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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
General Sessions Court

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2021-GS-07-00981, -00982
Appellate Case No. 2024-000692

The State,

Respondent,

v.

Stephan Quinton Polite,

Appellant.

**RECORD ON APPEAL
VOLUME 2 OF 2**

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1 play cards?

2 A Yes, sir.

3 Q All right. And you've been to a card
4 gathering over there before?

5 A Yes, sir.

6 Q Okay. All right, can you kind of lead
7 us through -- we'll just start with the night
8 that this happened. What time did you get
9 there?

10 A Around -- maybe around 6:00 -- about
11 6:00 to 7:00, around 6:00 to 7:00.

12 Q 6:00 or 7:00 p.m.?

13 A Yes, sir.

14 Q Okay, and make sure you speak loud, so
15 everybody can hear you.

16 A Yes, sir.

17 Q I know your softspoken.

18 A Around 6:00 or 7:00 p.m., somewhere in
19 that time.

20 Q And, Stephan, when you got there who was
21 there; do you remember?

22 A Pumpkin, Xavier, Arthur Washington,
23 Akeem Chaplin came with me.

24 Q Akeem Chaplin came with you?

25 A Yes, sir.

1 Q Okay.

2 A Alexis Smalls.

3 Q Okay.

4 A There were some people outside in the
5 parking lot just waiting --

6 Q All right.

7 A -- for the game to start.

8 Q When you got there, was Anthony Rivers,
9 Jr. there?

10 A No, sir.

11 Q Okay. Do you remember -- and when you
12 got there, tell us a little bit about the layout
13 of the inside the shed, as far as how it's set
14 up inside the shed.

15 A When you walk in the shed, there's
16 tables set up --

17 Q Okay.

18 A -- so you can play cards. They have a
19 card table, they have a -- it's normally, like,
20 two tables, so you can only have five people at
21 a time, and it's a poker table, and there's a
22 corner with a cooler in it. There's another
23 table that has a TV on it.

24 Q Are there chairs in there?

25 A Yes, sir.

1 Q Okay. Are there any weapons in the
2 shed?

3 A Yes, sir.

4 MS. MOLINA: I would object to the
5 leading questions.

6 MR. LEE: I didn't say there were --

7 THE COURT: Overruled, go ahead.

8 MR. LEE: -- I said were there.

9 THE COURT: Go ahead, overruled.

10 BY MR. LEE:

11 Q You can go ahead.

12 A No, sir.

13 Q Okay, all right. What weapons that
14 night did you observe when you got there?

15 A Arthur Washington keeps a -- he has a
16 AK-47, and he keeps it in the corner that's by
17 the cooler.

18 Q Arthur Washington keeps an AK-47 in the
19 corner?

20 A Yes, sir.

21 Q Okay. Do you know why that is?

22 A Can you repeat the question?

23 Q Do you know why he keeps it there?

24 A I guess for protection, sir.

25 Q Besides that are there any other weapons

1 inside the shed?

2 A Yeah, yeah, but he also keeps a pistol
3 by the TV.

4 Q A piston on the table by the TV?

5 A Yes, sir.

6 Q Okay. Do you know what kind of pistol
7 it is, or anything?

8 A It's a -- it's not a small pistol, it's
9 probably a .9 or .40, something like that.

10 Q A .9 or .40?

11 A Yes, sir.

12 Q Okay. Automatic?

13 A Yes, sir.

14 Q And are there chairs around the tables
15 for people to play poker?

16 A Yes, sir.

17 Q Okay, all right. And you said that the
18 -- there's a cooler, and then there's a TV. Is
19 the cooler near the TV?

20 A Yes, sir, that little area, yes, sir.

21 Q And we're not talking about a big shed.
22 I mean, what, is it as big as like right here to
23 the wall?

24 A It probably is smaller than that.

25 Q So it's kind of tight quarters?

1 A Yes, sir.

2 Q And in relation to the cooler where is
3 that pistol?

4 A Right over to where the cooler is, the
5 cooler would be in this corner, and the table
6 would be right here.

7 Q And how about the AK-47, is that in a
8 different corner, or is that there?

9 A It's right in the corner right behind
10 the cooler.

11 Q All right. So there's people there, you
12 named who was there, but Anthony Rivers had not
13 arrived yet, right?

14 A Yes, sir.

15 Q What time would you estimate Anthony
16 Rivers arriving at the G shed?

17 A Probably about 30 to 45 minutes later.

18 Q After you got there?

19 A Yes, sir.

20 Q Okay. And does Anthony Rivers typically
21 play cards?

22 A Not for the most part.

23 Q And do you know why?

24 A He doesn't work, he doesn't have a job,
25 so he -- he doesn't have enough money.

1 Q He doesn't have money, essentially, to
2 play for very long?

3 A Yes, sir, I believe.

4 Q Okay. But he shows up you said a little
5 bit later. Did you hear him first or see him
6 first, Anthony Rivers?

7 A I heard.

8 Q You heard him?

9 A Yes, sir.

10 Q Before he came in the G shed?

11 A Yes, sir.

12 Q And can you describe to me what you
13 heard before you saw him?

14 A I heard him out there.

15 Q Okay.

16 A Like ahhh, or something like that, and I
17 was like, "What is that?" And then --

18 Q It was something you never heard before?

19 A No, sir.

20 Q Heard from him before?

21 A No, sir.

22 Q Let me back up a little bit. When you
23 went into the -- went to the party, where did
24 you park your car?

25 A I backed up right next to Mr.

1 Washington's trailer.

2 Q Okay. So if I'm holding this up, so
3 everybody can see it, this is Mr. Washington's
4 trailer?

5 A Yes, sir.

6 Q Okay, and this is the G shed?

7 A Yes, sir.

8 Q Okay, and do you know whose car that
9 was, as indicated in that?

10 A Natasha Robinson.

11 Q That's Banger's car?

12 A Yes, sir.

13 Q Okay. Where on here, on this map, did
14 you park -- back your car into?

15 A Right next to here.

16 Q Right here?

17 A Yes, sir.

18 Q Okay, so you parked it right here, and
19 you backed in it, right?

20 A Yes, sir.

21 Q Okay. When you parked the car and
22 walked into the G shed, did you take anything
23 with you?

24 A Yes, sir.

25 Q What did you take?

1 A I probably had my handgun on my hip.

2 Q You had your handgun on your hip?

3 A Yes, sir.

4 Q When you went in?

5 A Yes, sir.

6 Q Okay, and we're talking about State's
7 Exhibit Number 40, that?

8 A Yes, sir.

9 Q Okay, so that's your gun?

10 A Yes, sir.

11 Q You bought it in 2010?

12 A Yes, sir.

13 Q Okay. And you had that on your hip?

14 A Yes, sir.

15 Q At the -- when you walked in?

16 A Yes, sir.

17 Q Okay. So now there's at least three
18 guns in the shed, right?

19 A Yes.

20 Q All right.

21 A Yes, sir, that I know of.

22 Q That you knew of, yeah, okay. All
23 right, and you said on your hip, you mean stuck
24 in your pants like that?

25 A I had -- I had it like in my waistband

1 and my pocket.

2 Q Okay. Any particular reason for taking
3 a gun into a card party?

4 A It's -- at every card party everybody
5 has their guns, because there's no telling what
6 might happen, or things like that. And after
7 I've been the victim, I continued to carry my
8 weapons.

9 Q Did you have a weapon with you when you
10 were shot in 2017 in the leg?

11 A I don't recall.

12 Q Okay. But even if you had one, it
13 didn't save you in 2017, correct?

14 A No, sir.

15 Q Okay. So are these card parties
16 inherently dangerous in any way?

17 A Yes, sir.

18 Q How so?

19 A Not everybody gets along with everybody.
20 If certain people come, it's -- depending on how
21 your outcome is, you could get robbed after, or
22 get stabbed to death.

23 Q How much money --

24 THE COURT: Let me get the witness to
25 get closer to the microphone. I believe the

1 jurors are continuing to have a problem
2 understanding you.

3 WITNESS: I apologize.

4 Q You can sit up a little bit.

5 All right. How much money are we talking
6 about, Stephan, at a typical card party, I mean
7 everybody brings their own money, do you know
8 how much money changes hands, or goes the night
9 of the card party?

10 A No. I can tell you the most I've made
11 in one night -- I said the most I've made in one
12 night.

13 Q Okay, and what was that?

14 A About 1,700.

15 Q You made \$1,700 one night at a card
16 party?

17 A Yes, sir.

18 Q Okay, how many people were at the party?

19 A There was a good bit of people, about --
20 they had people waiting, because the tables were
21 full.

22 Q Have you lost more than that at a party
23 before?

24 A Not that much, no, sir.

25 Q Okay, so we're not talking about nickel

1 gin rummy hands, are we?

2 A No, sir.

3 Q Okay. But these people at this card
4 party that night were pretty much family and
5 friends and people that you knew, right?

6 A I guess so.

7 Q Okay. Did you feel more safe or less
8 safe at this card party, versus the card party
9 where you got shot?

10 A I felt more safe at that card party,
11 because there was mostly family there.

12 Q Okay.

13 A The majority.

14 Q All right. So let's back up, you heard
15 this scream, as you've described, from outside,
16 and at that point did you know who it was?

17 A No, sir.

18 Q Okay. Did you just sit there, continue
19 to sit in the shed? And, again, were you
20 drinking anything that night?

21 A No, sir, I don't drink.

22 Q Okay. Did you look out the window? Did
23 you just sit there? What did you do after you
24 heard the scream from outside?

25 A I really didn't pay it no attention.

1 COURT REPORTER: I'm sorry.

2 THE COURT: The Court Reporter's having
3 trouble now.

4 BY WITNESS:

5 A I just kept on setting up for the poker
6 game, helping them set up.

7 Q You're good, stay right where you are,
8 so these ladies can hear you, okay?

9 A Yes, sir.

10 Q You were helping set up for the poker
11 party?

12 A Yes, sir.

13 Q Okay. Didn't know -- at that point
14 didn't know who that was that made that sound?

15 A No, sir.

16 Q Okay. Did it concern you or --

17 A No, sir.

18 Q -- you ignored that, right? All right.
19 At what point did you first lay eyes on Anthony
20 Rivers, Jr.

21 A When he walked in the house -- when he
22 walked in the G shed.

23 Q He walked into the G shed, okay. And
24 how would you describe Anthony Rivers'
25 appearance and demeanor when he walked into the

1 G shed?

2 A He was off and he wasn't --

3 Q Off?

4 A Yes, sir, he wasn't --

5 Q What do you mean by he was off?

6 A Like he was kind of talking to himself,
7 and making gestures, and stuff like that.

8 Q Okay. Had you ever seen him act in that
9 way before?

10 A Not in that manner, no, sir.

11 Q Okay. And you've known him his whole
12 life?

13 A Yes, sir.

14 Q Okay. So did you make any comment about
15 his appearance or actions?

16 A No, sir.

17 Q You didn't say anything?

18 A No, sir.

19 Q You're still setting up?

20 A We're still setting up.

21 Q Did anybody there, that you know of,
22 make any comment about his appearance or
23 demeanor?

24 A They -- I did hear, they said -- they
25 asked him -- like I heard Arthur Washington, he

1 asked, "What's wrong with you? Why are you
2 acting like that? You need to calm down."

3 Q Okay. Arthur Washington, he's the guy
4 that owns the property, right?

5 A Yes, sir.

6 Q Okay. And I think there's been some
7 testimony that perhaps he was Anthony Rivers'
8 best friend, or he really looked out for him; is
9 that right?

10 A Yes, sir.

11 Q Did he and Alexis Smalls, did they also
12 help Anthony out a little bit, as far as down on
13 his luck and help him out with stuff?

14 A Yes, sir.

15 Q Okay, but is it safe to say that Arthur
16 and Antony Rivers were --

17 A Yes, sir.

18 Q -- besties, as my kids like to say?

19 A Yes, sir.

20 Q All right. So he says, "What's wrong
21 with you?"

22 A Yes, sir.

23 Q What happens next, as far as Anthony
24 Rivers, Jr. coming into the G shed where you
25 were?

1 A He sat down on that cooler.

2 Q He sat down on the cooler?

3 A Arthur Washington said, "What's wrong?"
4 And he's like, "You need to chill out." He sat
5 down with his head down, and he just was like
6 talking to himself.

7 Q Is that the same cooler that you talked
8 about earlier that's close to the two guns?

9 A Yes, sir.

10 Q Okay. All right, went and sat down,
11 talking to himself, what did he do next? What
12 did Anthony Rivers, Jr. do next?

13 A He said something to Akeem Chaplin, and
14 he patted Akeem -- started trying to pat Akeem
15 down, and --

16 Q Like pat him down like a police officer
17 pats somebody down?

18 A Yes, sir.

19 Q Okay. Do you -- have you ever seen him
20 do that before?

21 A No, sir.

22 Q Okay. Do you know any reason why he
23 might have done that?

24 A I have no idea, sir.

25 Q Okay. And can you -- will you describe

1 the clothing that Anthony Rivers, Jr. had on
2 that night? Do you remember?

3 A He had on a -- I believe a tie-dye
4 shirt, with some black pants, and he always has
5 a string, or a zip-tie tied --

6 Q All right.

7 A -- to hold his pants up.

8 Q So instead of a belt?

9 A Yes, sir.

10 Q Okay. Did the pants appear to fit him
11 properly in the waist?

12 A No.

13 Q Were they baggy, or were they tight,
14 what?

15 A They were baggy.

16 Q They were baggy?

17 A Yes, sir.

18 Q Okay. And how about his -- was it a
19 tee-shirt he had on?

20 A Yes, sir.

21 Q Okay. Was the tee-shirt tight? Was it
22 baggy? Tucked in, not tucked in? Tell us about
23 that.

24 A It wasn't tucked in, it was kind of a
25 looser shirt.

1 Q A looser shirt?

2 A Yes.

3 Q And it was hanging down, right?

4 A Yes, sir.

5 Q Okay. Did you look to see if he had any
6 type of weapons or guns in his pockets?

7 A No, sir.

8 Q Do you think if he had something, you
9 would have been able to see it?

10 A I don't know, sir.

11 Q Okay. Did you see a boxcutter in his
12 back pocket?

13 A No, sir.

14 Q Okay, and we know he had at least that
15 in his pocket, right?

16 A Yes, sir.

17 Q All right, so let's get more into
18 Anthony Rivers, Jr. behavior and what he did.
19 So you say he, for no reason apparently, went up
20 to Akeem Chaplin, started patting him down.

21 Was he saying anything?

22 A I can't recall everything he was saying,
23 but he patted him down.

24 Q Okay.

25 A He asked Akeem, "Empty your pockets."

1 Q Okay.

2 A Yes.

3 Q You told Anthony Rivers to chill out?

4 A I told him back off.

5 Q Okay.

6 A And I told Arthur Washington, I said,
7 "Man, you need to control your company."

8 Q What exactly was he doing that seemed to
9 need him to be under control?

10 A He was just bouncing from person-to-
11 person, just going --

12 Q Was he ever saying, "Kill me, smoke me,"
13 that sort of thing

14 A Yes, sir.

15 Q Okay. Was that unusual?

16 A Yes, sir.

17 Q Have you ever heard him say that before?

18 A No, sir.

19 Q Okay. Do you know why he was saying
20 that?

21 A I have no idea.

22 Q Okay, all right. So after you told
23 everybody to cool it, did he have contact with
24 you, or did Anthony Rivers have contact with you
25 next?

1 A At that time I calmed Akeem down, he sat
2 back down, and he started like putting his head
3 down doing the same gestures. At that time I
4 realized that we were about to start playing
5 cards, so I went to go get my wallet out of my
6 car.

7 Q Okay. All right, so -- and when you
8 went to get your wallet out of your car, was
9 Banger there?

10 A She -- when I -- after I walked over
11 from my car she was coming to the house or the
12 shed.

13 Q So you did leave the shed to walk to
14 your car --

15 A Yes, sir.

16 Q -- to get your wallet?

17 A Yes, sir.

18 Q Okay. Did you get a gun when you went
19 to the car?

20 A No, sir.

21 Q 'Cause you already had your gun, right?

22 A Yes, sir.

23 Q Okay. So at any point inside did
24 Anthony Rivers do anything that caused you to
25 let him know that you had a gun on your hip?

1 MS. MOLINA: I would object to leading
2 again. These questions are suggestive of the
3 answers, and not permitted.

4 THE COURT: I'll overrule the objection,
5 you may continue.

6 BY MR. LEE:

7 Q Did you or did you not let Anthony
8 Rivers know that you had a gun on your hip?

9 A No, I didn't.

10 Q You didn't?

11 A No, sir.

12 Q What did you do, if anything, to try to
13 calm him down?

14 A I really didn't -- I wasn't saying
15 anything.

16 Q All right.

17 A I did -- the only person that was -- the
18 only person that I was concerned about was
19 Akeem, but I did -- I called him to come --
20 called family to come get him.

21 Q All right, was anybody else concerned
22 about the way Anthony Rivers was acting, and the
23 way he was behaving at the shed that night?

24 A Yes, sir.

25 Q Did everybody seem to be concerned, or

1 just you and Akeem and Arthur Washington? Who
2 seemed to be concerned about his behavior?

3 A Ms. Smalls.

4 Q Is that Alexis?

5 A Yes, sir. And Renee Brown.

6 Q Okay.

7 A And he came and he said something to
8 Danielle, but I believe she kind of ignored it.

9 Q All right. What was he doing that was s
10 over-the-top that people were concerned about
11 him being there?

12 A The outbursts, the talking to himself,
13 the cursing at people, being belligerent and
14 things of that nature.

15 Q Did he ever put his hands on you in any
16 way?

17 A Yes, sir.

18 Q What did he do?

19 A He pushed me up against the wall.

20 Q He pushed you against the wall?

21 A Yes, sir.

22 Q Was there any reason for him to do that?

23 A No, sir.

24 Q Okay. Had he ever done that before?

25 A No, sir.

1 Q And so what you did was, you said you
2 made a call?

3 A Yes.

4 Q Who did you make a call to?

5 A I called Keith Rivers, which is a cousin
6 of mine.

7 Q Okay.

8 A I called Sharard's uncle, that's the
9 other cousin of mine.

10 Q Okay.

11 A Yes.

12 Q And what was the purpose of calling
13 Keith and Sharard?

14 A I called them to come get him, because I
15 was -- I was like, "Man, he's acting crazy." I
16 said, "There's like no calming him down."

17 Q Did you consider what he was doing to be
18 threatening or dangerous in any way?

19 A Yes, sir.

20 Q Threatening and dangerous to you
21 possibly?

22 A Yes, sir. I don't know why he directed
23 it -- he spit -- first, what really started it,
24 he spit on me.

25 Q Okay.

1 A He spit on my foot. And then when I
2 lifted my hair up, I was like, "Man, what's
3 wrong?" I said, "Why would you do that?" So I
4 told Arthur Washington, I was like, "This man
5 just spit on me."

6 Q At what point did he push you against
7 the wall?

8 A After he spit on my foot.

9 Q Okay. And you said he seemed to be
10 directing everything towards you --

11 A Yes, sir.

12 Q -- at that point? Do you know why?

13 A Not at all.

14 Q Has he ever done that before?

15 A No, sir.

16 Q Okay. Have you ever seen him do that to
17 anybody else --

18 A No.

19 Q -- before this night?

20 A No, sir.

21 Q Okay. All right, so you say you called
22 your cousin, Keith Rivers, and Sherard or Rod
23 Johnson?

24 A Yes, sir.

25 Q Why did you call them?

1 A Because he normally listens to them for
2 the most part, because they're a little bit
3 older, they're older family members we have.

4 Q He also -- does he normally listen to
5 Arthur Washington; is that true?

6 A Yes, sir.

7 Q Okay, but he wasn't that day, was he?

8 A No, sir.

9 Q Was he listening to you?

10 A No, sir.

11 Q Was he listening to anybody?

12 A No, sir.

13 Q Was he talking to anybody in particular
14 some of the time?

15 A To me he didn't. Mostly like directing
16 his anger and stuff towards me, and he was
17 talking to himself.

18 Q Okay. All right, so when you called
19 Sherard and you called Keith, were you able to
20 talk to them?

21 A I called and I talked to Sherard.

22 Q Uh-huh.

23 A And I told him to come get him.

24 Q Right. And is it your understanding
25 that, at some point, Sherard did come up there

1 to pick him up?

2 A As I was leaving -- as I was trying to
3 leave, that's when Sherard's car was coming down
4 the road, so I couldn't make the turn to leave
5 out.

6 Q Okay, we'll talk about that in a minute.
7 So the person that you had called to try to get
8 him out of there, and everybody's saying was
9 Sherard Johnson, right?

10 A Yes, sir.

11 Q Okay, and he's the one that ultimately,
12 timing-wise, pinned you in, as far as being able
13 to leave at the end, right?

14 A Yes, sir.

15 Q Okay. All right, now, after you called
16 Keith and Sherard, at any point did anybody try
17 to remove Anthony Rivers from the shed?

18 A Yes, sir.

19 Q Who tried to do that?

20 A Arthur Washington, Banger, Campbell,
21 Randy Moss.

22 Q Okay, so they were trying to physically
23 remove him from the shed?

24 A Yes, sir.

25 Q Did he want to leave the shed?

1 A No, sir.

2 Q Did he put up any type of resistance to
3 them trying to get him out of the shed?

4 A Yes, sir.

5 Q And tell us a little bit about that.

6 A Alexis told Art, "He needs to leave."
7 So Art was like, "You need to leave."

8 Q Uh-huh.

9 A So when he was holding -- when they was
10 taking him out, he was holding onto the door,
11 like, you know, like holding onto the rim of the
12 door to try to lock his feet. He was -- at the
13 same time he was still trying to charge at me
14 the whole time.

15 Q The whole time charging you?

16 A Yes, sir.

17 Q And you still don't know where this came
18 from or what happened?

19 A No, sir.

20 Q Okay. All right, do they eventually --
21 did they get him out successfully of the shed?

22 A Yes, sir. They eventually -- because he
23 fell down.

24 Q Right.

25 A Because I was standing in the far back

1 corner.

2 Q Okay, and who fell down?

3 A Arthur Washington and A.J.

4 Q And they were fighting so hard that
5 Arthur fell down with --

6 A Yes, sir.

7 Q -- A.J.

8 A Yes, sir.

9 Q Okay. What did A.J. do after he fell
10 down?

11 A He fought him off and punched in the
12 mouth, and that's when he said, like, "I'm not
13 dealing with that."

14 Q Okay. Did he try to get back into the
15 shed at any point?

16 A Yes, sir.

17 Q Okay, and you were in the shed?

18 A Yes, sir

19 Q Okay. All right, why were you staying
20 in the shed?

21 A Because they asked me to stay in there
22 to try to calm him down, and I felt bad for him,
23 so I stayed in the shed just, you know, just so
24 I didn't have to -- because they asked me to.

25 Q To stay out of it, okay. And how long

1 did you stay -- and meanwhile they're trying to
2 get him gone off the property, or whatever,
3 you're staying in the shed. How long did you
4 stay in the shed while all this was going on?

5 A Maybe about an hour -- I'd say an hour
6 and 30 minutes.

7 Q Okay, and who else was in the shed with
8 you?

9 A It was Banger, back outside and stuff,
10 trying to calm him down.

11 Q Okay, and it wasn't working?

12 A No, sir.

13 Q All right. So I assume if you're
14 staying in the shed and having to deal with him
15 has the card playing started yet?

16 A No, sir, I'm just standing there just
17 waiting. We actually didn't play any cards.

18 Q Okay. So at that point what, if
19 anything, is going through your mind, as far as
20 your future that night as far as playing cards?

21 A I told them, I said, "I'm -- I'm not
22 comfortable right now to play cards," I said, "I
23 would rather go home, because," I said, "I don't
24 feel safe her no more."

25 Q And why didn't you feel comfortable to

1 stay?

2 A Because he wouldn't leave off the
3 property, and he just was out of control.

4 Q Had you ever seen him in that -- act
5 like that before?

6 A No, sir.

7 Q Okay. So you're telling them that, but
8 who is it that's keeping you from leaving?

9 A They had me locked in. Alexis and
10 Arthur even offered to try to put him in his
11 car.

12 Q Okay. When you say they locked you in
13 the shed, what do you mean by that?

14 A They locked the inside of the shed so
15 that he couldn't come back in there and try
16 to --

17 Q They locked the inside of the shed?

18 A Yes, sir.

19 Q Okay. There wasn't an actual physical
20 lock on the outside of the shed, was there --

21 A No, sir.

22 Q -- locking you in?

23 A No, sir.

24 Q Okay. That wouldn't make much sense to
25 have a lock on the outside of the shed, would

1 it?

2 A No, sir.

3 Q No? Okay. So you're ready to get out
4 of there?

5 A Yes, sir.

6 Q Okay, and at some point you said an
7 hour, hour and a half, at some point did he --
8 did you attempt to leave?

9 A After a while Arthur Washington came
10 back to the shed, and he's like, "Listen, I
11 can't hold you here no longer." I said, "Man,
12 all right," I said, "you'all just hold him so I
13 can get to my car so I can go home."

14 Q Okay. Now, at any time do you remember
15 Arthur retrieving a gun?

16 A Yes, sir.

17 Q From the timeline, when did he go get
18 that gun out of the house?

19 A While he was outside calming Mr. Rivers
20 down.

21 Q He went to go get a gun?

22 A Yes, sir.

23 Q Okay, and what, if anything, did Arthur
24 Washington do with that gun?

25 A He gave it to his wife, so she could

1 protect herself.

2 Q Okay.

3 A So I could leave, that's why he did it.

4 Q Okay. And did she put it in the shed,
5 or did she hang onto it, or take it back to the
6 house; do you know?

7 A She stayed in the shed with me with the
8 shotgun.

9 Q She stood in the shed with you and the
10 shotgun?

11 A Yes, sir.

12 Q Okay, so now we've got AK-47, shotgun
13 and pistol, and then the gun that you brought?

14 A Yes, sir.

15 Q All in the shed?

16 A Yes, sir.

17 Q Okay. Are you able to watch everything
18 at the same time with the guns?

19 A Yes, sir.

20 Q Okay. Now, when all this stuff was
21 going on, Stephan, for the hour and a half or
22 whatever it happened, did you have eyes on
23 Anthony Rivers?

24 A Yes, sir.

25 Q Okay, when he was inside the shed, did

1 you always have eyes on him?

2 A Yes, sir.

3 Q Okay, when he was outside the shed, were
4 you able to see him?

5 A Yes, sir, I could.

6 Q How were you able to see him from the
7 shed?

8 A Where I was standing, I was standing by
9 a window --

10 Q Uh-huh.

11 A -- and I was looking outside like
12 watching everything go on.

13 Q Okay.

14 A He said --

15 Q And could he see you in the window; do
16 you know?

17 A Yeah, at one point in time he came to
18 the window, and he started saying stuff to me.

19 Q Saying stuff to you?

20 A Yes, sir.

21 Q You're inside the shed, he's outside and
22 he won't leave?

23 A Yes, sir.

24 Q Okay. All right. All right, so then we
25 were talking about you said that -- tell us

1 about when you tried to leave.

2 A All right, when I tried to leave Randy
3 was like, "You don't want to do that now."

4 I said, "I know that boy's going crazy
5 out there." So Randy was like --

6 MS. MOLINA: I would object to the hearsay.

7 MR. LEE: All right.

8 THE COURT: Sustained.

9 BY MR. LEE:

10 Q You can't talk about what somebody else
11 said.

12 A All right, well, he wanted --

13 Q Let's just go back to you, it was your
14 decision to leave.

15 A I wanted to leave, so I'm leaving. I
16 asked if they'd walk me to my car, and that's
17 when --

18 Q Who's walking you to your car?

19 A Randy and Akeem, they were leaving with
20 me.

21 Q They were gonna leave with you?

22 A Yes, sir.

23 Q All right. And then where is Anthony
24 Rivers, Jr. at this time?

25 A He's off to the side.

1 Q And who's with him, if anybody?

2 A Arthur Washington.

3 Q Okay. And are they physically
4 restraining Anthony Rivers, Jr.?

5 A Not really, they were just kinda
6 standing between me and --

7 Q Okay, and then you decide that you're
8 leaving?

9 A Yes, sir.

10 Q And Akeem and Randy of course go with
11 you?

12 A Yes, sir.

13 Q In your car?

14 A It was starting to get dark, and I felt
15 -- I mean it gets worse when it gets dark.

16 Q And is it dark out there?

17 A Yes, sir.

18 Q Okay. And this is probably --
19 especially after 10:00 p.m., or whatever, right?

20 A Yes, sir.

21 Q All right, so you're going to your car,
22 still parked in the same place --

23 A Yes, sir.

24 Q -- Stephan?

25 A Yes, sir.

1 Q Backed in?

2 A Yes, sir.

3 Q Okay, so you went from the shed to your
4 car?

5 A Yes, sir.

6 Q Okay. What happened -- so you've got
7 guys on either side?

8 A Yes, sir.

9 Q Okay. What happened, if anything,
10 between your walk from the shed to your walk to
11 your car to leave?

12 A Oh he charged at me.

13 Q Who's he?

14 A Anthony Rivers.

15 Q So even though people were with him, he
16 was able to charge towards you?

17 A Yes, sir.

18 Q Okay. Did he make contact with you?

19 A He came in contact with me, yes.

20 Q And how would you describe his
21 appearance and demeanor when he was coming
22 towards you?

23 A He was trying to give me bodily harm.

24 Q Was he running?

25 A Yes, sir.

1 Q Was he still talking to himself, or
2 making weird noises?

3 A He was telling me what he's going to do
4 to me, and stuff like that.

5 Q Okay. And it wasn't something you
6 wanted done to you I assume?

7 A No, sir.

8 Q So when he gets to you, it's between the
9 G shed and your car? When you walk from the G
10 shed to your car, did it happen during that
11 walk?

12 A Like -- yes, sir.

13 Q Okay, all right. And tell us a little
14 bit about what transpired once he reached you.

15 A When he was reaching me, I kind of like
16 -- and I did have my weapon in my hand, because
17 I was walking to my car --

18 Q Right.

19 A -- and that's when I was kind of like --
20 I didn't mean to pistol whip him, or anything
21 like that, because I dropped my gun.

22 Q You dropped it?

23 A Yes, sir.

24 Q Okay, without the gun?

25 A Without the gun.

1 Q Okay. And, obviously, you landed some
2 hits though I mean right? You --

3 A Yes, sir.

4 Q Okay. And then how long of a fight was
5 it?

6 A I'd say probably about maybe two
7 minutes, three minutes.

8 Q Okay. And at the end of the fight where
9 is Anthony Rivers, Jr.?

10 A At the end of the fight, I had him -- he
11 ended up in the front of my car --

12 Q All right.

13 A -- I had him pinned down --

14 Q Uh-huh.

15 A -- because I was like it wasn't -- it's
16 not worth it, so I asked Arthur and the rest of
17 them other, or somebody, "Please hold him down,
18 so I can get in my car and get out of here."

19 Q And you said that in front of Anthony
20 Rivers, "Somebody hold him down, so I can get in
21 my car and get out of here?"

22 A Yes, sir.

23 Q All right.

24 A Yes.

25 Q Okay. And did they do that?

1 A No, sir.

2 Q Did they try to?

3 A No, sir.

4 Q Okay. So you get in your car, are you
5 in a hurry at this point?

6 A Yes, sir.

7 Q Okay. Do Akeem and Randy actually ride
8 with you or not?

9 A No, sir, I had to leave.

10 Q So you didn't wait on them?

11 A No, sir.

12 Q Okay, so you start -- you pull your car
13 out, where's Anthony Rivers at this point?

14 A He's kind of like standing up -- well,
15 not standing up, he's kind of like getting up,
16 so when I -- when he's getting up I'm driving
17 around in front of my car.

18 Q And there are still people around?

19 A Yes, sir.

20 Q Okay. At this point, do you know the
21 location of any of the weapons that were in the
22 shed?

23 A No, sir.

24 Q Okay. Do you know if Anthony Rivers
25 might have gone back in that shed?

1 A No, sir.

2 Q Okay. So as you start to leave, do you
3 just crank up your car and immediately go, or
4 did you have to drive around anybody, or tell us
5 about when you started to leave down the road.

6 A All right, there's cars lined up on the
7 side of me, so I couldn't just go straight to
8 the right. And if I would have kept going
9 straight, I would have hit him with my car.

10 Q Okay.

11 A So I had to kind of go -- I went around
12 him, and I started driving down the road.

13 Q So if you would have kept going
14 straight, you could have, or you would have just
15 run over him?

16 A Yes, sir.

17 Q Okay, but you didn't do that?

18 A No, sir.

19 Q Okay. All right. Did you -- when you
20 took your wallet in the shed, did you leave it
21 in the shed, or did you put it in your pocket,
22 or what did you do?

23 A I put it in my pocket, but I had on gym
24 shorts.

25 Q Did you have your wallet with you when

1 you left?

2 A Yes, sir.

3 Q Okay. So you have to go around, and
4 you're driving. At that point, what's going
5 through your mind?

6 A In my mind, I'm not sure.

7 Q All right, and --

8 A Well, I thought it was over until
9 everything else transpired.

10 Q Okay. As soon as you start to leave --

11 A Yes, sir.

12 Q -- and did you have to stop on the way
13 out, or slow down for any reason?

14 A I had to stop, because this car had --
15 at the time I didn't no whose car it was --

16 Q Uh-huh.

17 A -- because the headlights were coming --

18 Q Right.

19 A -- so I couldn't see --

20 Q Okay.

21 A -- but the car was coming down the --

22 Q Okay.

23 A -- road, so I had to stop. I got as far
24 up as I could.

25 Q Okay, all right. And so then you slowed

1 down or came to a stop to let the other person
2 go through?

3 A Yes, I had to, because they were already
4 almost there.

5 Q Okay. And we're talking about that
6 short little road, a dirt road that kinda goes
7 in there?

8 A Yes.

9 Q Where's your gun?

10 A When I got my -- I got my phone back
11 from Art --

12 Q Uh-huh.

13 A -- I had my gun in my lap --

14 Q Okay.

15 A -- and I had my clip sitting on the
16 floor.

17 Q Okay. So you laid down your gun, you're
18 driving out. And then did anything happen
19 between when you were able to crank up your car,
20 get in it, go around people and drive down, did
21 anything happen before you got to where Sherard
22 Johnson was coming in at the corner?

23 A The only thing that happened was when I
24 got in my car, I heard my wallet fall out, so I
25 had to open -- I was kind of reaching out of my

1 car and grabbing my wallet.

2 Q Okay, so you actually had to slow down,
3 or you stopped, opened your door to reach down
4 to get your wallet, right?

5 A Yes, sir.

6 Q Okay. All right. Now, does your --
7 does the automatic window on your car work or
8 not work?

9 A Not for my driver window.

10 Q Your driver window does not work?

11 A No, sir.

12 Q So like if you go to the drive-thru, you
13 go to open your door to get --

14 A I open the door, yes, sir.

15 Q All right, all right. As you're going
16 down towards Sherard Johnson - which turns out
17 to be Sherard Johnson's car, what's your next
18 interaction with Anthony Rivers, Jr.?

19 A My door swung open, and at that time I
20 feared for my life, because, you know, he just
21 popped up behind me, and he opened my door.

22 Q Did you -- sorry. Did you think you
23 were out of there; that it was over?

24 A Yes, sir.

25 Q Okay. Did you let your guard down at

1 all?

2 A Yes, sir.

3 Q Okay, all right. Did you see anybody
4 running behind your car?

5 A No, sir.

6 Q Did you hear anybody banging on your
7 trunk or anything?

8 A After a while, yes, sir.

9 Q Okay. And at what point did your -- did
10 you open your door at any point?

11 A No, sir.

12 Q How did your door get the open?

13 A He opened my door.

14 Q Do you know who was opening it at the
15 time?

16 A No, sir.

17 Q Okay. When your door opened, what went
18 through your mind?

19 A I was in fear for my life, 'cause you
20 don't know what's gonna happen to you, if
21 somebody opens your door, it's dark, and you're
22 trying to leave there.

23 Q Prior to your door being open by Rivers,
24 did you receive any warning, or hear anything?

25 A I heard somebody say, "Steph, watch

1 out."

2 Q You heard somebody say, "Steph, watch
3 out?"

4 A Yes, sir.

5 Q And was that immediately before your
6 door opened?

7 A Yes, sir.

8 Q Do you know who might have said that?

9 A Akeem.

10 Q Okay. But you were close enough to
11 where he said it and you could hear --

12 A Yes, sir.

13 Q -- "Steph, watch out?"

14 A Yes, sir.

15 Q And how long after that was your door
16 opened?

17 A Right after he yelled it.

18 Q Okay. All right. The gun was already
19 in your lap or on the side, and you got your
20 gun?

21 A Yes, sir.

22 Q Okay. And what did you do with your
23 gun?

24 A I fired a shot.

25 Q Okay. Did you know exactly who it was?

1 A No, sir.

2 Q Did you get a good look at who was
3 opening your door?

4 A Yes, sir. Once he -- when he opened my
5 -- once he opened my door, I realized who it
6 was, because of the way he was coming at me, and
7 the things that he was saying.

8 Q Okay. I know it's hard to remember
9 things, but in that instant that he opened your
10 door, and you looked, can you describe the look
11 on his face?

12 A His look was -- he wanted to -- his look
13 was like he wanted to -- he was ashamed of what
14 happened to him, and he wanted to do whatever he
15 could to hurt me in that car, sir.

16 Q Now, I should have, but I forgot, when
17 you started to testify, you understand, Stephan,
18 as somebody who's been charged with a crime,
19 that you have something called a Fifth Amendment
20 Right to not testify; do you understand that?

21 A Yes, sir.

22 Q Okay, and when somebody says, "I'm
23 taking the Fifth," it means, hey, I'm not gonna
24 testify against myself; are you --

25 A Yes, sir.

1 Q -- familiar with that?

2 A Yes, sir.

3 Q Okay, and are you also aware that if you
4 didn't testify, that the jury would be told by
5 the Judge, "Hey, you can't hold it against
6 Stephan, or anybody else, because they chose not
7 to testify, they have a constitutional right not
8 to testify;" do you understand that?

9 A Yes, sir.

10 Q But you decided to testify anyway,
11 right?

12 A Yes, sir.

13 Q And why did you decide to testify?

14 A Because the truth needs to be out there,
15 and I'm sorry about the situation, and how
16 everything played out, but I had to tell the
17 truth. I had to let them know what's -- my side
18 of the story.

19 Q So you wanted everybody to hear it?

20 A I beg your pardon?

21 Q Do you want everybody to hear it?

22 A Yes, sir.

23 Q I mean his family, your family the
24 truth?

25 A Yes, sir.

1 Q And you also understand that by getting
2 on the stand, and, again, the Judge would have
3 told the jury, "You can't even talk about if
4 somebody chose not to testify," right?

5 Do you understand that?

6 A Yes, sir.

7 Q They wouldn't be able to talk about it.
8 Do you also understand that if you put yourself
9 out there like this, that you are subject to
10 what's called cross-examination --

11 A Yes, sir.

12 Q -- right?

13 A Yes, sir.

14 Q Which means the State gets to go up
15 there and ask you questions, just like we've
16 gotten to ask Byrd, Banger and Pumpkin questions
17 when they were the State's witnesses, right?

18 A Yes, sir.

19 Q Do you understand that?

20 A Yes, sir.

21 Q Okay. How often do you think about the
22 night of May 29th, 2021, Stephan?

23 A I think about it --

24 Q A lot? Do you ever question whether you
25 could have done something different?

1 A No, sir, because I believe I did
2 everything that I could, because I tried to get
3 out of there. I just wanted to get out of
4 there.

5 Q Did you want to shoot him?

6 A No. No, I didn't want to shoot nobody.
7 I've done killed a man.

8 Q Are you glad you shot him?

9 A No, sir.

10 Q Did you do what you needed to do?

11 A I did what I had to do, because I didn't
12 have no other choice in it.

13 Q When all this happened, a day or two
14 later you went and talked to a lawyer, Mr. Moss,
15 right?

16 A Yes, sir.

17 Q Okay, just to get some legal advice?

18 A Just to get some legal advice, and I
19 didn't know what was gonna happen.

20 Q Okay. Did you know that the word on the
21 street, people were talking at Chaplin Grocery,
22 and there were rumors flying, and that sort of
23 thing? Have you heard some of those?

24 A I heard a rumor, you know --

25 Q Okay.

1 A -- yes, sir.

2 Q All right, so you went to go talk to the
3 lawyer, Mr. Moss?

4 A Yes, sir.

5 Q Okay, and you did need him as a lawyer
6 later on, didn't you?

7 A A few months later, yes.

8 Q Now, on the day you went and saw him,
9 how long did you talk to him?

10 A About 15 minutes --

11 Q 15 minutes?

12 A -- 25 minutes.

13 Q Okay, and kind of went through briefly
14 what happened?

15 A Yes, sir.

16 Q Okay. And then what, if anything, did
17 Mr. Moss do with you after you talked to him for
18 a little bit?

19 A He took me to the detectives.

20 Q So Mr. Moss, your former attorney,
21 actually called the detectives and said,
22 "Stephan Polite's over here, and we want to talk
23 to you?"

24 A Yes, sir.

25 Q Okay. How did you feel about that?

1 A I didn't -- I don't know.

2 Q Did you know Mr. Moss at that time?

3 A No, sir.

4 Q Okay. Tell us what your impression --
5 looking back, tell us what your impression of
6 Mr. Moss and his legal advice to you, tell us a
7 little bit about that.

8 A He --

9 Q What was your impression of Mr. Moss as
10 a lawyer with regard to you?

11 And so did you feel comfortable or
12 uncomfortable with him giving you legal
13 advice?

14 A No, I didn't, that's why I got you.

15 Q Okay. But you and he did go and talk
16 with Byrd --

17 A Yes, sir.

18 Q -- like a couple days later, right?

19 A Yes, sir.

20 Q And did Mr. Moss kind of talk the most?

21 A Yes, sir.

22 Q Got it. And was it your impression that
23 he was just gonna go give them some information,
24 and he was advising you not to talk?

25 A Yes, sir.

1 Q But, in fact, that conversation changed
2 a little bit, because Moss started asking you
3 some questions, and so did the detective, right?

4 A Yes, sir.

5 Q Okay. And did you answer those
6 questions?

7 A Which questions? Which questions,
8 questions from Moss or --

9 Q Well, let me ask a different question.
10 How long did you and Attorney Moss talk with
11 Byrd that day?

12 A Probably like -- we were probably there
13 for like ten minutes, or something like that.

14 Q And at that meeting, did you agree, or
15 did Moss agree for you to turn over the Grand
16 Marquis to law enforcement?

17 A Called a couple days later and he asked
18 for the car. I told him sure, and I gave them
19 my car.

20 Q All right, and you turned over your gun
21 as well?

22 A Yes, sir.

23 Q Okay. The same gun that's up there?

24 A Yes, sir.

25 Q The same gun that was involved?

1 A Yes, sir.

2 Q Okay. And you didn't throw it in the
3 river, you didn't hide it, you didn't --

4 A No, sir.

5 Q Stephan, it's been almost three years
6 since this happened.

7 A Uh-huh.

8 Q Can you tell us how it's affected you
9 between January 29th, 2021, and today, that
10 you're in trial for a murder?

11 A Everything is affected.

12 Q Because of this?

13 A Yes, sir.

14 Q And you're not allowed to travel to go
15 see them --

16 A No, sir.

17 Q -- as part of your bond?

18 A No, sir.

19 Q Has that affected your relationship with
20 your children?

21 A I guess it has, but I don't speak to
22 them, and things like that.

23 Q Is that tough?

24 A Uh-huh. Yes.

25 Q Has it affected your relationship with

1 your friends and family over here --

2 A Yes.

3 Q -- on this side?

4 A Yes, sir. Yes, sir.

5 Q It seems like every witness they don't
6 agree on much, but everybody says this is a sad
7 story; do you agree with that?

8 A Yes, sir.

9 Q Are you sorry it happened?

10 A Yes, sir.

11 Q If there was any way to undo it, would
12 you?

13 A I would, if I could.

14 MR. LEE: that's all the questions I
15 have, Your Honor.

16 THE COURT: Cross-examination?

17 MS. MOLINA: Judge, may we approach?

18 THE COURT: You may. Would you like to
19 stand up and stretch a minute, ladies and
20 gentlemen, while I speak with the attorneys?

21 (Bench conference.)

22 THE COURT: All right, let's come back
23 to order.

24 BAILIFF: Order in the Court, please.

25 THE COURT: We're trying to figure out

1 the schedule, and I believe it'd be in
2 everybody's best interest for us to go to lunch
3 now and come back at 1:30, and we'll resume
4 cross-examination and presentation of evidence.

5 I'll remind you don't let anybody talk to
6 you about the case, and you don't talk to about
7 the case. See you back at 1:30, ladies and
8 gentlemen.

9 (Jury exits the courtroom.)

10 BAILIFF: The jury's cleared, Your
11 Honor.

12 THE COURT: Let's take just a minute and
13 try to figure out what we're going to do with
14 the rest of the day.

15 COURT REPORTER: Is this on the record,
16 sir?

17 THE COURT: What?

18 COURT REPORTER: Is this on the record?

19 THE COURT: Yeah.

20 MR. LEE: Can my client come off the
21 stand?

22 THE COURT: I'm sorry?

23 MR. LEE: Can my client come off the
24 stand over here?

25 THE COURT: Yeah, he can step down.

1 MR. LEE: And I told the Solicitor, and
2 I will tell the Court and tell him, I'm not
3 gonna talk to him about his testimony during the
4 break, he's under oath, so I'm advising him, the
5 Court and the Solicitor that I will not talk to
6 him about his testimony.

7 THE COURT: Okay. Any idea whether you
8 would actually call additional witnesses? I
9 know what you said earlier, but --

10 MR. LEE: I don't plan on it.

11 THE COURT: All right, and let's just
12 suppose we're talking about another hour, hour
13 and a half with cross and redirect, we're
14 looking at 2:30, maybe 3:00. Any idea whether
15 the State would recall anyone in reply?

16 MS. MOLINA: The State doesn't -- I
17 don't perceive of recalling anybody. Obviously,
18 it depends on what he says, but even so, if
19 there was recalling, I don't imagine that that
20 testimony would be very long.

21 THE COURT: Okay, which brings us to
22 this, we have to have a charge conference, 3:30,
23 argue, charge, give the case to the jury at 5
24 o'clock, or come back tomorrow? I don't like
25 giving cases to juries at 5 o'clock.

1 MR. LEE: I don't either.

2 MS. MOLINA: And my preference would be,
3 if deliberations will be tomorrow, that we argue
4 and charge in the morning when everything is
5 fresh for them, instead of arguing and charging,
6 and then having them come back, but that's just
7 the State's preference.

8 THE COURT: I feel the same way, but Mr.
9 Lee?

10 MR. LEE: Well, Your Honor. I think I'm
11 already outvoted, but that would certainly be
12 fine with me. I will tell you that I have --
13 I've got some post-jury charges, in fact, I can
14 pass it up.

15 THE COURT: Great.

16 MS. MOLINA: And also putting on the
17 record being able to ask the Defendant about his
18 interview.

19 THE COURT: Yeah, for the record we had
20 a sidebar addressing that issue just a few
21 moments ago, and the defense counsel argues, and
22 I don't want to put words in his mouth, that the
23 question being proposed by the State is
24 protected. Probably briefly you need to go back
25 over that again.

1 MR. LEE: Yes, sir, my position on that
2 is, it's my understanding that the prosecutor
3 wants to on cross-examination inquire into
4 instances during the interview with Jim Moss and
5 my client and Sergeant Byrd.

6 It's my understanding she wants to cross-
7 examine my client and talk about the times
8 during the interview where my client, through
9 his lawyer, refused to answer the questions,
10 and, essentially, asserted his Miranda right,
11 which he was not given Miranda rights, but,
12 obviously, you don't have to be given Miranda
13 rights; in order to have them, we all have them.
14 And I believe it's improper for her to question
15 him as to questions that were asked, in which he
16 and/or his lawyer said, "He's not going to
17 answer." I think it's improper. I think that
18 you can waive Miranda in full, in part.

19 I think you can answer questions 1 through
20 6, but not 7 and 8, answer 9 and 10, and you can
21 say, "I'm not talking to you at all, but I'm
22 gonna talk to until I don't like the questions."
23 And I think that's what it was, it was a
24 selected invocation of Miranda, which is fine.
25 And I think commenting on a defendant's silence

1 is inappropriate.

2 THE COURT: All right, and Solicitor?

3 MS. MOLINA: I would just point back to
4 the case that I handed up to Your Honor, in
5 which on page 7 it says, "The State may point
6 out a defendant's silence prior to arrest, or
7 his silence after arrest, but prior to giving
8 the Miranda warnings, in order to impeach the
9 defendant's testimony at trial.

10 Due process is not violated, because
11 silence is probative, and does not rest on any
12 implied assurances by law enforcement
13 authorities."

14 THE COURT: And the reason is that
15 because of the impression that he's given, as we
16 discussed at sidebar?

17 MS. MOLINA: Yes, because going further
18 on this page, challenge a defendant's intention
19 that he told -- he spoke to police when he
20 actually did not.

21 MR. LEE: I never used the word
22 exculpatory. I never said he fully cooperated.
23 I don't think I asked him really any questions
24 about what he said during that interview, and
25 what Moss said during that interview.

1 I didn't testify -- I said that they went
2 down there and they agreed to ultimately give
3 them the car and the gun.

4 I never asked him, that I remember,
5 anything that he said. I never tried to use a
6 prior consistent statement that he made during
7 the interview, and I don't think I can talk
8 about a prior statement, but if she goes where
9 she wants to go, I think she opens the door for
10 me to then say, "You told a smaller very limited
11 story about this guy trying to get in your car,
12 didn't you? You said it on day two after this
13 happened." And I didn't ask any questions, that
14 I remember, about the substance of the statement
15 that was given to law enforcement, correct me if
16 I'm wrong.

17 THE COURT: I don't think you did.

18 MS. MOLINA: The State --

19 MR. LEE: So how have I opened the door
20 by having him testify today, as to what
21 happened? I didn't say, "You said this before,
22 hadn't you?" If I said, "You said this whole
23 thing before, this is the second time," he's
24 always been -- she might be able to impeach him
25 and say, "Well, you didn't say this, you didn't

1 say that, you took the Fifth on that." I didn't
2 mention the statement that he gave, the
3 substance of it, that he gave on June 1st or
4 Juen 2nd of 2021.

5 MS. MOLINA: The substance was already
6 brought out in the State's case through
7 Investigator Byrd. The Defendant --

8 MR. LEE: They brought it up.

9 MS. MOLINA: As a party statement. The
10 Defendant up there just testified about going in
11 with Moss, and he had a lawyer, and he agreed to
12 go in and talk with his lawyer, and he was
13 uncomfortable with the legal advice, and Moss
14 was talking, but then he agreed to turn over the
15 gun and the car. And I believe in the State's
16 case the defense pointed out that Stephan did go
17 in and talk to them, and he was cooperating.

18 The case that I handed up in the sentence
19 after challenging a defendant's contention about
20 his story, it says, "Explaining Doyle is not
21 violated when the Defendant opens the door to
22 cross-examination on post-direct silence, by
23 testifying on direct he told police what
24 happened, and the lawyer stated the same in
25 opening and closing."

1 And then further it cites another case,
2 "Finding no Doyle violation, because when a
3 defendant attempts to convince a jury that he
4 was a cooperative spirit, Doyle does not tie the
5 hands of a prosecutor, who attempts to rebut
6 this presentation by pointing to a lack of
7 cooperation."

8 MR. LEE: I don't think it's a Doyle
9 issue. I have not -- we haven't come in and
10 said that he was fully cooperative, that he's
11 told his story before, that he's consistent in
12 what he said. We didn't go there at all. We
13 said that which came out -- and, again, in her
14 case it came out, and I believe it came out
15 during Byrd's direct, not his cross, that he did
16 go down there and talk to them.

17 And I, you know, I mean I just don't --
18 I just think, you know, saying, "Well, he took
19 Miranda, he didn't cooperate, he's got something
20 to hide, because he invoked Miranda on a certain
21 question through his lawyer," I just think that
22 that's too vague theory to get that in on
23 something that's as important as Miranda.

24 MS. MOLINA: He didn't invoke Miranda,
25 because he wasn't entitled to Miranda.

1 MR. LEE: Yes, he was.

2 MS. MOLINA: And --

3 MR. LEE: You don't have to be read
4 Miranda to have Miranda, I have it right now.

5 THE COURT: Let her finish.

6 MS. MOLINA: It was pre-arrest, we did
7 the Denno hearing, and he voluntarily went in
8 there. So even if he was Mirandized, I believe
9 this case discusses, even if he was Mirandized -
10 - I apologize. I lost it, Your Honor, but he
11 went in there voluntarily.

12 He's given the spirit that he's cooperated
13 with law enforcement. Under the hearsay rules,
14 he's adopted the statements of his attorney, by
15 not rebutting them when he had the opportunity,
16 and the State should be allowed to point out
17 that he was not fully cooperative with law
18 enforcement.

19 And that he has said things here today that
20 he did not tell them then. Especially when the
21 defense has pointed out on all of the other
22 witnesses and law enforcement, that not being
23 truthful impedes the investigation, makes things
24 harder, and everybody -- all the witnesses are
25 lying, but his client, the Defendant, cooperated

1 and he didn't.

2 He cooperated some, but it wasn't full
3 cooperation, and the State should be able to
4 impeach him with that.

5 MR. LEE: Your Honor, once again, this is a
6 Defendant who has these constitutional rights we
7 need to worry about. And I guess there were
8 periods, well, since he didn't say exactly what
9 in exact detail exactly what he said today, that
10 means he's hiding something. I mean she's gonna
11 say, "Oh, you didn't say that, you took Miranda,
12 you didn't want to answer that question then."
13 I just think that punishing my client for taking
14 Miranda is inappropriate. It certainly, again,
15 doesn't send a very good message to law
16 enforcement or the Solicitor's Office, that,
17 hey, sure, we'd love to talk to you, come on
18 down here, but if you don't answer the questions
19 exactly that we ask, we're gonna use it against
20 you later on in court.

21 It's no wonder why nobody wants to talk to
22 law enforcement. That sends a bad message, if
23 nothing else, that you can't -- it's not all or
24 nothing. You can go in there and take the Fifth
25 on some things, not answer stuff, you know, you

1 can answer the questions you want, but because
2 you didn't provide the statement that they want
3 you to say or say something that they wanted you
4 to say that's incriminating, well, you didn't
5 answer that question, therefore, we're gonna use
6 that against you.

7 THE COURT: Well, to me, the only
8 question really, reviewing the State v. McIntosh
9 is whether he had, in fact, explicitly or
10 implicitly asserted cooperation. Because if he
11 has, if the Court finds that he has, then under
12 McIntosh it seems clear to the Court that the
13 Solicitor would be entitled to ask him about not
14 answering questions.

15 MR. LEE: Can I re-read McIntosh over
16 lunch and discuss it when we get back?

17 THE COURT: Fair enough, all right.
18 Let's go to lunch.

19 MR. LEE: Thank you, sir, what time do
20 you want us back?

21 THE COURT: The same time the jury's
22 coming back, 1:30.

23 MR. LEE: 1:30?

24 THE COURT: 1:30.

25 (Luncheon Recess)

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PROCEEDINGS CONTINUED

THE COURT: When we recessed for lunch,
we were gonna look at --

MR. LEE: Judge, and the situation is a little unique. And I would point out that McIntosh, you know, it talks about Doyle, which is Doyle v. Ohio, which is a classic case you'll learn in law school, but it appears that this is more of a case where someone is formally Mirandized, and in this case -- the present case we don't have that. And in McIntosh he was arrested and read his Miranda right, and chose not to speak to police, and then at trial the Solicitor questioned the Defendant at length about his failure to present his alibi defense to police, and they focused the jury's attention on Defendant's post-arrest silence as substantive evidence of his guilt.

So I think McIntosh -- I mean we don't have
a -- yeah, he wasn't Mirandized, he wasn't
Mirandized that day, he wasn't even arrested for

1 another three weeks, so I'm not sure that the
2 reliance on McIntosh is appropriate, because,
3 you know, there is a defining line that if
4 somebody is given their Miranda rights, and in
5 this case he was not given his Miranda rights,
6 and he, in fact, cooperated, and we stand by
7 that.

8 I think that the only -- I certainly think
9 that it could be argued that it is a prior
10 statement, and I think that -- and we have not
11 argued that it's a -- we have not argued that
12 statement. If the Solicitor can establish that
13 he made a prior inconsistent statement, I think
14 it's a pretty easy question.

15 If he says the car was red in his
16 interview, and he says it's green today, I think
17 she could impeach him with a prior inconsistent
18 statement; but what it appears they want to do
19 is to say, well, it's an inconsistent statement
20 because it wasn't included, you know, you took
21 the Fifth on answering that question, therefore,
22 it's an inconsistent statement that's been
23 previously made.

24 And I think that's where the rub is on
25 this, is I think she would have to follow the

1 normal prior inconsistent statement rule, and,
2 you know, if she thought there was a prior
3 inconsistent affirmative statement, not silence,
4 not exercising a constitutional right, she'd
5 have to follow the traditional rules, which is,
6 "Isn't it true that you gave a statement on such
7 and such date?" "Yes."

8 And you'd give him a chance to admit that
9 they made a prior inconsistent statement. If
10 they admit it, if the inquiry stops there, if
11 they deny it, you can prove it through
12 substantive evidence, and that's the standard
13 prior inconsistent statement, but I don't think
14 that the invocation of the right to remain
15 silent rises to the level of being a prior
16 inconsistent statement. And that's the only way
17 I think that they can try to get anything that
18 was said at the initial interview and based on -
19 - I mean he testified live, he was here, and if
20 he said something different back then,
21 substantively different, affirmatively
22 different, but by saying he didn't answer that
23 question, therefore, it's a prior inconsistent
24 statement, they wouldn't be able to challenge
25 him on that.

1 I don't think that's appropriate. So I
2 think McIntosh is good law, but I think it is a
3 different scenario, and it does not apply to the
4 situation we have here.

5 THE COURT: Well, looking at McIntosh on
6 page seven, in the first full paragraph, it
7 would apply to a defendant's right. At any
8 rate, Solicitor?

9 MS. MOLINA: It's the State's position
10 that he has indicated that he was cooperative
11 with police. The -- he did make the
12 inconsistent statement, through his agent, that
13 there was a struggle over the gun and the gun
14 went off, but in reference to the silence, that
15 is the impeachment of being cooperative, not an
16 inconsistent statement.

17 THE COURT: All right, the Court agrees
18 with the position and argument set forth by the
19 State. Does that mean we're ready for the jury?

20 MS. MOLINA: Yes, sir.

21 BAILIFF: Yes, Your Honor.

22 THE COURT: If they're all here.

23 MR. LEE: Judge, I would just point out
24 that, if she's gonna go there, that I believe
25 that she has to utilize the language that was

1 used, the statement, not her interpretation or
2 spin of what was said. Because, again, it's not
3 her statement and how she reads it, it's what
4 was said, and they have it written out what was
5 said.

6 THE COURT: The question that was asked?
7 I don't remember what the question was.

8 MS. MOLINA: It's to impeach the
9 assertion that he was cooperative, not to get
10 into the details. "So did you go and talk to
11 law enforcement, and answer all of their
12 questions?" "No." "Did you review some?" And
13 then move on.

14 THE COURT: It sounds simple enough to
15 me.

16 MR. LEE: Okay. I mean I still maintain
17 my objection, but I understand --

18 THE COURT: I understand.

19 MR. LEE: -- your ruling. Do you want
20 my client to get on the stand before they come
21 in?

22 THE COURT: If he could, certainly.

23 BAILIFF: The jury's entering the
24 courtroom, Your Honor.

25 (Jury enters the courtroom.)

1 BAILIFF: The jury's seated, Your Honor.

2 THE COURT: Welcome back, ladies and
3 gentlemen.

4 Solicitor?

5 MS. MOLINA: Thank you, sir.

6 **

7 **CROSS-EXAMINATION**

8 BY MS. MOLINA:

9 Q On May 29th, 2021, you went to 10
10 Keystone Drive to play cards, right?

11 A Yes, ma'am.

12 Q And you were playing cards with your
13 friends and family members, right?

14 A Yes, ma'am.

15 Q And these were people that you routinely
16 played cards with, right?

17 A I suppose so.

18 Q And you don't drink, correct?

19 A No, ma'am.

20 Q Arthur, Alexis, Banger, Pumpkin were
21 amongst the guests, right?

22 A Yes.

23 Q And when A.J. arrived you heard him
24 screaming?

25 A Well --

1 Q You heard somebody screaming?

2 A Yes.

3 Q And then A.J. comes into the shed, pats
4 down Akeem, right?

5 A Yes.

6 Q Does he pat down Akeem in the shed?

7 A Basically, yes.

8 Q And Akeem pushed him off?

9 A Yes.

10 Q And at some point while you'all are in
11 the shed, you get up and go outside to your car,
12 right?

13 A Yes, ma'am.

14 Q And Banger followed you?

15 A No.

16 Q So you had already gone to your car and
17 closed the door, and were walking back inside?

18 A Yes.

19 Q And when you went back inside at that
20 point, or sometime shortly thereafter, A.J.
21 became threatening towards you?

22 A Yes.

23 Q And it took Art, Banger, Luan and Randy
24 to try to get him out of the shed?

25 A I believe so, yes, ma'am.

1 Q And those people are asking you to stay
2 inside the shed?

3 A Yes.

4 Q And at some point, Art got a gun, right?

5 A Yes.

6 Q And then Alexis had that gun?

7 A Yes.

8 Q And you and the victim are separated,
9 you in the shed, he's outside, and you're
10 looking at each other through the windows,
11 right?

12 A Yes.

13 Q And then after some time you tried to
14 leave the shed?

15 A Yes, ma'am.

16 Q And you tell people you're leaving,
17 right?

18 A Arthur Washington.

19 Q So you told people you were leaving,
20 right?

21 A Yes.

22 Q And you, in fact, walked out of the
23 shed?

24 A Yes, ma'am.

25 Q And A.J. is still outside, right?

1 A Yes.

2 Q And A.J. is surrounded by Arthur and
3 Alexis?

4 A No.

5 Q Who's he surrounded by?

6 A I'm not sure.

7 Q Okay, but Art's out there?

8 A Yes.

9 Q And while you're walking, A.J. confronts
10 you, right?

11 A He does.

12 Q And at that point, you do have your gun
13 in your hand, right?

14 A Yes.

15 Q But you -- this gun ends up on the
16 ground and into two pieces, right?

17 A Correct.

18 Q And then you guys fight, and you're on
19 top of him, right?

20 A Not on top.

21 Q You never pinned him down?

22 A No.

23 Q So he was on the ground?

24 A I wasn't on top of him.

25 Q How did you pin him down?

1 A We went down to the ground and he fell
2 down, and I flipped his legs over and down.

3 Q Okay. Did you punch him in the head?

4 A When?

5 Q During the fight.

6 A It's a fight, I can't tell you exactly
7 where I hit him.

8 Q Are you bigger than him?

9 A As far as height? Yes, ma'am.

10 Q And after the fight Randy Moss gives you
11 back your gun?

12 A Yes, ma'am.

13 Q And you get in your car to leave, right?
14 The gun's in your lap.

15 A Yes, and the clip was on the passenger
16 seat.

17 Q The clip's in the passenger seat?

18 A Yes, ma'am.

19 Q Okay. And as you're driving away,
20 there's another car coming in, right, and you
21 slow down to let that car in, right?

22 A Yes, ma'am.

23 Q Okay. And you testified that eventually
24 you hear some banging on your car?

25 A Yes, ma'am.

1 Q But before that you heard Akeem yell
2 something to you, right?

3 A Yes.

4 Q And the door opens, right?

5 A Yes.

6 Q And you shoot A.J.?

7 A My door opens, yes.

8 Q With your gun that doesn't have a clip
9 in it?

10 A Yes.

11 Q Okay. Did you rack your gun before you
12 went into the shed the first time, before A.J.
13 was there?

14 A No.

15 Q Did you rack it before you left the
16 shed?

17 A No.

18 Q Did you rack it when Randy Moss gave it
19 back to you?

20 A No, ma'am.

21 Q So it was an unloaded gun the whole
22 time?

23 A I didn't know if Moss did something to
24 it or not.

25 Q Okay. And when A.J. opens the door, you

1 see it's him, right?

2 A No, I see the door then I see it's him.

3 Q You see it's him?

4 A After a while I saw him.

5 Q Okay. And he didn't try to get in the
6 car, right?

7 A I knew he was gonna try to get in the
8 car.

9 Q He just opened the door and you shot
10 him, right?

11 A My car door opened foot was on the
12 brake.

13 Q Okay.

14 A My car moved forward some too. So he
15 did try to get in. With everything happening so
16 fast, ma'am, and I really -- so I don't recall.

17 Q Okay, but you did see --

18 A it exactly.

19 Q Okay, but you did see his face appearing
20 to be ashamed of what he had done is what you
21 testified to on direct, right?

22 A No, I was just scared.

23 Q You said, "The door opened, you saw the
24 look on his face, ashamed of what happened, and
25 him trying to hurt you."

1 A No, ma'am, I said, "My door opened," I
2 said, "He probably was ashamed because of that."
3 I never said he had an ashamed look on his face,
4 no.

5 Q Okay.

6 A I said he had a look of aggression, and
7 that he wanted to harm me.

8 Q Okay, but you saw his face?

9 A Yes.

10 Q And so after you shoot him and you see
11 it's your cousin that you helped, did you get
12 out and help him?

13 A No, ma'am.

14 Q And then once you were to safety, did
15 you call 911?

16 A I'm sorry.

17 Q Okay. Did you go to the hospital to
18 check on him?

19 A No, ma'am.

20 Q Okay. And this is the cousin you try to
21 help out a lot, right?

22 A Correct.

23 Q And in the days following the incident,
24 you, through your attorney, set up a meeting
25 with law enforcement, right?

1 A I didn't set up the appointment, my
2 attorney -- well, he wasn't my attorney, but I
3 did want to go up there, but he did, yeah, you
4 can say that, yes, ma'am.

5 Q And then you go in with your attorney
6 and your girlfriend to speak to law enforcement,
7 right?

8 A You can say that too. Yes, ma'am, you
9 can say that. Yes, ma'am.

10 Q And during that interview you named some
11 of the people that were there, right?

12 A Yes, ma'am.

13 Q Including Banger and Pumpkin?

14 A Yes, ma'am.

15 Q As people that law enforcement could
16 follow-up with, right?

17 A Yes, ma'am.

18 Q And during that, you acknowledged that
19 you were at this card party, and there was a
20 fight, right?

21 A Yes.

22 Q Did you correct him, if it was wrong?

23 A I told them the same thing.

24 Q But you did say to police who was there,
25 right? You told them that.

1 A Say what again? I don't remember. To
2 be honest with you, I don't recall.

3 Q Okay. You don't recall telling the
4 police who was at the party?

5 A Yeah, I do recall that.

6 Q So you told police that?

7 A Through my lawyer, yes. My lawyer I had
8 at the time, yes, ma'am.

9 Q And you also told police that they --
10 that you were locked in the shed, right?

11 A Yes.

12 Q And that A.J. was trying to attack you,
13 right?

14 A Correct.

15 Q And you acknowledged that the victim
16 opened your door, right?

17 A I believe that was said by my lawyer.

18 Q And you were fully cooperative with
19 police?

20 A Yes, as far as giving information, yes,
21 ma'am.

22 Q And you had your weapon in your car in
23 the 3 or 4 days in between, right?

24 A Correct.

25 Q And you stated that this incident has

1 prevented you from traveling to see your kids;
2 is that right?

3 A Right.

4 Q Because part of bond conditions were not
5 to leave the state, right?

6 A Yes.

7 Q But by consent order, weren't there a
8 few times where you were permitted to leave the
9 state to pick up or see your children?

10 A Not that I can recall.

11 Q So you were permitted to leave the state
12 to --

13 A Yes, ma'am.

14 Q -- see your children?

15 A Yes, ma'am.

16 Q Just not as often as you would have
17 liked?

18 A Yes, ma'am.

19 Q Do you recall the things that A.J. was
20 saying to you?

21 A Not all of them.

22 Q Not all of them?

23 A I don't remember, it was so long ago,
24 but --

25 Q You don't remember anything he said to

1 you?

2 A Not all of it.

3 Q Well, what do you remember?

4 A Basically, I remember what I just told
5 you,

6 Q Okay.

7 A I remember that.

8 Q Okay. When you shot A.J., was he
9 standing in the door?

10 A I don't remember.

11 Q You don't recall where he was standing
12 when you shot him?

13 A My foot was on the brake and when he
14 opened my car door I was obviously -- my car
15 went forward, so I couldn't tell you exactly
16 where he was at, at that time.

17 Q When you shot him, right?

18 A Correct.

19 Q But you don't know where he was when you
20 shot him?

21 A He was on the side of my car.

22 Q Next to your driver's door?

23 A He opened my driver's door, and he was
24 right there, yes, ma'am.

25 Q Okay. And at that point you had the

1 ability to leave and drive away?

2 A No, ma'am, because of the car that was
3 coming down the road. Two cars can't go down
4 that road at the same time. That's the reason
5 why, if the car wasn't coming down the road, I
6 would leave.

7 Q Right, but after you shot him, you had
8 the ability to leave, right?

9 A Yes, ma'am, because the car had cleared
10 out.

11 Q Okay, and you did leave?

12 A Yes.

13 Q And you were shot in 2017, right?

14 A Correct, correct.

15 Q At a card party?

16 A Yes, ma'am.

17 Q And so now when you go to card parties
18 you bring a loaded firearm?

19 A It's not -- it wasn't loaded.

20 Q You -- so you bring an unloaded firearm
21 to card parties for protection?

22 A If I have a situation that occurs, I
23 need to get my gun.

24 Q You run to your car and you load it?

25 A Not really.

1 Q But it's unloaded, right?

2 A It's not loaded.

3 MS. MOLINA: Nothing further.

4 MR. LEE: No redirect, Your Honor.

5 At this time the defense rests.

6 **

7 **DEFENSE RESTS**

8 THE COURT: You may step down. Anything in
9 reply from the State?

10 MS. MOLINA: Nothing from the State.

11 THE COURT: Ladies and gentlemen, it
12 appears that you have heard and seen all of the
13 information, all the facts that you're going to
14 receive in this case. What remains is for the
15 attorneys to make their closing arguments to
16 you, and for me to tell you about the law that
17 applies in the case. My guess is that's going
18 to take an hour, hour and a half, or something
19 like that.

20 So I'm going to ask you to retire to the
21 jury room right now for about 5 or 10 minutes
22 and you can decide whether you want to proceed
23 this evening with the trial of the case, or
24 whether you want to come back in the morning and
25 do this.

1 So I'll ask the Foreperson to poll the jury
2 and figure out what the pleasure is of the jury.

3 So if you'll please retire to the jury room
4 and let us know what you decide.

5 (Jury exits the courtroom.)

6 BAILIFF: The jury's cleared, Your Honor.

7 MR. LEE: Your Honor, at this time I'd like
8 to renew my previous motions made, renew our
9 objection to the denial of the stand your ground
10 motion, renew my motion for a directed verdict
11 for the reasons stated at the end of the State's
12 case, as well as renew the motion I made which
13 you denied, as far as me being able to get into
14 multiple, what we consider relevant convictions
15 of Althea Brown, which were numerous.

16 The convictions involved dishonesty, fraud,
17 et cetera, which were denied, because they were
18 not within the 10-year time period set forth in
19 the rules, and Your Honor found that the
20 exception to that, as far as inquiring into the
21 relevant facts and circumstances, and you found
22 that it did not.

23 Again, the effect of that is magnified I
24 believe, by the fact that the State called a
25 total of 2 fact witnesses. We called the

1 Defendant -- and when say fact, I should say
2 eyewitnesses who were there, rather than law
3 enforcement.

4 So 50 percent of the lay testimony that
5 came from the State's case came from Althea
6 Brown. Her credibility is certainly a great
7 issue in this, and we really believe that we
8 were severely hamstrung in our ability to
9 impeach Ms. Brown's testimony through not being
10 able to use those convictions that we sought to
11 introduce, but those would be my motions at this
12 time.

13 THE COURT: Anything from the State?

14 MS. MOLINA: The State would rest on its
15 previous arguments, sir.

16 THE COURT: As far as the motions and the
17 reasons for them are concerned, I'm going to
18 deny them.

19 MR. LEE: Well, I think we need to talk
20 about the charges, which I think will take a
21 little bit of time, but --

22 MS. MOLINA: Can I --

23 THE COURT: Have you'all had a chance to
24 look at the --

25 MS. MOLINA: I haven't. I was going to ask

1 for 10 minutes just to look through them, but --

2 MR. LEE: I mean however you want to handle
3 it, Judge, I mean I think -- I hate cutting
4 short something.

5 I mean, if we talk about charges for a
6 while and then we do closings -- I believe she'd
7 go first in full, I would close in full, and
8 then she would have a chance to rebut.

9 I don't know how long that will take, I
10 don't know how long the actual charging of the
11 jury will take, but I would think that it's 2:05
12 right now, I mean 4:35, 5:00 I think would be
13 the earliest we'd get it to the jury, and I
14 think that may want to just start in the
15 morning.

16 THE COURT: What is it you believe we need
17 to discuss concerning charges?

18 MR. LEE: Well, listen, I'm happy to do
19 things however Your Honor wants to do it.

20 THE COURT: Do you want to address that
21 now?

22 MR. LEE: Yes, sir. If they have any other
23 ones they want to submit or not, I don't know.
24 I mean we're ready, I just don't know if it's in
25 the best interest of the jury to get the case at

1 5 o'clock.

2 MS. MOLINA: If I could just have like 10
3 or 15 minutes --

4 THE COURT: Okay, sure.

5 MS. MOLINA: -- to review these? Thank
6 you.

7 THE COURT: We'll be at ease for a few
8 minutes.

9 BAILIFF: May I approach, Your Honor?

10 THE COURT: Yes. A note from the jury
11 states, "We wish to stay. We are delivering
12 tonight." Maybe means deliberating, I'm not
13 sure. The jury wants to stay, it sounds like.

14 MR. LEE: Yes, it does.

15 THE COURT: Solicitor, have you had a
16 chance to review the charges?

17 Let me ask you a couple questions about
18 charges, and I'm just not sure I've ever seen in
19 a murder case, the charge on intent, I don't
20 understand why that would be necessary in this
21 case, identification and proximate cause of
22 death.

23 MS. MOLINA: I agree on proximate cause of
24 death, and --

25 MR. LEE: That's fine.

1 MS. MOLINA: -- identification.

2 THE COURT: And I thought the intent was
3 covered with malice.

4 MS. MOLINA: I have no objection to leaving
5 it in.

6 MR. LEE: Agree, agree, agree. Take out
7 two and leave intent in, I agree with that, if
8 it's up to us.

9 THE COURT: I didn't understand what you
10 said, I'm sorry.

11 MR. LEE: Okay, I agree about taking out
12 approximate cause of death, we can take that
13 out, no objection. I just include that because
14 it was concluded by the Judge the last one I
15 tried, but I'm happy -- I don't think there's
16 any issue about that.

17 THE COURT: Proximate cause of death, okay.

18 MR. LEE: Take it out. Take out intent --
19 I mean take out identification, I agree with
20 that.

21 THE COURT: Okay.

22 THE COURT: I've never seen anybody ask for
23 a charge of intent in a murder case.

24 MR. LEE: I think every criminal act
25 necessarily involves some type of intent.

1 THE COURT: The charge of malice? What --
2 do both sides want it in?

3 MS. MOLINA: I don't object to keeping it
4 in.

5 THE COURT: Okay.

6 MR. LEE: I don't object either.

7 THE COURT: What about the remaining
8 charges submitted by the defense?

9 MS. MOLINA: In possession of a weapon
10 during the commission of a violent crime, in the
11 second paragraph just striking attempted murder.

12 MR. LEE: Let's take it out. You must
13 first find Defendant guilty of murder, take out
14 either or attempted murder on page 23.

15 Judge, one thing I just saw in there is, I
16 noticed that they were early on provided
17 notebooks to write in, and I think we probably
18 need to include something in the standard
19 language about some of you may have taken notes.
20 How does it usually go?

21 Yes, some people take better notes than
22 others, some people write down stuff they think
23 is important, so I guess use your notes to
24 supplement, but allowing your memory rather than
25 what may be written down.

1 THE COURT: Okay.

2 MR. LEE: There should be a standard --

3 THE COURT: This is the only County I find
4 that people request to take notes on a regular
5 basis.

6 MR. LEE: Really?

7 MS. MOLINA: For self-defense I found one
8 that's different from a case, and I'll hand it
9 to Mr. Lee.

10 THE COURT: What? I'm sorry, I didn't
11 understand.

12 MS. MOLINA: I apologize. I'm passing up a
13 proposed self-defense charge, and it's a self-
14 defense charge taken from State v. Barron,
15 415SC475 2016.

16 THE COURT: What's the difference between
17 the 2?

18 MS. MOLINA: It includes adding the -- that
19 self-defense is necessity -- grounded in
20 necessity, and you may use such reasonable force
21 as necessary, even to take human life founded
22 upon either actual or reasonably apparent
23 necessity.

24 And I think -- I believe the one provided
25 by the defense talks about just bodily harm and

1 not serious bodily harm. In this case there's -
2 - the difference is the level of force and
3 deadly force, and that which being necessary to
4 defend from -- including the use of deadly
5 force, so serious bodily injury.

6 THE COURT: What we have in it, is this the
7 place you're referring to --

8 MS. MOLINA: It's in the beginning.

9 THE COURT: What page?

10 MS. MOLINA: Oh, the case or of those jury
11 charges?

12 MR. LEE: Self-defense starts on page 24,
13 Judge, the one I submitted.

14 MS. MOLINA: Yeah.

15 THE COURT: I'm trying to figure out where
16 the State's proposed charge is that language
17 that you wanted.

18 MS. MOLINA: On the first page that I
19 handed up to you, under the caption, self-
20 defense. Use force as is reasonably necessary,
21 even to the event of taking a life.

22 And then the next paragraph, the right of
23 self-defense is founded upon necessity. And
24 then the difference as to the first element
25 between mine and the defense's is, without fault

1 in bringing on the immediate difficulty, giving
2 rise to the necessity of using deadly force.
3 His stops at bringing on the difficulty.

4 THE COURT: Slow down, say it a little bit
5 louder.

6 MS. MOLINA: In my proposed language under
7 the first element, bringing on the difficulty, I
8 included which gave rise to the necessity of
9 using deadly force, which resulted in the taking
10 of human life. And then that next portion, one
11 cannot provoke initiator, otherwise, through his
12 own fault bring about a difficulty, and then
13 claim the right to self-defense and the use of
14 deadly force against an attack which was caused
15 by that provocation.

16 THE COURT: Okay.

17 MR. LEE: Your Honor, I believe that mine
18 absolutely mirrors State v. Glenn, which we
19 talked about earlier. I think I got it straight
20 from that. If I didn't pass up Glenn, I mean it
21 states these are the four elements of self-
22 defense, it's State v. Glenn.

23 THE COURT: I'm trying to figure out the
24 difference between the two. I think both may be
25 about the same.

1 MS. MOLINA: Mine includes where his leaves
2 out. It's in addition to his that self-defense
3 is founded in necessity and the force used was
4 necessary in that first paragraph.

5 And then in bringing on the difficulty it's
6 in addition to what he has, which refers back to
7 the giving rise to the necessity of using deadly
8 force. And then talks about one cannot provoke,
9 initiate or otherwise through his own fault
10 bring about the difficulty, and then claim self-
11 defense with the use of deadly force, so just
12 adding onto what he has.

13 THE COURT: Well, that sounds like that's
14 consistent with what --

15 MR. LEE: Mine comes straight from the
16 case. I copied it word-for-word, so it sets
17 forth each of the elements, and the charge that
18 these are the elements.

19 THE COURT: So both of them would be
20 correct statements of the law.

21 MS. MOLINA: -- on page -- yes. And mine
22 involves a car, a sober defendant driving home a
23 drunk victim with BAC of .323, and a
24 confrontation beginning in the car, and the
25 defendant shooting and killing the victim in the

1 car.

2 MR. LEE: Mine is State v. Glenn, it says,
3 "These are the elements of State v. (phonetic),
4 State v. McCurry, State v. Davis, in the Supreme
5 Court of South Carolina." And it says these are
6 the elements, and that's what I -- that's what's
7 on my charge.

8 It doesn't offer any side explanations, as
9 these are the four elements, which hers inserts
10 an explanation after the first one, which she's
11 obviously going to challenge.

12 THE COURT: All right, well, I'm gonna put
13 the burden on you.

14 Tell me what's wrong then with the State's
15 proposal. Is it an incorrect statement of the
16 law?

17 MR. LEE: I think it's a gratuitous
18 insertion of her position in this case, that a
19 case at some point I guess, I'm not sure what
20 the cite of that insertion is. My intention in
21 doing the way it was, and the way it was done,
22 and where this came from, when I tried another
23 case with Judge Bonds is, these are the four
24 elements.

25 It doesn't talk about the -- this is what

1 it means, it's these are the four elements,
2 boom, boom, boom, which is what I think they
3 mean. I mean that's just some editorializing,
4 and there may be a case that says in deciding
5 that to look at that, but I don't think to
6 editorialize after one element, and then just
7 use what I said for 2, 3 and 4.

8 You have to be consistent, and if we need
9 to start inserting after, well, element 1 is
10 this without fault, by the way one cannot take,
11 provoke or otherwise explain that. And then you
12 go down to secondly, then we need to insert
13 things talking about the Defendant actually
14 believed he was in imminent danger. And by the
15 time he explained that it's, hey, third, I know
16 we've talked a lot about the first two a lot. I
17 think you need element, element, element,
18 element, and if she wants to move that somewhere
19 else that may be appropriate, but I don't think
20 you can say these are the four elements, here's
21 number one, and by the way here's a little more
22 about number one, which is not what these cases
23 say.

24 The paragraph she put, Judge, inserted, one
25 cannot provoke or initiate, that is not an

1 element of self-defense. That is possibly a way
2 that you can discuss or interpret element number
3 one, but saying one cannot provoke, initiate or
4 otherwise through his own fault bring about the
5 difficulty, and then claim to write a self-
6 defense and the use of deadly force against an
7 attack, which was caused by the provocation,
8 that is not an element of self-defense.

9 THE COURT: Would you like me to use my
10 standard self-defense charge, and as it relates
11 to number one the without fault?

12 My standard charge would say, first, the
13 Defendant must be without fault in bringing on
14 the difficulty, that Defendant's conduct was the
15 type which was reasonably calculated to and did
16 provoke a deadly assault. The Defendant would
17 be at fault in bringing on the difficulty, and
18 not be entitled to self-defense.

19 MR. LEE: No, sir.

20 MS. MOLINA: No, sir. And I don't object
21 to the standard jury charge of the book.

22 MR. LEE: How about this? How about we use
23 this one, but insert her paragraph that she
24 wants after the first element, and then we can
25 from there? Because I don't know what yours

1 says, and this has been tailored specifically to
2 this case, because, you know, the way the
3 Court's been going for a long time is, Judges
4 don't charge on the facts, don't charge on the
5 facts, except if it's self-defense, and then
6 Judges you'all need to come up with a case
7 specific to the facts charged in dealing with
8 all of it.

9 And that's what I efforted to do on this,
10 and if the only real objection that she has is
11 wanting to include, one cannot provoke, initiate
12 or otherwise through his own fault, if we can
13 charge this, I don't mind slipping that one
14 paragraph in there, and --

15 MS. MOLINA: That --

16 MR. LEE: -- I have serious bodily injury on
17 here too.

18 MS. MOLINA: Well, it's a typo in the one
19 that I found out.

20 MR. LEE: Okay.

21 MS. MOLINA: It's just adding bodily
22 injury.

23 MR. LEE: Okay.

24 MS. MOLINA: And then the only addition
25 would be to the third, just about when deadly

1 force is appropriate, only because you have the
2 right to use self-defense, but you don't have
3 the right to just kill somebody because they're
4 banging on your car. If a force instruction
5 isn't --

6 MR. LEE: That's in there.

7 MS. MOLINA: I didn't see it. And I would
8 just add in after the -- because he has the
9 fatal blow, in order to save him from serious
10 bodily injury, but I think the deadly force is
11 only appropriate when necessary and entertains
12 the reasonable belief.

13 THE COURT: Let me ask you'all some
14 questions. You're moving from my standard
15 charge would be, you know, tell me if I'm wrong,
16 prior difficulties between the parties, was
17 there any testimony about prior difficulties?

18 MS. MOLINA: I don't believe there was any
19 testimony about prior difficulties.

20 THE COURT: Size and age?

21 MS. MOLINA: Size.

22 THE COURT: Okay.

23 MR. LEE: He said he was taller.

24 MS. MOLINA: He brought out his size for
25 his pants.

1 THE COURT: Reputation, anything?

2 MS. MOLINA: Not for violence.

3 THE COURT: Not for violence?

4 MS. MOLINA: Not for violence.

5 THE COURT: Threats?

6 MR. LEE: What threats?

7 THE COURT: Threats by the victim, the
8 deceased.

9 MR. LEE: Yes.

10 MS. MOLINA: I don't think there is.

11 THE COURT: Okay.

12 MS. MOLINA: It may have come out on --

13 MR. LEE: Whose testimony?

14 MS. MOLINA: -- Banger.

15 THE COURT: Okay.

16 MS. MOLINA: I think you elicited in
17 Banger. He couldn't remember any threats. I
18 think I recall somebody saying something, or he
19 is getting it out on cross. I think there is
20 evidence.

21 THE COURT: Intoxication?

22 MR. LEE: Yes.

23 MS. MOLINA: Yes.

24 THE COURT: That could be considered --
25 this is all the standard in mine.

1 MR. LEE: Judge --

2 THE COURT: Okay.

3 MS. MOLINA: Yes.

4 MR. LEE: -- if you don't mind --

5 MS. MOLINA: Yes.

6 MR. LEE: -- what is yours? I mean is
7 yours an old bench book, or where does yours
8 come from? 40 years on the bench, I just don't
9 know what source you're using, without seeing
10 what it says, I don't know that --

11 THE COURT: I don't have them on this copy.

12 MR. LEE: Because, honestly, the correct
13 approach is, I would be very hesitant standing
14 here right now to say your standard charge on
15 this or that is okay, because I haven't had a
16 chance to review it. I have had a chance to
17 review this. I think there's very few changes
18 that we're looking for on this. This provides
19 me the record of what's going to be charged. It
20 allows me to follow along and read it, so I
21 would greatly prefer if we can make it happen,
22 so that -- and if there's some give and take,
23 that's fine, but that we have here what's gonna
24 be charged.

25 And I think that everything in here is an

1 accurate recitation of the law. Sammie wants to
2 add the one paragraph, which I disagree with,
3 but if it means using this, versus ones that are
4 in your bench book that I haven't had a chance
5 to review, and would need time to review, I
6 would rather us compromise, and I don't think
7 that's gonna make a difference in the verdict.

8 THE COURT: Okay.

9 MR. LEE: I am objecting to her one
10 paragraph that she wants changed, I guess is
11 what I'm saying.

12 MS. MOLINA: On page 26.

13 MR. LEE: Okay, agreed.

14 THE COURT: All right, then let's start all
15 over again. Going back to the proposal
16 submitted by defense counsel, the State.

17 MS. MOLINA: The other things that I wanted
18 to add are prior record of a witness, and I
19 think these do come from the charge book, so I
20 can give you these, prior record of a witness,
21 punishment, and statement of defendant I think
22 have to be in there.

23 THE COURT: The statement of the Defendant?

24 MS. MOLINA: Yes, sir.

25 THE COURT: Okay.

1 MS. MOLINA: Prior record of witness,
2 punishment and statement of Defendant.

3 MR. LEE: Okay, I agree, that's fine.

4 MS. MOLINA: And I also think that based on
5 the facts a voluntary manslaughter should be
6 included. There's evidence that a threat that
7 we just agreed on, and a continuing fight that
8 ended up with the victim being shot.

9 He was threatened, and in the State's case
10 evidenced words, plus the hostile acts of
11 attacking him in the -- while he's trying to
12 leave, and continuing this fight, I think
13 there's evidence to support the voluntary
14 manslaughter.

15 MR. LEE: Okay, I don't think it's close.
16 Voluntary manslaughter is doing something in the
17 sudden heat of passion upon sufficient legal
18 provocation. When the shot's fired, he's
19 leaving, he's leaving, number one, and they're
20 clearly -- I mean voluntary manslaughter is, you
21 walk in and then your wife is in bed with the
22 Postman, that's what a voluntary manslaughter
23 is. It is a sudden heat of passion, your
24 emotions overcome you to the extent that you do
25 what you do.

1 So I don't think it's even close on
2 voluntary manslaughter, and the problem with
3 that is, it's an attempt to give some type of
4 compromise offer to the jury, quite frankly, is
5 what it is.

6 And I don't think there's any evidence,
7 much less substantial evidence, or reliable
8 evidence to support voluntary manslaughter.
9 They've never made the argument; they never
10 presented any evidence that this was done in a
11 sudden heat of passion. That's usually
12 something done quickly without thinking,
13 something happens quickly.

14 This has been going on for hours, according
15 to all the testimony, all of it, so there was
16 nothing done in a sudden heat of passion upon
17 sufficient legal provocation. And because
18 they're saying --

19 THE COURT: All right, I'm gonna bring the
20 jury back in, apologize to them, and tell them
21 we're gonna come back in the morning, whether
22 they like it or not.

23 MS. MOLINA: Yes, sir.

24 MR. LEE: We've been dribbling the ball
25 out, that's right, Judge.

1 BAILIFF: The jury's entering the
2 courtroom, Your Honor.

3 (Jury enters the courtroom.)

4 THE COURT: Things have not gone as
5 smoothly as I had hoped that they would, which
6 also means not the way you want them. Sometimes
7 it just happens that way. The wheels have
8 fallen off this well-oiled machine.

9 I can't in good conscience at 5:00 to 5:30
10 tell you to go to the jury room and begin
11 deliberating this case, it's a murder case. If
12 it's a case where you are trying to decide how
13 much money to give the Plaintiff, whether to
14 give the Plaintiff a few dollars more, or a few
15 dollars less, this is a murder case.

16 I can't put that burden on you, or the
17 pressure on you, to try and deliberate at that
18 time of day, I'm sorry. We're not even ready to
19 start at this moment, if we wanted to, we're not
20 there yet.

21 9:30 in the morning, and I know you'all
22 want to get it done, get on with life tomorrow,
23 noted, so I don't make this decision lightly.
24 Let's get back at 9:30 in the morning.

25 Ladies and gentlemen, I'll remind you don't

1 let anyone talk to you about the case, and you
2 don't talk to anybody about the case.

3 See you tomorrow morning, ladies and
4 gentlemen.

5 (Jury exits the courtroom.)

6 BAILIFF: The jury's cleared, Your Honor.

7 THE COURT: Okay. Everybody okay and get
8 this thing rolling, or do we need to take a few
9 minutes?

10 MS. MOLINA: Yes, sir.

11 THE COURT: Now, did I understand defense
12 counsel to say defense counsel would accept
13 State's self-defense?

14 MR. LEE: No. What I suggested, Your
15 Honor, was to keep what I had, and then insert
16 the paragraph that she had after, right here.
17 That's where you have it, you say first, I say
18 first.

19 MS. MOLINA: Yeah.

20 MR. LEE: And then insert that right there.

21 MS. MOLINA: Yes.

22 MR. LEE: Okay, and everything else we're
23 good, except changing the serious bodily injury.

24 MS. MOLINA: Thirdly, deadly force is only
25 appropriate when necessary, and may only be

1 exercised when the Defendant has a reasonable
2 belief that it will result in loss of life, or
3 suffers serious bodily injury.

4 THE COURT: Does that mean you'all have an
5 agreement, because I'm not sure I'm following.

6 MS. MOLINA: Can we take 10 minutes, and we
7 will look for -- see if Monica's got a charge
8 book.

9 THE COURT: Look for what?

10 MS. MOLINA: A standard or something that
11 Monica's got, and we'll print out a new copy
12 with everybody on the same page.

13 MR. LEE: Can we see if we can agree and
14 have it printed out for you in like 10 minutes?

15 THE COURT: That's fine with me.

16 MS. MOLINA: Okay.

17 THE COURT: All right, we're in recess for
18 10.

19 MR. LEE: Thank you.

20 (RECESS)

21 **

22 **PROCEEDINGS CONTINUED**

23 MR. LEE: The jury charge I guess the issue
24 is if they're going to ask for voluntary
25 manslaughter, I guess we need to argue that.

1 Everything else I think is cleaned up, right?

2 MS. MOLINA: Yes, I believe that's right.

3 THE COURT: Meaning the one that was just
4 handed to the Court --

5 MS. MOLINA: Yes.

6 MR. LEE: I consent we agree that that's
7 the appropriate charge.

8 THE COURT: All right, which brings us to
9 the issue of voluntary manslaughter that's being
10 proposed by the Defendant.

11 MR. LEE: No, I don't want it.

12 THE COURT: Oh, I'm sorry.

13 Let's hear from the State.

14 MS. MOLINA: The State's position is
15 there's evidence in the record to support a
16 voluntary manslaughter charge.

17 That's different than what we have in this
18 case. There is evidence of arguments going back
19 and forth all night, that during the fight the
20 Defendant pistol-whipped the victim multiple
21 times, and then continued to punch him in the
22 head. That plus the fact that he testified he
23 was in fear, and he was feeling threatened, I
24 think is heat of passion, and the uncontrollable
25 impulse to do violence under the sufficient

1 legal provocation from the fight.

2 On 14 it states, "Fear resulting from an
3 attack can constitute a basis for voluntary
4 manslaughter." In this case he testified he was
5 in fear for his life when the victim opened the
6 door, and that was following an attack. And
7 they went onto say and reaffirm the principle
8 that a person's fear immediately following an
9 attack or threatening an act may case a person
10 to act in a sudden heat of passion.

11 And in the first column, second paragraph,
12 it states, "To warrant the Court eliminating the
13 charge of manslaughter, there must be no
14 evidence whatsoever attempting to reduce the
15 crime from murder to manslaughter. And so it's
16 the State's position that it has to be included.

17 THE COURT: Can you tell me where you just
18 were, you read it, which page?

19 MS. MOLINA: Page 14 in the first column,
20 second paragraph under jury instruction.

21 THE COURT: Right.

22 MR. LEE: Judge, this case cannot be
23 farther away from a voluntary manslaughter case.
24 If they want to dismiss the murder, and go
25 forward on voluntary manslaughter, we consent to

1 that, but this is far from a voluntary
2 manslaughter case. And all it takes really is
3 to read what voluntary manslaughter it is.

4 It says -- this is page 14, first
5 paragraph, "It's consistently held that a sudden
6 heat of passion upon sufficient legal
7 provocation is defined as an act or event that,
8 'must be such as would naturally disturb the
9 sway of reason and render the mind of an
10 ordinary person incapable of cool reflection and
11 produce what according to human experience may
12 be called an uncontrollable impulse to do
13 violence."

14 And the way that she's trying to squeeze
15 this in, so she can have a compromised offer for
16 the jury, in my opinion, and I'd argue the same
17 thing, but it's wrong. What she's trying to say
18 is, well, he's in fear, so that means it is
19 voluntary manslaughter.

20 If that was the case, you could never have
21 a self-defense case where voluntary manslaughter
22 was not -- fear alone does not make something
23 voluntary manslaughter. Voluntary manslaughter
24 is a separate animal in and of itself, and it's
25 saying it is an uncontrollable impulse to do

1 something, with a mind of an ordinary person
2 incapable of cool reflection and may be called
3 an uncontrollable impulse to do violence. This
4 case absolutely zeroed this case fits.

5 My client is driving away. He's been
6 involved with the situation for several hours.
7 He has tried to leave a few times. He finally
8 gets to leave, gets attacked on the way to his
9 car leaving, takes care of that so he can leave,
10 and starts driving down the road. Any upset he
11 may have had from the previous encounter with
12 Anthony Rivers is gone.

13 And, you know, for them to produce no
14 evidence, ask no questions, produce no
15 witnesses, then talk anything about the sway of
16 reason being disturbed, and the mind make it
17 incapable of cool reflection, and an
18 uncontrollable impulse to do violence, there is
19 absolutely nothing, even in the light most
20 favorable -- even if you turn it 10 ways from
21 Sunday, there's nothing that has been presented
22 or argued or suggested that talks -- that
23 suggest he had an uncontrollable impulse to do
24 violence. There's fear, it'd have to be.

25 All right, then well for 3 hours he did

1 pretty good, you know, but all of a sudden, he's
2 driving down the road thinking he's out of
3 there, good to go, somebody opens his door, and
4 they're saying it's an uncontrollable impulse to
5 do violence.

6 No, it wasn't, it was self-defense, he was
7 scared. Self-defense requires a quick decision.
8 If you deliberate about it, arguably, it's not
9 self-defense. Self-defense is going to require
10 someone to make a tough, difficult, spur of the
11 moment decision about whether they're in danger,
12 and whether they need to defend themselves.

13 That is not the same as an uncontrollable
14 impulse to do violence. And to say that those
15 two are hand-in-hand is just absolutely
16 incorrect, and it would require, under that
17 argument, every single self-defense charge.
18 There's no way you cannot charge voluntary
19 manslaughter on any murder case that if a self-
20 defense charge is raised, and there's plenty of
21 them that have done that.

22 This is either malice, murder or it's self-
23 defense. That charge is highly prejudicial to
24 the Defendant. It begs for a compromised
25 verdict from the jury. It will lead to

1 confusion of the jury. And quite frankly, it's
2 a little disingenuous I think to argue both of
3 these under these sets of facts.

4 I'm not sure how they're going to all of a
5 sudden change course, and say, well, it didn't
6 really happen the way that we said all along,
7 and we charged him with murder and malice and
8 stuff, now we think it was an uncontrollable
9 impulse, something that he had no control over,
10 it happened like that.

11 So this clearly is not a voluntary
12 manslaughter charge case. You know, some
13 defendants would jump all over the fact that
14 that is a lesser-included, but this isn't that
15 case.

16 No, we're not consenting to it, and I think
17 that charging it would be a reversible error.
18 The facts don't support this at all. And the
19 fact that it's having to be argued and in such a
20 tenuous argument for even a charge on it,
21 certainly suggests that there is, based on the
22 facts of the case, there's little or no chance
23 of a jury to conscientiously deliberate, of
24 coming back and finding beyond a reasonable
25 doubt that he's guilty of voluntary

1 manslaughter.

2 Just how far it has to be stretched just to
3 try to get it charged, I think shows the reason
4 it shouldn't be charged, and it's a highly
5 prejudicial charge to my client. It's based on
6 zero facts that have been, even stretching them
7 as wide as you can, there's no evidence about
8 any type of his mind -- a mind of an ordinary
9 person incapable of cool reflection and produce
10 what according to human experience may be called
11 an uncontrollable impulse to do violence.

12 An uncontrollable impulse to do violence,
13 that simply is not the case. This is self-
14 defense or it's murder. Either he meets the
15 elements, the self-defense elements are met, or
16 they're not, but to throw voluntary manslaughter
17 in there is absolutely improper. Although I'd
18 almost like to see the Solicitor argue, no, it's
19 not that, it's that, but I can't agree to this,
20 I think it's improper. I think that you are
21 required as the trial judge to deny their motion
22 to charge voluntary manslaughter.

23 THE COURT: Solicitor?

24 MS. MOLINA: Again, I would refer to page
25 14 in that first column, it's to warrant the

1 Court eliminating the charge of manslaughter,
2 there must be no evidence whatsoever tending to
3 reduce the crime from murder to manslaughter.
4 It's certainly the State's position that this
5 was done in malice, but there's also some
6 evidence in the record, from which a jury could
7 find that he acted -- that voluntary
8 manslaughter instead.

9 It's not just fear, as the defense was
10 stating, it is fear resulting from an attack can
11 constitute a basis for voluntary manslaughter.
12 Plus the uncontrollable impulse to do violence,
13 there's evidence in the record that the
14 Defendant is a nice, happy guy, who never acts
15 like this, and then was 2z z, threatening the
16 victim, pistol-whipping him and beating him, and
17 then shooting him, it's not fear alone.

18 And further down on page 14, it says, "In
19 determining whether the act caused death was
20 impelled by the heat of passion or by malice,
21 all the surrounding circumstances and conditions
22 are to be taken into consideration, including
23 previous relations, conditions connected with
24 the tragedy, as well as those existing at the
25 time of the killing.

1 There's evidence in the record that the
2 Defendant, and to use the defense's theme, was
3 different that night, things were different. He
4 was acting with this uncontrollable impulse to
5 do violence by pointing this gun, which he had
6 done to his cousin, fighting his cousin, and
7 then shooting him.

8 It's the State's position this was done
9 with malice, but the case law says, "To warrant
10 the Court eliminating the charge of
11 manslaughter, there must be no evidence
12 whatsoever."

13 MR. LEE: Judge, I have been doing this a
14 long time, because we have one murder, we don't
15 have first degree, second degree, we don't have
16 a non-malice murder, but in South Carolina right
17 or wrong, you don't have that option. In some
18 states it's a murder, second degree, you know, a
19 non-malice murder.

20 In South Carolina we don't have that
21 option, it's either murder with malice, or
22 something else. And to get to the something
23 else which usually is voluntary manslaughter,
24 it's just not, it's not a non-malice murder.

25 A voluntary manslaughter requires the state

1 of mind for someone to essentially you flip your
2 lid, and you have no control over it. It's a
3 whole different type of intent that involved in
4 a murder, malice. An uncontrollable, something
5 that is so deep, so bad, something that would
6 affect someone who is uncontrollable.

7 Murder is controllable.

8 An uncontrollable impulse to do violence is
9 a completely different state of mind. I think
10 that the -- if this is charged, the intent
11 charge is gonna have to be completely redone,
12 because they're talking about a charge that does
13 not apply to this set of facts, no matter how
14 much you believe or don't believe, there is
15 nothing that has been presented, nothing that
16 can be interpreted as to say this shooting of
17 Mr. Rivers was a result of sway of reason, and
18 an ordinary person, in this case Mr. Polite, was
19 incapable of a cool reflection, and had an
20 uncontrollable impulse to do violence, and
21 that's the first part.

22 The sufficient legal provocation they're
23 saying all along there's no sufficient legal
24 provocation, he's just being loud, talking S-H-
25 I-T. So it fails on both of the elements of

1 manslaughter, and if there's no evidence of one
2 of them, that would be enough.

3 So this is far from the other case I tried,
4 I think that was a tow truck driver, not -- this
5 is far from that.

6 This is a plain-Jane murder of self-
7 defense, and that's the way it should be kept,
8 that's the way it's been tried, that's the way
9 it's been presented throughout, and to inject
10 this uncontrollable impulse, all this kind of
11 stuff, and then try to pull some stuff out of
12 self-defense, which here has to be shown.

13 He testified there was fear, so I'm gonna
14 make that into -- there was no testimony that he
15 was out of control, he couldn't control what he
16 was doing, it was just an impulse, kind of an
17 out-of-body experience. So I'll be quiet, you
18 know what my arguments are, but I think the
19 conclusion of that an option of a lesser-
20 included is inappropriate in this case. It's
21 appropriate in some, but not in this one.

22 I know it's unusual for a defendant not to
23 jump at that. In this case we absolutely have
24 discussed it and do not want it.

25 THE COURT: Thank you, Mr. Lee.

1 Now, I've read the case of State v.
2 (phonetic), for the reason of defense counsel I
3 will deny the request for an involuntary
4 manslaughter charge.

5 I just don't see that there's any evidence
6 of the uncontrollable impulse required.

7 Where does that leave us? Done?

8 MR. LEE: I don't have anything else,
9 Judge.

10 THE COURT: Thank you.

11 MR. LEE: And I think we passed up what we
12 think is the appropriate charge.

13 THE COURT: Thank you.

14 MR. LEE: She's gonna object to put not
15 guilty first, but other than that, I think it
16 is --

17 MR. MOLINA: Yes, that's fine. I don't
18 think we need to have another argument for an
19 hour about switching them, as long as there's
20 the switch every time, don't read into it.

21 THE COURT: Okay.

22 MR. LEE: One verdict has to come first,
23 don't read anything into the fact which verdict
24 is listed first, that's what she wants.

25 THE COURT: I've actually never done that.

1 I just think the jury would have enough sense to
2 know that one's got to come first.

3 MR. LEE: If they can't figure that out,
4 we're in trouble.

5 THE COURT: All right, anything to do?

6 MR. LEE: 9:30 you said?

7 THE COURT: You'all want to make sure we've
8 got all the exhibits.

9 MR. LEE: Oh, yeah.

10 MR. MOLINA: Yes, sir.

11 MR. LEE: We have reviewed them, Your
12 Honor, and everything is in order.

13 THE COURT: Solicitor?

14 MS. MOLINA: Yes, Your Honor. We are in
15 agreement.

16 THE COURT: You're gonna lock them up,
17 right?

18 BAILIFF: Yes, sir.

19 **

20 (At 5:16 p.m. the proceedings were
21 continued until the following day without
22 interruption.)

23 **

24 END OF VOLUME III

25

1 CERTIFICATE OF REPORTER

2 ***

3 I, Kymberlee M. Williams, Certified Shorthand
4 Reporter/Registered Professional Reporter for the
5 14th Circuit of the State of South Carolina do hereby
6 certify that the foregoing is a true, accurate and
7 complete transcript of the proceedings held in this
8 case, relative to appeal, in the General Sessions
9 Court for Beaufort County, South Carolina on the
10 17th Day of April 2024.

11
12 I do further certify that I am not related, of
13 counsel, or interest to any party hereto.

14
15 This, the 1st day of September 2024.

16
17
18
19
20 

21
22 _____
23 Kymberlee M. Williams, CSR/RPR
24
25

STATE OF SOUTH CAROLINA	IN THE GENERAL SESSIONS COURT
	2021-GS-07-00981, -982
COUNTY OF BEAUFORT	
-----)	
State of South Carolina)	
	)
Plaintiff,	)
vs.	)
	)
	)
Stephan Q. Polite,	)
	)
	)
-----Defendant.)	)

TRANSCRIPT OF JURY TRIAL
VOLUME IV
PAGES 655 - 781

April 18, 2024
Beaufort, South Carolina

B E F O R E:

The Honorable **BROOKS GOLDSMITH**, Judge Presiding

Kymberlee M. Williams, CSR/RPR
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PROCEEDINGS

**

THURSDAY, APRIL 18, 2024

BEAUFORT, SOUTH CAROLINA

(The following proceedings were held in open court. All parties were present.)

THE COURT: Are we ready for the jury?

MS. MOLINA: The State is ready.

MR. LEE: Yes. The defense is ready, Your Honor.

THE COURT: Bring in the jury.

BAILIFF: The jury's entering the courtroom, Your Honor.

(Jury enters the courtroom.)

BAILIFF: The jury's seated, Your Honor.

THE COURT: Good morning, and welcome back, ladies and gentlemen.

Again, I apologize for this delay. We're now at the stage in the proceedings where, as I told you yesterday, the attorneys will make their closing arguments to you, where they try to convince you to see the case the way they see it.

I'll remind you what the attorneys say to

1 you is not evidence, you've already received the
2 evidence, you decide what the evidence is, but
3 the attorneys will make statements to you about
4 what they believe the evidence has shown or has
5 not shown in this case. And we begin with the
6 State. Solicitor?

7 MS. LEE: Thank you, may it please the
8 Court?

9 **

10 **CLOSING ARGUMENT BY MS. MOLINA**

11 MS. MOLINA: In opening statements I told
12 you this case is about how far the Defendant is
13 willing to go after he's been insulted and
14 challenged, and that's exactly what all of the
15 evidence that you've seen in the last few days
16 have shown.

17 It's undisputed that on May 29th, 2021, the
18 victim, Anthony Rivers, Jr. was shot and killed
19 at 10 Keystone by the Defendant. It's
20 undisputed that it was a gathering of family and
21 friends to play cards. And you've heard that
22 A.J. arrived drunk, another undisputed fact.
23 And you heard that when he arrived, he was
24 screaming and pulling his head, Banger told you
25 that, Natasha.

1 The defendant also told you that he heard
2 somebody screaming, but they also told you that
3 he arrived first, he was already there.

4 Natasha, Banger, told you that when she saw
5 Anthony, he said he was - she -- he said,
6 "You're whacked, Banger, you're whacked," she
7 ignored it.

8 You heard that there was a group already in
9 the shed, Defendant was in there, and when A.J.
10 walked in he started patting down Akeem. And
11 what at first seemed as a bizarre act of
12 somebody drunk showing up to the gathering with
13 his friends and family, ended up being the most
14 reasonable action of the night.

15 The Defendant told you that in 2017 when he
16 got to a card party, patting down seemed
17 reasonable. So A.J. goes in, pats down Akeem,
18 he relaxed a bit, he pushed him away, "Stop it."

19 No reaction, he ignored it, but when A.J.
20 did the same thing to the Defendant, the
21 Defendant became angry. People had to calm him
22 down, and he did calm down. The Defendant walks
23 out, walks outside, Banger followed him, because
24 Pumpkin had a bad feeling, follow him out to the
25 car. And when they're out at the car, Banger

1 sees him reach down, pick up a gun, put it in
2 his hands.

3 Banger said, "Don't bring that gun in
4 here." The Defendant said, "He called me a
5 bitch," and then he showed everybody not to mess
6 with me, his group of family and friends.

7 So the Defendant walks back into the shed,
8 make sure that A.J., who everybody said doesn't
9 carry a gun, doesn't like guns, doesn't believe
10 in guns, make sure A.J. sees it, to intimidate
11 him, to threaten him.

12 That act is the catalyst for the rest of
13 the night. And as a result, as can reasonably
14 be expected, A.J. becomes upset, and everybody
15 told you what happened. He doesn't like guns.
16 His cousin just armed himself and made sure to
17 make it right by him.

18 And it's not in dispute that multiple
19 people had to then pull A.J. out of the shed,
20 and Banger described it, the Defendant described
21 it, he was strong, it took a couple people to do
22 it.

23 And then they fell and they went back into
24 the shed. And at that point A.J. was calling
25 his bluff, "You've got a gun, you're not gonna

1 do anything with it," and runs back in. He's
2 gonna point that gun at him, and he threatens
3 him, "I'll put you in a wheelchair."

4 You heard it from Banger, she said that
5 A.J. wasn't scared, and he wasn't scared of
6 guns, and he wasn't scared of his cousin. And
7 so at that point everybody had to separate them
8 again, get A.J. back outside, and Defendant was
9 told to stay in the shed.

10 They keep telling him to lock the shed,
11 lock it from the inside, he wouldn't lock it,
12 but there are people telling him, "Stay in the
13 shed, we're gonna calm him down, it's gonna be
14 okay."

15 And at some point, the Defendant tells you
16 he calls a ride for the victim, to try and help
17 him out. And you also heard that while A.J.'s
18 outside he's angry, he's insulting other people
19 at the party, and they're not reacting.

20 You heard that Art went in and got a gun,
21 but that Alexis said to him, "He's our friend,
22 put the gun away." And, eventually, Defendant
23 decides he's leaving, and he walks out. And at
24 that point A.J. confronts him, and Banger and
25 Pumpkin told you that he took this gun, pistol-

1 whipped him twice. A.J.'s stumbling around, and
2 that the second pistol-whip the gun went flying
3 out of his hand.

4 And so now Defendant begins to wail on him,
5 punching him on the side of his head. A.J.'s
6 not fighting back. He's trying to protect
7 himself maybe, he's not fighting with him, he's
8 not scared of him, now he's calling his bluff.
9 Again, "You're not gonna use that gun, we're
10 family."

11 And afterwards the Defendant stops,
12 snatches the gun from where he lost it, and gets
13 in his car and starts to drive out. A.J. has
14 just been attacked and beaten and pistol-whipped
15 by his cousin, he's still angry, understandably,
16 and he runs after the car. And it's slowly
17 pulling out, letting the ride the Defendant
18 called for the victim, in.

19 And A.J. is banging on the car, just like
20 Banger and Pumpkin told you, he's banging,
21 saying, "You pistol-whipped me, we're family,"
22 calling him out, how unreasonable that action
23 is, pistol-whipping your family member after
24 you've already pulled a gun on him.
25 Understandably, he might want to fist fight,

1 maybe.

2 The Defendant is in the car driving away.
3 And right as Rod has pulled enough in that he
4 can get around him, Banger and Pumpkin tell you
5 the door opened, and they heard pow and A.J.
6 drops. And Pumpkin told you the Defendant
7 opened that door. And everybody's talking about
8 how dark it is out there, and it is dark, but
9 there are lights, there is a light.

10 There's also Rod's headlights that should
11 have blinded him on the way in, there's lights,
12 they can see. And after Defendant has fled, the
13 reasonable people at that gathering spring into
14 action to what needs to be done.

15 Banger told you she went to combat medicine
16 mode, and she did. She immediately went to
17 A.J., started looking for where he's hit. She
18 finds the spot; she's begging for a bag and
19 towel. She gets some plastic bags; she starts
20 packing the wound.

21 She was there to try to stop the bleeding
22 of her friend. She just watched her other good
23 friend shoot.

24 You heard the 911 call, it was emotional,
25 and you heard the *Defendant in the back

1 moaning, they were trying to get him to stay
2 down, he'd just been shot by him. They continue
3 to wait for law enforcement.

4 You heard that they're doing what they can
5 to save A.J., like reasonable people would for
6 their friend.

7 Z Why did this all happen? Because A.J.
8 called him a bitch, and he challenged him.
9 Every time he armed himself, pointed the gun,
10 pistol-whipped him with the gun, and,
11 eventually, shot the gun.

12 He saw Banger out there. This was hard for
13 them. They both said they'll be happy when it's
14 over, it's a very sad situation, and it's a
15 tragic one, but it was an avoidable tragedy; but
16 for the actions of the Defendant, A.J. die that
17 night.

18 Banger described what it was like for her
19 after the incident. How she went home trying to
20 numb the pain, she drank, she smoked, nothing
21 was enough. Every time she closed her eyes she
22 saw it again, and how could you not. And a
23 traumatic event watching your friend killed in
24 front of you by another friend, another friend.
25 She told you she played basketball with him last

1 year, that they're all very close, and she could
2 not fathom how this would happen.

3 You heard from Corporal Garcia, he was
4 first on-scene, he was applying aid to the
5 victim until EMS arrived, at which point he
6 started to mark the scene up, and you'all have
7 these items. Marker number 1, the cartridge
8 from the Defendant's gun at the scene next to
9 A.J.

10 Number 2, the black towel that they were
11 trying to soak up the blood and stop the
12 bleeding.

13 Number 3, the bag that Banger used to try
14 to plug the bullet holes.

15 You then heard from Sergeant Perkins, who,
16 when he got on-scene, was actually the one that
17 found the bullet, the shell casing, and he stood
18 next to it, so they could mark it, even though
19 he was in the way of EMS, they worked around
20 him, so they could mark it.

21 You heard from Chelsea Seronka, she was one
22 of the investigators on the case, she went to
23 the hospital, and then she went back to the
24 scene. And Chelsea-- Staff Sergeant Seronka was
25 there, she collected the victim's clothing,

1 bagged it up, she also took pictures of them, a
2 blood covered tee-shirt and pants, with the
3 shoestring broke.

4 And within the pants pocket she found a 20-
5 dollar bill, some change, a paper towel, an
6 unopened box of cigarettes, a lighter, and a
7 boxcutter, that's what he had on that day. And
8 Banger and Pumpkin also told you that during the
9 fight A.J.'s pants fell down.

10 All he had holding them up was a little
11 shoestring and he didn't have underwear on. Why
12 is that important? Because they saw everything,
13 and then that goes in his pockets.

14 He was not armed. Staff Sergeant Seronka
15 also got a DNA swab from the victim, that she
16 had acquired from him.

17 At the scene, just like with Corporal
18 Garcia and Sergeant Perkins, Arthur and Alexis
19 didn't see anything. They made the 911 phone
20 call, they didn't see anything. They heard one
21 shot, saw him laying in the dirt, which we know
22 is not true, because Banger, Pumpkin, the
23 Defendant put them outside, but they told law
24 enforcement they didn't.

25 And so at that point Investigator Byrd came

1 over, working off the information he had.
2 Nobody saw anything, but we have a victim who
3 was shot and killed, so Investigator Byrd, who
4 is familiar with many people from St. Helena,
5 checks and trying to find out what happened.
6 What happened?

7 No one really wants to talk, but he does
8 find out, he does develop the Defendant as the
9 suspect. And he tries to go and make contact
10 with him, and they get the call from the
11 Defendant's attorney, this is a few days later.

12 And -- on June 3rd, and they say, "We'll
13 come in for a meeting on June 2nd." Great. At
14 the meeting Sergeant Byrd, Sergeant Duncan, the
15 Defendant, his former attorney and girlfriend
16 all sit down.

17 And when they sit down the Defendant -- for
18 about ten minutes, the lawyer does most of the
19 talking, but what Investigator Byrd finds out
20 is, that the victim slammed open the door, had
21 struggled for Defendant's gun, and it went off.
22 He also finds out from the Defendant that among
23 other people, Banger and Pumpkin were there.
24 And the Defendant wants you to believe that he
25 was fully cooperative in the investigation, but

1 he did not go to police before they came
2 knocking at his door.

3 They had to ask around, "Does anybody know
4 what happened?" And also in that meeting he
5 turns over his car and gun that he's had -- or
6 he agrees to turn them over that he's had.

7 And then on June 2nd Investigator Byrd gets
8 those items, and he begins to process them. The
9 car -- any prints on the car. There's virtually
10 no dents, maybe a small dent right here, but
11 otherwise in pretty good shape.

12 He starts looking for blood, starts on the
13 car looking for blood. There's no blood. But
14 then he starts looking for the things that can't
15 be seen, and requires microscopes, GSR and DNA.

16 He swabs the driver's door interior for GSR
17 and DNA, and he also swabbed the outside for
18 DNA. He swabs the gun and the magazine.

19 All these items have been with Defendant
20 the last few days. He then talks to people,
21 interviews the people, as the people the
22 Defendant names in his interview, the people
23 that were there *, so he went to Banger's house,
24 and then he met with Pumpkin. H learns that
25 after an argument that the Defendant heard

1 between his lawyer and Investigator Byrd,
2 decided it's probably not very good for me to be
3 here.

4 You heard from Dr. Phillips, he wasn't up
5 there very long, he was probably up there as
6 long as A.J. was alive in the emergency room.
7 That he came in unresponsive, attempted life-
8 saving measures, unsuccessful, and A.J. died
9 soon after arriving.

10 You heard from Tim French, the DNA analyst,
11 and he told you that the victim was excluded
12 from the exterior handle and excluded from the
13 gun barrel.

14 Investigator Fletcher told you about GSR in
15 this case, and how it tells you whether or not
16 somebody came into contact with a gun that had
17 been fired.

18 And Staff Sergeant Seronka took a GSR kit
19 from the victim, which Megan told you doesn't
20 really tell you much. We knew the victim had
21 been shot. She took it from Alexis, the lady on
22 the phone, no GSR on her. She took it from
23 Arthur, you heard in the 911 call, was trying to
24 keep A.J. down, one particle on him. And
25 Investigator Byrd also swabbed in the car the

1 seat and the B pillar, for GSR.

2 You heard from Brian Molanio that he
3 received this gun, the gun that the Defendant
4 turned over, and test-fired it, compared it
5 against the casing found at the scene. This
6 isn't this, and this.

7 And then you heard from Dr. Presnell, and
8 she told you about the victim's injuries. Said
9 he had an entrance wound, and that it came out
10 on the same side in the back. And that the
11 bullet hit his liver and ribs, and, ultimately,
12 that's what killed him.

13 She also identified other injuries,
14 scratches, bruises. It makes sense. Banger and
15 Pumpkin and the Defendant tell you he was
16 punching, but Banger and Pumpkin also tell you
17 that he pistol-whipped him too.

18 Dr. Presnell also talked to you'all about
19 soot and stipling, and she said that she'd
20 expect to see soot on a body that the gun came
21 into contact with that body. And that she
22 couldn't test for soot on the victim's clothing,
23 because he came to her without clothing, but she
24 also told you about stipling, and she said that
25 she didn't see stipling on the body either.

1 And she said stipling occurs typically,
2 generally, when a person is shot within 36
3 inches. It can vary by gun, but, generally, 36
4 inches. And she told you that clothing does
5 have the ability to maybe prevent from stipling,
6 but she said it's likely that if a person is
7 within those 36 inches, they have on a tee-
8 shirt, that she might see some stipling, and no
9 stipling in this case.

10 Inconsistent with the Defendant's story
11 that they were struggling in the car over this
12 gun that went off. Dr. Presnell also talked to
13 you about the Defendant's -- or the victim's
14 toxicology. That they did a blood test, and he
15 had a .316 BAC, and that he had marijuana.

16 And we've heard a lot about amphetamines,
17 methadone, all these drugs, but Dr. Presnell
18 told you that the forensic pathology department
19 only does a blood test, because the blood shows
20 what was in him, and maybe under the influence
21 that night, right, unless it was present in the
22 blood and the urine, methamphetamine is not in
23 the blood.

24 Also came out from Dr. Presnell that a
25 lethal BAC in somebody who doesn't drink is

1 around a .4. Everybody told you he didn't
2 drink, and he didn't die of alcohol poisoning.
3 And they guy with a .316 BAC was still
4 reasonable enough to know how unreasonable it is
5 to pull a gun on your cousin, to pistol-whip
6 your cousin, to shoot your cousin. A sober guy
7 didn't know that.

8 Defendant is charged with murder and
9 possession of a weapon during a violent crime.
10 Murder is the unlawful killing of another with
11 malice aforethought. The Judge is gonna give
12 you all of the definitions of the terms and
13 elements, but malice is hatred or ill-will or
14 hostility towards another. It is the
15 intentional act doing of a wrong -- is an
16 intentional doing of a wrongful act, without
17 just cause or excuse.

18 That's what we have in this case, all over.
19 It can also be conduct showing a total disregard
20 for human life, also in this case. In this case
21 malice is evidence by the Defendant retrieving a
22 gun, bringing that gun in to intimidate and
23 threaten the victim, pointing it at him, beating
24 him with it, rearming himself, and shooting his
25 cousin, who he knows to be unarmed after he had

1 just beat him, that's smaller than him, and when
2 he recklessly fired this gun back towards where
3 everybody else at that party was.

4 The victim of senseless gun violence shoots
5 back into a crowd. Malice is also shown when he
6 flees the scene. When he left his cousin
7 bleeding in a dark driveway, there's a light,
8 but a dark driveway, remote. Takes law
9 enforcement and EMS a little bit to get there.
10 Doesn't call 911, doesn't check on him, it's
11 crazy.

12 Malice is also the absence of blood in the
13 car, the absence of gunshot residue on the seat
14 and on the B pillar. The defense talked
15 throughout the case about how not being truthful
16 and forthcoming under an investigation, yes,
17 like when the Defendant told them there was a
18 struggle in the car. Aforethought, is malice
19 aforethought, does not require a specific time,
20 just that it existed before the act.

21 Well, we know he first formed it when he
22 got that gun, and from that point on, he
23 prepared to shoot A.J. Every time that A.J.
24 would call his bluff, he'd up it, presenting it,
25 pointing it, pistol-whipping, shooting. And if,

1 at any point, that's what it supported, but, if,
2 at any point, he changed his mind, he reformed
3 that malice when he armed himself in the car,
4 after he left the victim on the ground and was
5 driving away.

6 Now, murder has to be the unlawful killing.
7 If the Defendant was acting in self-defense, I
8 believe the definition of self-defense it's not
9 unlawful just necessary. You have the right to
10 defend yourself, but, however, there's four
11 elements that must be proven. If one fails, the
12 defense fails. It's not self-defense.

13 MR. LEE: Your Honor, I'm going to object.
14 That's an incorrect statement of the law. That
15 the elements have to be disproven by the State,
16 not proven by us. That's an incorrect statement
17 of the law, and I would ask her to correct that.

18 MS. MOLINA: I was getting to that point.

19 THE COURT: I'm sorry?

20 MS. MOLINA: I was getting to that point,
21 that was my next topic.

22 MR. LEE: I'm still going to object.

23 THE COURT: I sustain the objection.

24 MR. LEE: thank you.

25 MS. MOLINA: The State has the burden of

1 disproving those elements, that they all must be
2 present for it to be self-defense. They have to
3 disprove one, just one.

4 The first element of self-defense is that
5 the Defendant must be without fault in bringing
6 on the difficulty, which means if the
7 Defendant's conduct was reasonably calculated to
8 provoke a deadly assault, Defendant wouldn't be
9 at fault in bringing on the difficulty.
10 Defendant's actions was a catalyst for this
11 night.

12 A.J. did the same thing as other people,
13 called another person a name. No announcement,
14 no gun, but the Defendant he's got a gun, but he
15 doesn't get a gun the rest of the night.

16 Defendant is the only one that is at fault
17 in bringing on the difficulty. The victim was
18 drunk, he was belligerent, he was running his
19 mouth.

20 Lack of judgment affording the opportunity
21 for conflict. It doesn't just add up. There's
22 other things that I've told you about, arming
23 himself, pointing, threatening, "I'll put you in
24 a wheelchair," pistol-whipping, shooting, that's
25 bringing on the difficulty.

1 And to say that if the Defendant was
2 initially at fault, he had withdrawn, because he
3 got in his car would be nonsense. That would be
4 a good faith withdrawal by words and actions.
5 It wasn't in good faith, he got in the car and
6 rearmed himself, and then he shot him for
7 banging on the car.

8 You can't provoke an attack, and then run
9 and hide in your car and shoot somebody he knows
10 is unarmed, that you defeat in a fight, that
11 never hit you. And at most we heard Banger say
12 the victim might have threatened to beat his
13 ass. That's not, "I'm gonna kill you." That's
14 not, "I'm gonna put you in a wheelchair."

15 The first element fails, the Defendant is
16 not without fault. The second element, that at
17 the time of the fatal attack Defendant actually
18 believed he was in imminent danger of death or
19 serious bodily injury, or he actually was in
20 that danger. Well, we know from the evidence
21 that he actually wasn't in that danger, so it's
22 his belief. And to say or believe that the
23 Defendant, at any point, was scared of the
24 victim that night doesn't make sense.

25 He wasn't scared of this person that

1 multiple people had pulled back, he was so
2 strong, easily beat him by all accounts, not
3 even close, and he's armed, victim's not. Being
4 angry, frustrated for a defendant does not morph
5 into fear.

6 In self-defense a defendant has the right
7 to act on appearances, but for all of the
8 reasons that I've told you'all, and just told
9 you'all, the only thing apparent was the victim
10 was not a threat to the Defendant to cause death
11 or serious bodily injury. Acting on appearances
12 is not a license to kill, if somebody banged on
13 your car, or was yelling at you, "Kill me, kill
14 me," saying in other words, you won't do it.

15 The third element, the second one failed,
16 third element, if Defendant's fear was believed,
17 then it must be shown that a reasonable prudent
18 person of ordinary firm and courage would have
19 entertained that same belief.

20 Banger didn't shoot him, Alexis didn't
21 shoot him. Pat him down, did the same thing,
22 all the same thing. Arthur didn't shoot him.
23 Arthur went and got a gun, and then Alexis,
24 being a reasonable person said, "He's our
25 friend," and Arthur gave that gun to Alexis, a

1 reasonable person. And Banger also told you,
2 and Pumpkin, and the Defendant, that he was
3 driving away. A reasonable person would not use
4 deadly force on an unarmed person, that they
5 defeat while they're driving away.

6 Third one, the Defendant had no other means
7 of avoiding the danger of losing his life, or
8 sustaining the infliction of a serious bodily
9 injury, other than to do the acts he did under
10 the circumstances.

11 Not only did he have a duty to retreat, he
12 had the ability, evidenced by the fact that he
13 left. He shot when Rod was enough out of the
14 way, that he could open the door, shoot and
15 leave, it's unreasonable.

16 He had the duty to retreat and he had the
17 ability to leave. The State only has to
18 disprove one of those.

19 None of the four are present in the case.
20 And even if you believe that at some point, he
21 was scared, the other three still fail, and not
22 self-defense.

23 The Defendant's actions on the night of May
24 29th, 2021, at 10 Keystone were not in self-
25 defense, they were in response to a threat.

1 They were in response to being challenged. On
2 that night friends and family gathered to hang
3 out, play cards, and instead A.J. and the
4 Defendant gambled on A.J.'s life. And A.J. lost
5 his life betting that the Defendant wouldn't
6 kill him, betting that the Defendant was not
7 capable of murder.

8 The Defendant spent a significant amount of
9 time up on that witness stand, telling you a lot
10 of nice things about him, has a good job, he
11 doesn't drink, he's a victim of gun violence.
12 Banger and Pumpkin told you he was a good guy
13 too.

14 They like him too; they were friends with
15 him too. Do you know who else knew all that
16 stuff? A.J., and that's why he didn't think
17 he'd be capable of murdering him, but that's
18 also exactly why he had to respond to be
19 assaulted and challenged in front of the group
20 of his friends and family, to let people know
21 not to mess with him, no matter who you are.

22 Largely what you've heard the past few days
23 is not an excuse. Banger, Pumpkin, the
24 Defendant all tell you a very similar set of
25 facts about what happened that night. They only

1 get different in situations that are
2 inconsistent with what the Defendant wants
3 you'all to believe. He agreed that everybody
4 was there for a card party, something they do
5 regularly.

6 He heard someone scream at Akeem. Doesn't
7 -- can't remember what was being said, he can't
8 remember that. And he said that after Akeem got
9 patted down, A.J. starts bouncing around to
10 other people. He tells Arthur, "Control your
11 company," his cousin, "Control your company,"
12 bouncing around nonspecific, because if A.J.
13 pats Defendant down, no gun.

14 It wouldn't be consistent with what he told
15 you'all yesterday, that he walked in there with
16 it. And then Defendant remembers to bring his
17 gun to a card party with family and friends but
18 forgets his wallet. He has to go back out for
19 the wallet. That's why he went back outside.

20 And Banger didn't see anything, because she
21 only got a glimpse, and he already had that gun.
22 And then for no reason at all A.J. gets fired up
23 when he's back in there.

24 And then the story comes back together, and
25 there's people pulling A.J. out, people pulling

1 A.J. out, separating them, and then they're
2 separated. They get back in, and the Defendant
3 said that would go to when he pointed the gun
4 and threatened to put him in a wheelchair.

5 So it's just for no reason, and then they
6 were separated for the night. And then the
7 story comes back together, and he's locked in
8 the shed, and people are telling him not to
9 leave, to calm down.

10 And, eventually, he does remember Arthur
11 going to get his gun, even though he told you
12 there's all these guns in the shed, he's got a
13 gun, Arthur goes and gets the gun, gives it to
14 Alexis, so that Alexis can stand guard for him,
15 so Alexis and A.J. can.

16 The Defendant's version of events doesn't
17 make sense. Everybody told you he didn't like
18 guns, he doesn't believe in them, said it's hard
19 for the friends and family, and yet the
20 Defendant's version, where the host who's
21 responsible for keeping the guests happy, and
22 providing friends -- or food and drinks,
23 seemingly they also provide firearms, just in
24 case.

25 There's firearms laying all over the shed

1 for anybody to grab. You don't use firearms as
2 party favors, and it doesn't make sense with
3 anything, or any of the evidence. But, again,
4 the parties come back together. The Defendant
5 is just walking out, but he's confronted or
6 attacked by unarmed A.J.

7 And now the story changes again. He's got
8 the gun in his hand, that he brought for
9 protection, but he drops in on the ground,
10 making it a fair fight, a fair fist fight.

11 And even if that's true, that means he's
12 not scared of A.J. He drops that gun, not
13 scared, and then some nonsense about pinning him
14 down, holding his legs, it doesn't make sense.

15 And that during that all of the people that
16 have been trying to calm him down and don't
17 offer any help. He agrees the gun was on the
18 ground, and that Randy handed it back to him,
19 and he gets in the car, the magazine on the
20 seat, the gun on his lap, never put it back
21 together, and he starts trying to maneuver
22 around the victim's body.

23 And, again, for the first time that night
24 he takes his eyes off A.J. Tells you that he's
25 parked here, the fight happens here, he's

1 maneuvering around, and A.J. might run back into
2 the G shed, while he's slowly driving, and then
3 runs back out, and he doesn't know what's in his
4 hand.

5 It's not possible, it didn't happen.
6 A.J.'s on the ground, he's just been shot. He
7 sees that he has slowed down, angry that his
8 cousin has done this to him, fought him, and
9 actually reasonably to provoke the victim being
10 upset, runs after, banging on the car, "You
11 pistol-whipped me, we're family."

12 He also told you at some point he stops,
13 picks up his wallet -- opens the door to pick up
14 his wallet, that doesn't make any sense.
15 Driving slow, headlights. And somehow the
16 Defendant is unable to hear somebody knocking on
17 his car, but he tells you he eventually hears
18 him banging on his car, but he hears Akeem
19 somewhere said, "Watch out."

20 And then at that point you see the victim
21 right at him, he swings open the door. He
22 doesn't know who it is at first, but then he's
23 able to see that it was the victim, or
24 recognizes the victim, and then registered an
25 angry, aggressive look on his face, and he

1 finally shot -- he said, "Finally shot," but he
2 told you he shot and killed A.J. with a gun that
3 wasn't loaded.

4 He said he never put the magazine back in
5 there, it was on the seat. I asked him, "When
6 did you rack that gun? Did you rack that gun
7 when you went to the shed?" "No, no, no, no,
8 no." "Did you rack it before you left the
9 shed?" "No, no, no, no, no." "Did you rack it
10 in the car?" "No, no, no, no, no."

11 What he said was, "Randy must have done it,
12 Randy put one in the chamber." That doesn't
13 make any sense. His gun -- he picks it up, puts
14 the magazine in, racks it, drops the magazine
15 out, hands it to the Defendant? That doesn't
16 make any sense.

17 He just doesn't want you to believe that
18 he's armed himself, and he's lying a lot, and,
19 again, fled the scene. And he told you'all he
20 fully cooperated, but he didn't want to. His
21 former attorney, which he now says is an
22 incompetent man.

23 And, finally, the Defendant's last effort
24 to convince you'all that he's not capable of
25 doing what all of the evidence has shown you

1 he's capable of doing. He told you'all that he
2 hasn't been able to see his kids, because of
3 these bond conditions that don't let him travel
4 out-of-state. And when confronted, said, "Well,
5 I don't get to see them as much as I want to,"
6 but he lied. Don't make the same mistake that
7 A.J. did on May 29th, 2021, believing that the
8 Defendant is not capable of murder.

9 The evidence shows that every time
10 Defendant raised the stakes, A.J. called him on
11 it. The evidence shows that everyone knew the
12 hand that A.J. was playing, he was unarmed, he
13 was drunk, he runs his mouth, he's unarmed. He
14 mentioned boxcutters. Don't be confused, nobody
15 knew that was in his pocket. Defendant's
16 firearm however, fully loaded, and unbeknownst
17 to everyone, especially A.J., he had.

18 Defendant didn't get in the car to withdraw
19 a box cutter. A.J. didn't stay down. Calling
20 his bluff one more time. And that call caused
21 him to lose his life, and he wasn't bluffing.

22 We're gonna talk about A.J.'s life or the
23 Defendant's, and always A.J. is unarmed.
24 Defendant shot and killed his cousin, Anthony
25 Rivers, Jr. on May 29th, 2021, on 10 Keystone

1 Drive, and he did so not in self-defense, but
2 with malice aforethought, and that's why it's
3 your duty to find him guilty of murder and
4 possession of weapon during a crime.

5 THE COURT: Thank you, Ms. Molina.

6 Mr. Lee?

7 **

8 **CLOSING ARGUMENT BY MR. LEE**

9 Thank you, Your Honor, may it please the
10 Court? Ms. Molina. I hate bringing notes up to
11 the podium, because I just want to talk to you,
12 but there are so many things that I had to write
13 down, so I want to talk to you, and I may look
14 at my notes a little bit, but let's talk a
15 little bit.

16 May 29th, 2021 is a different night for
17 Stephan. Why was that a different night? Well,
18 I started talking about the card game amongst
19 friends, happy, everybody knew each other, and
20 they did that by design, because you kind of
21 heard later on what happened at some other
22 parties. And it wasn't a choir practice,
23 nobody's -- I don't want you to think that for a
24 second.

25 There was booze there, there was alcohol

1 there. There were guns there. It was among
2 people who knew each other and trusted each
3 other, but it was different this night, because
4 somebody else was there, somebody came, even
5 though he was invited, he came, Anthony Rivers.

6 Now, Anthony Rivers was invited to the card
7 game, the one everybody knows and seemed to
8 like. Stephan looks out for him and gives him
9 money and clothes and gives him a ride when he
10 needs it.

11 Anthony Rivers showed up with a different
12 Anthony Rivers. He wasn't the one that was
13 supposed to be there. Jose Cuervo wasn't
14 supposed to be there, and to this level of .316,
15 four times the legal limit of alcohol. Mary
16 Jane, marijuana, as they call it, was not
17 invited, but she came, and guess who brought
18 her? Anthony Rivers. You can say what you want
19 about blood versus urine, someone else was there
20 who was not invited, Molly, is what they call
21 methamphetamine, the stuff that was in his
22 urine.

23 He was on something, because everybody said,
24 "What the hell is he on?" Who knows what he was
25 on. I mean three years ago who had heard of

1 fentanyl. There are drugs out there that don't
2 even show up on tests. There was something that
3 was different that made him different, because
4 he wasn't acting normal. It wasn't the usual
5 Anthony Rivers that night.

6 What also was different, I talked about
7 decisions. Most times most decisions are easy
8 to make, made quickly, and not really dangerous.
9 But there's also some decisions that are made
10 that are almost all the other ones, little more
11 difficult decisions if you have time to think
12 about them, to reflect and weigh the pros and
13 cons.

14 Getting married, maybe go to college, those
15 aren't made like that, because they're
16 important, and they have long-lasting effects.
17 And the decision that was made on May the 29th
18 by Stephan Polite, when he got out of that
19 place, he was finally able to leave, was neither
20 one of those kinds of decisions, it was a --
21 couldn't be more important, because it was for
22 his life, it was instinctual, it was
23 instantaneous.

24 He didn't have time to reflect. He didn't
25 have time to weigh the pros and cons. It

1 couldn't have been more important, but he could
2 not have had less time to make that decision;
3 and those are the kind of decisions that are
4 tough, the ones that you don't have to make very
5 often.

6 If you're driving, and someone turns in
7 front of you, you don't have time to weigh,
8 well, should I swerve to the left or the right,
9 or should I speed up, or try to slam on my
10 brakes? Those are made like that. Now,
11 fortunately, we don't have those decisions much,
12 thankfully. Ones that are that important that
13 you have to decide in an instant.

14 And here we have the Solicitor who just
15 spent an hour nitpicking about that decision
16 that was made. "Well, it doesn't make any
17 sense. There's a bunch of other reasonable
18 people that," when we talk about reasonable
19 people.

20 And the law recognizes in this situation,
21 that you've got to make an instantaneous,
22 lifechanging decision to save yourself, and in
23 the end someone who's put you in that decision,
24 who's threatening you, the law says, "Look, if
25 you've got to choose between yourself and

1 somebody else, you get to choose yourself." And
2 that's kind of a commonsense definition of self-
3 defense.

4 You don't have to let somebody hurt you, and
5 thank goodness it's like that, and it should be.
6 And that's what we've said all along happened in
7 this case. Does anyone like what happened --
8 the end result? Nobody wants to be put in the
9 position that Stephan Polite was put in, but he
10 was.

11 And in order for self-defense not to be a
12 complete defense and end up in a not guilty
13 verdict, it's not an excuse, but it's just an
14 indication, a reason to have to kill somebody to
15 stay alive. The only reason -- the only way it
16 can't be is, if the State of South Carolina
17 through their evidence, through their witnesses,
18 proves to you beyond a reasonable doubt, which
19 we talked about that, beyond a reasonable doubt.

20 Proof beyond a reasonable doubt, a reason
21 doubt is the type of doubt that causes you to
22 hesitate to act when making one of life's
23 important decisions. That's the burden they
24 have, and I talked about why that burden was so
25 high, because of the implications and what

1 happens in criminal court. They have to prove
2 to all of you'all's satisfaction, and beyond a
3 reasonable doubt self-defense didn't apply.

4 Not 50/50, 70/30, And they have to prove
5 beyond a reasonable doubt that self-defense was
6 not appropriate in this case, and it's not an
7 absolute defense, justification. Because murder
8 is unlawful and unjustified, self-defense takes
9 away the unlawful part of it, the unjustified
10 part.

11 And then you don't see it much, because
12 people are so seldom in this position, but it
13 was a different night that night, it was a
14 different Anthony Rivers. And so the State of
15 South Carolina nevertheless, after their
16 investigation, which we'll talk about in a
17 minute, decided that they're gonna charge
18 Stephan Polite with murder, for murdering
19 Anthony Rivers.

20 And they did, and that's why we're here.
21 And the Solicitor decided that she was going to
22 bring this case to trial, and she's going to
23 take on the burden and responsibility of proving
24 to the jury, because you'all are the last
25 stands, the last line.

1 She said she's gonna prove to you'll beyond
2 a reasonable doubt that Stephan unlawfully
3 killed Anthony Rivers with malice aforethought,
4 it wasn't justified, he had no reason to do it,
5 and he is guilty beyond a reasonable doubt of
6 murder.

7 So let's talk about how that's happened.
8 And the Judge will tell you at the end in the
9 charge, reasonable doubt is the type of doubt
10 that causes a reasonable person to hesitate to
11 act. There's a million reasonable doubts in
12 this case.

13 I'm gonna try to go through some of them,
14 but I'm sure you'all noticed -- I mean you'all
15 can talk about them in the jury room. So
16 reasonable doubt can come from something that
17 you see or hear, saying, that doesn't sound
18 right, or it can come from something that you
19 don't see or don't hear, the absence of
20 something, and there's a ton of both types of
21 situations.

22 I think the first question you have to ask
23 yourselves and talk about in the jury room is,
24 we're building a house as a jury, you've got to
25 build a house, and that's the Solicitor's job,

1 they need to be a house for us, and it needs to
2 be steady, it needs to be supported, it needs to
3 be able to withstand just about anything. So
4 what's the first thing you do when you build a
5 house? Start at the bottom and build a
6 foundation.

7 And I don't care how nice the house is from
8 up here, if the foundation's no good, guess
9 what, it crumbles. So what is the State's
10 foundation upon which they base this case?

11 Two people that they laughably, in my
12 opinion, called reasonable. And not only do
13 these reasonable people -- they call them by
14 their nicknames, by their street names, Banger
15 and Pumpkin, that is the foundation of the
16 State's case. If you can't get past Banger and
17 Pumpkin, you can't get anywhere. That's
18 reasonable doubt right there.

19 To sit here and call a witness by their
20 street name, or their -- come on, this is a
21 murder case, this is different, this is serious.
22 This is the biggest week of his life, and his
23 family's, and his kids, everybody. And they
24 want to come in here and say, "Oh, well, all the
25 other people were reasonable, Banger's

1 reasonable." Do you'all see auras over my head
2 or halos? I don't see any aura you'all, or
3 anybody else, but Banger does. It doesn't make
4 any sense.

5 I don't know what to say that other than the
6 Solicitor wants to cherry pick certain things
7 that fit into her narrative, her prosecution,
8 that Banger said, "Well, I'm telling the truth
9 about that," she's a reasonable person.

10 She didn't pull a gun on Anthony Rivers.
11 And then there's Pumpkin, she didn't really want
12 to be here, she didn't take very long. You
13 know, and Banger is currently disabled, but she
14 plays full contact basketball, and she's
15 disabled 100 percent by the military, for what?
16 Mental illness.

17 Every time I asked her a question, she'd go
18 on and on and on. And then when I caught her in
19 an inconsistent statement, she'd go, "Whatever
20 he wrote down four years ago that's the truth.
21 Whatever he wrote down that's the truth." Well,
22 you just swore on the Bible you're gonna tell
23 the truth today.

24 Pumpkin sort of -- a little bit echoed what
25 Banger said, but what do we know? Pumpkin

1 talked to Banger, after Banger talked to law
2 enforcement, and went in the next day. And
3 they're still reasonable people that their case
4 is based on.

5 The two people that they chose to bring to
6 court to satisfy their burden and give you'all
7 everything that you need to convict somebody of
8 a murder beyond a reasonable doubt, out of all
9 the people that were out there, they brought
10 two, two.

11 And they said they're reasonable and
12 trustworthy, and worthy of facing a murder
13 conviction of Stephan Polite on those two
14 reasonable people. They also called
15 Investigator Byrd. They have to because he's
16 the lead investigator. What Byrd had was,
17 "Everybody was bs'ing, or not talking to him, or
18 telling him things that weren't true.

19 Why? That's for you to decide. Garbage in,
20 garbage out. He said, "Yes, several people were
21 lying to get Stephan." He spent all day at the
22 tree at Chaplin Grocery trying to just talk to
23 random people, because the people that were
24 there, for whatever reasons, I mean they have
25 all kinds of resources, they had cameras, they

1 had everything you'd want.

2 Where would be a good place to start, in
3 addition to? Who else would help you and the
4 jury, in your difficult job of doing what the
5 Solicitor asked, which is, here's everything,
6 here's all the proof beyond a reasonable doubt.
7 You know what feels great about this? Here is
8 it in your lap, remove all reasonable doubt from
9 your mind. Who else could you have heard from?
10 Because we have reasonable doubt from what you
11 don't see and you don't hear.

12 Well, they started the trial off by playing
13 this 13-minute emotional 911 call. My client
14 says it's the first time he had heard it, and,
15 obviously, it upset him, so that's how they
16 started. And why did they play that? Well, she
17 told you, because you can hear him moaning, you
18 can hear Anthony Rivers moaning. We don't deny
19 that he died and it was a terrible thing.

20 So ask yourself, what's the purpose of
21 playing that? Just to play on your heart
22 strings, to try to look at something else,
23 distraction, but what did we hear in that 911
24 call? Well, Alexis Smalls, who identifies
25 herself on the phone, who lives there, said,

1 "Hey, I'm out 10 Keystone, somebody's been
2 shot." And then Arthur Washington, who also
3 lives there, gets on the phone, and they
4 specifically ask, "Did you see who did it?"
5 What did he say? "No. We were just inside, we
6 were inside, and just ran out. We didn't see
7 anybody, no car's leaving, nothing."

8 Alexis Smalls and Arthur Washington who live
9 there, who aren't here this week, who lied. She
10 even said they lied, but yet she wants you to
11 ignore that. She won't be bringing the liars in
12 court to give the jury what they want, they
13 lied. Why? I don't know.

14 Oh, well, maybe because Arthur Washington's
15 best friend was Anthony Rivers, Jr. Best
16 friends, but Washington lied, he's not here for
17 the trial of his best friend's killer.

18 Wild horses couldn't keep some of these
19 witnesses away. "I mean I want to, I'll
20 testify." Well, they aren't here, they didn't
21 bring them, but don't worry about that. Let's
22 talk about Arthur Washington, the owner of the
23 property. What do we know about him?

24 Well, he lied on the 911 call, and he was so
25 scared of his best friend who he'd never seen

1 act like that before, what did he do? He went
2 and got a gun, because this guy was scaring the
3 kids. Arthur Washington felt the need to get a
4 gun, a shotgun.

5 Remember Alexis, I think, had him put it
6 back in the shed. Well, why did they do that?
7 Well, guess who has gunshot residue on their
8 hands? Arthur Washington, who doesn't know
9 nothing about nothing. And they even said they
10 lied about that; they think it's better for
11 Arthur. Because after he calls 911 and lies to
12 him, doesn't know anything about anything, they
13 come to the house, and they talk to him, and
14 still didn't know anything about anything.

15 And then they go to talk to him on the front
16 porch stoop of the G shed, which appears to
17 maybe stand for gun shed, but, again, G shed,
18 shed, whatever you want to call it. Arthur
19 Washington is sitting on the stoop up there with
20 the officer right there.

21 And as you listened, the shed where the card
22 game was going, because Anthony was throwing the
23 paper on there, where all these tables were set
24 up, there's guns in there, there's a big party
25 going on minutes before, when that officer shows

1 up to talk to Arthur Washington. Pitch black,
2 you can -- pitch black in that shed, it's been
3 shut down, there's nothing in there, and he's
4 right between the door and the officer.

5 And Officer Garcia said, "Hey, when people
6 do that, they kind of like have something to
7 hide," which didn't seem like a big deal at the
8 time. And then we have the -- it's different
9 for Arthur, there's a little bit more. And the
10 Solicitor said, "Well, then, you know, Chelsea
11 Seronka went out there, after she left the
12 hospital," and she starts talking about the
13 things that Chelsea -- she got a GSR kit from
14 Anthony Rivers.

15 What she didn't tell you or remind you of
16 is, who else did she get a GSR kit from? Alexis
17 Smalls and Arthur Washington. And how do you
18 ignore this? Most importantly, what did
19 Investigator Seronka ask Arthur Washington, the
20 owner of the house and the owner of the shed?
21 "Can I go in the shed?"

22 Asked permission, and Arthur Washington, who
23 doesn't know anything about, Anthony Rivers, his
24 best friend, denied her request to go in that
25 shed. The one that's been shut down, he's

1 locked it. His friend's been shot, go through
2 somebody's shed. And not a single picture since
3 of the shed, not a single picture in court.

4 I don't know what's in that shed. I don't
5 know who's in that shed. I don't know what may
6 have come from Mr. Rivers and put into that
7 shed. Are you gonna take a gun off of somebody
8 so the cops won't find it, but you don't really
9 just want to throw it away, where would be a
10 good place to put it?

11 Somewhere where you know it's gonna be safe,
12 or you know where it is, and the police can't
13 get it. I don't know. Would have been nice to
14 ask him that. Put him under oath and let's find
15 some more stuff out. What you don't see and
16 don't hear is sometimes the most important. Who
17 else is out there? Akeem Chaplin, they didn't
18 bring him.

19 He's the one that said, "Watch out, Steph,"
20 right before that door opened, he's not here.
21 And there's been so many names running around,
22 Randy Moss, wouldn't you like to hear from him?

23 I mean the Solicitor's got the obligation
24 and the duty and the power and the resources to
25 get anybody here they want to, he's not here.

1 He saw the tussle before Stephan left, he's not
2 here. Does that cause you reasonable doubt?

3 Yes. And who else could we have? What
4 other reasonable people were -- well, I guess
5 the people that were reasonable were the ones
6 that the Solicitor says acted exactly the way
7 they should, because the reasonable people
8 didn't get so upset that night, but Stephan
9 Polite did. That doesn't make any sense.

10 What's not reasonable is, the investigation
11 that was done in this case, and the things that
12 weren't done, and the witnesses that weren't
13 brought here. And what's not reasonable is for
14 them to ask you to find beyond a reasonable
15 doubt that Stephan Polite did not act in self-
16 defense and is guilty of murder. Because the
17 reasonable people that were there were waiting
18 on law enforcement to get there, that's what she
19 said.

20 The people acted reasonably, stuck around,
21 and they were trying to help A.J., and they
22 stuck around waiting for law enforcement to
23 arrive. Again, who is that? Banger and
24 Pumpkin, the reasonable ones? We know Arthur
25 Washington was out there, you hear him on the

1 911 call, he's right there, but he didn't see
2 anything.

3 Is he acting reasonable when he lies to 911,
4 lies to the police officer, locks the shed,
5 doesn't give permission to go in the shed? Is
6 that reasonable? Of course not. Then the
7 Solicitor goes onto tell you that, "Oh,
8 everybody knew that Anthony Rivers didn't like
9 guns."

10 Well, he's at a card party where there's
11 guns, he didn't seem too bothered by that. And
12 it's weird, because if you don't like guns -- he
13 doesn't like guns, but he's not afraid of guns.
14 Is that reasonable? I mean if a sober Anthony
15 Rivers isn't scared of a bullet, what is an
16 Anthony Rivers, who's a .316, four times the
17 legal limit of alcohol, hopped up on marijuana
18 and whatever else, he's 10 feet tall and bullet
19 proof, he's certainly not scared of a gun.

20 He's not scared of anything. He's not gonna
21 stop, he doesn't know when to stop, he doesn't
22 know not to start, but he's one of the other
23 reasonable people that were there, to the
24 exclusion of Stephan Polite, because he's the
25 unreasonable one, according to the prosecutor.

1 And then there's this suggestion by the
2 Solicitor that when Stephan and his lawyer went
3 to talk to the police to turn over the car and
4 turn over the gun, Stephan Polite helped in this
5 case.

6 Now, they say, "Well, it could be thanks,
7 but no thanks, you know, he -- yeah, he helped,"
8 but remember when, according to her, the
9 Solicitor, your lawyer was in there, and he
10 talked about some sort of struggle in the car.

11 I don't remember anything about a prior
12 statement saying there was a struggle in the
13 car. I know what he said. I know what he
14 looked like on that stand, talking about
15 Stephan. I know the people that associate with
16 him. I know what kind of person he is, because
17 we've heard about them.

18 But she wants to nitpick and say, "Hey, I
19 think your lawyer said something to you about a
20 struggle in the car, and if there was a struggle
21 in the car, there'd be blood in the car, and
22 you're just lying. You lied then; you're lying
23 now.

24 Which way do you want it? Which way do you
25 want it?" And then she's trying to prove this

1 case beyond a reasonable doubt. The only
2 gunshot residue in the car. There should be, I
3 mean I think there would be, because there's no
4 question it was fired from the car, so how do we
5 explain that?

6 Well, you've got to collect the GSR first.
7 You've got to dust it, and you've got to do the
8 little thing. If you don't pick some, there's
9 nothing to test, but just the absence of that,
10 the absence of Anthony Rivers' DNA underneath
11 the handle of the car.

12 I mean you've got your own DNA guy, and
13 among other things, but they don't have the
14 ability or the desire go look for people, to
15 bring witnesses to court, to give you all the
16 evidence that you need?

17 Oh, who else wasn't here? His supervisor
18 who was out there that night, Todd Duncan, the
19 one who sat in on interviews. He is now Master
20 Sergeant Todd Duncan, but he's still an
21 investigator. He talked to these people, he
22 talked to witnesses. Well, it wouldn't hurt.
23 They can't give you too much. They're not
24 giving you anything.

25 Yet they still have the burden to prove this

1 case beyond a reasonable doubt, remove all doubt
2 from your mind. They were talking about
3 basketball, and she played basketball with
4 Stephan.

5 How close to the basket would I need to take
6 you'all, so that you knew and didn't hesitate to
7 act that you would make the shot? That you
8 wouldn't hesitate, and say, "I know that I'm
9 gonna make that shot."

10 I mean is it a free throw? Those NBA guys
11 make those most of the time. Is it a three-
12 pointer? No, you would want to be right -- you
13 have the basket right there, and you want the
14 ball right there to get it in, and you want the
15 Solicitor to carry you all the way up there, and
16 all the way up there, remove the doubt, so that
17 you drop the ball in the basket.

18 Think about where they have put you though,
19 because of what they haven't shown you in the
20 arguments they've made. It's not a layup, it's
21 not a free throw, it's not a three-pointer, it's
22 not half court, they, essentially, want you to
23 throw the ball the length of the floor, and make
24 it beyond a reasonable doubt, and say, "All
25 right, that's close enough, here you go.

1 I've convinced you, you can make this shot,
2 no questions asked." Well, the other thing that
3 I use as a silly example, if you miss it, it's
4 no big deal.

5 If we miss on this, it is a big deal. We
6 can't undo these things. The only way this
7 thing can be appealed, if he's found guilty, we
8 have to show that the Judge made an error, not
9 that you'all didn't get it right, so don't rely
10 on that, this is a big day. This is his one
11 week in court.

12 I know I'm leaving a bunch of stuff out, and
13 I trust you'all to talk about things. Think
14 about what you saw, what you didn't see, what
15 you heard, or what you didn't hear, and then
16 you'all saw Stephan. Did he have to get up
17 there? Nope, absolutely didn't have to.
18 Because, you know, if he gets up there, guess
19 what, he's got to answer questions from her, but
20 he did.

21 And if he hadn't have got up there, the
22 Judge would have said, "Jury, you can't even
23 talk about that the Defendant didn't get up and
24 tell you what happened." And it didn't make
25 sense, it didn't make sense. And, again, it's

1 not a, well, Stephan told me three -- or the
2 reasonable people that they chose to bring to
3 court, it's not like, well, it would have to be
4 that you have reasonable doubt, that you have,
5 excuse me, that the State had removed all
6 reasonable doubt from your mind, that their
7 version is right and his is wrong, not 51/49,
8 removed all doubt about what he told you.
9 Because what he told you is textbook self-
10 defense, it's textbook.

11 And I would add one other thing that I
12 thought about driving over here is, I hate scary
13 movies, I can't stand them, never want to watch
14 them. Well, in 1978 I had to look it up, Friday
15 the 13th came out with Jason, and I don't like
16 to watch scary movies, and I'm showing my age, I
17 watched that when I was younger, and I will
18 never watch another scary movie again.

19 And the thing about it is, this woman was
20 being stalked by this guy. I mean it is bloody,
21 messy, scary and everything else, but at the end
22 she finally gets away. And so all this horrible
23 stuff happens, and the very last scene in the
24 movie is, they're playing this peaceful music,
25 and there's this canoe on this like plastic

1 mountain lake, and this girl's kind of leaning
2 over a little bit. It looks like she's asleep
3 and resting. And then it shows a police officer
4 pull up to the shore, and he's like waving at
5 her and stuff like that. It's like the movie's
6 over, and all of a sudden the guy who'd been
7 stalking her, comes out of the water, grabs her
8 and pulls her hair and pulls her in the water,
9 because you have let down your guard, you have
10 gotten -- already been scared, and it's finally
11 over.

12 And that is the classic part of that movie,
13 and that's what people always talk about is, you
14 let down your guard, you'd gotten away, in her
15 case and in his case, and you're even more
16 susceptible to fear and to danger, because you
17 let your guard down.

18 He had eyes on him, Rivers, the whole night,
19 purposely, purposely did. The one time he
20 didn't have eyes on Anthony Rivers, he has to
21 stop and get his wallet, he's slowly driving
22 out, that's the only time he turned his back on
23 Anthony Rivers.

24 The next thing he knows he's right there,
25 he's got the door open, and, yeah, he had a gun,

1 and, yeah, he shot him; but it's just like the
2 scene in Friday the 13th, it makes it even
3 worse, it makes it even more fearful, it makes
4 you make more of those impulse decisions,
5 instantaneous, and that decision was
6 instantaneous, instinctual, important.

7 Yes, it was unfortunate, that's why we're
8 here today, but it had to be made. He didn't
9 want to make it, but he had to. And the reason
10 we're here today is, because he made that
11 decision that the Solicitor said was
12 unreasonable, under her definition of
13 unreasonable, when we know what her definition
14 of unreasonable is, the case she presented, the
15 investigation of Banger, Pumpkin, et cetera.

16 If that's her definition of reasonable, I
17 don't want to be reasonable; but under a
18 legitimate definition of reasonable, that was a
19 reasonable decision to make under the
20 circumstances. And she also acts like Stephan
21 has had it out for Anthony Rivers, wanted to
22 hurt him, building up the scenario. If for one
23 second Stephan Polite would have wanted to shoot
24 and kill Anthony Rivers, he had all night to do
25 it.

1 He was in the shed for an hour and a half.
2 He goes there, he's joking around with Natasha
3 Robinson, and everything's good, everything's
4 good to go, and all of a sudden Anthony Rivers
5 comes in, and everything changes.

6 And at that point, when everything starts
7 going down, and whether you want to say Rivers
8 was acting like a demon, or whatever, I think
9 that's probably a pretty good description of
10 him, and that's what he was dealing with that
11 night.

12 So Stephan goes from going over there to
13 have a good time with friends. The next thing
14 you know he's confined by the G shed walls, why?
15 Because Rivers is out there, and people are
16 trying to get him, he's fighting. For ten
17 minutes he's holding onto the banister, they
18 push him down, he goes after Stephan again, he's
19 yelling through the thing.

20 Stephan, essentially, is held captive in the
21 shed he said for like an hour, hour and a half.
22 And who are they trying to get rid of at that
23 time? Not Stephan, not the guy who has murder
24 on his mind, they're trying to get rid of the
25 problem, the one that's not reasonable.

1 Stephan stayed in the shed. They said,
2 "Stay in there, we're trying to get rid of him."
3 And they try and try and try, they try different
4 things. Stephan went so far as to call a mutual
5 friend, "Hey, man, will you come pick him up?
6 He's crazy. He needs to get out of here."

7 He calls his friend, who is ironically the
8 one who blocks the car when he was leaving,
9 which is, again, sadly ironic. So for an hour,
10 hour and a half he's captive in the G shed. We
11 know there's guns in there, there's other people
12 in there. At some point, I guess, the shotgun
13 that Arthur Washington went and got is in there,
14 so -- but he's in there. He'd like to leave, he
15 wants to leave, they won't let him leave.

16 Now, is that because Anthony Rivers is
17 intoxicated. It's probably part of that, but do
18 you know what the other part of it probably is?
19 The host, hostesses, they don't want him to
20 leave. He plays big money poker. And guess
21 what? Any time the pot gets sliced, the house
22 gets the little portion of it, so it's in their
23 interest to have him stay there, because he's
24 got money, he gambles.

25 Even if he wins the pot, they get a piece of

1 it. They don't want him to leave. But anyway
2 he's in there, he wants to leave, he's tired of
3 this, he wants to go home. He wants to remove
4 himself from the situation.

5 And, finally, at some point, they think they
6 have Anthony Rivers pinned up good enough, he
7 starts to leave, and do you know what Mr. Rivers
8 did? Breaks free and comes after him again, and
9 that's when they get in the fight. I think
10 Banger used the term, "He made a beeline to his
11 car to go home."

12 He wanted -- he's trying to get out of
13 there, he's trying and trying, he's trying to
14 get him a ride home, he's trying to calm him
15 down. Now, if you think they calm him down, I
16 don't know. Maybe that's a reasonable thing to
17 do, I don't know.

18 Maybe it worked before, I don't know, but
19 that's not -- they tried everything to try to
20 get this guy to calm down, to quit being so
21 aggressive, and quit being so crazy. So when he
22 finally said, "Well, okay, you'all hold him over
23 there, I'm gonna go," what happens? And this is
24 after an hour, hour and a half, Rivers is
25 continuing to act like this. Why? We don't

1 know. Probably because what was inside of him,
2 in his bloodstream, because the doctor said,
3 "Yeah, marijuana can enhance the effects of
4 alcohol."

5 He was already at a .316, bac, but if you're
6 aggressive -- we all have friends that drink,
7 some people get aggressive, some people get
8 happy, some people get sad, some people get mad,
9 some people want to fight. And so you have a
10 level that high that's enhanced by marijuana,
11 that can act as a simulant, so you don't even
12 realize you're that drunk, but you are amped,
13 and it goes on for an hour and a half.

14 And finally he's able to try to leave, there
15 he comes, comes after him, gets in a fight.
16 According to the Solicitor's theory, Stephan
17 then took this weapon and pistol-whipped Anthony
18 Rivers, pistol-whipped him twice. Do you see
19 any lacerations?

20 Do you see any major injuries to Anthony
21 Rivers from being pistol-whipped twice? No.
22 There would be brain bleeds, there'd be cuts
23 across -- this is a metal gun being -- someone
24 being pistol-whipped. It didn't happen. He
25 said they fought. "Well, where'd you hit him?"

1 "Man, I don't know exactly where."

2 That's the most honest answer I've heard the
3 whole time, "I don't know exactly where, but he
4 got hit, I got hit, it was a fight." Trying to
5 control him down, he tried to keep him down. He
6 goes to his car. Gets in his car, drops his
7 wallet, had to do like that, and he's like the
8 lady at the lake, it's finally over.

9 All I've got to do is get around this corner
10 and I'm out of here. Here comes Jarad Johnson
11 to rescue him, the guy that Stephan Polite had
12 called. Then in the meantime Anthony Rivers --
13 he's still after him. Gets up to the car, opens
14 it right here, and Stephan's like that lady in
15 the lake, falls over. And he's right there, and
16 he's in his face, and he's close and the door
17 opens. And he did what he had to do. He didn't
18 have time to make a decision.

19 Everything he did, although everybody wishes
20 we could undo what happened, he is lawfully
21 excused from that homicide. It was a terrible
22 tragedy. It's gonna affect these people for a
23 long time, everybody. It's gonna affect him for
24 a long time. And that scar he has on his leg
25 from getting shot in 2017 is a pistol scar that

1 he's gonna have forever. He sees that thing
2 every day he takes a shower. But the scars he's
3 got from this don't show, and he's gonna have
4 them, and he's paid a severe price for this.

5 And the Solicitor is trying to say, "Well,
6 this and this, and that's not really true." I
7 mean does that show he's lying about it? Of
8 course not.

9 People have to go to work, and the people
10 who love him, they show up, because they support
11 him, but the scars he's got from this you can't
12 see, and they will be forever lasting. Had he
13 not done what he did that night, he'd have
14 plenty of scars, he may not even be here.

15 And you can poo-poo all you want about a
16 razor knife not being a weapon. He wasn't
17 carrying no gun, his pants fell down and, you
18 know, he didn't have any drawers on. Well, he
19 at least had that, that's probably the thing
20 that didn't get out of his pocket, and it's a
21 razor knife.

22 Who knows if he was banging on the car with
23 this, or a gun that -- he may have already had a
24 gun, or his fist, or whatever, and he's going
25 down the side. And if you want to tell me

1 that's not a weapon, tell the people whose
2 planes were hijacked on 9/11. That's what the
3 hijackers used were boxcutters, and that's
4 exactly what that is.

5 I've left out a bunch of stuff. I know
6 you'all took notes, and you'all will talk about
7 it and stuff. This is probably not what you
8 were expecting when you came in Monday is to
9 hear about death and that sort of thing, but the
10 bottom line is you've got to ask yourself this
11 question, when you get back there, what are our
12 reasonable doubts, and has the prosecutor in the
13 State of South Carolina, with all their
14 resources, with all the time, it's almost three
15 years, have they done everything they can do to
16 give us a fair view of this case, a complete
17 view, and in doing so, did they answer all our
18 questions?

19 Did they remove all reasonable doubt we have
20 about what happened that night? And did they
21 convince us -- did they disprove self-defense
22 beyond a reasonable doubt? And they didn't.

23 And, again, each one of you I'm sure has
24 doubts that I haven't talked about, we'd be here
25 forever, but I would encourage you to start your

1 deliberations by talking about reasonable doubt.
2 Everybody needs for this thing to be over, for
3 them, and for them, and for them, and for all
4 others.

5 And your verdict is gonna end this in a very
6 loud way, one way or the other. And I would
7 encourage you to think about that, and to
8 understand and realize that you have an
9 incredibly tough job being a juror, but I'm
10 gonna ask you to send Stephan back to his
11 family.

12 It's gonna take a long time for people to
13 get over this, but you'all know the right thing
14 to do, and the right verdict. Take as long as
15 you want, talk about whatever you want.

16 Please, this is a difficult time in the
17 lives of lawyers. The end of a very long time
18 is here. I've always had Stephan's back, and
19 always been there, but I'm getting ready to turn
20 him over to you'all. I trust you'all to take
21 care of us. Thank you.

22 THE COURT: Thank you, Mr. Lee. Ms. Molina?

23 **

24 **FINAL CLOSING ARGUMENT BY MS. MOLINA**

25 MS. MOLINA: The defense has brought up

1 multiple times that A.J. was four times over the
2 legal limit to drive, not to live. There's no
3 legal limit that you have to be at, in order to
4 not be murdered. Then he wants you to believe
5 that you can't trust the science, and there's
6 drugs affecting A.J. that didn't show up on his
7 tox.

8 Self-defense is based on fear, and it's
9 necessary in order to take somebody's life, not
10 necessary in this case. And pointing out
11 calling Banger and Pumpkin by their nicknames,
12 he also did, but the defense wants you to
13 believe Banger and Pumpkin, when they are
14 consistent with the Defendant, but then called
15 them liars when they say whatever's in the
16 report, when he was asking her what she was
17 wearing that day, and the dates. It doesn't
18 matter.

19 They also talked to you about Investigator
20 Byrd, people telling him garbage, and filtering
21 through that. The first person Investigator
22 Byrd got any details from garbage. And then
23 made a big deal about all the people you didn't
24 see, while also pointing out that they all lied.
25 You don't bring liars to court, that doesn't

1 make sense. The people who have been
2 consistent, who talked to law enforcement, who
3 were then corroborated by the evidence and not
4 the people who said, "I didn't see anything."
5 What good would that have been?

6 He also said that Arthur Washington got the
7 gun because he was scared. The testimony was
8 because A.J. insulted his wife, or girlfriend,
9 Alexis, not that he was scared. He's not scared
10 of A.J., he's trying to calm him down.

11 I told you'all about the gunshot residue.
12 He wants you to believe it's from grabbing this
13 gun, maybe. More likely from when he's on the
14 ground rendering aid to the victim who's just
15 been shot. And at no point when Defendant was
16 on that stand did you hear him say, "I thought
17 victim had a gun," but I don't know, maybe,
18 maybe he could have, I don't know.

19 He talked about how he kept his eyes on him
20 the whole night. The first time he took his
21 eyes off. Well, didn't he still have ears on
22 him? You know where he is. You can hear that;
23 he's banging on your car. Banger and Pumpkin
24 are very good friends with both, to the victim
25 and Defendant, and they told you'all that.

1 And they told you that. And then he's
2 talking about, well, why did A.J. get all riled
3 up about all the other guns in the shed, because
4 it's a lie, Defendant lied about that. No one
5 else said that; he lied about it.

6 The victim was looking for a gun when he
7 went in there. Had there been guns, he would
8 have been riled up. He told you it was out of
9 nowhere, it doesn't make sense. They also
10 talked a lot about A.J. believing he's bullet
11 proof, and not afraid of guns. And you've heard
12 people say that A.J. was saying, "Kill me, kill
13 me."

14 Well, consent is not a defense to murder.
15 And the victim having some stupidity when it
16 comes to guns is not a defense to murder. He
17 should have been scared of guns, but for some
18 reason he wasn't, not a defense for murder.

19 He also talked to you about no GSR on the
20 car, and the absence of DNA, and that does the
21 same thing. Well, there was DNA for GSR in the
22 car on the inside of his door. And you heard
23 all the reasons that DNA might not show up on a
24 car.

25 The car takes possession the days following

1 the murder, not Arthur Washington, not Alexis,
2 not the people who stayed on scene rendering
3 aid, who are hiding all this evidence in this
4 shed, so the actual evidence with the Defendant.
5 And a big deal about Master Sergeant Duncan not
6 being called.

7 Investigator Byrd told you they were with
8 each other the whole time. Everything that
9 Master Sergeant Duncan did, Investigator Byrd
10 was there for. He also said that all these
11 people for an hour and a half were trying to get
12 rid of the victim. They were trying to calm him
13 down, after he was provoked and antagonized by
14 the Defendant, bringing on the difficulty,
15 leading to the shooting.

16 Trying to get him to quit being so angry and
17 aggressive. Angry and aggressive because he
18 pulled a gun on him. And he talked to you about
19 all these visible scars that he could have
20 suffered that night.

21 Well, A.J. actually got injuries that the
22 forensic pathologist told you about. Bruises on
23 the side of his head from being pistol-whipped,
24 a gunshot wound that killed him. Not just a
25 reminder of senseless gun violence, and how you

1 should properly take care of handling a firearm,
2 he didn't, actual injuries. And I do agree with
3 what Mr. Lee said about the most honest thing
4 out of the Defendant's mouth while he was up
5 there was, "Ma'am, I don't know where I hit him,
6 we were fighting." Didn't even say he hit him
7 in the head, two pistol-whips.

8 And no one did more than the Defendant to
9 help law enforcement. Law enforcement followed
10 up on the things the Defendant told them, and
11 now he's saying you can't trust that, and you
12 can't believe that, because they're not
13 consistent with the story he spun up yesterday.
14 He wants you to trust him. The man that got up
15 there and told you he shot, caused this wound,
16 killed the victim with an unloaded gun. He's a
17 liar.

18 You've also heard twice during defense's
19 closing that it's all doubt, Sanders is not all
20 doubt, it's reasonable doubt. And reasonable
21 doubt is like a puzzle, and when you're doing a
22 puzzle, sometimes you might be missing a corner
23 piece and maybe a piece down here, but you know
24 what the picture is. It's not a half-court
25 basketball shot; it's a murder case, putting the

1 pieces together. And it might be nice to have
2 the whole puzzle, that's not what the law
3 requires, beyond a reasonable doubt.

4 You'all know what happened here, and you
5 have all of the pieces to find the Defendant
6 guilty of murder, and possession of a weapon
7 during a violent crime.

8 THE COURT: Thank you, Ms. Molina.

9 Ladies and gentlemen, we have about 20 or so
10 minutes more to go, but I've got a feeling we
11 might need a short recess. Let's take a five-
12 minute recess. I'll ask you to retire to the
13 jury room and remind you it's too early to begin
14 discussing the case. Let us know when you're
15 ready to come back in.

16 (Jury exits the courtroom.)

17 THE COURT: All right, we're in recess for
18 about five, eight minutes.

19 (RECESS)

20 **

21 **PROCEEDINGS CONTINUED**

22 BAILIFF: All rise, this Court is back in
23 session.

24 THE COURT: Please keep your seats, ladies
25 and gentlemen. We believed that the jury is

1 about ready to come back in. Lunch has been
2 ordered for them, and is expected to arrive in
3 30 minutes, so after we have them retire to
4 their jury room to begin deliberations, then
5 we're gonna take a 30-minute break.

6 I don't know what the Solicitor has planned,
7 but we're gonna take 30 minutes before we do any
8 other business.

9 Let's bring the jury in, if they're ready.

10 BAILIFF: Yes, Your Honor.

11 THE COURT: Oh, let me tell the attorneys
12 something I should have already told you. For
13 the first few minutes of my presentation to the
14 jury, I probably will not use word-for-word what
15 you have proposed. It'll be, in essence, the
16 same thing.

17 BAILIFF: The jury's entering the courtroom,
18 Your Honor.

19 (Jury enters the courtroom.)

20 BAILIFF: The jury's seated, Your Honor.

21 THE COURT: Welcome back, ladies and
22 gentlemen. I assume the Bailiff has informed
23 you that lunch has been ordered. At any rate,
24 it has been ordered for you.

25

JURY CHARGE

THE COURT: I'm about to now tell you about the law that applies in this case. If you recall earlier, I told you that you decide what the facts are, you apply them to the law, as I tell you it is.

As I also mentioned to you earlier, the fact that the Defendant has been indicted is not evidence and cannot be considered by you as evidence.

The Defendant has pled not guilty to these charges, the charges contained in the indictment, and this puts the burden upon the State to prove the Defendant's guilt to you beyond a reasonable doubt. I'll tell you that a person charged with committing a criminal offense in this State is never required to prove themselves innocent.

And I tell you that it is an important rule of law, that the Defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which an indictment was issued, unless guilt has been proven by evidence that satisfies you, the jury, of that guilt beyond a

1 reasonable doubt. This presumption of innocence
2 does not end when you begin your deliberations,
3 but it accompanies the Defendant throughout the
4 trial until you reach your verdict of guilt,
5 based on evidence that satisfies you of that
6 guilt beyond a reasonable doubt.

7 The presumption of innocence is like a robe
8 of righteousness placed about the shoulders of a
9 defendant, which remains with the Defendant
10 until it has been stripped from the Defendant by
11 evidence that satisfies you of the guilt beyond
12 a reasonable doubt. The presumption of
13 innocence is not mere legal theory, it is not
14 just a legal phrase, it is a substantial right
15 to which every defendant is entitled, unless
16 you, the jury, are satisfied from the evidence
17 of the Defendant's guilt beyond a reasonable
18 doubt.

19 A reasonable doubt is the kind of doubt that
20 would cause a reasonable person to hesitate to
21 act. The State has the burden of proving the
22 Defendant guilty beyond a reasonable doubt.

23 Some of you may have served on juries in
24 civil cases, where you're told it was only
25 necessary to prove a fact that's more likely

1 true than not true, such as by the greater
2 weight or the preponderance of the evidence, but
3 in criminal cases the State's proof must be more
4 powerful than that, it must be beyond a
5 reasonable doubt.

6 Proof beyond a reasonable doubt is proof
7 that leaves you firmly convinced of a
8 defendant's guilt, but, of course, there are
9 very few things in this world that we know of
10 with absolute certainty, and in criminal cases
11 the law does not require proof that overcomes
12 every possible doubt. If based on your
13 consideration of the evidence, you are firm
14 convinced that the Defendant is guilty of the
15 crime charged, you must find the Defendant
16 guilty. If on the other hand, you think there's
17 a real possibility that the Defendant is not
18 guilty, you must give the Defendant the benefit
19 of the doubt and find the Defendant not guilty.

20 During this trial you and I have had
21 different responsibilities and obligations. One
22 of the things I've been required to do is rule
23 on the admissibility of evidence during this
24 trial. You are to consider only the testimony
25 that has been presented from the witness stand,

1 or any exhibits that have been made a part of
2 the record in this case. I also have the
3 additional duty, as I told you a moment ago, to
4 charge you or tell you about the law that
5 applies in this case. And as the Presiding
6 Judge, I am the sole judge of the law of the
7 case, and it is your duty, as jurors, to accept
8 and apply the law as I now state it to you. And
9 if you have any idea that the law is different,
10 or should be different, then I tell you that you
11 must put that out of your mind, because under
12 your oath you're obligated to accept the law
13 exactly as I state it to you.

14 As you know, in every case tried in this
15 Court before a jury, the jury becomes the sole
16 and exclusive judge of the facts of the case.
17 And a Trial Judge, such as myself, cannot
18 comment about the facts of the case, or make any
19 statement about the facts of the case, because
20 you, the jury, are to determine the sole facts
21 of this case, and you're not to infer from
22 anything that I have said or done during the
23 progress of this trial, that I have an opinion
24 about the facts of this case.

25 The law does not permit me to have an

1 opinion about the facts of this case, this is a
2 matter solely for you, the jury, to determine.
3 As jurors, it is your duty to determine the
4 effect, the value, the weight and the truth of
5 the evidence presented during the trial.

6 There are two types of evidence generally
7 presented during a trial, direct evidence and
8 circumstantial evidence. Direct evidence is
9 testimony of a person who claims to have actual
10 knowledge of a fact, such as an eyewitness. It
11 is evidence which immediately establishes the
12 main fact to be proof.

13 Circumstantial evidence is proof of a chain
14 of facts and circumstances indicating the
15 existence of a fact. It is evidence which
16 immediately establishes collateral facts, from
17 which a main fact may be inferred.

18 Circumstantial evidence is based on inference,
19 and not on personal knowledge or observation.
20 The law makes no distinction though between the
21 weight or the value to be given to either direct
22 or circumstantial evidence, nor is a greater
23 degree of certainty required of circumstantial
24 evidence than of direct evidence.

25 You should weigh all of the evidence in this

1 case, and after weighing all of the evidence, if
2 you are not convinced of the guilt of the
3 Defendant beyond a reasonable doubt, you must
4 find the Defendant not guilty.

5 Necessarily, ladies and gentlemen, you must
6 determine the credibility of the witnesses who
7 have testified. This simply means the
8 believability, because it is your duty and
9 obligation as jurors to analyze, and to evaluate
10 the evidence, and determine which evidence
11 convinces you of its truth.

12 In determining the believability of
13 witnesses who have testified, you may believe
14 one witness over several witnesses, or several
15 witnesses over one witness. You may believe
16 part of the testimony of a witness, and reject
17 the remaining part of the testimony of that very
18 same witness.

19 You may believe the testimony of a witness
20 in its entirety or reject the testimony of a
21 witness in its entirety. And you may consider
22 whether the witness has exhibited to you any
23 interest, bias, prejudice, or other motive in
24 the case; and you may also consider the
25 appearance and manner of a witness while on the

1 witness stand.

2 Normally, the rules of evidence does not
3 permit witnesses to testify about their opinions
4 or conclusions, but an exception to this rule
5 exist for witnesses that are called expert
6 witnesses. An expert witness, a witness who by
7 education, experience has become an expert in
8 some art, or science, or profession. They may
9 state an opinion as to relevant matters in the
10 area that they claim to be an expert in. They
11 also may give the reasons for their opinion.

12 You should consider any expert opinion
13 received as evidence in this case, and like
14 other evidence, you give it the weight you think
15 it deserves. If you decide that the opinion of
16 an expert witness is not based on sufficient
17 education, or experience, or if you conclude
18 that the reasons given in support of the opinion
19 are not sound, or that an opinion is outweighed
20 by other evidence, you may disregard the opinion
21 entirely.

22 An expert witness' testimony is to be given
23 no greater weight than that of other witnesses,
24 simply because the witness is an expert, and
25 you're not required to accept an expert's

1 opinion, even though it is not contradicting. I
2 tell you that in order to establish criminal
3 responsibility, criminal intent is required.
4 For example, the mental state required to be
5 proven by the State for a particular crime might
6 be purpose, intent, knowledge, recklessness, or
7 criminal negligence.

8 Criminal intent must be proven by the State
9 beyond a reasonable doubt. Criminal intent is a
10 matter that must be determined by the jury from
11 the circumstances surrounding the situation.
12 There's no way to prove intent by mathematical
13 certainty. There's no way medical science can
14 dissect a person's brain and determine what the
15 person had in their mind. So the law says that
16 criminal intent may be shown from the
17 circumstances shown to have existed. This is
18 how you make a determination of whether or not
19 the element requiring intent was present.

20 It is not necessary to establish intent by
21 direct and positive evidence, but it may be
22 established in the same way other facts are,
23 taking into consideration the acts of the
24 parties, and the facts and circumstances of this
25 case.

1 Criminal intent is a mental state of
2 conscious wrongdoing. It's up to you to
3 determine what the Defendant intended to do from
4 the circumstances shown to have existed.
5 Criminal intent can arise from action, or a
6 failure to act. It may arise from negligence,
7 or recklessness, or an indifference to duty or
8 consciousness that is considered by the law to
9 be the equivalent of criminal intent.

10 A person has testified in this case that
11 allegedly had a criminal record, and I tell you
12 that such a person is competent to testify
13 during this trial. The past record of such a
14 person does not affect the ability of that
15 witness to testify. The past record may only be
16 considered by you, if at all, in determining the
17 witness' believability.

18 Remember, you're the sole judges of the
19 facts of this case, and of the believability of
20 any and all of the witnesses. A statement has
21 alleged to have been made by the Defendant and
22 has been submitted as evidence in this case.
23 And while the Court has determined that this
24 statement is admissible, I tell you that you
25 make the ultimate decision of whether or not the

1 Defendant made the statement and whether the
2 Defendant did make the statement, you must
3 determine whether the statement was made
4 voluntarily and of his own free will, and this
5 means that the Defendant was not caused by
6 pressure, force, fear, threats, coercion,
7 intimidation, or by hope of a leniency or reward
8 of any kind.

9 In determining whether a statement was
10 voluntary, you may consider both the
11 characteristics of the Defendant, and the
12 details of the question. Some of the factors
13 you may consider would be the age of the
14 Defendant, education, or lack of education of
15 the Defendant, the Defendant's mental ability or
16 capacity, the Defendant's IQ or intelligence,
17 the Defendant's background and environment, the
18 place and the length of detention, if any, the
19 nature of the question, and the advice or lack
20 thereof to the Defendant of his constitutional
21 rights, including, but not limited to the right
22 to remain silent, or that any statement could be
23 used against him in a court of law, the right to
24 have a lawyer present, and if he or she could
25 not afford a lawyer, the lawyer would be

1 appointed to represent him without cost, and
2 that he could stop making a statement at any
3 time.

4 You must carefully consider all the
5 surrounding circumstances before you give any
6 weight to an alleged statement. The State has
7 the burden of proving beyond a reasonable doubt
8 that the statement was voluntary. If you
9 determine it was, you may give the statement any
10 further consideration that you think is proper.
11 You decide the weight, if any, that should be
12 given to the statement, and if you determine the
13 statement was not the free and voluntary act of
14 the Defendant, you should not consider it at
15 all.

16 As you know, the Defendant is charged with
17 murder. The State must prove beyond a
18 reasonable doubt that the Defendant unlawfully
19 killed another person with what is called malice
20 aforethought. Malice is hatred, ill-will or
21 hostility towards another person. It's the
22 intentional doing of a wrongful act, without
23 just cause or excuse, and with an intent to
24 inflict an injury is an evil intent.

25 Malice is wrongful intent to injure another

1 person. It indicates a wicked or depraved
2 spirit intent on doing wrong. Malice is a legal
3 term implying wickedness and excluding a just
4 cause or excuse. The term malice indicates a
5 formed purpose and design to do a wrongful act
6 under the circumstances that exclude any legal
7 right to do it.

8 Malice aforethought does not require that
9 malice exists for any particular time before the
10 act is committed, but malice must exist in the
11 mind of the Defendant just before and at the
12 time the act is committed, therefore, it must be
13 a combination of the previous evil intent and
14 the act.

15 Malice aforethought may be express or
16 implied. These terms expressed or implied do
17 not mean different kinds of malice, but merely
18 the matter in which malice may be shown to
19 exist, either by direct evidence, or by
20 circumstantial evidence from the fact and
21 circumstances which are proven. Express malice
22 is shown when a person speaks words, which
23 express hatred or ill-will for another, or when
24 the person prepared beforehand to do the act
25 which is later accomplished, for example, lying

1 in wait for a person, and preparation to show
2 that a deed was done in the Defendant's mind
3 would be expressed malice.

4 Malice may be shown from conduct, showing a
5 total disregard for human life. The Defendant
6 is also charged with possession of a weapon
7 during the commission of, or the intent to
8 commit a violent crime.

9 The State must prove beyond a reasonable
10 doubt that the Defendant was in possession of a
11 firearm, or visually displayed what appeared to
12 be a firearm during the commission of a violent
13 crime. And, of course, a firearm is any rifle,
14 pistol, revolver, a weapon designed to expel a
15 projectile.

16 In order to find the Defendant guilty of
17 possession of a weapon during the commission of
18 a violent crime, you must first find the
19 Defendant in this case guilty of murder. In
20 other words, the Defendant cannot be found
21 guilty of possession of a weapon during the
22 commission of a crime, if he's not also found
23 guilty of murder in this case.

24 The State must prove beyond a reasonable
25 doubt that the weapon further advanced or helped

1 the commission of the crime.

2 The Defendant has raised the defense of
3 self-defense. Self-defense is a complete
4 justification or a charge of murder, and it
5 negates the existence of malice in the charge.
6 Thus, you must find that the Defendant is not
7 guilty of murder, unless the State proves beyond
8 a reasonable doubt that an element of self-
9 defense did not exist in this case. There are
10 four elements.

11 First, the Defendant must be without fault
12 in bringing on the difficulty. One cannot
13 provoke, initiate, or otherwise, through his own
14 fault, bringing about a difficulty, and then
15 claim the right of self-defense and the use of
16 deadly force against an attack, which was caused
17 by that provocation.

18 Second, the Defendant must have actually
19 believed he was in imminent danger of losing his
20 life or sustaining serious bodily injury, or was
21 actually in such imminent danger.

22 Third, that his defense is based upon his
23 belief of imminent danger, that such a
24 reasonable, prudent man of ordinary fitness and
25 courage would have also entertained the same

1 belief. If the Defendant actually was in
2 imminent danger, the circumstances were such
3 that a reasonable man of ordinary prudence,
4 firmness and courage to strike the fatal blow,
5 in order to save himself from serious bodily
6 harm, or from losing his own life.

7 Deadly force is only appropriate when
8 necessary and may only be exercised when the
9 Defendant entertains a reasonable belief that he
10 or some other person is about to sustain loss of
11 life or suffer serious bodily harm.

12 Fourth, the Defendant had no other probable
13 means of avoiding the danger of losing his life,
14 or sustaining serious bodily injury, other than
15 to act as he did in this particular instance.
16 If you have a reasonable doubt of Defendant's
17 guilt after considering all the evidence,
18 including the evidence of self-defense, then you
19 must find the Defendant not guilty.

20 On the other hand, if you have no reasonable
21 doubt of the Defendant's guilt after considering
22 all the evidence, including the evidence of
23 self-defense, then you must find the Defendant
24 guilty.

25 The Defendant is presumed to be innocent

1 until proven guilty beyond a reasonable doubt.
2 If you have any reasonable doubt of whether the
3 State has shown that the Defendant did not act
4 properly in self-defense, then you must find the
5 Defendant not guilty.

6 If the other requirements for the use of
7 deadly force and self-defense are satisfied, the
8 Defendant need not retreat in order to avoid the
9 need for deadly force. If it is not possible or
10 did not reasonable appear to be possible to
11 retreat, without danger of being killed, or
12 suffering serious bodily injury. If after
13 committing the assault an aggressor withdraws in
14 good faith from a conflict and announces in some
15 way to his adversary his intention to retire, he
16 is restored to his right of self-defense.

17 One's right of self-defense is restored
18 after withdrawal from the initial difficulty
19 with the victim, if that withdrawal is
20 communicated to the victim by word or act. If a
21 Defendant is in imminent danger, or a
22 Defendant's believe that he's in imminent danger
23 of death, or receiving serious bodily harm, and
24 that it is reasonable; that the Defendant not
25 wait until an actual attack or injury or until

1 force is used by the assailant before exercising
2 the right to use deadly force and self-defense.
3 In other words, a Defendant does not have to
4 wait until the assailant gets the drop on him,
5 to so speak, in order to be entitled to use
6 force and self-defense.

7 Additionally, once the right to fire in
8 self-defense arises, the Defendant is not
9 required to wait until his adversary is on equal
10 terms, until he has been disarmed, or armed his
11 weapon in order to act.

12 In determining whether the Defendant acted
13 properly in self-defense, it is sufficient that
14 he believed he was in imminent danger. The
15 Defendant need not be actually in danger,
16 because such people are entitled to act on
17 appearances.

18 The Defendant acts properly using force in
19 self-defense, if under the circumstances, as
20 they appear to him, he believed he was in such
21 danger, and a reasonably prudent person or
22 ordinary firmness and courage in the same
23 situation, and with the Defendant's
24 characteristics, would have entertained the same
25 belief.

1 And the consideration of whether self-
2 defense is applicable herein, you should try as
3 near as you can to put yourself in the
4 Defendant's situation at the time he fired the
5 shot.

6 You should consider the circumstances by
7 which he was surrounded and take into
8 consideration the person with whom he was
9 dealing, and all the facts which surrounded him,
10 as you obtain from the testimony, and as near as
11 you can tell, view the situation from the
12 Defendant's standpoint.

13 Unless the State shows that a person of
14 ordinary reason, coolness and prudence would not
15 have acted as the Defendant did under these
16 circumstances that surrounded him at the time
17 the shot was fired, then you should find the
18 Defendant not guilty.

19 One of the elements of self-defense is the
20 Defendant must have actually believed he was in
21 imminent danger of losing his life, or
22 sustaining serious bodily injury, or actually
23 was in imminent danger, you may consider prior
24 instances of violence of unprovoked aggression
25 by the assailant involved.

1 In determining whether the Defendant had a
2 right to use force in self-defense, the
3 assailant's appearance of impairment from
4 consumption of drugs and/or alcohol, that may be
5 relevant to determine if there was a need for
6 force.

7 As to whether the Defendant had a reason to
8 believe there was need for force, and whether
9 the deadly force was reasonably necessary.
10 One's right to self-defense is restored after
11 withdrawal from initial difficulty with the
12 victim, if that withdrawal is communicated to
13 the victim by word or act.

14 During the trial some of you have taken
15 notes, and I tell you that these notes are only
16 to be used to aid the memory of the individual
17 juror taking the notes and are not to be
18 considered superior to the independent
19 recollection of other jurors.

20 In just a moment, ladies and gentlemen,
21 you'll retire to the jury room and begin your
22 deliberations, and you will be provided a
23 verdict form, which asks you to determine as to
24 each of these charges, whether the jury
25 unanimously finds the Defendant guilty or not

1 guilty, and of course, unanimously means all
2 jurors agree. There cannot be a verdict unless
3 all jurors agree.

4 I'm gonna ask all the jurors, including our
5 alternate jurors, to retire to the jury room,
6 but to not yet begin deliberations until I send
7 to the jury room the exhibits as well as this
8 verdict form. Once that occurs, I'm gonna ask
9 the alternate jurors to step back out into the
10 courtroom, and the remaining jurors will begin
11 their deliberations.

12 Once the jury has reached a unanimous
13 verdict on these charges, I ask you to please
14 knock on the door and let the Bailiff know, and
15 we'll receive you back into the courtroom.

16 So at this time, ladies and gentlemen,
17 please retire to the jury room.

18 (Jury exits the courtroom.)

19 BAILIFF: The jury's clear, Your Honor.

20 THE COURT: Exceptions from the State?

21 MS. MOLINA: Nothing from the State.

22 THE COURT: From defense?

23 MR. LEE: No, Your Honor.

24 THE COURT: All right, let's get our
25 exhibits together, and ask our alternate jurors

1 to come back.

2 Do we all agree they're all here, if you'll
3 look?

4 MS. MOLINA: Yes, all of those are the
5 exhibits to go back, except the gun.

6 THE COURT: And it was an agreement not to
7 send the firearm back?

8 MR. LEE: Yes, sir.

9 THE COURT: Verdict form. We'll welcome the
10 other three jurors back in the courtroom.

11 Welcome back, ladies and gentlemen, I want
12 to thank you for your service. Did we get
13 anything for the alternate jurors?

14 BAILIFF: if they're still here when it
15 comes.

16 THE COURT: Apparently, there's food that
17 will be here, if you want to stay. You're
18 welcome to leave. We're gonna take about a 30-
19 minute break in here, so there won't be anything
20 going on.

21 If you'd like though, you can go in the back
22 of the courtroom and sit and wait, or you can go
23 home, if you want to, and come back. The
24 courtroom's open, and you do whatever you want
25 to do.

6 (RECESS)

7

8 PROCEEDINGS CONTINUED

13 One is, "If the jury cannot reach a
14 unanimous agreement what happens?"

18 Number three, "Could we get a copy of the
19 law that was read to us, to help in our
20 discussions."

23 MS. MOLINA: I think you covered it in your
24 charge to them, that they had to reach an
25 agreement, and I don't know if this is something

1 that an Allen charge might cover, or if you just
2 tell them the procedure. You talked about how
3 they had to reach a unanimous decision.

4 MR. LEE: Judge, I think they're asking
5 about the procedure in general, and I think the
6 appropriate response would be to continue to
7 deliberate as long as you can. After that
8 point, I will bring you back in and give you
9 further instructions on the law when that
10 happens, and then I will send you back to
11 deliberate at that point.

12 THE COURT: What do you say, Solicitor?

13 MS. MOLINA: Yeah, I agree, yes.

14 MR. LEE: I don't think the charge covers
15 that situation, I think it's a separate
16 question, and tell them it's not over yet.

17 And I will bring you back in and give you
18 something they call an Allen charge. And I
19 think with the Allen charge they'll understand.
20 I don't think you need to explain the point
21 right now.

22 THE COURT: Yeah, I think I'm gonna skip
23 around an Allen charge now at this stage. I
24 think I'll just tell them to continue
25 deliberating, and if they reach the point where

1 they are unable to reach a unanimous decision,
2 let us know, we'll discuss the matter with them
3 further. All right, number two, what say the
4 State?

5 MS. MOLINA: I think we recharge them on
6 self-defense.

7 MR. LEE: Or to be more specific in
8 answering the question, the correct answer to
9 that question is, the State is required to
10 disprove one of the elements of self-defense,
11 like beyond a reasonable doubt.

12 MS. MOLINA: They didn't ask for the
13 standard.

14 MR. LEE: Well --

15 MS. MOLINA: Yeah, I mean -- and I think
16 maybe if we answer their third question, if we
17 send back the charge that we discussed, it
18 answers number two.

19 THE COURT: I can't do that.

20 MS. MOLINA: You don't send back --

21 THE COURT: I don't have that.

22 MR. LEE: You can say the law has been
23 provided to you through the jury charge, and --

24 THE COURT: I'm sorry?

25 MR. LEE: I think you can say the law has

1 been provided to you through the jury charge I
2 read to you, and that's what you need to go by.
3 If you need me to re-read or reinstruct you on a
4 specific part of that, then I will be glad to do
5 so, and I will have to read it to you rather
6 than send it back.

7 THE COURT: Yeah, there's actually some law
8 that indicates that sending back a copy is not
9 generally a good idea, but, number two, if
10 you're gonna send back a copy, you need to send
11 back a copy for each and every juror, so one
12 juror isn't taking the whole thing to
13 themselves.

14 MS. MOLINA: Well, as to the second
15 question, I don't object to the defense's
16 suggestion about that language. And then say
17 something similar to what he said, "I've charged
18 the law, and there's a specific section that you
19 can get that."

20 THE COURT: There's also some case law
21 indicating that it's not good practice just to
22 -- well, I was getting ready to say something
23 that wasn't actually correct, so I'll retract
24 that. What about recharging self-defense?

25 I'm not sure whether you'all agree on what I

1 should do about that or not.

2 MR. LEE: I wouldn't have an issue if you
3 want to recharge self-defense, but I think it
4 needs to be from beginning to end.

5 MS. MOLINA: I agree with that.

6 THE COURT: All of self-defense, not just a
7 portion of self-defense, I agree with that.

8 MS. MOLINA: I agree with that. And I just
9 think it's a little confusing, if we answer the
10 self-defense question, and then as to the second
11 one, tell them that we'll recharge them if they
12 want that.

13 THE COURT: What I've done before in
14 answering number three, when they ask for a copy
15 of it, I normally just said, "I regret I'm
16 unable to grant your request."

17 MS. MOLINA: No objection from the State.

18 THE COURT: And don't go into any details,
19 just say, I can't give it to you. All right.
20 See if there's unanimity here, as to number one,
21 I ask the jury to resume deliberating, and if
22 they ever reach a point where they believe
23 they're unable to reach a unanimous decision, to
24 please let me know.

25 In answering number two, recharge self-

1 defense in its entirety.

2 Number three, I just advise them I'm unable
3 to do what they request.

4 MR. LEE: You could say there are no written
5 copies of any of the law that was charged.

6 THE COURT: I'm sorry?

7 MR. LEE: I think you might say,
8 "Unfortunately, I'm unable to provide you
9 written copies of any of the law that was
10 charged to you following the case."

11 THE COURT: Let's bring the jury back in.

12 BAILIFF: Yes, Your Honor.

13 THE COURT: Well, before they come back in,
14 Solicitor, let me ask you this. In the charge
15 on self-defense, does the charge as given
16 specifically say?

17 MS. MOLINA: It does not in re-reading it.
18 It says --

19 BAILIFF: The jury's entering the courtroom,
20 Your Honor.

21 (Jury enters the courtroom.)

22 BAILIFF: The jury's seated, Your Honor.

23 THE COURT: Welcome back, ladies and
24 gentlemen. I have your note, and I'm still
25 trying to respond to it, so bear with me just a

1 moment.

2 (Bench conference.)

3 THE COURT: I do have your note, as I read
4 it, it poses three questions to the Court.

5 The first question is, if the jury cannot
6 reach a unanimous agreement, what happens?"

7 Well, my response to that is this, is that
8 I'm going to ask you to continue deliberating,
9 and if you reach the point where the jury is
10 unable to reach a unanimous decision, let me
11 know, and we'll have you come back in the
12 courtroom.

13 Number two, you have a question about self-
14 defense. I'm going to read to you, again, the
15 definition of self-defense. Perhaps I was
16 speaking too fast, too quickly the last time,
17 I'll try to slow it down some.

18 Self-defense is the complete justification
19 for a charge of murder, it negates the existence
20 of malice in the charge, and, thus, you must
21 find that the Defendant is not guilty of murder,
22 unless the State proves beyond a reasonable
23 doubt that any one of the elements of self-
24 defense did not exist.

25 The first element is that the Defendant must

1 be without fault. One cannot provoke, initiate
2 or otherwise through his own fault bring about a
3 difficulty, when the claim of the right of self-
4 defense is use of deadly force against an
5 attack, which was caused by that provocation.

6 The second one is that the Defendant must
7 actually believe that he was in imminent danger
8 of losing his life, or sustaining serious bodily
9 injury, or he was actually in such imminent
10 danger.

11 The third element is, that if his defense is
12 based upon his believe of imminent danger, a
13 reasonably prudent man of ordinary fitness and
14 courage would have entertained the same belief.

15 If the Defendant actually was in imminent
16 danger, the circumstances were such as would
17 warrant a man of ordinary prudence, firmness and
18 courage to strike the fatal blow, in order to
19 save himself from serious bodily harm, or losing
20 his own life.

21 Deadly force is only appropriate when
22 necessary. It may only be exercised when the
23 Defendant entertains a reasonable belief that he
24 or some other is about to sustain loss of life
25 or suffer serious bodily harm.

1 And the fourth is, that the Defendant had no
2 other probable means of avoiding the danger of
3 losing his life, or sustaining serious bodily
4 injury than to act as he did in this particular
5 instance.

6 If you have a reasonable doubt of the
7 Defendant's guilt after considering all of the
8 evidence, including the evidence of self-
9 defense, then you must find the Defendant not
10 guilty.

11 On the other hand, if you have no reasonable
12 doubt of the Defendant's guilt, after
13 considering all the evidence, including the
14 evidence of self-defense, you must find the
15 Defendant guilty. A Defendant is presumed to be
16 innocent until proven guilty beyond a reasonable
17 doubt. If you have any reasonable doubt as to
18 whether the State has shown that the Defendant
19 did not act properly in self-defense, then you
20 must find the Defendant not guilty.

21 If the other requirements for the right of
22 use of deadly force and self-defense are
23 satisfied, the Defendant need not retreat, in
24 order to avoid the need for deadly force, if it
25 is not possible, or did not reasonably appear

1 possible, to retreat with that danger of being
2 killed or suffering serious bodily injury.

3 If, after commencing the assault, the
4 aggressor withdraws in good faith from the
5 conflict, and announces in some way to his
6 adversary his intention to retire, he is
7 restored to his right of self-defense. One's
8 right to self-defense is restored after
9 withdrawal from the initial difficulty with the
10 victim, if the withdrawal is communicated to the
11 victim by word or act.

12 If the Defendant is in imminent danger, or
13 if the Defendant's belief is that he is in
14 imminent danger of death, or receiving serious
15 bodily harm, if that belief is reasonable, the
16 Defendant need not wait until an actual attack
17 or injury, or until the force is used, before he
18 has exercised his right to use deadly force and
19 self-defense.

20 In other words, the Defendant did not wait
21 until the assailant gets the drop on him, in
22 order to be entitled to use deadly force and
23 self-defense.

24 Additionally, once the right to fire in
25 self-defense arises, the Defendant is not

1 required to wait until the adversary is on equal
2 terms until he has fired or aimed his weapon, in
3 order to act. In determining whether the
4 Defendant acted properly in self-defense, it is
5 sufficient that he believes he was in imminent
6 danger.

7 A Defendant may not actually be in such
8 danger, because people are entitled to act on
9 appearances. If the Defendant acts properly,
10 using force for self-defense, if, under the
11 circumstances as they appeared to him, he
12 believes that he was in such danger, and a
13 reasonably prudent person of ordinary firmness
14 and courage in the same situation, and with the
15 Defendant's characteristics, would have
16 entertained the same belief.

17 And the consideration of whether self-
18 defense is applicable herein, you should try as
19 near as you can to put yourself in the
20 Defendant's situation at the time he fired the
21 shot. You should consider the circumstances by
22 which he was surrounded and take into
23 consideration the person with whom he was
24 dealing, and all of the facts which surrounded
25 him, as you obtain the same from the testimony,

1 and as near as you can view the situation from
2 the Defendant's standpoint.

3 Unless the State shows that a person of
4 ordinary reason, coolness and prudence would not
5 have acted as Defendant did under these
6 circumstances that surrounded him at the time
7 the shot was fired, then you should find the
8 Defendant not guilty. One of the elements of
9 self-defense is that the Defendant must actually
10 have believed he was in imminent danger of
11 losing his life, or sustaining serious bodily
12 injury, or that he actually was in such imminent
13 danger.

14 In determining whether the Defendant had a
15 reasonable belief of such imminent danger, or
16 whether the Defendant actually was in such
17 imminent danger, you may consider prior
18 instances of violence or unprovoked aggression
19 by the assailant in involved. In determining
20 whether the Defendant had a right to use force
21 and self-defense, the assailant's appearance of
22 impairment of consumption of alcohol or drugs
23 may be relevant to whether there was a need for
24 force, or the Defendant had a reason to believe
25 there was a need for force, and whether deadly

1 force was reasonably necessary.

2 One's right of self-defense is restored
3 after withdrawal from the initial difficulty
4 with the victim, if that withdrawal is
5 communicated to the victim by word or act. I
6 hope that answers your question.

7 The third request is that you be provided
8 with a copy of the law regarding this matter,
9 and I regret to inform you that I am unable to
10 provide that to you, and so I think I've
11 answered all the questions, and, if not, send
12 another note out, but at this time I'm going to
13 ask you to please retire to the jury room, and
14 resume your deliberations.

15 (Jury exits the courtroom.)

16 BAILIFF: The jury's cleared, Your Honor.

17 THE COURT: And before the jury came in, let
18 the record reflect that we had a side bar on the
19 issue of self-defense, and there was an
20 objection to what the Court stated to the jury.
21 Mr. Lee?

22 MR. LEE: Yes, sir, my objection at the time
23 was you changed the wording of the charge that
24 was given, and it originally said, "Thus, you
25 must find the Defendant not guilty of murder

1 unless the State proves beyond a reasonable
2 doubt that an element, A-N, element did not
3 exist in the case." You, based on the question,
4 changed the word an to two words, and so it
5 said, "Proof beyond a reasonable doubt that any
6 one element of self-defense did not exist in
7 this case."

8 It is our position that it was correct as
9 stated, that was the one that everyone agreed
10 on, and my objection is that I don't believe
11 it's proper to change the wording of a charge
12 that has already cleared.

13 THE COURT: All right, the Court
14 understands.

15 Solicitor?

16 MS. MOLINA: The State's position is that it
17 wasn't clear, because they had a question about
18 it. It's a matter of law that the Court can
19 instruct, and that it was appropriate, because
20 there is a big difference between the State's
21 burden disproving four elements, versus
22 disproving one element.

23 And I think the small change of one word an
24 to any one was appropriate and sufficient to
25 answering their question.

1 THE COURT: All right, the Court agrees, and
2 I guess overrules the objection. Anything else
3 while we're waiting on the jury? All right.
4 We'll be at ease in State v. Polite.

5 (RECESS)

6 **

7 **READING OF THE VERDICT**

8 THE COURT: I understand we have a verdict.
9 Ready for the jury?

10 MS. MOLINA: Yes, Your Honor.

11 THE COURT: Defense?

12 MR. LEE: We are ready, Your Honor.

13 BAILIFF: The jury's entering the courtroom,
14 Your Honor.

15 (Jury enters the courtroom.)

16 THE COURT: Welcome back, ladies and
17 gentlemen. The Bailiff has indicated he
18 believes the jury has reached a verdict in this
19 case; is that correct?

20 FOREPERSON: Yes, sir.

21 THE COURT: Was it a unanimous verdict?

22 FOREPERSON: Yes, sir.

23 THE COURT: Everybody agreed?

24 FOREPERSON: Yes, sir.

25 THE COURT: Do we have the verdict form?

1 Madam Clerk, publish the verdict.

2 CLERK: In the State of South Carolina v.
3 Stephan Hugh Polite, on the charge of murder,
4 we, the jury, unanimously find the Defendant,
5 Stephan Polite, guilty. On the charge of
6 possession of the charge of possession of a
7 deadly weapon during a violent crime, we, the
8 jury, unanimously find the Defendant, Stephan
9 Polite, guilty.

10 THE COURT: Anything further before the jury
11 is discharged?

12 MR. LEE: Yes, sir, I would ask that the
13 jury be polled.

14 THE COURT: I'm sorry?

15 MR. LEE: I would ask that the jury be
16 polled.

17 THE COURT: Madam Clerk?

18 CLERK: Ladies and gentlemen, please raise
19 your hand when I say your number, just so I know
20 who I'm speaking to.

21 Juror number 264, was this your verdict?

22 JUROR 264: Yes.

23 CLERK: Is it still your verdict?

24 JUROR 264: yes.

25 CLERK: Juror number 340, was this your

1 verdict?
2 JUROR 340: Yes.
3 CLERK: Is it still your verdict?
4 JUROR 340: Yes ma'am.
5 CLERK: Juror number 9, was this your
6 verdict?
7 JUROR 9: Yes, ma'am
8 CLERK: Is it still your verdict?
9 JUROR 9: Yes, ma'am.
10 CLERK: Juror number 81, was this your
11 verdict?
12 JUROR 81: Yes, ma'am.
13 CLERK: Is it still your verdict?
14 JUROR 81: Yes, ma'am.
15 CLERK: Juror number 154, was this your
16 verdict?
17 JUROR 154: Yes.
18 CLERK: Is it still your verdict?
19 JUROR 154: Yes, ma'am.
20 CLERK: Juror number 298, was this your
21 verdict?
22 JUROR 298: Yes
23 CLERK: Is it still your verdict?
24 JUROR 290: Yes.
25 CLERK: Juror number 228, was this your

1 verdict?
2 JUROR 228: Yes.
3 CLERK: Is it still your verdict?
4 JUROR 228: Yes.
5 CLERK: Juror number 153, was this your
6 verdict?
7 JUROR 153: Yes.
8 CLERK: Is still your verdict?
9 JUROR 153: Yes.
10 CLERK: Juror number 195, was this your
11 verdict?
12 JUROR 195: Yes, ma'am.
13 CLERK: Is it still your verdict?
14 JUROR 195: Yes, ma'am.
15 CLERK: Juror number 65, was this your
16 verdict?
17 JUROR 65: Yes.
18 CLERK: Is it still your verdict?
19 JUROR 65: *Yes.
20 CLERK: Juror number 253, was this your
21 verdict?
22 JUROR 253: Yes.
23 CLERK: Is it still your verdict?
24 JUROR 253: Yes.
25 CLERK: Juror number 152, was this your

1 verdict?

2 JUROR 152: Yes.

3 CLERK: Is it still your verdict?

4 JUROR 152: Yes.

5 CLERK: Have I called everyone's juror
6 numbers?

7 THE COURT: Anything else before the jury's
8 discharged?

9 MR. LEE: No, sir, not from the defense.

10 MS. MOLINA: Nothing from the State.

11 THE COURT: Ladies and gentlemen, I want to
12 thank you for your service. When we asked you
13 to serve on jury duty, we didn't tell you it
14 would be an easy job, but, obviously, you have
15 been working on this case for many, many hours.

16 We're getting ready to let you go. You're
17 free to discuss this with people, lawyers,
18 anybody you want to about what happened here in
19 the courtroom, or what happened in the jury
20 room, if you want to, it's totally up to you.

21 I don't have any reason to think anybody's
22 gonna bother you about your verdict, but it is
23 your verdict, and you can do what you wish to
24 with that. You can tell, like I said, anybody
25 that asks exactly how you felt about what

1 happened, or not.

2 And if anybody bothers you about your
3 verdict, presses on you, and you wish to not
4 speak, tell them you don't want to speak to
5 them. If they persist, tell them the Judge has
6 already told you that you don't have to, and
7 report them to the Clerk of Court. Is there
8 anything we can do for you before we release
9 you?

10 Ladies and gentlemen, I want to thank you
11 for your service, you're excused at this time
12 with our thanks.

13 (Jury exits the courtroom.)

14 (Court's Exhibits 11 - 13 admitted into
15 evidence.)

16 BAILIFF: The jury's cleared, Your Honor.

17 THE COURT: Is the State ready for
18 sentencing?

19 MS. MOLINA: We are working on sentencing
20 sheets right now to bring sentencing sheets up
21 to you.

22 THE COURT: Do you want to do that this
23 evening?

24 MR. LEE: Yes, sir.

25 THE COURT: Anything further?

1 MR. LEE: Yes, sir. Judge, at this time the
2 defense would make a motion for a new trial,
3 renew my previous motions, and they included
4 motions for a directed verdict at the end of the
5 State's case, as well as at the end of ours. I
6 would renew our motion or objection to a denial
7 of our stand your ground motion which was heard
8 on Monday of this week.

9 I would incorporate into those and renew our
10 motion to be able to use the prior convictions
11 of Althea Brown, which were numerous ones
12 involving fraud and dishonesty, that although
13 they were more than ten-years-old, we believe
14 were significant facts that the jury should
15 hear. That the prejudicial effect of that has
16 been amplified, looking back, number one, the
17 State only called two eyewitnesses to the entire
18 case, and so her testimony was crucial,
19 particularly, during the case and in the
20 closing, when the Solicitor was saying that
21 Pumpkin, who is Althea Brown, heard testimony
22 corroborated the detailed testimony that Natasha
23 Robinson gave.

24 So the State used that, they used her as
25 corroborating evidence against a story that was

1 questionable in our opinion at best. The
2 ability to show the longstanding propensity of
3 Ms. Brown over a 20-year-period to lie and cheat
4 and steal and commit fraud.

5 We think it should have been heard by the
6 jury. I don't think there was any prejudice to
7 any witness that we needed to worry about. I
8 know we did an analysis what I thought that the
9 section of that rule, and I told you I think was
10 specific to this case, and I think that in light
11 of the case, and the facts of this case, the
12 evidence is out there, I think that that was not
13 only highly prejudicial, and what was not highly
14 prejudicial was very probative as to the
15 truthfulness of Ms. Brown.

16 And so for those reasons I would renew all
17 of those motions. I want to say I do not
18 believe that there are any other motions. So
19 stand your ground, directed verdict, Althea
20 Brown impeachment.

21 So I'll renew all those at this time and
22 tell you that perhaps the individual effect of
23 each one may not carry today, but certainly the
24 combined effect of the denial of all those, in
25 our opinion, amounts to the denial of due

1 process, and denied Mr. Polite a fair trial.

2 And I'll also point out it was a six-hour
3 deliberation, there was an Allen charge, and,
4 again, Ms. Brown's testimony because it was 50
5 percent of the State's case, as far as the
6 witnesses who testified.

7 That would be it from the defense, Your
8 Honor.

9 THE COURT: Thank you, Mr. Lee.

10 Ms. Molina?

11 MS. MOLINA: The State would rest on its
12 previous arguments, Your Honor.

13 THE COURT: The Court understand your
14 motions and the grounds of the motions, but as
15 I've previously stated, the Court will deny the
16 motions. Thank you.

17 **

18 **SENTENCING HEARING**

19 THE COURT: Are you ready for sentencing?
20 Is the State ready for sentencing?

21 MS. MOLINA: Yes, sir, yes.

22 THE COURT: Is defense ready?

23 MR. LEE: As ready as we can be, Your Honor.

24 THE COURT: I understand.

25 MS. MOLINA: Everybody agrees in this case

1 that it was a tragedy, but it was an avoidable
2 tragedy. Through talking to the witnesses and
3 preparing for this trial, they all had wonderful
4 things to say about A.J., Anthony Rivers, Jr.
5 He was a hard worker, do anything for anybody,
6 happy-go-lucky, and it truly was senseless, and
7 avoidable, and very sad for both sides.

8 It was hard to get the witnesses to want to
9 come, they didn't want to be here because of how
10 close everybody was.

11 The State did offer a voluntary plea. I
12 understand that there were defenses that
13 certainly came up, and the State at this point
14 is recommending 30 to 40 years.

15 I believe that some of the family members
16 would like to address the Court at the
17 appropriate time.

18 THE COURT: Okay.

19 MS. RIVERS: I'm Candace Rivers. I grew up
20 with Anthony. I do think it was senseless
21 violence. This has been a long time coming, and
22 this is a sad day, but I am very grateful for
23 today. I'm glad for the verdict. I appreciate
24 you'all's time and everything, but I just want
25 to say that we have missed his smile and laugh,

1 his enthusiasm. Everything about him is missed.

2 THE COURT: Thank you, ma'am.

3 MS. MOLINA: Nothing further from the State.

4 I am going to hand up to Your Honor the
5 sentencing sheets.

6 THE COURT: Mr. Lee?

7 MR. LEE: Thank you, Judge.

8 THE COURT: Yes, sir.

9 MR. LEE: Thank you, Judge.

10 From a defense standpoint, this is always
11 the hardest part of anything. It's a lot easier
12 to talk to a jury than to fight all week, and
13 for three years, and be sitting here on
14 sentencing on a verdict that didn't go your way.

15 Tomorrow Beaufort County is gonna be less of
16 a place because Stephan Polite's gonna be in
17 jail. I think you saw the people that came to
18 support him. I mean family, friends, coworkers
19 taking a day off of work to come stand behind
20 him.

21 I honestly believe, Judge, that you could
22 probably see his true character by who he hangs
23 out with, and who came to see him, as well as
24 testimony on the stand. You got to hear a lot
25 about him, so I won't go through all of that,

1 but he adds a lot to the world, and it's a shame
2 that that light's gonna be put out for a while.

3 I will say, as far as on April 1st, I
4 believe, which was a Monday, I did get a call
5 from the prosecutor, two weeks, ago, and the
6 offer was made, a voluntary offer, of 20 to 25.
7 That's the only offer we got.

8 We were already in the throes of getting
9 ready for Court, and so, yes, it is true they
10 did make that offer, but we honestly believed
11 that the proper path forward was to go to Court
12 and to challenge this.

13 Obviously, we're terribly disappointed it
14 didn't come out our way. The family has a lot
15 of healing to do, but there are good people out
16 there, and Stephan's dad, I believe, works with
17 A.J.'s dad every day.

18 So I mean it is going to be a daily thing,
19 and this was a different night, and everybody is
20 sorry that it happened, that's one thing we all
21 agree on.

22 So, Judge, I think I've said through one of
23 our arguments is, I think South Carolina is
24 making a big mistake in not revisiting the
25 murder statute.

1 You have voluntary manslaughter, which
2 carries two to 30, and then you have murder, and
3 it's all or nothing. The unlawful killing of
4 another with malice, and there's no lesser
5 degrees of murder.

6 There's not a non-malice murder. There's
7 not a, you know, imperfect self-defense murder.
8 And this is not the type of murder that needs to
9 be severely punished.

10 Unfortunately, under the statute, it carries
11 a mandatory minimum of 30 years, and it carries
12 a maximum of life.

13 The only record that I'm aware of that
14 Stephan -- I think he may have a driving under
15 suspension charge in all of his life.

16 He served his country. He's got two great
17 kids that he tries to see as much as he can. He
18 was under a can't leave the Fourteenth Circuit
19 condition of bond ever since this happened.

20 And except for limited times, when the
21 Solicitor was gracious enough, I was able to ask
22 her, and they did let him go a couple times to a
23 family reunion, and maybe to pick up the kids
24 once or twice, and a couple times for Family
25 Court, but he already has suffered and will

1 continue to suffer.

2 I talked about it in my closing, I mean he's
3 got the scar on his leg, but he's got a scar
4 between his ears, inside his head that he will
5 always have, and that will be there whether he
6 was found guilty or not guilty. And so it's a
7 shame that we're here today.

8 His mom, Alicia Lucky, flew in from Houston,
9 right?

10 MS. LUCKY: San Antonio.

11 MR. LEE: San Antonio, Texas. She's been
12 here all week. She is -- he's the apple of her
13 eye, and they're a strong family, but I do think
14 she'd like to say a couple words, if you'd allow
15 her to, with the understanding that the sentence
16 is mandatory. It is a day-for-day sentence,
17 which means you don't get any type of credit for
18 good time, or doing anything, you know, any type
19 of credits are not available.

20 So this truly is a day-for-day. I wish I
21 could ask for a lot less, but the statute
22 doesn't permit it. If you had the ability to do
23 that, I would ask you for a lot less than that,
24 but we certainly, under the circumstances, would
25 respectfully ask for the minimum, a 30-year

1 sentence.

2 Please say your name.

3 MS. LUCKY: Sure, my name is Alicia Lucky.
4 I am Stephan Polite's mom. And I can honestly
5 say you'all got a little snippet of who Stephan
6 Polite is. He has always been polite, as his
7 last name is, courteous, respectful, and not
8 ever a troublemaker.

9 He has been raised in a military family. We
10 do know that he had come up in a family of
11 military, I too work for the Department of
12 Defense.

13 So he has the morals, he has served the good
14 citizen of this here State and of the United
15 States. I'm not with him every day, but I speak
16 to my son almost daily, and every day he is
17 reminded of his purpose here on earth, and this
18 is not his purpose today, Your Honor.

19 I can't honestly say what has happened, but
20 I'm glad to say that my son is still here. I'm
21 happy to say that as a family, we will continue
22 to support him, and we will do the best that we
23 can to be here for him every day.

24 And I do want to extend my gratitude, my
25 grace and prayers because I know this has not

1 been easy. We are all family. We have been
2 family for years. We may have left the
3 community and come back, and maybe have changed,
4 but by God, by God, we've maintained the
5 closeness of a family, and I love you all, and
6 none of this is ever going to change, never ever
7 going to change.

8 I'm glad that we do have closure, and I
9 think that we all can be respectful, and try to
10 gain what we once had. It won't ever be the
11 same, we've lost A.J, and we're losing Stephan
12 too.

13 And so, Your Honor, I just ask that you have
14 mercy on him. I just ask that you impose the
15 minimum sentence on him.

16 THE COURT: All right, thank you.

17 MS. LUCKY: My heart goes out to my son, my
18 heart goes out to the decision that everyone had
19 to make here and know we will always provide
20 protection. Know that while you're in there,
21 we're out here.

22 MR. POLITE: Yes, ma'am.

23 MS. LUCKY: And we're gonna hold you down --

24 MR. POLITE: Yes ma'am.

25 MS. LUCKY: -- until my last breath.

1 MR. POLITE: Yes, ma'am.

2 MS. LUCKY: And you remember that.

3 MR. POLITE: Yes, ma'am.

4 MS. LUCKY: I've always told you that --

5 MR. POLITE: Yes, ma'am.

6 MS. LUCKY: -- and I always will have your

7 back.

8 MR. POLITE: Yes, ma'am.

9 MS. LUCKY: Okay?

10 MR. POLITE: Yes, ma'am.

11 MS. LUCKY: So go in there, do what you've

12 got to do, and you show them who I say you are.

13 MR. POLITE: Yes, ma'am.

14 MS. LUCKY: You show them how you were

15 raised.

16 MR. POLITE: Yes, ma'am.

17 MS. LUCKY: And you do what you've got to do

18 to get through this --

19 MR. POLITE: Yes, ma'am.

20 MS. LUCKY: -- day-by-day, hour-by-hour,

21 minute-by-minute. Gold is always walking with

22 you.

23 MR. POLITE: Yes, ma'am.

24 MS. LUCKY: When everything else fails, call

25 on God.

1 MR. POLITE: Yes ma'am.

2 MS. LUCKY: Okay?

3 MR. POLITE: Yes, ma'am.

4 MS. LUCKY: All right.

5 MR. POLITE: All right.

6 MS. LUCKY: Okay? I love you.

7 MR. POLITE: I love you too.

8 MS. LUCKY: I know.

9 I love you, and I'll see you on the other
10 side one day.

11 MR. POLITE: Oh, God.

12 MS. LUCKY: Hang in there.

13 MR. LEE: Judge, I don't think anybody can
14 top that. I mean that's -- she's speaking for
15 everybody, and that's it.

16 And, again, that's who these people are, and
17 that's who he is, and, unfortunately, the jury
18 didn't see it that way, but we respect the
19 decision and stand before you and we are ready
20 to accept responsibility.

21 THE COURT: Well, it has been stated several
22 times this is a tragedy. You know, it's
23 difficult for all concerned. I've forgotten how
24 old your client is, 30, 31, 32?

25 MR. POLITE: 30.

1 MS. LUCKY: 30.

2 MR. LEE: He's 30.

3 THE COURT: I consider his age, his lack of
4 a prior record, service to his country, and his
5 family support.

6 On the charge of murder I sentence you to
7 the Department of Corrections for a period of 30
8 years.

9 On the possession of a weapon during the
10 commission of a violent crime, I'm sentencing
11 you to five years, and any time served will be
12 credited.

13 MR. LEE: If I'm not mistaken, it was less
14 than a week, I believe.

15 Judge, are those sentences concurrent?

16 THE COURT: Concurrent. It's on the forms
17 that the sentences are concurrent.

18 Anything else before we adjourn Court?

19 MR. LEE: No, sir.

20 MS. MOLINA: Nothing further.

21 THE COURT: Court's adjourned until 9:30
22 tomorrow morning.

23 (At 6:16 p.m. the trial was concluded.)

24 **

25 END OF VOLUME IV

1 CERTIFICATE OF REPORTER

2 ***

3 I, Kymberlee M. Williams, Certified Shorthand
4 Reporter/Registered Professional Reporter for the
5 14th Circuit of the State of South Carolina do hereby
6 certify that the foregoing is a true, accurate and
7 complete transcript of the proceedings held in this
8 case, relative to appeal, in the General Sessions
9 Court for Beaufort County, South Carolina on the
10 18th Day of April 2024.

11
12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14
15 This, the 1st day of September 2024.

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22 Kymberlee M. Williams, CSR/RPR