 did good, Your Honor. That's all he had to say.

22 THE COURT: What?

23 MR. ANDERSON: He said I did good. That's
24 all he had to say.

25 THE COURT: Okay. Yes, sir, what you want

1 to tell me?

2 MR. SMALDONE: And Your Honor, just, and
3 I've just conferred with my client and I do have
4 some concern. I believe it's possible there may
5 only be one ABWIK, and the reason I, I looked on
6 NCIC, and as Your Honor knows there's a conviction
7 in I think '93. And then I think in 2002, if I'm
8 not mistaken, the second ABWIK, it looks, it's
9 marked under Department of Corrections so it looks
10 like a probation revocation or parole revocation.
11 Now me and the Solicitor agree that it, that would
12 be a very long time to ---

13 (The Court and probation agent confer.)

14 THE COURT: He says it's parole
15 revocation, it's only one.

16 PROBATION OFFICER: Just one.

17 THE COURT: He's telling me there's only
18 one. That was a parole revocation.

19 MR. ANDERSON: Then we're fine with that
20 being, that being made to reflect the same.

21 THE COURT: All right, what else you want
22 to tell me?

23 MR. SMALDONE: Your Honor, thank you. You
24 know, I can't -- Your Honor heard the facts. This
25 is a case where, you know, certainly I think it was

1 probably one of those almost self-defense, almost
2 imperfect self-defense cases. Unfortunately, the
3 elements weren't there. But you heard that, you
4 know, Your Honor, you heard that he went there to
5 grocery shop, and unfortunately, through the turn of
6 events that thing happened, this horrible thing
7 happened; and you know, my client has always told me
8 that he's, you know, sorry it happened. He's sorry
9 for the shooting. There's certainly remorse on his
10 part.

11 Now the trial was mainly to determine
12 whether or not that shooting was justified. A jury,
13 a Williamsburg County jury determined that it was
14 not justified. Your Honor, we just ask Your Honor
15 to consider the facts, the lack of premeditation,
16 the level of provocation that was involved in this
17 case. And again, Your Honor's heard it all. His
18 record, I think he had a little bit of a wild past
19 certainly; but he's been out of trouble for it
20 sounds like ten years. He's kind of, you know, been
21 doing his own thing for ten years; and
22 unfortunately, just through a random turn of events
23 this all occurred. And, Your Honor, he's sorry.
24 I'm sorry on his behalf. I'm not sure if his mother
25 would like to briefly address the Court. I

1 believe she, you already heard from his mother.
2 She's here just in her support. So Your Honor,
3 that's, I believe that's all that we have at this
4 time.

5 THE COURT: Okay.

6 MR. SMALDONE: Your Honor, we ask that
7 Your Honor ---

8 THE COURT: Sure, I'll be glad to hear
9 from her.

10 (Mr. Smaldone and defendant confer.)

11 MR. SMALDONE: Your Honor, this is, and
12 she's already been on the record. This is
13 Ms. Josephine James.

14 THE COURT: Yes, ma'am.

15 MS. JAMES: I mean, I'm really upset right
16 now.

17 What you want me to say?

18 MR. SMALDONE: You don't have to tell him
19 anything.

20 THE COURT: You don't have to tell me
21 anything. I just wanted to, he said you wanted to.

22 MS. JAMES: What you want me to say? Your
23 Honor, I mean, you all come out and said guilty. I
24 mean, I just don't understand, you know.

25 I told you I had witnesses and I, you

1 know, but I ---

2 MR. SMALDONE: If I may.

3 (Mr. Smaldone and Ms. James confer.)

4 MS. JAMES: I just want to take my son
5 home. I mean, he haven't done anything really to
6 do -- he's been done good things lately. You know,
7 before all this stuff came up he have done marvelous
8 things. That's the problem. People push up from
9 him. They try and make him look like a bad dog.
10 And then he's back and forth from doctor keeping up
11 with his prescriptions. And he's only child I have
12 at my home with me, Your Honor. I love my child,
13 and I feel that, I feel like he don't deserve this.

14 THE COURT: I understand.

15 MS. JAMES: I mean, things always be
16 wrong, it always be backwards. People don't
17 understand when somebody just pick, pick, pick. I
18 have sit up here and I know we always been picked
19 on. Like I got up here early and I said when we
20 first come in here, when Clifton Newman been here,
21 we first come in here, shorten up that, his sister
22 come bawling on my door crying, begging, wanting to
23 make stay with us. I tell her I ain't got time for
24 that. She got my son in all this because of her
25 brother.

1 We both know he's trouble. Be honest with
2 yourself.

3 UNIDENTIFIED PERSON: You be honest---

4 MS. JAMES: Be honest with yourself and
5 leave it alone. I leave it in God hands. I will
6 leave it in God hands. That's all I can say.

7 THE COURT: All right. Thank you, ma'am.

8 MR. SMALDONE: Your Honor, we just briefly
9 ask, I believe the last felony he had was in --
10 well, yeah, the last felony was in the early '90s if
11 I'm not mistaken so we just ask Your Honor for the
12 maximum amount of mercy for Mr. James.

13 MS. JAMES: May I say one more thing and
14 that's it?

15 (Mr. Smaldone conferred with Ms. James.)

16 MS. JAMES: I want to say one thing.
17 Judge, to make sure, tell her father don't be giving
18 daughter the truck. He don't even know she come
19 running to the house behind him. I stop that.
20 She's hang down my end too much. It make it look
21 like my son's at for her. He not even trying to go
22 out with. He don't want to communicate with her.

23 THE COURT: I understand.

24 All right. On the sentence of assault and
25 battery of a high and aggravated nature, the

1 sentence of the Court is you're committed to the
2 State Department of Corrections for a term of twenty
3 years. On possession of a weapon it's five years to
4 run concurrent with the assault. Good luck.

5 (Pause.)

6 THE DEFENDANT: Your Honor. Your Honor.

7 THE COURT: Yes, sir.

8 THE DEFENDANT: Out of everything today,
9 the only thing I'd ask you is before I leave
10 Williamsburg County can I please have my motion in
11 full because you ordered that. That's a court
12 order.

13 THE COURT: What motion?

14 THE DEFENDANT: All, any part of the
15 motions they have so I want to, do I have a right to
16 appeal?

17 THE COURT: Yeah, you got, I mean, you
18 have to talk to your lawyer about this. You got ten
19 days to appeal this verdict.

20 THE DEFENDANT: That's what I'm asking,
21 why I'm asking. Basically, once you get in the
22 system it seems to be a burden to receive any of
23 that type information, you know.

24 THE COURT: You'll have full appellate
25 rights, whatever —

1 THE DEFENDANT: I don't have, I don't even
2 have it during this trial so that's why I'm asking
3 can I have full of it so that I can put it for
4 appeal.

5 THE COURT: Nothing else come in front of
6 me ---

7 THE DEFENDANT: No, I know it go to
8 supreme court.

9 THE COURT: Right.

10 THE DEFENDANT: Yeah, that's what I'm just
11 ---

12 THE COURT: You just got to file it.

13 THE DEFENDANT: I'm asking for to carry my
14 motion if they have it ready, they supposed to be
15 presented. I just want to know if I can get it.

16 THE COURT: Where are your motions?

17 THE DEFENDANT: My attorney should be able
18 to release it to me just as soon as possible.

19 MR. SMALDONE: He's talking about
20 discovery, Your Honor, which is, he's, we've been
21 over it.

22 THE COURT: Oh, okay.

23 MR. SMALDONE: But I'm, here's what I'm
24 gonna do because it's a running issue with SCDC in
25 the past so I am gonna actually --- and he's already

1 received it -- but I'm gonna hand him his written
2 discovery on record, that way everybody is clear.
3 I'm just taking out right now any juror information
4 that I do have, but I believe this is it.

5 THE COURT: He'll give it to you now and
6 you can take it with you.

7 MR. SMALDONE: I'm gonna do it now to save
8 a stamp.

9 THE COURT: Okay.

10 THE DEFENDANT: I just know I need to have
11 it to carry ---

12 THE COURT: I understand. He'll give it,
13 he'll give it to you.

14 THE DEFENDANT: He know what I mean.

15 MR. SMALDONE: The inmates ask for it at
16 the jail to prove you're not a snitch so it's very
17 common.

18 THE COURT: I understand.

19 MR. SMALDONE: Your Honor, at this time
20 I'm gonna give him the entirety of the written
21 discovery that I've received.

22 THE COURT: Okay.

23 (Mr. Smaldone tenders documents to defendant James.)

24 THE DEFENDANT: What about the CD, Mr.
25 Smaldone?

1 MR. SMALDONE: I don't know that, I don't
2 have the CD. I have it on my computer. I cannot
3 give you that.

4 THE DEFENDANT: My motion in whole, that's
5 gonna be the most important thing to me. If I ever
6 come home in 20 years I'm gonna need all my motion.
7 I mean, I actually have to go right. I have to go
8 to study. I have to try to get back to court. I
9 can't, I have a son, I have a family. I have to get
10 back to court. Without this it causes confusion as
11 it has been today without it. I would just like to
12 ask can I have some evidence, can I have my
13 discovery motion? I'm gonna need it and that's all
14 I'm asking the Court. No burden on anyone, just
15 allow me to have what I motion for.

16 THE COURT: Well, do you want a copy of
17 the video?

18 THE DEFENDANT: I would like to have one,
19 the whole entire copy of ---

20 MR. SMALDONE: You don't have a computer.

21 THE COURT: It's on your computer. You
22 don't have a copy?

23 MR. SMALDONE: I have it on my hard drive.

24 THE DEFENDANT: I would like to have that
25 witness list, indictment ---

1 THE COURT: You got an extra disk?

2 THE DEFENDANT: I would like to have a
3 witness list.

4 MR. ANDERSON: The one we've got, that's
5 in evidence, Your Honor.

6 THE COURT: The only one you got is in
7 evidence?

8 MR. ANDERSON: I can burn a copy, but I
9 have to go upstairs.

10 THE DEFENDANT: Your Honor, this time just
11 about the CD.

12 THE COURT: What else you, what you think
13 you're entitled?

14 THE DEFENDANT: Sir? Entitled to motion
15 discovery, medical records, I need 9-1-1 calls, I
16 need victim's ---

17 THE COURT: None of that was introduced in
18 this case.

19 THE DEFENDANT: Well, how could they deny
20 a witness?

21 THE COURT: They can call anybody they
22 want to.

23 THE DEFENDANT: How they deny without
24 fullest of the motion of discovery.

25 THE COURT: They don't have ---

1 THE DEFENDANT: If they deny for motion of
2 discovery, Your Honor, I'm afraid I cannot fight a
3 case.

4 THE COURT: I understand. They only have
5 to ---

6 THE DEFENDANT: Over the, without my
7 motion for discovery. I can't fight a case without
8 that, not knowing what the State have against me,
9 not knowing what the State has withheld from me.

10 THE COURT: They have -- you can file
11 whatever. They only have to provide you with the
12 things they intend to introduce in their case in
13 chief or anything they have that's exculpatory --

14 THE DEFENDANT: Your Honor, they have to
15 have, he have to give me the part of the motion in
16 which I have asked, not just what they want to give
17 me.

18 THE COURT: No, no, that's not true.

19 THE DEFENDANT: It is true. We'll go to
20 supreme court.

21 THE COURT: Right, go to supreme court.

22 THE DEFENDANT: She dead.

23 THE COURT: You can take that up with
24 them, sir.

25 (Pause.)

1 THE DEFENDANT: She dead, can't bring her
2 back. (Inaudible.) You can't bring her back.
3 You'll neither. No, his momma dead. With that
4 foolishness, acting childish.

5 UNIDENTIFIED PERSON: What did he say?

6 THE DEFENDANT: His mother is dead, that's
7 what I said. His mother is dead behind that
8 foolishness. She died after he did that dumb stuff.
9 She deserve to be dead.

10 UNIDENTIFIED PERSON: Oh, my God ---

11 THE DEFENDANT: Yeah, she dead, she's dead
12 and cold. She's dead.

13 THE COURT: Okay.

14
15 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
16
17
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25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings; that a correction was made on Page 345, line 20 on September 18th, 2023.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 21st day of September, 2023.

Frances B. Ray
FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA)

County of Williamsburg County)John A. James III, 194433)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2021-CP-45-307

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE Corr. Inst
990 WISACKY Hwy. Bishopville S.C. 29090
2. Name and location of Court which imposed sentence Williamsburg County
Court House Square, 125 W. Main St. Kingstree, S.C. 29550
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018-GS-45-0022 Abuse
 - (b) 2018-GS-45-0022 P.O.W.C.V.C.

FILED
8-5-2021
Williamsburg County
Clerk of Court
Kingstree, SC

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) may 31st 2018 20y⁺ Violent/Serious
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty Guilty Verdict rendered
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. J.C. Court of Appeals, williamburg County
- ii. Remittitur according to Rule 221(b) Submitted
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed, without Oral Argument
- ii. Remittitur according to Rule 221(b) Submitted
- iii. _____
- (c) the date of each such result:
- i. Jan 27, 2021
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. unpublished Opinion No. 2021-cv-023
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Defective Assistance of Counsel
- (b) Counsel Fail to make timely Objection
- (c) Counsel Fail to Investigate
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel Fail to request any pretrial Determinations
- (b) Counsel Fail to Preserve Issue
- (c) Appellant was not entitled to Immunity
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof: N/A
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. A

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. A

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. A

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Trial Court Attorney: Grant Smaldone, 100410
165 Wappoo Creek Dr. Suite 1A Charleston S.C. 29412

ii. Direct Appeals: Appellate Defense Joanna K. Delany Esq.
P.O. Box 11589 Colo. S.C. 29211-1589

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial

ii. Direct Appeals

iii. _____

19. State clearly the relief you seek in filing this application:

Immunity, New trial, Reconstruction of Sentencing

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of LEE)

VERIFICATION

I, John A. James III, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

John A. James III

SWORN to and subscribed before me this 3
day of Aug., 2021.

Debra Eastridge (L.S.)
Notary Public

My Commission Expires: 3/3/2024

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, John A. James III, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

John A. James III
Applicant

SWORN or affirmed to and subscribed before me this

3 day of Aug., 2021.

Debra Eastridge
Notary Public

My Commission Expires: 3/3/2024

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

John A. James, III, SCDC #196633,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No.: 2021-CP-45-0327

**RETURN TO THE APPLICATION
FOR POST-CONVICTION RELIEF
AND MOTION FOR A MORE
DEFINITE STATEMENT
(Counsel Already Appointed)**

FILED

1/11/2022
Williamsburg County
Clerk of Court
Lancaster SC

Respondent the State of South Carolina, making its return to the application for post-conviction relief filed by Applicant John A. James, III, on August 5, 2021, and not forwarded to the Respondent until October 12, 2021¹, would respectfully show this Court:

I. PROCEDURAL AND FACTUAL HISTORY

Procedural History

Applicant is presently confined within the South Carolina Department of Corrections. During its January 2018 term, the Williamsburg County Grand Jury indicted Applicant for assault and battery of a high and aggravated nature and possession of a weapon during the commission of a violent crime (2018-GS-45-0022). Applicant was represented by Grant B. Smaldone, Esquire, of the private bar. Assistant Solicitor Warren S. Anderson of the Third Circuit Solicitor's Office prosecuted the case.

On May 29, 2018, the State called the matter to trial before the Honorable R. Ferrell

¹ Respondent's return is due to be filed within ninety days of service of the application. Because Respondent was not served with this application until October 12, 2021 when the Williamsburg County Clerk of Court first forwarded the application to the Attorney General's Office pursuant to S.C. Code Ann. § 17-27-40, the return is due on January 10, 2022. See Rule 12(a), SCRCF ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.").

Cothran, Jr., circuit court judge, and a jury. On May 31, 2018, the jury convicted Applicant as indicted. Judge Cothran sentenced Applicant to imprisonment for twenty years for assault and battery of a high and aggravated nature and for five years for possession of a weapon during the commission of a violent crime, with the sentences to be served concurrently.

Applicant filed a timely notice of appeal. Appellate Defender Joanna K. Delany of the South Carolina Commission on Indigent Defense-Office of Appellate Defense perfected Applicant's appeal by filing a brief with the Court of Appeals on the following issue:

The [trial] court erred in appellant's ABHAN trial where it refused to charge the jury on the lesser offense of second-degree assault and battery, where expert testimony about the complainant's injuries was that he had "a scar" and that most people tolerate the type of surgery undergone by the complainant "without much difficulty," since these facts supported a finding of moderate bodily injury (second degree assault and battery) rather than great bodily injury (ABHAN), since the court must instruct the jury on a lesser-included offense where there is any evidence of the lesser offense rather than the greater offense.

Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentence in an unpublished opinion. *State v. John Arthur James, III*, Unpub. Op. No. 2021-UP-023 (Ct. App. filed Jan. 27, 2021). The remittitur was issued on February 23, 2021.

Factual Summary as Presented at Trial

The Williamsburg County Grand Jury indicted Applicant for assault and battery of a high and aggravated nature (ABHAN) and possession of a weapon during the commission of a violent crime arising from a shooting incident on July 15, 2017, in an IGA parking lot.

At trial, James Singletary ("Singletary") testified he went to the IGA the day of the shooting to get something to eat. When he drove into the parking lot, he spoke to a friend, and then parked his car. As Singletary opened his car door, Applicant walked up and punched him three times in the face. Singletary stated Applicant "hollered, he got a weapon, he got a weapon," but Singletary

was unarmed at the time. Applicant then ran around in a circle, came back to Singletary's car and kicked the car door. (Tr. pp. 45-48, State's Exhibit 1).²

Applicant fell after kicking Singletary's car, then got up, ran over to his mother, who was by her car in the parking lot, and told her to "give [him] that damn thing out of the box." Singletary spoke to his friend for about thirty seconds, and started toward his car to leave, but Applicant started yelling at him, so Singletary got a machete out of the trunk of his car and started walking toward Applicant. Singletary stopped and said he was going to call the police. Applicant then got out of his mother's car with a gun. Applicant fired a shot toward Singletary, who turned around and started walking away for Applicant. (Tr. pp. 48-50).

As Singletary walked away, Applicant came up behind him. When Singletary got to a corner of the building, Applicant shot him twice in the abdomen from approximately six feet away. (Tr. pp. 50-51).

Dr. John Gause testified he was working at McLeod Regional Medical Center in July 2017, and in his capacity as a general surgeon, he was called to the emergency room on July 15th after Singletary was transported there by ambulance. He stated Singletary had gunshot wounds in his abdomen and groin, with multiple injuries (six holes) to his small bowel. Dr. Gause operated and removed approximately fifteen inches of Singletary's small intestine, and hooked the remaining bowel back together. Dr. Gause testified that without the surgery and removal of part of his small intestine, Singletary would have died from peritonitis (an infection caused by stool leaking from the bowel into the abdominal cavity). In addition to losing part of an internal organ (small intestine), Singletary was left with a surgical scar on his midline. (Tr. pp. 76-80).

² State's Exhibit 1 (Video) was transported to the Court of Appeals for consideration on appeal.

At the close of the State's case-in-chief, Applicant moved for a directed verdict on the ground the State failed to prove Singletary suffered the "level of bodily injury" required for an ABHAN conviction because the surgery involving his small intestine was not complex, and the only permanent disfigurement was a scar. The State argued being shot twice causes substantial risk of death, and Dr. Gause testified Singletary would have died without the surgery to treat his internal injuries, which was sufficient to present the case to the jury. The circuit court agreed and denied Applicant's directed verdict motion. (Tr. pp. 131-132).³

The circuit court instructed the jury on ABHAN, the lesser included offense of assault and battery, first degree, and self-defense. After the jury left the courtroom, Applicant objected to the court's failure to charge the lesser included offense of assault and battery, second degree, which he had requested during a previous bench conference. The court acknowledged Applicant made the request, but denied the requested charge, stating: "I don't think the facts of this case warrant that. It's either going to be ABHAN or first degree or not guilty." (Tr. pp. 326-343).

The jury convicted Applicant of ABHAN and possession of a weapon during a crime of violence. (Tr. pp. 347-357).

II. ALLEGATIONS RAISED IN THE APPLICATION FOR POST-CONVICTION RELIEF

In his application for post-conviction relief, Applicant sets forth the following claims of ineffective assistance of counsel:

1. Counsel fail[ed] to make timely objection
2. Counsel fail[ed] to investigate
3. Counsel fail[ed] to request pretrial determination
4. Counsel fail[ed] to preserve issue

³Applicant also moved for a directed verdict on the ground the State failed to disprove his self-defense claim, which the court also denied. (Tr. pp. 132-134). Applicant did not challenge that ruling on appeal.

5. Appellant was not entitled to immunity

See PCR Application (question #10 and #11).

Applicant failed to provide any specific allegations or facts to support these generic claims of ineffectiveness. Based on this, Respondent addresses ineffective assistance of counsel generally, but also moves for a more definite statement and requests that Applicant, through his appointed counsel, file an amended application clearly delineating the specific grounds for relief with supporting facts as required under the applicable rules and statutes.

As requested relief, Applicant states he is seeking, "immunity, new trial, reconstruction of sentencing."

Attached to this return and incorporated into this response to the application are the Williamsburg County Clerk of Court records regarding the general sessions proceeding, the transcript from Applicant's trial, Applicant's records from the South Carolina Department of Corrections, the entire direct appeal record (including the record on appeal and briefs, the order affirming his convictions, and the remittitur), and the current application for relief. Respondent reserves the right to amend this return based upon receipt of additional relevant information.

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

In his application, Applicant raises generic claims of ineffective assistance of counsel without any specificity or facts to support such allegations. Accordingly, Respondent addresses this general allegation and Respondent submits the record establishes Applicant will not be able to prove any ineffectiveness of counsel as to these claims. However, as set forth below, Respondent requests that Applicant, through his counsel, file an amended application with specific grounds for relief so that Respondent may file an amended return specifically addressing all claims.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee

Applicant, like all other defendants, the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney’s performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant’s burden for proving both of these components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to

prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." *Harrington*, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing

court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify

reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may

evaluate the prejudice prong only. *Id.*

As set forth above, it is impossible to discern what specifically Applicant is raising on post-conviction relief based on his generic claims of ineffectiveness without specific allegations or supporting facts.

Respondent submits Applicant cannot satisfy either requirement of the *Strickland* test, as the record establishes he was represented by competent counsel who diligently represented him. However, without specific allegations of ineffective assistance of counsel, it is impossible to respond to the claim of ineffective assistance of counsel precisely. Accordingly, Respondent requests Applicant, through his appointed counsel, amend his application to include the specificity required to support an allegation of ineffective assistance of counsel.

IV. MOTION FOR MORE DEFINITE STATEMENT

In his application, Applicant fails to list specific allegations or any facts to support such allegations, but, instead, lists generic, vague allegations of ineffectiveness. *See* PCR Application (question #10 and #11).

The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” S.C. Code Ann. Section 17-27-50. In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). *See also* Rule 8(a)(2), SCRPC (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRPC (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”). “[M]ere allegations of

incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the [applicant] that he was deprived of adequate and effective assistance of counsel is insufficient.” *Coardes v. State*, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Applicant has failed to state with any specificity the allegations he wishes to pursue on post-conviction relief beyond vague allegations. Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant, through his appointed counsel, to provide a more definite statement of his allegations by filing an amended application before the scheduling of any hearing(s) in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

V. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C.

Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC; *see also* Rules 15(a)-(b), SCRPC. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRPC.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

VI. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VII. CONCLUSION

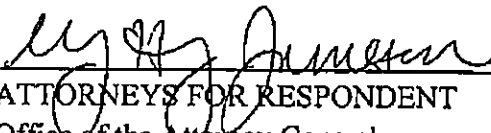
WHEREFORE, Respondent respectfully requests Applicant, through appointed counsel, file an amended application with specific allegations and supporting facts, prior to the scheduling of any evidentiary hearings in this matter so that Respondent may file an amended return specifically responding to these amended, specific allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. Jeffrey Young
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

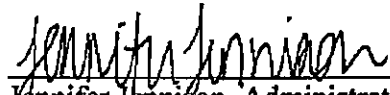
January 10, 2022

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	
	)	2021-CP-45-327
	)	
John A. James, III, #196633	)	
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE OF SERVICE BY MAIL
	)	
State of South Carolina,	)	
	)	
Respondent,	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return, Motion for a More Definite Statement, and Motion for Partial Summary Dismissal in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Michael H. Lifsey, Esquire
Post Office Box 548
Chester, SC 29706

DATED this the 10th day of January, 2022.


 Jennifer Jennison, Administrative Coordinator
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)
John A. James, III, SCDC #196633,)
Applicant,)
v.)
State of South Carolina.)

COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
Case No.: 2021-CP-45⁰0327

**AMENDED POST-CONVICTION
RELIEF APPLICATION**

2022 MAY 19 AM 10:58
FILED

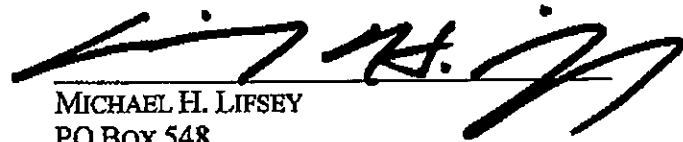
The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on August 5, 2021, to add the following allegations:

1. Ineffective assistance of counsel for

- (a) Failing to adequately prepare for trial, having been appointed only a month prior to the trial date.
- (b) Failing to object or offer any opposition whatsoever at a status conference held on April 26, 2018 in front of Judge Clifton Newman, to the plan of the Solicitor to try the case on May 29, 2018, despite the fact that trial counsel was only formally appointed that day.
- (c) Failing to request a continuance from the trial judge when the case was called for trial on May 29, 2018 in front of Judge Ferrell Cothran, Jr.
- (d) Failing to request an immunity hearing pursuant to the Protection of Persons and Property Act (SC Code Section 16-11-410 *et seq.*).
- (e) Failing to object to the trial judge's confusing instructions regarding the charge of Possession of a Weapon During the Commission of a Violent Crime as it related to the charges of Assault and Battery of a High and Aggravated Nature and the lesser included offense of Assault and Battery 1st Degree.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



MICHAEL H. LIFSEY
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CHESTER, SC 29706
803-899-5040
MICHAEL.LIFSEY@GMAIL.COM
SC BAR No. 015154
ATTORNEY FOR APPLICANT

May 17, 2022

CERTIFICATE OF SERVICE

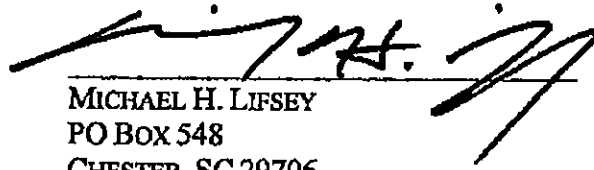
I certify that I have served this document via first class mail on:

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

2022 MAY 19 AM 10:56
SHARON STAGGERS
CLERK
SC

FILED

This 17th Day of May, 2022.



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ATTORNEY FOR APPLICANT

May 17, 2022

STATE OF SOUTH CAROLINA))
COUNTY OF WILLIAMSBURG) COURT OF COMMON PLEAS

JOHN A. JAMES, III)
196633

PETITIONER,)

v.)

TRANSCRIPT OF RECORD
21-CP-45-0327

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

June 15, 2023
Sumter, South Carolina

B E F O R E :

THE HONORABLE R. KIRK GRIFFIN, JUDGE

A P P E A R A N C E S:

MICHAEL H. LIFSEY, ESQ.
Attorney for the Petitioner

T. CRUISE MITCHELL, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

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E X H I B I T S

RESPONDENT'S:

No.	Description	ID/EVD
1	CD - video of incident	4/4
2	CD - video of incident	4/4

1 MR. MITCHELL: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. MITCHELL: This is the post-conviction relief
4 matter of John A. James, III, v. State, case
5 number 2021-CP-45-0327 out of Williamsburg County. Cruise
6 Mitchell on behalf of the State of South Carolina.
7 Applicant is present and represented by counsel Michael
8 Lifsey. Applicant was indicted at the January 2018 term of
9 the Williamsburg County grand jury for assault and battery
10 of a high and aggravated nature and possession of a weapon
11 during the commission of a violent crime. Applicant was
12 represented by Grant B. Smaldone, Esq. Assistant Solicitor
13 Warren Anderson prosecuted the case. On May 29th, 2018,
14 applicant proceeded to trial before the Honorable R. Ferrell
15 Cothran, Jr., and a jury. The jury found applicant guilty
16 as indicted. Judge Cothran, Jr., sentenced applicant to
17 20-years imprisonment for assault and battery of a high and
18 aggravated nature and 5-years imprisonment for possession of
19 a weapon during the commission of a violent crime.
20 Applicant timely commenced this PCR action on August 5th,
21 2021.

22 And, Your Honor, I have in my possession two
23 copies of the security footage from the IGA parking lot
24 which was the main piece of evidence in this case; and I've
25 spoken with Mr. Lifsey, and at this time I would just move

1 to have these marked for identification and made a part of
2 the record.

3 THE COURT: Mr. Lifsey.

4 MR. LIFSEY: Yes, Your Honor. They are part of
5 the record, which you have a right to review, and I think
6 the easiest way to get them to you is the way that the
7 attorney general proposes, so that seems fine to me.

8 THE COURT: All right. Let's have them marked and
9 they'll be made a part of the record.

10 MR. MITCHELL: May I approach, Your Honor.

11 THE COURT: Yes, sir.

12 (Respondent Exhibit Nos. 1 and 2 were
13 marked for identification and admitted in
14 evidence.)

15 MR. LIFSEY: Thank you, Your Honor. I call the
16 applicant Mr. James to the stand.

17 THE COURT: All right, Mr. James. Please come
18 forward to the witness stand.

19 THE CLERK: Place your left hand on the Bible.
20 Raise your right hand and state your name.

21 THE WITNESS: John James.

22 WHEREUPON,

23 JOHN JAMES,
24 having been duly sworn by the Clerk, testified
25 as follows:

PW - J. JAMES - DIRECT

1 THE CLERK: Thank you much, sir. Step around.
2 Please watch yourself coming up the ramp. State your full
3 name for the record and spell your last name please.

4 THE WITNESS: John James, J-A-M-E-S.

5 MR. LIFSEY: May it please the Court, Your Honor.

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION

8 BY MR. LIFSEY:

9 Q Mr. James, where are you currently being held
10 right now?

11 A At Tyger River Correctional Institution.

12 Q All right. What kind of sentence are you serving?

13 A I'm serving a violent 20.

14 Q Okay. Were -- tell me what you were convicted of.

15 A Assault and battery high and aggravated nature.

16 Q All right. Let's talk about it. When did the
17 incident occur that gave rise to the charges?

18 A June 2017.

19 Q And you were charged with assault and battery high
20 and aggravated nature at that time; is that right?

21 A I was -- I was charged with attempt murder.

22 Q Uh-huh.

23 A Assault and battery high and aggravated nature. I
24 wasn't informed of an indictment. I never received an
25 indictment so I didn't know until trial.

PW - J. JAMES - DIRECT

1 Q I got you. And I'll get to that in just a minute.
2 I want to -- if you could for the Court, just give a brief
3 overview. I -- we're not retrying the case, but a brief
4 overview of what happened, from your perspective, when you
5 got what led to these charges.

6 A I went grocery shopping, me and my mother. We
7 came out the store; and the female that I was dating, her
8 brother, he pulled into the parking lot. She had gone
9 missing for quite a while; and when I saw his car, I went to
10 him and let him know that she was gone.

11 Q Okay. And ---

12 A At that time he reached for his glove compartment
13 and I ran away from the car.

14 Q Okay.

15 A He chased me around the parking lot for a moment.

16 Q Did he have a weapon?

17 A Yes. Yes, sir. Appeared that he had a weapon.
18 He did this pointing gesture across the hood of his car; and
19 by that time, I ran around the parking lot. He chased me a
20 while, then we -- we separated. We both went our own ways.

21 Q Uh-huh. Then what happened?

22 A After that when we were around, we sitting in the
23 car, we couldn't find the keys. Me and mother, we searched
24 for the keys to the car. The alleged victim, Singletary,
25 who returned to his car, he got in his car. He searched the

PW - J. JAMES - DIRECT

1 cab of his car and then he got out of his car. He opened
2 the trunk of his car and he retrieved a machete.

3 Q Okay. A machete did you say?

4 A Yes, sir.

5 Q Go ahead.

6 A And at that moment, that's when he came towards me
7 and my mother.

8 Q Uh-huh.

9 A My mother knew him prior. I didn't really know
10 him that well. She -- she had gotten her gun; but when she
11 was restrained by one of her friends -- he's now deceased,
12 David, David Gamble, who I asked to be present at our
13 hearing.

14 Q Yes, sir.

15 A At that moment that's when I snatched the gun from
16 her after, after she was -- was being held. I snatched the
17 gun from her and I shot in the air. The victim seemed to
18 be -- to retreat at that time. He left.

19 Q Uh-huh.

20 A While I'm sitting there, while I'm standing in
21 front of the car to be sure that he's leaving, my mother is
22 on the phone trying to catch single (ph) in the parking lot
23 calling 9-1-1, which did get through several times. And as
24 he was leaving, he left in his direction, then his direction
25 changed.

PW - J. JAMES - DIRECT

1 Q Uh-huh.

2 A And this is when he goes between the gray -- the
3 gray cars around the gray car or the gray Camry, he's going
4 towards my mother from my -- I'm thinking. So I ran over to
5 him.

6 Q Uh-huh.

7 A Okay. And that's when I told him, hey, go ahead,
8 go ahead, I done warned you. So he's swinging, he's
9 swinging his -- he's swinging his machete.

10 Q Uh-huh.

11 A He's swinging his machete at me. I say, go ahead,
12 go ahead, man, shoot; and before you know it, I shot.

13 Q Gotcha. All right. And once again, I just wanted
14 a brief overview and that's a brief overview of what
15 happened is what you're saying; is that correct?

16 A Right.

17 Q All right. Then you ultimately get charged; is
18 that right?

19 A Right.

20 Q All right. And that was in -- it went to trial on
21 the charge in May ---

22 A May.

23 Q --- of 2018; is that correct?

24 A Correct.

25 Q Who was your lawyer at the trial?

PW - J. JAMES - DIRECT

1 A Grant Smaldone.

2 Q All right. How long had he been representing you?

3 A He had just got appointed like 26 days before --
4 April the 26th to be exact.

5 Q Okay. So April 26th y'all appeared -- you
6 appeared in front of a judge; is that correct?

7 A Right, in front of Clifton Newman.

8 Q All right. And Judge Newman, is that when Judge
9 Newman formally appointed Mr. Smaldone to represent you?

10 A Right. At the initial appearance.

11 Q Okay.

12 A At the initial trial appearance, right.

13 Q So had you -- so did y'all discuss at that hearing
14 when a trial date would be?

15 A Yes.

16 Q Okay. And what did your lawyer say about a trial
17 date?

18 A He said he didn't think he will be prepared with
19 such short notice.

20 Q You mean to try it that week?

21 A To try it. To try it within a week or two.

22 Q Uh-huh.

23 A Right.

24 Q But did he -- did they eventually set a trial date
25 for a month later, or less than a month later, in May; is

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1 that right?

2 A That -- right. That's eventually that was the
3 date we had set for. He said he wouldn't be -- he wouldn't
4 be -- he wouldn't prepared ---

5 Q Uh-huh.

6 A --- with such a short notice.

7 Q So your lawyer was appointed on April 26th and you
8 went to trial starting May 29th; is that right?

9 A May 29th or the 28th, yes.

10 Q All right. Well, let me talk -- how -- what kind
11 of relationship did you have with your lawyer? You didn't
12 hire him, right? He was appointed.

13 A He was appointed, right. I tried to reach his
14 office a few times. It was located in Charleston at that
15 time.

16 Q Uh-huh.

17 A I tried to reach him and talk to him prior to
18 going to court. Never returned any calls or anything.

19 Q All right. So did you -- were you able to meet
20 with your lawyer and discuss your case in detail?

21 A I met with my lawyer the day -- the day of the
22 jury that we picked a jury. The day before we picked the
23 jury.

24 Q Okay.

25 A Right. And it was just basically we went over

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1 our -- we talked about a video and possibly a plea.

2 Q Okay. How long was your meeting? Do you remember
3 about how long?

4 A About 20, 35 minutes.

5 Q How -- other than that, say, let's just say 30
6 minutes. Other than that 30-minute hearing, did you have
7 any other meetings with your attorney prior to trial?

8 A On trial morning -- I met with him trial morning
9 outside the courtroom. He wanted to sit outside and discuss
10 the case. At that time the alleged victim Singletary, he
11 pulls up in front of the courthouse ---

12 Q Uh-huh.

13 A --- and sits in his car. I told my attorney that
14 didn't feel safe so I left him and my mother sitting outside
15 and they discussed the case.

16 Q Okay. Did you just meet with your attorney any
17 other time to discuss your case?

18 A No, that was it.

19 Q So I want to make sure I'm understanding what
20 you're testifying to. You're saying that your lawyer was
21 appointed April 26th, correct?

22 A Correct.

23 Q And you only -- the only lengthy meeting you had
24 was for really only 30 minutes long, occurred just a
25 couple -- the day before your trial; is that right?

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1 A Correct.

2 Q And then you met briefly with him the morning of
3 your trial?

4 A Right.

5 Q Are there things you wanted to ask your lawyer or
6 would have wanted to discuss with your lawyer if you had had
7 more time to meet with him?

8 A Right. Yes, I did.

9 Q Tell us some of those things you would have liked
10 to have known from your lawyer.

11 A My first question was to my lawyer and at initial
12 appearance was I didn't -- I didn't know what my indictment
13 was. I didn't know what my charge was being called before
14 the courts. That was the first thing that bothered me. I
15 didn't know if I was going for attempt murder or nothing.
16 At that -- at that time and I'm thinking this is, this is
17 the end my life, I'm going up for attempt murder, you know,
18 for protecting myself. And they said that they would --
19 they would see that I, I get an indictment, but they read
20 off an indictment during court that said -- solicitor,
21 that's when he was, like, he's not gonna charge attempt
22 murder, but he's going to charge assault and battery high
23 and aggravated nature.

24 Q Let me pause you just a minute. I'll come back.
25 You're saying the first time you ever received a copy of

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1 your indictment was, what, the day of trial?

2 A No, sir.

3 Q Did you ever -- when did you receive a copy of
4 your indictment?

5 A After I was convicted for 20 years.

6 Q So you never received a copy of your indictment?

7 A Never received a copy.

8 Q All right, go ahead. What are some other things
9 you would have liked to discuss with your lawyer?

10 A I would like to know what was the difference
11 between ABHAN, assault and battery high and aggravated
12 nature, attempt murder. I would like to know the things
13 what could have mitigated or negated an ABHAN. And these
14 questions I never could find that out and still I'm worried
15 about.

16 Q All right, let me take -- let's take that a little
17 bit at a time. Are you saying you never -- excuse me. Your
18 lawyer, did he ever explain to you the elements of the crime
19 for which you were charged, assault and battery of a high
20 and aggravated nature?

21 A No, sir.

22 Q How about -- how about the lesser included offense
23 that ultimately got charged to the jury of assault and
24 battery first degree, did he explain elements of that to
25 you?

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1 A No. Assault and battery first degree ---

2 Q Did he explain the differences between assault and
3 battery high and aggravated and assault and battery first
4 degree?

5 A No, sir.

6 Q Did you and he discuss strategies to try to reduce
7 the charge from the higher to the lower?

8 A He wanted to plead.

9 Q All right. So sorry to have interrupted you. Are
10 there other things -- for example, did y'all discuss
11 self-defense at all and the elements of self-defense?

12 A No, sir. Again, on record he wanted me to plead.

13 Q Okay. Did you have questions about the legal
14 issues involving what self-defense is? Do you have them
15 today?

16 A Yes.

17 Q Explain some of that to the judge, these things
18 that you would have liked to discuss with your lawyer?

19 A I would have liked to know basically what is
20 self-defense, how is self-defense established, what that
21 self-defense derive from, what legal principle is govern
22 self-defense. Yeah, those things of that nature.

23 Q Were you able to discuss those with your lawyer at
24 any point prior to your trial?

25 A No, sir.

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1 Q All right. Are there any other issues you can
2 think of that you wanted to discuss with your lawyer but
3 were unable to?

4 A Yes. As an ordinary layman I want -- only thing I
5 knew is that I felt that I was being attacked and provoked
6 to act. And I keep asking about provocation, would it
7 reduce my sentence any, can I -- would provocation be a
8 sufficient defense in my case; and only thing I got was
9 nothing, nothing out of him. Just, we're not going to argue
10 that, you can't -- that wouldn't be sufficient for this
11 case. And that's only thing I could explain myself with.

12 Q I want to jump ahead just a minute, but I'll come
13 back but. You ended up testifying at trial, right?

14 A Yes, I did.

15 Q Would it have been helpful to you to have had
16 these discussions so you understood the elements of all
17 these issues prior to you testifying in front of the jury?

18 A Yes.

19 Q All right. Are there other things that you would
20 have liked to -- is there anything else you would have liked
21 to discuss with your lawyer that you could not?

22 A The main issue that I wanted to discuss with my
23 lawyer is that we could -- if we could have raised a
24 continuance prior to trial being that he had just got
25 appointed to give us time to prepare, give me time to get an

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1 indictment, give me time to go over my indictment, you know.

2 Q I presume would have had more time to meet with
3 him than the one time you did?

4 A Right. Right.

5 Q All right, let me ask you this. Did your lawyer
6 ever ask for a hearing, an immunity hearing, under the
7 stand-your-ground law in South Carolina, which is, I guess,
8 technically protection of persons and property act?

9 A I didn't receive a hearing so I don't think he
10 requested any.

11 Q As far as you know, no such hearing was held?

12 A Right.

13 Q Did your lawyer explain to you your right to at
14 least ask a judge to give you a hearing on that issue?

15 A On April the 26th at the initial appearance before
16 the Honorable Clifton Newman, I verbally motioned and ask
17 for fact finding hearing or evidentiary hearing; and from my
18 understanding they told -- determined that, yeah, we would
19 have one.

20 Q Uh-huh.

21 A And from there we end up in trial.

22 Q Got you. So no pretrial hearing was ever held to
23 your knowledge to address the issue of whether or not you
24 would be entitled to immunity?

25 A Right, none.

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1 Q All right. Let me ask you about jury charges with
2 the judge. Do you have issues with some of the jury charges
3 and the charges the judge gave the jury in this case?

4 A Yes. Like I said, I'm still concerned about what
5 legal principles that they determined self-defense to fall
6 under.

7 Q Uh-huh.

8 A I also asked and requested additional self-defense
9 instructions on provocation; however, the judge did not give
10 me those instructions with that language of provocation, but
11 the language that the trial court did use was consistent
12 with provocation. They gave me the -- allowed me -- he gave
13 me the right to use lawful use of force instructions. He
14 gave me -- told me I had the right to act on appearance.
15 And on these things and with these kind of instructions,
16 like, it raises a question that it's a legal principle where
17 he determined them, you know, in order to prove an ABHAN
18 case.

19 Q How about in regards to, like, duty to retreat or
20 anything like that? You have complaints about what the
21 judge charged in regards to that?

22 A I don't have a complaint about it. It's just the
23 confusion about it. They raise a self-defense defense.
24 They say that I had a duty to retreat in self-defense. Then
25 it comes back and say that if I can establish being

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1 attacked, then I had no duty to retreat and I had the right
2 to stand my ground and use force even if it amount to deadly
3 force. And it's just confusing me as to what the legal
4 concepts are.

5 Q Okay.

6 A And my attorney never explained -- explain it to
7 me, nor did he ever objected to any of these instructions.

8 Q And these are -- would you agree -- I mean, you've
9 been researching this issue some since you've been in jail I
10 assume?

11 A Yes, I was reading.

12 Q Would you agree that the issues of the interplay
13 of self-defense with these various charges you face are
14 fairly complicated legal issues? Would you agree with that?

15 A You say the various charge?

16 Q Are complicated legal issues. Would you agree
17 with that?

18 A To me.

19 Q Yeah, as a ---

20 A As a regular -- as a ordinary layman it's
21 confusing to me.

22 Q What is your educational background?

23 A My highest education is 7th grade level, reading
24 level.

25 Q So at a 7th grade reading level, do you believe

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1 that a 30 to 40-minute conversation with your lawyer was
2 enough time for you to understand these complicated legal
3 issues?

4 A No.

5 Q Are there any other issues you want to raise to
6 the Court or complain about the way your lawyer represented
7 you in this matter?

8 A Had my -- had my lawyer adequately did an
9 investigation in this case, he could have determined --
10 determined that self-defense has a wide, a wide variance as
11 well. He could have asked for additional self-defense
12 instructions. He could have -- he could have aided me and
13 assist me more than he did.

14 Q Okay.

15 A And there's a reasonable probability that if he
16 did, the proceedings would have been different at trial.

17 Q Would more meetings with your attorney to
18 understand these issues have affected your decision to go to
19 trial and your strategy you followed at trial?

20 A Of course. If we had a pretrial hearing or any --
21 any pretrial matters, it could have determined better
22 decision makings than it go to trial.

23 Q All right. Is there any other issues at all you
24 want to raise to the Court here today? This is your day in
25 court on a PCR hearing. Anything else you want to tell the

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1 Court about your case or your trial or any of that?

2 A Yes.

3 Q Please do.

4 A I don't think my -- my counsel, he never made an
5 objection to certain statements, certain instructions, and I
6 think that -- I think that it errored me in my defense.
7 They said that self-defense is a complete defense, and it
8 starts and it ends with a pretrial hearing. Had we had a
9 pretrial hearing to determine or to establish my immunity
10 under -- under the protections of person and property which
11 is the act of South Carolina, I think the judge could have
12 determined my case different.

13 Q Okay.

14 A A act -- attack has been established in my case.

15 Q Uh-huh.

16 A On the alleged victim, he has been prosecuted in
17 my case. He has assault and battery first degree. And not
18 a finger pointing issue, but he harm me, he victimize me. I
19 had allegedly victimize him. The general assembly says that
20 any person in the State of South Carolina doesn't have to
21 surrender their safety to over to a criminal, and I have the
22 right to remain unmolested in this state. However, I was
23 molested as well as my mother was molested in this state by
24 the alleged victim that I'm convicted of. And I just
25 believe if -- if we had a hearing prior to this, I would

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1 have established my preponderance of evidence I was now
2 entitled to that immunity act.

3 Q Of course, you can't get something you don't ask
4 for and your lawyer never asked for immunity or a pretrial
5 hearing; is that right?

6 A Correct.

7 Q Okay. Any other issues you want to raise while
8 ---

9 A Yes. I understand that immunity hearing was based
10 on preponderance of evidence which is a lighter standard
11 than going to trial. In our law system -- our laws -- my
12 case to be viewed under preponderance of evidence and I
13 don't think -- it's irretrievably lost, so we end up in
14 trial.

15 Q All right. Anything else you want to ask?

16 A And I was pre-- I feel I was prejudiced about
17 that.

18 Q Okay. Any other matters?

19 A I have another issue.

20 Q What's that?

21 A Trial court's instructions.

22 Q Okay.

23 A Trial court at trial -- at trial the trial court
24 instructed -- they determine that ABHAN and assault and
25 battery was kind of difficult to assert between the two, as

PW - J. JAMES - DIRECT

1 the Court stated. However, the Court allowed the jury to
2 deliberate in what they knew was confusion.

3 Q You're saying -- you're saying you don't -- you
4 think your lawyer should have objected to the judge's
5 recharge of the jury because instructions were confusing; is
6 that right?

7 A Yes. I think my attorney should have objected to
8 the jury deliberating in what is known to be confusing
9 instructions.

10 Q Okay.

11 A I mean, the Court was well aware, the Court was --
12 and he stated that -- the trial court even stated that he
13 has complained to the legislature because assault and
14 battery high and aggravated nature and assault and battery
15 first degree, they were difficult and hard to assert --
16 assert a difference between the two.

17 Q Yes, sir.

18 A But yet he instructed -- he's instructing the jury
19 to go and deliberate in what is confusing to him.

20 Q Okay.

21 A But his authority as a lawyer, as in with law.

22 Q Okay.

23 A So he's confused with the law, I'm pretty sure the
24 jury deliberated in confusion and trial counsel failed to
25 object to deliberation. He could have allowed to -- if he

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1 had he objected, he could have allowed the Court to go into
2 more advance instruction for the jury, but he failed to even
3 object.

4 Q Yes, sir.

5 A And there's a reasonable probability if he had
6 objected, objected to the -- to the jury retiring and
7 deliberating in this confusion, there's a reasonable
8 probability the jury -- the judge could have given a more
9 curative instruction, and we thought that this proceeding
10 would have been different.

11 Q Yeah. And that didn't happen, right?

12 A No.

13 Q Anything else you want to ask about or you want
14 to -- excuse me, want to put on the record with regards to
15 your lawyer or representation?

16 A Yes. When the Court sought to clarify the
17 difference between assault and battery and high and
18 aggravated na-- high and aggravated nature and assault and
19 battery first degree, being that they were confusing
20 instructions, he intimated his opinion to the jury.

21 Q Are you talking about when he referred to assault
22 and battery high and aggravated nature in the charge as the
23 more accurate charge?

24 A More accurate and greater, the greater offense,
25 right.

PW - J. JAMES - DIRECT

1 Q Okay. And you believe that was -- could have been
2 interpreted by the jury as a comment on the facts?

3 A It was a comment on the facts, as well as a
4 mandated guilty of ABHAN.

5 Q So you're saying that you believe the judge's
6 instruction encouraged the jury to find you guilty of the
7 greater offense?

8 A Right, from the way that he stated it. If I can
9 quote it, he -- I think he said that ---

10 Q Well, you need to look at the transcript?

11 A Yes.

12 Q Give me just a minute.

13 MR. LIFSEY: Excuse me, Judge. May I approach?

14 THE COURT: Yes.

15 MR. LIFSEY: Give me just a moment. Judge, just
16 for the record, I think he's referring to -- well, I've got
17 two different copies of trial transcript. It's 345 in the
18 judge's -- in the judge's instructions to the jury.

19 THE COURT: All right.

20 BY MR. LIFSEY:

21 Q Okay.

22 A Here's where the jury asks for -- to restruck, to
23 re---

24 Q To be reinstructed?

25 A To be reinstructed.

PW - J. JAMES - DIRECT

1 Q Uh-huh.

2 A He says that I know that these def-- I know those
3 definitions are very close. The greater and the more
4 accurate one is assault and battery of a high and aggravated
5 nature.

6 Q And that's the issue you think could have confused
7 the jury, or at least the jury could have interpreted that
8 as an instruction to find you ---

9 A Guilty of ABHAN.

10 Q --- guilty of ABHAN? Okay. All right. Anything
11 else you want to raise while you're here?

12 A Yes.

13 Q What's that?

14 A He also instructed -- he gave jury instructions --
15 well, that mandate was prejudiced because the trial court
16 should not have intimated that opinion as to what is greater
17 or what are more accurate because even anybody could
18 understand that, that you basically saying that ABHAN was
19 the greater offense, it was the more accurate offense.
20 Accurate for what? Accurate for this case.

21 Q Gotcha. I understand that issue. I think you've
22 made that clear. What I'm saying, are there other issues
23 concerning your trial that you want to raise? Anything
24 else?

25 A Yes. I believe that that issue was -- I believe

PW - J. JAMES - DIRECT

1 that that issue, it was error for him to make the statement
2 and it was to prejudice my case.

3 Q Uh-huh.

4 A My presumption of innocence was infringed.

5 Q Got you.

6 A However, trial court instructed instructions on
7 possession of a deadly weapon.

8 Q Uh-huh.

9 A If you can find that for me, it also lean towards
10 a ABHAN. I mean, he instructed the jury that the only way
11 that they could determine guilty of possession of a deadly
12 weapon, if the jury first found me guilty of ABHAN.

13 Q Uh-huh.

14 A Trial counsel should have raised an objection at
15 that point because it was -- it would -- it would be error.
16 It doesn't take a possession of a deadly weapon. You can
17 have -- you can have a possession of a deadly weapon in
18 assault, assault and battery first degree. From trial --
19 from trial court's interpretation he's stating that you
20 cannot have possession of a deadly weapon in assault and
21 battery first degree. So in order for them to find guilty
22 of possession of a deadly weapon, they had to first find me
23 guilty of assault and battery high and aggravated nature.
24 That is burden shifting and that seemed to prejudice my case
25 without an objection.

PW - J. JAMES - DIRECT

1 Q Okay.

2 A Had counsel objected, the jury -- the judge would
3 have given more curative instruction as to what possession
4 of a deadly weapon is during the commission during of a
5 violent crime. However, they against my second amendment
6 right to bear arms.

7 Q Okay.

8 A So when he infringed on that, it was prejudice to
9 me 'cause I have the right to bear arms in a self-defense
10 matter.

11 Q Got you. Anything else you want to raise?

12 A I want to raise the fact that -- can I have a
13 minute?

14 Q Uh-huh.

15 A It's kind of hard to do this. I want to go back
16 to this pretrial for immunity findings.

17 Q Okay.

18 A It say that one assert self-defense, claim
19 self-defense, he has a right to establish immunity, and this
20 is a right. I didn't think it was sound trial strategy for
21 counsel to not have a pretrial hearing in his strategy and
22 if it raises self-defense. I want to also reflect on the
23 general assembly finding that it's proper for law abiding
24 citizen to protect themselves and their families. And these
25 are issues that should have been presented at a pretrial

PW - J. JAMES - DIRECT

1 hearing in which I would have known my rights and I was
2 prejudiced by not knowing these rights by counsel.

3 Q Correct. You're saying no one explained to you
4 the advantages of having a pretrial hearing so you -- you
5 didn't make a decision to waive that hearing?

6 A No. And I didn't know the advantages that I have
7 under the act. I never knew what the general assembly
8 attempt findings were. I didn't know I had these rights. I
9 didn't know I had the right to stand my ground.

10 Q Yes, sir.

11 A These certain things I didn't -- didn't know. I
12 didn't know I had the right to -- to establish an attack.
13 Only thing -- the only thing I knew is that the victim,
14 alleged victim, was prosecuted. That's the only thing I
15 know and that's the only thing I could have used at trial.
16 He harm me and my mother.

17 Q Okay.

18 A Had I known these things I believe the
19 proceedings, trial proceedings would have been different.
20 It could have worked better in my favor knowing what the
21 general assembly attempt findings were.

22 Q But you didn't know that 'cause y'all didn't meet
23 but the one time for a half hour or so is what you're
24 testifying?

25 A Right.

PW - J. JAMES - DIRECT

1 Q Got you. Anything else?

2 A Can I see that minimum application you have, be
3 sure that.

4 Q You can have that -- that's a extra copy for you.

5 A I want to focus more on this deadly weapon issue
6 as being aggravated. The course of this court is did I have
7 a right to arm myself and that becomes a question, still a
8 question to me. Under when I'm attacked do I have the right
9 to arm myself or do I -- or was that right infringed? Due
10 process of the law determine that I have to be -- I have
11 equal protection of the law and that goes from effective
12 assistance of counsel, to pretrial hearings, 'cause that's
13 the only protection of the law I have. And to infringe
14 against that protection of the law, it's ineffective.

15 Q Got you. This whole hearing is about did your
16 lawyer provide you effective representation of counsel. So
17 like I say, are there other issues regarding his effective
18 representation you want to raise?

19 A No. He just ---

20 Q I want to make sure we covered everything. I'm
21 not trying to cut you off or anything. I just want to make
22 sure that you've had your say and your day in court on all
23 this.

24 A Yeah. I notice a lot of things. When I'm sitting
25 in that cell and closed in, there's a lot of things in my

PW - J. JAMES - DIRECT

1 mind.

2 Q Uh-huh.

3 A But here, it's kind of difficult to present your
4 case. It's not -- it's not like I'm presenting my case at a
5 trial.

6 Q Yes, sir.

7 A But the ineffectiveness, you can totally see that
8 counsel was ineffective for just not meeting with him, just
9 ---

10 Q And you're asking that the judge review the entire
11 transcript, which I'm sure he will, is that correct, just to
12 look ---

13 A I -- hopefully he will.

14 Q --- at these things?

15 A Yes, sir. I'm hoping he will.

16 Q Yes, sir.

17 A I mean, 'cause 20 years aggravated sentence for
18 just protecting myself so I don't be harmed. A conviction
19 on me and the alleged victim, it seems the State was just
20 looking for prosecution and both as a prosecutor but I'm
21 suffering to a aggravated 20 year sentence versus the man
22 that brought about this whole confusion, he goes home ---

23 Q Got you.

24 A --- for time served. All right. Please answer
25 any questions the attorney general has for you.

PW - J. JAMES - DIRECT

1 MR. MITCHELL: The State has no questions for this
2 witness.

3 THE COURT: All right. Mr. James, you can step
4 down, sir. Thank you.

5 THE WITNESS: Thank you, sir.

6 MR. LIFSEY: I don't have any further witnesses,
7 Judge.

8 THE COURT: All right. Mr. Mitchell.

9 MR. MITCHELL: Your Honor, the State calls Grant
10 Smaldone to the stand.

11 THE COURT: Mr. Smaldone, please come forward,
12 sir.

13 THE WITNESS: Yes, Your Honor.

14 THE CLERK: Sir, place your left hand on the Bible
15 and raise your right hand and state your full name.

16 THE WITNESS: Grant Smaldone.

17 WHEREUPON,

18 **Grant Smaldone,**
19 having been duly sworn by the Clerk, testified
20 as follows:

21 THE CLERK: Thank you much, sir. Step around
22 please. State your full name for the record and spell your
23 last name please.

24 THE WITNESS: My name is Grant Smaldone.
25 S-M-A-L-D-O-N-E.

RW - G. SMALDONE - DIRECT

1 D I R E C T E X A M I N A T I O N

2 BY MR. MITCHELL:

3 Q Good morning, Mr. Smaldone.

4 A Hello.

5 Q You were appointed to represent Mr. James in this
6 case?

7 A That's correct.

8 Q And will you explain at what stage of the case you
9 began representation?

10 A Definitely later in the course of the case. By
11 "case," I mean from arrest date to trial date, definitely
12 towards the end of that spectrum.

13 Q Do you know why it took so long for Mr. James to
14 finally get an attorney?

15 A I'm actually not sure about that. I think from
16 what I recall at a status conference, I don't believe he
17 ever either retained one or I don't think he ever applied
18 for a public defender or a conflict attorney. But I might
19 be wrong.

20 Q There were a few allegations made by Mr. James
21 regarding the status conference hearing and why you didn't
22 request a continuance when the trial was scheduled for a
23 month after you were appointed.

24 A Right.

25 Q Will you explain why you didn't?

RW - G. SMALDONE - DIRECT

1 A Honestly, I thought -- I would think a month would
2 be adequate time to prepare for trial. I kind of knew
3 from -- I'm not sure at what point -- I remember at the
4 status conference I already knew the basis of the case, the
5 evidence, the -- I don't know if I reviewed it personally,
6 but I don't know if I talked with the solicitor in the case,
7 or I'm not sure, but I knew the gist of the case and what
8 the evidence would likely be. I know it was all on video
9 so, I mean, respectfully, for me, I understand Mr. James
10 might not be ready, but I know I would be ready. I could
11 probably prepare this in a lot less than a month. It's --
12 since it was on video. And no offense to Williamsburg
13 County or the Third Circuit, but they're not really calling
14 in like blood spatter experts or, you know, the crack squad
15 from the FBI. You're lucky if you get two cops to testify
16 so I thought I could handle it.

17 Q So this was a relatively straight forward case?

18 A Yes.

19 Q With not too much evidence?

20 A No. I mean, the -- right. Like I said, there's
21 not -- there's not a lot of pieces that are put -- that need
22 to get put together. It's a video and so the evidence is
23 certainly strong or at least it's -- they're not -- it
24 doesn't leave the jurors with a lot more questions, so to
25 speak, since it's all on video.

RW - G. SMALDONE - DIRECT

1 Q And did you meet with Mr. James before the trial?

2 A Yes.

3 Q Do you recall how many times you met with him?

4 A I'm honestly not sure; it's been a while. I know
5 I met with him. If he says -- I don't have specific
6 memories to contradict what he said so I -- it may be what
7 he said; I'm not sure.

8 Q So it may be that you only met with him once the
9 day -- the day of trial?

10 A Well, I -- if I recall -- if I recall what he said
11 correctly, and it sounds right, I think I met with him the
12 day before the trial. And then typically in Williamsburg
13 County the jury comes in at 2:00 so I think I probably met
14 with him in the morning of that day as well. That would
15 be -- that sounds -- I think that's what he said and I, that
16 would be something that I would do. So again, I don't have
17 specific memory but that sounds like I believe that's what I
18 did.

19 Q And did you explain the elements of the charges to
20 Mr. James?

21 A I believe so; I always do. I don't -- I try not
22 to do it in a, you know, a power point presentation or a
23 legal professorial way with bullet points, but I always talk
24 about the charge and, you know, whether he wants to testify,
25 facts of the case or listen to what they have to say as

RW - G. SMALDONE - DIRECT

1 well, so I'm -- I know I did. But it might not be, you
2 know, in a traditional manner like with a blackboard and
3 stars and whatnot.

4 Q So it's your standard practice to inform the
5 client of the charges he's facing and the elements of the
6 crimes and ---

7 A Yes.

8 Q --- in a way they understand at least?

9 A Yes.

10 Q And do you recall if Mr. James was shown his
11 indictment?

12 A I honestly don't know. It's possible that he
13 wasn't. I don't know what they would really do. I mean, I
14 don't know if there is a federal case maybe, but you know,
15 every indictment -- and I understand he doesn't -- may not
16 realize out of every indictment it's about a
17 sentence-and-a-half saying John James did commit ABHAN in
18 South Carolina. So I don't recall. I -- it's very likely
19 that I did not, though, so.

20 Q But Mr. James did understand that he was going to
21 trial for assault and battery of a high and aggravated
22 nature?

23 A Yes.

24 Q And in preparation for the trial, what was your
25 defense strategy?

RW - G. SMALDONE - DIRECT

1 A It was definitely a self-defense case in my
2 opinion and just try to harp on the kind of brutality of a
3 machete and kind of the terror that someone would feel if
4 that's raised against them.

5 Q And what was your reason for not requesting a
6 stand-your-ground hearing?

7 A I honestly did not believe that it was -- it would
8 be fruitful. I thought that it basically be frivolous due
9 to video and whatnot showed.

10 Q So you believed that you weren't going to be able
11 to meet all the elements of the protection against personal
12 property acts from a hearing from the video?

13 A Right. I don't know if I can admit any of them,
14 but. You know, like I said, I think the -- when I say trial
15 strategy about the machete and things like that, that's code
16 for emotion. You know, I think I wanted to inject some
17 emotion into this case, and generally bench trials and
18 stand-your-ground hearings aren't really where that is a
19 fruitful strategy. So I think for reasons, I mean, I know
20 that Mr. James approached the car first so already we, you
21 know, probably lost just on that because I think there was
22 testimony -- I know there was testimony from the alleged --
23 well, the victim in the case, that there was a -- he walked
24 to the car and punched him through the window is what the
25 victim would say so already that's going to be an issue.

RW - G. SMALDONE - DIRECT

1 Q And Mr. James would have had to testify at this
2 hearing?

3 A He wouldn't have had to, but I wouldn't have much
4 to say ---

5 Q Go on ---

6 A --- without him testifying, yes.

7 Q And Mr. James talks about how the standard of a
8 stand-your-ground hearing is preponderance of the evidence.

9 A Right.

10 Q But that's on the defendant to prove by -- to show
11 by preponderance of the evidence, correct?

12 A Right.

13 Q So it's actually not a lesser standard because the
14 State has to prove beyond a reasonable doubt, but at the
15 hearing the burden is on the defendant?

16 A Right. If I recall correctly, the only benefit
17 is -- I think the only -- I might be wrong. I think the
18 only difference between stand your ground and self-defense
19 other than the procedural issues is I don't think you have
20 any -- any duty to retreat whatsoever with stand your
21 ground. I think with self-defense you have to at least -- I
22 think you have a duty to retreat, but there's something
23 about the sound like duty to retreat; but I might be wrong.

24 Q And do you recall anything wrong with the jury
25 charges in this case?

RW - G. SMALDONE - DIRECT

1 A No, but I will -- honestly, from reading the
2 transcript I was -- I was a little puzzled when Judge
3 Cothran said, or at least the transcript says that he said
4 something about the more accurate charge. I'll be honest
5 that's was a little troubling. I don't recall that
6 happening. As far as the charges themselves, no, I thought
7 they were as straight forward as those charges can be. The
8 whole assault and battery spectrum probably needs to get
9 rewritten and clarified just like Judge Cothran said so.
10 But as far as the charges themselves, other than the comment
11 afterwards, there was nothing confusing about them again,
12 other than that they exist.

13 Q Do you believe the evidence in this case supported
14 assault and battery first degree?

15 A I honestly don't. And, again, I might be
16 completely wrong about assault and battery first degree.
17 But the provision that may be applied, I always say that
18 assault and battery first degree is when -- a good example
19 is like if you shoot at someone and miss. Most solicitor's
20 office and cops love to charge that as attempted murder
21 which is probably unethical; but to me that's assault and
22 battery first degree. And the other provision of the sexual
23 aspect and the commission during another felony aspect but.
24 To me, if you miss, that's assault and battery first degree
25 generally; and if you hit them, it's gonna be maybe AB.

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1 second if you're lucky, but probably ABHAN or attempted
2 measure.

3 Q And during the trial, especially during the cross
4 of the doctor who performed the autopsy, you tried to elicit
5 that it may not have been great bodily injury?

6 A Right.

7 Q And you did request the AB second instruction?

8 A Yes.

9 Q And that was denied?

10 A Yes.

11 Q And you did feel adequate to prepare for this
12 trial?

13 A I did, yes.

14 MR. MITCHELL: No further questions, Your Honor.

15 THE COURT: All right. Thank you, Mr. Mitchell.
16 Mr. Lifsey.

17 MR. LIFSEY: May I have one moment, Judge.

18 THE COURT: Yes, sir.

19 MR. LIFSEY: Thank you, Judge.

20 C R O S S - E X A M I N A T I O N

21 BY MR. LIFSEY:

22 Q Let me just ask you a couple of questions.

23 A Yes.

24 Q So no question you were appointed and began
25 preparing for this case a month ahead of the trial?

RW - G. SMALDONE - CROSS

1 A Correct.

2 Q All right. And you testified that based on your
3 experience and facts of the case you were prepared, believed
4 you were prepared to go?

5 A Correct.

6 Q All right. Is it fair to say, however that, the
7 client might not have been prepared to go?

8 A That is possible.

9 Q I mean, were you familiar with his general
10 educational background?

11 A I honestly don't believe that I was because I
12 remember today being a little surprised 'cause he's a --
13 Mr. James is a somewhat intelligent person. Sometimes that
14 intelligence might be directed kind of on tangents; but, you
15 know, he's smart. So I was surprised. So I'd be -- I don't
16 think that I was familiar that -- I think he said 7th grade.
17 That was -- that was surprising to me.

18 Q I mean, obviously many of the decisions made at a
19 trial are, of course, lawyer decisions, correct?

20 A Correct.

21 Q But there are certain matters that are client
22 decisions, correct?

23 A Correct.

24 Q Obviously, first of all, whether to go to trial at
25 all.

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1 A Correct.

2 Q Or his plea is 100 percent a client decision. And
3 whether to testify or not, that's a client decision?

4 A Correct.

5 Q Would -- do you believe that a 30-minute
6 conversation the day before and a conversation the morning
7 of the trial are enough for him to be able to make
8 intelligent decisions on those issues?

9 A It may not have been. I'm not -- I'm not sure. I
10 don't know one way or the other. There's always more. You
11 know, especially when you lose there's always more you could
12 have, you think, at least, that you could have done. So
13 it's -- I'm not sure.

14 Q Got you. And I'm not addressing at this point
15 anything you did in the trial. What I'm addressing is his
16 ability to make a knowing and intelligent decision on any of
17 the issues for which he needed to make a decision on?

18 A Right.

19 Q Let me ask you a little bit about a
20 stand-your-ground hearing. You did not have a
21 stand-your-ground hearing?

22 A Correct.

23 Q Did you discuss at all with the client whether the
24 advantages of having or not having a stand-your-ground
25 hearing?

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1 A I honestly don't know if I did or not. I may have
2 not.

3 Q You testified on direct that you did not believe
4 you would prevail at the hearing ---

5 A Correct.

6 Q --- if you had had one?

7 A Correct.

8 Q But is there any real disadvantage to having it?

9 A Not other than kind of showing in some cases
10 showing your hand, which I don't know that this really would
11 have been one because, like I said before, it's on video. I
12 don't know that there would have been a disadvantage. I
13 don't know that ethically if I know that it's completely
14 frivolous. I don't know that I should request one.

15 Q Well, I mean, did you believe it to be completely
16 frivolous or did you just figure that you're probably going
17 to lose it?

18 A I've seen more frivolous ones, but this would
19 be -- honestly, this would be more -- it's from the stand
20 your ground perspective, not -- again, it's a spectrum.
21 I've seen more frivolous ones.

22 Q And, of course, I guess, it's fair to say we
23 talked about this video. Much of the actions that occurred
24 were, entirety of it really, were captured on a video; is
25 that correct?

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1 A That's right.

2 Q And, of course, the judge and any appellate court
3 can review that video; is that right?

4 A Right. And I think there's -- you have to piece
5 together two angles or maybe three, but it all -- there's
6 no -- I don't believe that there's gaps despite some issues
7 at trial with things.

8 Q The solicitor -- excuse me, the attorney
9 general -- I do that every time. The attorney general asked
10 you about your opinion of assault and battery first degree;
11 but you also asked for assault and battery second degree,
12 even lower than that, correct?

13 A Correct.

14 Q And I think you testified on your direct that you
15 don't dispute at all that it's likely he never received a
16 copy of his indictment?

17 A Right. It's unlikely that he did.

18 MR. LIFSEY: Can I beg the Court's indulgence just
19 to ask one other matter.

20 THE COURT: Yes, sir.

21 MR. LIFSEY: May I approach the witness briefly,
22 Judge?

23 THE COURT: Yes, sir.

24 BY MR. LIFSEY:

25 Q Can I direct you to -- per my client's request ---

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1 A Yes, sir.

2 Q --- to Page 288 of the transcript?

3 A Yes.

4 Q Where you indicate you having an ethical conflict?

5 A Yes.

6 Q What are you referring to at that point? Do you

7 remember?

8 A I don't remember. If I -- if you like, I can

9 review kind of before it for context 'cause I don't

10 remember.

11 Q Sure.

12 A And just for everyone, I'm flipping back to Page

13 287 just to see what.

14 Q Sure. Yeah, I'm not trying to hoodoo you here.

15 Just look at it so.

16 A Right. Was this at sentencing probably?

17 Q And obviously, the judge can review the entirety

18 of the transcript but I'm just -- if you don't remember, you

19 don't remember.

20 A Right. I don't -- I honestly don't know. It

21 could be -- I'm honestly not sure. I'm trying to think what

22 it could possibly be, but I'm kind of at a loss there.

23 Q Okay.

24 MR. LIFSEY: Beg the Court's indulgence just one

25 moment.

RW - G. SMALDONE - CROSS

1 THE COURT: Yes, sir.

2 (Attorney confers with petitioner.)

3 MR. LIFSEY: I apologize, Judge. If you'd give me
4 just a minute.

5 THE COURT: Yes, sir.

6 THE WITNESS: I -- if you'd like, I believe I
7 recall more about what I said "ethical conflict". I ---

8 BY MR. LIFSEY:

9 Q Okay.

10 A I kind of was thinking it over in my head. I
11 believe there was -- there was an issue at sentencing where
12 my client either wanted me to or was saying things that I
13 believed to not be truthful so I wanted to kind of position
14 myself so I didn't have -- 'cause I don't want to say my
15 client is not telling the truth because there's an ethical
16 issue there, but also I can't say -- I can't lie to the
17 Court and technically not supposed to let him lie to the
18 Court so I -- that's -- I believe that's why I said it
19 because he was saying certain things that I didn't believe
20 had basis and fact.

21 Q Thank you, sir.

22 MR. LIFSEY: I don't have any further questions,
23 Your Honor.

24 THE COURT: Any redirect?

25 MR. MITCHELL: Just briefly, Your Honor.

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1 R E D I R E C T E X A M I N A T I O N

2 BY MR. MITCHELL:

3 Q Was it Mr. James' choice to testify at trial?

4 A Yes.

5 Q And was it his decision to go to trial?

6 A Yes.

7 Q And just for the record, you did ask the jury to
8 instruct on the A&B first as well?

9 A Probably, yes. I -- if I asked for second, yeah,
10 then first yes. I did, sorry.

11 Q No further questions. Thank you, Mr. Smaldone.

12 THE COURT: All right. You may step down. Thank
13 you.

14 THE WITNESS: Thank you.

15 MR. MITCHELL: Your Honor, the State calls
16 Mr. Warren Anderson.

17 THE COURT: All right. Mr. Anderson, please come
18 forward.

19 THE WITNESS: Yes, Your Honor.

20 THE CLERK: Raise your right hand. State your
21 name.

22 THE WITNESS: Warren Anderson.

23 WHEREUPON,

24 WARREN S. ANDERSON,
25 having been duly sworn by the Clerk, testified

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1 as follows:

2 THE CLERK: State your name for the record and
3 spell your last name please.

4 THE WITNESS: I'm Warren Scott Anderson. My last
5 name is A-N-D-E-R-S-O-N.

6 DIRECT EXAMINATION

7 BY MR. MITCHELL:

8 Q Good morning, Mr. Anderson.

9 A Good morning.

10 Q Did you prosecute Mr. James?

11 A I did.

12 Q And the incident alleged with Mr. James' arrest
13 occurred in July of 2017?

14 A That's right, July 15.

15 Q And the trial took place in May of 2018?

16 A That's right.

17 Q And Mr. Smaldone wasn't appointed until April of
18 2018, and prior to that did Mr. James have an attorney?

19 A No, sir. He was a persistent person that would
20 come up to appearances and failed to get a lawyer, and I
21 could expound on that if you want me to.

22 Q Yes, you may.

23 A All right. And to do that I'll give you how
24 appearances work in Williamsburg. It's virtually impossible
25 for a case to get more than 30 days without a person having

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1 a lawyer in Williamsburg. It's one of the things we pride
2 ourselves on. The way we accomplish is that at first
3 appearance, first off they're told at bond court by the bond
4 court judge, you got to get a lawyer, you got to get a
5 lawyer. And they're given an application for the public
6 defender at bond court. I've seen this happen in bond
7 court. I actually observed it with my own two eyes. And
8 they get the first appearance which is about 30 days out
9 from the date of the arrest. And they're basically told in
10 no uncertain terms by the solicitor, you got to get a
11 lawyer. We have a staff in the public defender there fill
12 out the applications. And in this case that actually
13 happened. It looks like on October 27th he appeared in
14 court. He had no lawyer. He was given instructions since
15 he didn't have one to be back following week to appear
16 before a judge to where a judge could waive the fee and
17 appoint a lawyer for him. Mr. James did not do that, came
18 up with a bunch of excuses and did not appear. Yet appeared
19 again, of course, in September when he was again told he
20 really, really needed to get a lawyer. He again made up a
21 bunch of excuses. He appeared October 20th which is his
22 next date. Again, no lawyer again. Williamsburg, this
23 is -- this is an aberration. There's -- to get this far
24 down the process in Williamsburg and not have a lawyer means
25 you're actively avoiding hiring a lawyer. It got to the

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1 point that in March Judge Cothran admonished him for not
2 having a lawyer and said you absolutely need to get a
3 lawyer, these are serious charges, they're going to take you
4 to trial. After that, he was admonished. In April he
5 applied for a lawyer. April 11th specifically is when he
6 filled out the application. April 12th Mr. Smaldone was
7 appointed. Mr. Smaldone had full discovery in this case by
8 April 16th. Then we had a status conference before Judge
9 Newman, and this was because Mr. James had come to court
10 earlier in the week. I believe we were picking a jury in a
11 different case, and he was trying to get the Court's
12 attention. And I don't know if you've ever had court with
13 Judge Newman, but if someone is trying to talk to him,
14 they're going to get talked to. And Mr. James and his momma
15 were in there. They were waving a bunch of stuff around and
16 Judge Newman cautioned him, don't show the solicitor any of
17 this evidence, wait till your lawyer gets here. And he made
18 me call Mr. Smaldone and schedule an appointment that week
19 for this status conference. And I think it's actually what
20 y'all put into evidence in this case. In that status
21 conference Mr. James is loudly and vocally basically
22 screaming he wants a trial as soon as possible. That's what
23 he'd been screaming at every single one of his appearances
24 before that to me, that he wants a trial, he wants this
25 dealt with, he's innocent, and all this stuff. And Judge

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1 Newman tells him at that hearing that he's behind the eight
2 ball because he's taking so long for getting this lawyer and
3 that's why we're here today. And he asks us when we can try
4 it and I -- I say we can try it tomorrow as far as I'm
5 concerned which 'cause it's not a complex case. It's a fair
6 characterization of the evidence in this case. Everything
7 that needs to be known in this case is on that disk. The
8 entire incident from the first second to the guy on the
9 ground bleeding out is on that video, and there's no -- like
10 Mr. Smaldone said, there's going to be two cops. There's
11 not gonna be blood spatter analysis. We're not calling in
12 the FBI. It's a bone simple case. It's terrifying and
13 horrible 'cause someone got shot, but it is not complex.
14 And I've overtalked. I think I answered the question. I
15 apologize.

16 Q No, no, you're fine, Mr. Anderson. So Mr. James
17 was warned several times to get an attorney by both your
18 office and other ---

19 A It was to the point that we had to get a circuit
20 court judge to fuss at him, yes.

21 Q And during this whole process he wanted to go to
22 trial soon?

23 A Every time I talked to Mr. James he would make
24 excuses about not having a lawyer. I would calmly explain
25 to him he needed to get a lawyer. And then he'd go to

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1 eleven and start screaming and yelling about a trial.

2 Q And do you believe this -- do you believe there
3 would have been a need for a stand-your-ground hearing or
4 Duncan hearing in this case?

5 A I wasn't expecting one because you can fall in a
6 trap. Duncan hearings can be great for the defense when you
7 don't know what happened and they can be great for the
8 defense when you know exactly what's happened and it's
9 Duncan. But in this case, like I said, it's all on video
10 and it's not Duncan, and it's not close to Duncan. What
11 that video shows -- and I'm talking about the evidence; the
12 Court can watch it -- is the victim vehicle pull into the
13 center part of the parking lot in the IGA in Kingstree.
14 Mr. James goes toward the vehicle like a bullet out of a
15 gun, straight for it. You see violent motion on the
16 driver's side of the vehicle and then the victim would
17 testify that what he remembers and what he testifies to is
18 that he pulls in and parks and he's getting punched in the
19 head by Mr. James. That's not close to Duncan. You have to
20 be acting lawfully. You can't be an aggressor. He -- if
21 anything, the victim would have a Duncan motion. And it's a
22 trap for rookie defense attorneys to make a Duncan motion
23 when there's not one merited because it gives the State a
24 crack at cross-examining the defendant before the trial
25 starts so I'd have another statement from Mr. James where

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1 he's not gonna -- there's a chance I'd get him tripped up on
2 the video before the trial even starts so there are major
3 pitfalls to be made. I did not expect one in this case, no.
4 It much more closely matches self-defense than it does
5 Duncan.

6 Q And do you believe the evidence supported a
7 assault and battery first degree?

8 A I ---

9 MR. LIFSEY: I object to the relevance of that
10 question.

11 MR. MITCHELL: Your Honor, the relevance goes to
12 the prejudice in this matter about whether any type of
13 mistake on the jury charge and law would have -- could have
14 affected the outcome of the trial.

15 THE COURT: Well, I mean, it was charged so at
16 least the court thought that there was evidence supporting
17 it. So I'll sustain the objection. Now, if you have some
18 question about the issue raised about how the charges were
19 clear versus unclear, I think that's appropriate but, so
20 I'll sustain the objection but you can -- you can explore
21 that avenue about the clarity of the charges.

22 Q Mr. Anderson, did you -- do you remember seeing
23 anything or hearing anything wrong with the jury charges?

24 A I -- I don't remember the charges being read, but
25 I do remember there was a question. The jury had a question

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1 about the difference between ABHAN and assault and the judge
2 came back and read them and that's what they're talking
3 about, but I don't remember specifically what -- if it's
4 what he read, it's what he read. I don't -- that's not
5 something that sticks out in my mind particularly in the
6 whole trial. But that did happen for sure.

7 Q And just going back, this wasn't a difficult case
8 to prepare for necessarily?

9 A While the charges are incredibly serious, it's --
10 again, it's an assault case that is entirely on video.
11 There's not -- it's not like there's going to be some
12 lengthy chain of custody. We're not going to be arguing
13 about, you know, whether or not this DNA evidence, you know,
14 was tampered with or anything like that. There's no, you
15 know, it's a video. And I'm, you know, lawyers get pumped
16 up and they're -- they think they're the most important part
17 of the trial; but really, this trial was the authentication
18 of that video and the jury deciding whether that's
19 self-defense or not; that's what this is.

20 Q So self-defense was argued on Mr. James' behalf?

21 A Yes, sir.

22 Q All right. Thank you, Mr. Anderson. I have no
23 further questions.

24 THE COURT: Mr. Lifsey.

25 MR. LIFSEY: Just one minute.

RW - W. ANDERSON - CROSS

1 THE COURT: Yes, sir.

2 CROSS - EXAMINATION

3 BY MR. LIFSEY:

4 Q Let me just ask you a question. You testified on
5 direct about appearances in Williamsburg County and tell me
6 if I'm mis-- if I'm not quoting you correctly. The
7 defendants are told in no uncertain terms they've got to get
8 a lawyer. Is that what you said?

9 A That is what I said, but I can go into it a little
10 bit more. Maybe I can ---

11 Q Let me just ask you my question. I mean, you are
12 aware they've got a constitutional right to represent
13 themselves.

14 A Yes, sir.

15 Q You're trying to coerce people into not -- not
16 having their constitutional right to represent themselves?

17 A And they're -- they're given an option. We put
18 them in -- there's three categories. Come in, there's this
19 form. We say, all right, you can represent yourself, you
20 can get a public defender, you can get a private lawyer.
21 You fill out the form and they're given instructions to be
22 back next week. If they're going to represent themselves or
23 get a priv-- or public defender, or if they get a private
24 lawyer they have to bring back a receipt before the next
25 Wednesday. That's the process.

RW - W. ANDERSON - REDIRECT

1 Q Okay. So it's inaccurate to say that they're told
2 in no uncertain terms they've got to get a lawyer?

3 A I -- it said that, but more accurate they're told
4 they have to work on getting it ready.

5 Q And the bottom line in this case is whatever
6 happened, he got a lawyer in April and a month later he went
7 to trial; is that correct?

8 A That's absolutely correct.

9 Q You mentioned pretrial hearings and the only --
10 you mentioned there are traps for defense lawyers. I mean,
11 what would have prevented you, Mr. Smaldone, from having the
12 pretrial hearing and not calling his client?

13 A He could have done that.

14 Q And then there would have been no disadvantage
15 whatsoever for him having this hearing, would there?

16 A None that I can think of.

17 Q All right. I don't have any further questions.

18 THE COURT: Any redirect?

19 MR. MITCHELL: Just briefly.

20 R E D I R E C T E X A M I N A T I O N

21 BY MR. MITCHELL:

22 Q Did you coerce Mr. James into getting an attorney?

23 A No, sir.

24 MR. MITCHELL: No further questions, Your Honor.

25 THE COURT: All right. Thank you, Mr. Anderson.

1 You can step down.

2 Mr. Mitchell.

3 MR. MITCHELL: Your Honor, the State rests.

4 THE COURT: All right. I'll give the parties an
5 opportunity to make any short argument in summation.

6 Mr. Lifsey.

7 MR. LIFSEY: Thank you, Judge. You know,
8 everybody has talked about the video. I know Your Honor is
9 going to do like Your Honor does in every case and review
10 this file carefully. I would ask you to do that. I'd ask
11 you to look at the transcript. I would ask you to look at
12 the video. My only disagreement with everybody is, you
13 know, the whole notion, especially represented by the
14 solicitor, that the video is all that matters. I mean, if
15 it is, why do we have trials, why do we call witnesses. The
16 truth of it is, the victim's testimony mattered in this
17 case. And the client, you know, I would argue the lawyer
18 had an opportunity to hear that victim's testimony one time
19 and ahead of time. There's no real disadvantage to him and
20 didn't take advantage of it.

21 I don't -- I acknowledge the -- from a factual
22 standpoint this was not a difficult case to prepare for so I
23 acknowledge that. But, you know, to quote the solicitor, I
24 mean, we lawyers aren't the whole focus here. The focus is
25 the defendant and his rights; and it just seems to me the

1 idea that a man with a fairly limited education, a fairly
2 limited understanding of the law which you can see from
3 reviewing his comments throughout the trial and his
4 testimony and his testimony today, is able to go to trial
5 with one 30-minute conversation the day before the case and
6 a brief conversation the morning of, and he's facing 20
7 years. And it just seems to me that these issues that -- I
8 mean, it's the kind of thing that used to happen in the
9 criminal justice system 20, 30, 40, 50 years ago. It just
10 seems crazy to me that we're doing that in the year of 2018
11 we're making people go to trial like that without the --
12 with, you know, less than an hour of conversation with their
13 defense lawyer.

14 Your Honor, as to the rest of the issues regarding
15 the charge and all those issues, those are issues that you
16 can review the transcript. I'd ask you review those. Thank
17 you.

18 THE COURT: All right. Mr. Mitchell.

19 MR. MITCHELL: Your Honor, the applicant has not
20 met his burden entitling him to post-conviction relief.
21 Mr. Anderson testified that Mr. James throughout this whole
22 process wanted to go to trial as soon as possible. Any
23 delay in him receiving an attorney was Mr. James' own fault.
24 Mr. Smaldone testified that a month was plenty of time to
25 prepare for this case. And furthermore, the applicant has

1 not shown what evidence would have been uncovered in further
2 preparation or discussion between him and his attorney.
3 With regard to the stand-your-ground hearing, as you'll be
4 able to watch on the video yourself, he -- the elements of
5 stand-your-ground hearing just clearly aren't met here and
6 so the applicant was not prejudiced by any lack of
7 stand-your-ground hearing in this case.

8 I agree with Mr. Lifsey as far as the jury
9 instruction goes, you can read over those yourself and
10 then -- so with that, the applicant has not been prejudiced
11 by any deficiency, and I submit there is no deficiency in
12 this case.

13 THE COURT: All right. Thank you, sir. All
14 right, folks, obviously there's a vital piece of puzzle that
15 I haven't seen yet that's been admitted into this case; and
16 I'm going to take the two videos which have been entered
17 into the record in this case, review them. I'm going to
18 reread the transcript so I'm going to take this matter under
19 advisement and make a decision in this case in a reasonable
20 amount of time. So I'm going to -- once I've made a
21 decision, I'll notify parties by email and direct the
22 prevailing side to prepare the appropriate order. So this
23 matter will be under advisement until the attorneys hear
24 from me. Thank you. This matter is adjourned.

25 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), retired court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 29th day of June, 2024.

Frances B. Ray

FRANCES B. RAY, RPR
Third Judicial District

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

John A. James, III, SCDC #,196633

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2021-CP-45-00327

ORDER OF DISMISSAL

SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG, S.C.
2023 DEC 27 AM 11:00
FILED

INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by John A. James, III, ("Applicant") on August 5, 2021. On June 15, 2023, a hearing into the matter was convened before the Honorable R. Kirk Griffin at the Sumter County Courthouse. Applicant was present and represented by Michael Lifsey, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. During the hearing, testimony was taken from Applicant, Grant B. Smaldone ("Counsel"), and Assistant Solicitor Warren S. Anderson ("Solicitor").

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its January 2018 term, the Williamsburg County Grand Jury indicted Applicant for assault and battery of a high and aggravated nature and possession of a weapon during the commission of a violent crime

(2018-GS-45-00022). Applicant was represented by Grant B. Smaldone, Esquire. Assistant Solicitor Warren S. Anderson of the Third Circuit Solicitor's Office prosecuted the case.

On May 29, 2018, Applicant proceeded to trial before the Honorable R. Ferrell Cothran, Jr. and a jury. The jury found Applicant guilty as indicted. On May 31, 2018, Judge Cothran Jr. sentenced Applicant to twenty (20) years for assault and battery of a high and aggravated nature and five (5) years for possession of a weapon during the commission of a violent crime, with those sentences to be served concurrently.

Applicant filed a timely notice of appeal. Appellate Defender Joanna K. Delany of the South Carolina Commission on Indigent Defense, Office of Appellate Defense perfected the appeal by filing a brief with the Court of Appeals on the following issue:

The [trial] court erred in appellant's ABHAN trial where it refused to charge the jury on the lesser offense of second-degree assault and battery, where expert testimony about the complainant's injuries was that he had "a scar" and that most people tolerate the type of surgery undergone by the complainant "without much difficulty," since these facts supported a finding of moderate bodily injury (second degree assault and battery) rather than great bodily injury (ABHAN), since the court must instruct the jury on a lesser-included offense where there is any evidence of the lesser offense rather than the greater offense.

Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentence in an unpublished opinion. *State v. John Arthur James, III*, Unpub. Op. No. 2021-UP-023 (Ct. App. filed Jan. 27, 2021). The remittitur was issued on February 23, 2021.

STATEMENT OF FACTS

At trial, James Singletary ("Singletary") testified he went to the IGA the day of the shooting to get something to eat. When he drove into the parking lot, he spoke to a friend, and then parked his car. As Singletary opened his car door, Applicant walked up and punched him three times in the face. Singletary stated Applicant "hollered, he got a weapon, he got a weapon," but Singletary

was unarmed at the time. Applicant then ran around in a circle, came back to Singletary's car and kicked the car door. (Tr. pp. 45-48).

Applicant fell after kicking Singletary's car, then got up, ran over to his mother, who was by her car in the parking lot, and told her to "give [him] that damn thing out of the box." Singletary spoke to his friend for about thirty seconds, and started toward his car to leave, but Applicant started yelling at him, so Singletary got a machete out of the trunk of his car and started walking toward Applicant. Singletary stopped and said he was going to call the police. Applicant then got out of his mother's car with a gun. Applicant fired a shot toward Singletary, who turned around and started walking away for Applicant. (Tr. pp. 48-50).

As Singletary walked away, Applicant came up behind him. When Singletary got to a corner of the building, Applicant shot him twice in the abdomen from approximately six feet away. (Tr. pp. 50-51).

CURRENT APPLICATION

Applicant timely commenced this PCR application on August 5, 2021. In his application Applicant alleged he was entitled to relief based on the following grounds:

1. Counsel fail[ed] to make timely objection
2. Counsel fail[ed] to investigate
3. Counsel fail[ed] to request pretrial determination
4. Counsel fail[ed] to preserve issue
5. Appellant was not entitled to immunity

Pursuant to Rule 71.1, SCRCP, Applicant, through PCR counsel, amended his application to include the following allegations:

1. Ineffective Assistance of Counsel for
 - a. Failing to adequately prepare for trial, having been appointed only a month prior to the trial date.
 - b. Failing to object or offer any opposition whatsoever at a status conference held on April 26, 2018 in front of Judge Clifton Newman, to the plan of the Solicitor to try

the case on May 29, 2018, despite the fact that trial counsel was only formally appointed that day.

- c. Failing to request a continuance from the trial judge when the case was called for trial on May 29, 2018 in front of Judge Ferrell Cothran, Jr.
- d. Failing to request an immunity hearing pursuant to the Protection of Persons and Property Act (SC Code Section 16-11-410 *et seq.*).
- e. Failing to object to the trial judge's confusing instructions regarding the charge of Possession of a Weapon During the Commission of a Violent Crime as it related to the charges of Assault and Battery of a High and Aggravated Nature and the lesser included offense of Assault and Battery 1st Degree.

On October 5, 2022, Applicant, through PCR counsel, filed a second amended allegation adding the following additional allegation:

- f. Failing to object to the confusing instruction and commentary by the trial judge when the jury sought clarification on the difference between Assault and Battery of a High and Aggravated Nature and Assault and Battery 1st Degree.

At the hearing, Applicant proceeded only on claims that were raised in the amended applications.

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *accord. Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRPC. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of “were outside the wide range of competence” demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Id.* Significantly, “the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Id.* at 696.

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State’s return, this Court finds Applicant’s claims to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Failure to Adequately Prepare for Trial

Applicant contends Counsel was ineffective for failing to adequately prepare for trial, having been appointed only a month prior to trial. This Court finds credible and persuasive the testimony of Counsel, who presented well-recalled testimony of his preparedness for trial.

1. PCR Testimony

Applicant testified he went to trial on May 29, 2018, with his Counsel, Grant Smaldone, only being appointed on April 26, 2018. Applicant testified a status conference was held in front of Judge Newman to discuss trial date. Applicant testified Counsel said he would not be prepared for trial within a week or two, but they eventually set a trial date about a month later. Applicant testified he attempted to call Counsel's office, but never received a call back. Applicant testified Counsel met with him the day before a jury was selected and they talked for about 20-35 minutes. Additionally, Applicant testified they met again the morning of trial. Applicant reiterated they only met those two times prior to trial.

Applicant testified Counsel never explained the elements of assault and battery of a high and aggravated nature or self-defense. Applicant testified he wanted to know the legal principles governing self-defense. Applicant testified he felt like he was provoked during the underlying incident, but Counsel did not want to argue provocation during trial. Applicant testified it would have been helpful to know this information in advance of his testimony at trial. Applicant testified he has a 7th grade reading level and he needed more than a 30 minute conversation with Counsel to understand the legal issues. Applicant testified that if Counsel adequately investigated the case he could have asked for additional self-defense instructions and the proceeding would have been different. Applicant testified Counsel was ineffective for not meeting with him.

Counsel testified one month was enough time to prepare for this case. Counsel testified this was a straightforward case in which the entire incident was on video and contained no expert testimony. Counsel testified he met with Applicant, but he does not recall how many times. Counsel testified it is his standard practice to explain the elements of the crime charged to his clients. Counsel testified he advises his clients about their right to testify. Counsel testified he was

prepared for trial. Solicitor Anderson explained the entire case was on video and was a “bone-simple” case.

2. Discussion

This Court finds Counsel was not ineffective in his preparation for trial. Counsel’s credible testimony indicates he met with Applicant and informed him of the elements of assault and battery of a high and aggravated nature. Counsel credibly testified it is his standard practice to explain the elements of the crime charged and the defendant’s right to testify. Applicant testified Counsel should have discussed his case with him more; however, “even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation.” *Harris*, 377 S.C. at 75, 659 S.E.2d at 145. This Court finds Counsel was prepared for trial and the straightforward nature of the case did not require much investigation, especially given the entire incident was captured on video. Although Applicant testified the outcome of the trial would have been different had Counsel adequately prepared for a self-defense case, this Court disagrees. The record from Applicant’s trial shows Counsel effectively argued self-defense to the jury. Applicant testified at his trial explaining he was provoked and feared for his safety during the confrontation. (Trial Tr., certified on September 21, 2023, p. 189). Counsel’s entire closing argument to the jury was that Applicant acted in self-defense. (Trial Tr., certified on September 21, 2023, pp. 306-325). The jury repeatedly watched the video of the incident and, despite the worthy efforts of Counsel, found Applicant guilty of assault and battery of a high and aggravated nature. This Court finds Counsel properly informed Applicant of the elements of his charges and self-defense. Additionally, this Court finds Counsel was adequately prepared for trial. Therefore, this Court finds Counsel was not deficient in his preparation.

Additionally, Applicant has failed to present “any evidence of how additional preparation or communication would have resulted in a different outcome.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); *see Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel’s lack of preparation prejudiced him); *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Here, Counsel commendably argued self-defense to the jury and an instruction on self-defense was given during the charge to the jury. Thus, Applicant has failed to meet his burden establishing prejudice in this regard.

Accordingly, this Court finds this allegation is **DENIED**.

Failure to Object to Trial Date During Status Conference Hearing and Failure to Request a Continuance¹

Applicant next contends Counsel was ineffective for failing to object or offer any opposition whatsoever at a status conference held on April 26, 2018, in front of Judge Clifton Newman, to the plan of the Solicitor to try the case on May 29, 2018, despite the fact that trial counsel was only formally appointed that day. Additionally, Applicant alleges Counsel was ineffective for failing to request a continuance from the trial judge when the case was called for trial on May 29, 2018, in front of Judge R. Ferrell Cothran, Jr. This Court disagrees and finds Counsel’s credible testimony refutes this allegation.

¹ Allegations 1(b) and 1(c) will be addressed in this section.

1. PCR Testimony

At the PCR hearing, Applicant testified Counsel should have requested a continuance to give them additional time to prepare. Counsel testified he believed a month was adequate time to prepare for this trial. Counsel reiterated the straightforward nature of the case that did not require additional time.

Solicitor Warren Anderson testified Applicant was repeatedly informed he had a right to an attorney during multiple appearances; however, Applicant was actively avoiding a lawyer. Solicitor testified Applicant finally requested an attorney on April 11 and Counsel was appointed on April 12. A status conference was held before Judge Newman in which Applicant insisted on a trial.

2. Discussion

This Court finds Counsel was not ineffective for failing to request a continuance. Counsel credibly testified he believed a month was plenty of time to prepare this case. Additionally, Applicant's own delay in obtaining an attorney contributed to the amount of time Counsel had to prepare. As discussed in the previous section, this Court finds Counsel was adequately prepared for this trial. Thus, Counsel was not deficient for failing to object to the trial date at the status hearing nor failing to request a continuance during the status conference hearing.

Furthermore, Applicant has presented no evidence or testimony showing how a continuance could have affected the outcome at trial. Therefore, Applicant has failed to prove he was prejudiced by Counsel's alleged deficiencies.

Accordingly, this allegation is **DENIED**.

Failure to Object to Judge's Confusing instructions²

Applicant further contends that Counsel was ineffective for failing to object to the trial judge's confusing instruction and commentary when the jury sought clarification between assault and battery of a high and aggravated nature and assault and battery 1st degree. Additionally, Applicant alleges Counsel was ineffective for failing to object to trial judge's confusing instructions regarding the charge of possession of a weapon during the commission of a violent crime as it related to the charges of assault and battery of a high and aggravated nature and the lesser included offense of assault and battery 1st degree. This Court disagrees and finds that the trial court's jury instructions, viewed as a whole, were correct.

1. PCR Testimony

Applicant testified the trial court gave his opinion to the jury by saying assault and battery of a high and aggravated nature was the greater and more accurate one.³ Applicant testified the trial court admitted the difference between ABHAN and A&B 1st is confusing. Applicant testified that if the instruction was confusing to the trial judge, it was confusing to the jury. Applicant testified Counsel should have objected to the instruction. Furthermore, Applicant testified the trial court gave an ambiguous instruction regarding possession of a weapon during the commission of a violent crime when the court informed the jury they can only find Applicant guilty of the weapons charge if they also find him guilty of ABHAN.

2. Trial Transcript Challenge

Following the evidentiary hearing, the State initiated a formal transcript challenge challenging the transcription of the jury instruction in question. Specifically, the State challenged

² Allegations 1(e) and 1(f) will be addressed in this section.

³ As explained in more detail in the subsequent section, the State initiated a transcript challenge where, upon review of the tapes, the court reporter indicated the transcript should have reflected "greater and more aggravated one." A new transcript was certified correcting this scrivener's error.

the “greater and more accurate” transcription. (Trial Tr., certified on October 20, 2018, l. 20 p. 345). Following a review of the recordings, the court reporter indicated the transcript should reflect “greater and more aggravated one.” (See Affidavit, dated September 19, 2023). The court reporter transcribed a new transcript, including a new certification page, reflecting this change. (See Trial Tr., certified on September 21, 2023).

3. Discussion⁴

This Court finds Counsel was not ineffective for failing to object to the trial judge’s jury instruction on the difference between assault and battery 1st degree and assault and battery of a high and aggravated nature. This allegation, and the testimony from the evidentiary hearing supporting it, is based on a transcription error that was corrected following the State’s transcript challenge. When considering only the transcript certified on September 21, 2023, this Court finds this allegation is without merit.

During Applicant’s trial, the court gave the following jury instruction on assault and battery of a high and aggravated nature:

The Court: A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person and great bodily injury to another person results or the act is accomplished by means likely to produce death or great bodily injury. Great bodily injury means bodily injury which causes a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the functions of a body member or organ.

(Trial Tr., certified on September 21, 2023, p. 332).

Additionally, the court gave the following instruction on the lesser included offense of assault and battery first degree:

Now if you feel that the State has failed to prove the defendant guilty of assault and battery of a high and aggravated nature, you may consider a lesser included offense of assault and battery first degree. A person commits assault and battery first degree if the person

⁴ This Court only considered the transcript certified on September 21, 2023, when making its findings of fact and conclusions of law.

unlawfully injures another person and the act either - - injures that person, I'm sorry. Is accomplished by means likely to produce death or bodily injury. Great bodily means the same thing I just gave you in assault and battery of a high and aggravated nature.

(Trial Tr., certified on September 21, 2023, p. 332).

The trial court gave an additional instruction to the jury when they requested a re-charge on assault and battery of a high and aggravated nature, and assault and battery, first degree:

The Court: Assault and battery of a high and aggravated nature. A person commits the offense of assault and battery high and aggravated nature if the person unlawfully injures another person and great bodily injury to another person and great bodily injury to another person results or the act is accomplished by means likely to produce death or great and bodily injury. Great bodily injury means bodily which causes a substantial risk of death or which causes serious permanent disfigurement or protraction, or protracted loss or impairment of the function of body member or organ.

Now, assault and battery in the first degree. A person commits the offense of assault and battery in the first degree if the person unlawfully injures another person and the act either -- well, that doesn't apply 'cause it wasn't. A person may also commit the offense of assault and battery first degree if the person unlawfully offers or attempts to injure another person with the present ability to do so and the act is accomplished by means likely to produce death or great bodily injury.

I know those definitions are very close. The greater and more aggravated one is assault and battery high and aggravated nature. And in assault and battery high and aggravated nature there must be an injury. In assault and battery in the first degree there doesn't necessarily have to be an injury as long as it's an offer or attempt to do injury. That's the only difference in the two. One is greater and more serious than the other. Assault and battery of a high and aggravated nature is more serious than assault and battery in first degree so the State has to prove beyond a reasonable doubt either one of those.

(Trial Tr., certified on September 21, 2023, pp. 344 – 346).

It is well established under South Carolina law “that a trial judge must refrain from any comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of witnesses, the guilt of an accused, or any fact in controversy.” *Sosebee v. Leake*, 293 S.C. 531, 362 S.E.2d. Here, this Court finds trial judge’s instruction regarding the difference between assault and battery 1st degree and assault and battery of a high and aggravated nature was

proper and not an impermissible comment on the facts. The trial judge's comment that assault and battery of a high and aggravated nature is the "greater and more aggravated one" is a correct statement of the law. Therefore, Applicant has failed to prove Counsel was deficient as to this allegation.

Additionally, Applicant alleges Counsel should have objected to the trial court's instruction regarding possession of a weapon during the commission of a violent crime. Specifically, Applicant alleges the instruction was confusing to the jury when the court charged the following:

The Court: ...In order for the defendant to be guilty of possession of a weapon during the commission of a violent crime you must first find the defendant guilty of committing a violent crime or attempting to commit a violent crime, and I charge you that assault and battery of a high and aggravated nature is a violent crime. Now assault and battery first degree is not a violent crime.

(Trial Tr., certified on September 21, 2023, p. 333).

This Court finds this instruction was proper and a correct statement of the law. According to S.C. Code Ann. § 16-1-60, assault and battery of a high and aggravated nature is a violent crime, while assault and battery first degree is not. Additionally, the possession of a weapon during the commission of a violent crime statute explicitly states "the penalties prescribed in this section may not be imposed unless the person convicted was at the same time indicted and convicted of a violent crime." S.C. Code Ann. § 16-23-490. This Court finds both jury instructions in question were properly charged. Therefore, this Court finds Applicant has failed to prove Counsel was deficient.

Additionally, it was uncontradicted that Applicant shot the victim in the abdomen twice during the incident. The victim's surgeon testified that without surgery the victim would have succumbed to his injuries. (Trial Tr., certified on September 21, 2023, p. 79). The evidence presented at trial clearly supported a guilty verdict for assault and battery of a high and aggravated

nature and possession of a weapon during the commission of a violent crime. Therefore, this Court finds Applicant has failed to meet his burden establishing prejudice as to this allegation.

Accordingly, this allegation is **DENIED**.

Failure to Request an Immunity Hearing

Applicant contends that Counsel was ineffective for failing to request an immunity hearing pursuant to the Protection of Persons and Property Act (S.C. Code Ann § 16-11-410). This Court finds this allegation is without merit.

1. PCR Testimony

Applicant testified Counsel should have requested a pre-trial immunity hearing. Applicant testified the judge may have determined he was immune from prosecution pursuant to the act. Counsel Smaldone testified he believed a pre-trial immunity hearing would be frivolous based on the video of the incident. Counsel explained his trial strategy was to play on the juror's emotions which does not work at a pre-trial bench hearing. Counsel testified the victim stated Applicant walked up to him and punched him.

2. Discussion

Applicant asserts Counsel was ineffective for failing to seek immunity pursuant to the Protections of Persons and Property Act. This Court disagrees. Subsection 16-11-440(C) of the South Carolina Code provides in pertinent part:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be . . . has not duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person. . .

Additionally, our Courts have held that “while the Protection of Persons and Property Act may be considered “offensive” in the sense that immunity thereunder operates as a bar to prosecution, such

immunity is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence.” *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013).

This Court finds Applicant failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [her] case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). “[W]hen Counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010).

This Court finds Counsel believed a pre-trial immunity hearing would be frivolous based on the evidence presented at trial, specifically the video and the victim’s testimony. This Court agrees. During Applicant’s trial, the victim testified that when he pulled into the parking lot of the IGA, Applicant approached him and punched him three times in the face. (Trial Tr., certified on September 21, 2023, p. 47). This Court finds the video of the incident corroborates this testimony.

Because Counsel articulated a valid reason for not requesting a pre-trial immunity hearing, Applicant has failed to prove Counsel was deficient. Furthermore, this Court finds the evidence presented at trial demonstrates Applicant was not without fault in bringing on the difficulty, so any attempt to receive immunity would have been unsuccessful. Additionally, Applicant testified during trial explaining his version of events. (Trial Tr., certified on September 21, 2023, pp. 155–259). Despite this, a jury found he was not acting in self-defense and found him guilty. Therefore, Applicant has failed to meet his burden establishing prejudice as to this allegation.

Accordingly, this allegation is **DENIED**.

CONCLUSION

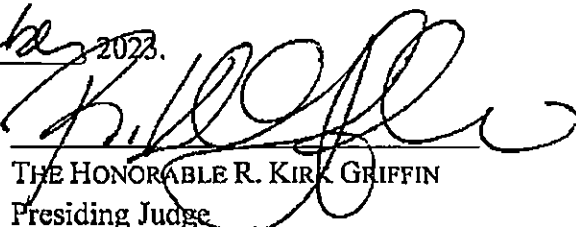
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 15th day of December, 2023.


THE HONORABLE R. KIRK GRIFFIN
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina

WITNESSES

Y. Davis
Department

Kingtree Police

DOCKET NO. 2018-GS-45-0022

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

January

TERM

2018

THE STATE

vs.

JOHN JAMES III

ARREST WARRANT NUMBER

2017A4520300060

2017A4520300061

ACTION OF GRAND JURY

TRUE BILL

Date

1/25/18

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

464

Indictment for

Assault & Battery of a High & Aggravated Nature
Possession of a Weapon During a Crime of Violence

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

FILED

2018 JAN 25 PM 1:59

SHARLETT TAGGERS
CLERK OF COURT
KINGTREE, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

INDICTMENT FOR
Assault & Battery of a High & Aggravated Nature
Possession of a Weapon During a Crime of Violence

At a Court of General Sessions, convened on 01/25/2018 the Grand Jurors of
WILLIAMSBURG County present upon their oath:

COUNT ONE

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

That John James III did in Williamsburg on or about July 15, 2017, violate Section 16-3-600(B)(1) of the Code of Laws of South Carolina (1976), as amended, in that he did unlawfully injure another and great bodily injury to James Singletary resulted or the act was accomplished by means likely to produce death or great bodily injury to wit; he shoot James Singletary with a pistol resulting in great bodily injury.

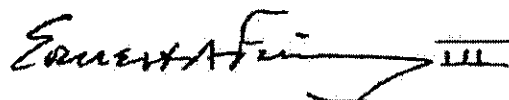
COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

That John James III did in Williamsburg County, on or about July 15, 2017, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made
and provided.

Solicitor



466

STATE OF SOUTH CAROLINA

COUNTY OF Williamsburg
STATE VS.
John James III

AKA:
Race: Black Sex: M Age: 43
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: Salter, SC 29590
DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Assault & Battery of a High & Aggravated Nature

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-45-0022
A/W#: 2017A4520300060
Date of Offense: 7/15/2017
S.C. Code §: 16-03-0600 (B) (2)
CDR Code #: 3411

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0600 (B) (2) of the S.C. Code of Laws, bearing CDR Code # 3411
☒ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: [Signature] 10090
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the SCDOC.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
3% to County (if paid in installments)		\$ <u>123.75</u>

TOTAL \$ 123.75
Clerk of Court/ Deputy Clerk [Signature]
Court Reporter: [Signature]
SCCA/217 (04/2018)

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.
Presiding Judge [Signature]
Judge Code: 2144
Sentence Date: May 31, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

467

COUNTY OF Williamsburg
STATE VS.

John James III

AKA:

Race: Black Sex: M Age: 43

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Salters, SC 29590

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Possession of a weapon during violent crime

INDICTMENT/CASE#: 2018-GS-45-0022

A/W#: 2017A4520300061

Date of Offense: 7/15/2017

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: with result of better hearing.
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the SCDoc.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
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§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code:

Sentence Date:

May 31, 2018