

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHEROKEE COUNTY
Court of General Sessions

Roger L. Couch, Circuit Court Judge

Case No. 2010-GS-11-00607

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SC Court of Appeals

The State of South Carolina,..... Respondent,
v.
Hayword Tony Chambers,..... Appellant.

RECORD ON APPEAL
VOLUME II

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1 Ladies and gentlemen, one more time I'll ask you
2 to go back to the jury room. Don't begin discussions until
3 I have asked you to do so.

4 (The following takes place outside the presence of
5 the jury panel)

6 THE COURT: We will be in recess briefly.

7 MS. LESKANIC: And I do have a motion, Your Honor.
8 I don't know if you want to take it up now.

9 THE COURT: Do you want to take it up right now?

10 MS. LESKANIC: It's up to Your Honor.

11 THE COURT: It doesn't matter to me.

12 MS. LESKANIC: I have a motion to strike her
13 testimony. I believe it was offered for the proposition
14 that the victim would advance on a drawn and pointed gun,
15 and her testimony was that she never pointed the gun at the
16 victim.

17 THE COURT: I will be happy to hear from you.

18 MR. SLADE: Your Honor, anytime enraged where
19 someone would advance on a person that he has had the kind
20 of relationship with over the last several -- twelve,
21 fourteen hours, knows very well what's about to happen. She
22 had gone out to the car to get her gun. She -- I believe
23 she testified that he can see her out the window going to
24 get it.

25 I interpreted the fact that she was not pointing

1 it at him as her own reluctance again to use a gun. I don't
2 think it takes away anything from the point I'm trying to
3 make with it. If somebody that he's enraged with or
4 focusing his rage on is armed with a gun, that doesn't slow
5 him down. That's my point.

6 THE COURT: Well, once again, the purpose of
7 allowing that testimony was to show that -- two things;
8 character trait by a victim under rule -- I believe
9 that's -- let me look it up to be specific about what I'm
10 saying.

11 All right, Rule 404(a)(2) says that -- (a) says
12 that "evidence of a person's character or trait of character
13 is not admissible for the purpose of proving action in
14 conformity therewith on a particular occasion, except:"

15 One of the exceptions is number (a)(2), which says
16 "evidence of a pertinent trait of character of the victim of
17 the crime offered by an accused."

18 And also it's being offered under 404(b), which
19 says "evidence of other crimes, wrongs, or acts are not
20 admissible to prove character of a person in order to show
21 action in conformity therewith. It may, however, be
22 admissible to show motive, identity, existence of a common
23 scheme or plan, the absence of mistake or accident, or
24 intent."

25 Again, the purpose of my allowing any of this

1 testimony has been that the rule gives the accused the right
2 to offer evidence of character trait of a victim under
3 (a)(2), and also to show intent in this case.

4 Now, whether the gun was drawn or pointed, my
5 understanding would be he advanced on an armed person with
6 whom he was having a conflict, knowing that person was
7 armed, and the purpose was not to show that he does that on
8 a regular basis, but to show he has a certain trait of
9 character or a certain intent given the state of his mind at
10 that time.

11 All of these incidences involved violence with
12 domestic partners.

13 In this case there was an argument in progress
14 with a domestic partner over apparently possession of
15 cocaine. And so the purpose of the evidence was to show
16 possible intent and/or to show a character trait.

17 It was my finding, again -- how many times do we
18 have to go over this, but I'll go over it one more time,
19 that the actions taken by the defendant that have been put
20 into the record took place over a long period of time.

21 A long period of time is a factor sometimes that
22 mitigates the introduction of such evidence, but in this
23 case to me indicates that there is a character trait that
24 this gentleman had over a long period of time. He had
25 violence with domestic partners, violence with one where he

1 severely injured some domestic partners. Sometimes he was
2 taking action which some people might think was irrational,
3 such as advancing on an armed person.

4 And then I found out today that there is more than
5 three events. There is probably many events that took place
6 over a long period of time.

7 It is evidence of character trait.

8 Also it could possibly be evidence to show what
9 his intent might have been on this occasion.

10 So I have admitted it. And whether or not the gun
11 was pointed or not pointed, that someone advances on someone
12 who is armed, or when they are not armed, is something that
13 I think should -- that would go towards the admissibility.

14 So what I have heard so far today has reenforced
15 my decision. It may be wrong, Ms. Leskanic, and I'm sure
16 that you disagree with it, and you have preserved your right
17 to take that up with someone else. Thank you.

18 MS. LESKANIC: Thank you, Your Honor.

19 THE COURT: We are in recess.

20 (Whereupon, proceedings were recessed)

21 (Whereupon, proceedings were reconvened)

22 MR. SLADE: I apologize, Your Honor. We are
23 discussing her rebuttal. At this point one of the ones
24 she's told me she may use is the jailhouse informant. There
25 is not an objection to that.

1 She has told me now -- Ms. Leskanic has told me
2 now that she says that there is an incident -- she asked
3 Hayword has he ever pointed a gun at anybody. I think she's
4 intending to offer somebody who says Hayword pointed a gun
5 at him. My objection to that, Your Honor, is that that's
6 not -- that's not proper rebuttal. It's not proper
7 impeachment. It's obviously the prior use of a bad act and
8 that -- sir?

9 THE COURT: Nothing.

10 MR. SLADE: Obviously the prior use of a bad act
11 and that doesn't come in against the defendant.

12 THE COURT: It's being offered for impeachment
13 purposes.

14 MR. SLADE: And -- that's exactly right. And
15 that's not proper impeachment, simply because in order to
16 properly impeach somebody and even have a chance of
17 introducing extrinsic evidence for that, you have to
18 properly impeach them by saying "didn't you at such a such a
19 time do such and such a thing? That was not done. All that
20 was asked was "have you ever pointed a gun at anybody?" He
21 denied it. She is stuck with that answer. That's the first
22 level of the objection, Your Honor.

23 THE COURT: Let me -- I realize I did not rule on
24 your motion to strike, although I think I may have, but I
25 have denied it.

1 Now --

2 Yes, ma'am.

3 MS. LESKANIC: Your Honor, with this witness --
4 I'm sorry, I know that you ruled against me on that motion,
5 that that was an issue.

6 THE COURT: I wanted to be sure that was on the
7 record.

8 MS. LESKANIC: Yes, sir, very clearly.

9 In this case we had found an individual by the
10 name of Brad Douglas. He filed a report back in February of
11 2009, stating that he was being given a ride by this
12 defendant in the burgundy station wagon and that this
13 defendant wanted to be paid with crack cocaine and Mr.
14 Douglas did not have any crack cocaine, so he asked to get
15 out of the car.

16 The victim gets out -- well, Mr. Douglas gets out
17 of the car and what he tells me is that Mr. Chambers then
18 called him back over to the car.

19 When Mr. Douglas turned around, Mr. Chambers was
20 pointing a silver handgun at him, walked up to him, struck
21 him in the head with the gun and then left the scene.

22 And I think all of that is very closely connected
23 to what we are dealing with here.

24 He's admitted that he gives rides to people. I
25 asked him two times on the stand if he had ever pointed a

1 gun at anyone. If he said yes, I would have had reason to
2 go ahead further, but he said no to begin with. And I gave
3 him two opportunities to give any explanation to that and he
4 denied it. And I think that it's very closely connected to
5 common scheme or plan. He gets upset when he hasn't had his
6 crack cocaine for a ride, and he responds by quickly pulling
7 out his pistol.

8 MR. SLADE: Your Honor, if we get past the first
9 objection that it's not proper impeachment, the second thing
10 is in using a prior bad act, this is the first I know of it.
11 It's got to be a determination by the court to determine the
12 probability of it.

13 Now, what I have been informed of, and this is the
14 first I know of any of this, is that there is an incident
15 report. The incident report, as we well know, is only a
16 first step in a lengthy process. We don't know what
17 happened with that. We don't know the likelihood it
18 happened, or any of that.

19 And, again, the prosecutor -- the solicitor had a
20 chance to specifically ask him. Obviously she had some
21 facts there she could have confronted him with when he
22 denied it, and she's entitled to do that. That's the whole
23 impeachment process. That's what makes it fair. You give
24 them a chance to address what you are about to try to
25 impeach them on so that they can respond to it, if they have

1 a side. That's --

2 I apologize for returning to the first level of
3 argument, but the second is that they have to show some
4 likelihood of probability that this was -- that this
5 actually was carried out.

6 And the third thing is that when the defendant
7 testified and they are trying to introduce evidence of a
8 prior bad act, Your Honor, I don't know if they are trying
9 to introduce it, I guess, as a common scheme or plan. This
10 is just one incident.

11 You know, the court has made us very aware of the
12 struggle you have and what you have to overcome to get any
13 of this 404(b) evidence in, and one incident report, where
14 people can file incident reports over all kind of things,
15 just simply doesn't meet that test.

16 THE COURT: When did this happen?

17 MS. LESKANIC: February --

18 THE COURT: Allegedly the offense?

19 MS. LESKANIC: February of 2009, Your Honor.

20 THE COURT: And this --

21 MS. LESKANIC: I'll be happy to hand up the
22 incident report, Your Honor.

23 THE COURT: That would be helpful. Thank you.

24 MS. LESKANIC: And prior bad acts, as the court is
25 aware, doesn't require a conviction, and we haven't even

1 been allowed to go into that with the prior bad acts that
2 have been offered by the defense.

3 THE COURT: All right, you indicated you have two
4 rebuttal witnesses, is that correct?

5 MS. LESKANIC: We may have one out of the jail
6 also, Your Honor, yes, sir.

7 MR. SLADE: That's who I was talking about, Roscoe
8 Morris is the jailhouse informant.

9 THE COURT: Is he here ready to testify?

10 MS. LESANIC: I don't think we have him from the
11 jail. First we were going to take care of Mr. Douglas, but
12 we can get him here, or --

13 THE COURT: Well, what I'm going to do -- it's a
14 quarter to five. What I'm going to do is we will take these
15 up in the morning.

16 I will ask each of you to submit a written brief
17 to me by nine o'clock in the morning on this subject.

18 MR. SLADE: Sure.

19 MS. LESKANIC: Yes, sir.

20 MR. SLADE: Your Honor, if I could, could we pass
21 up a copy of Mr. Elliott's (sic) criminal history as well?

22 THE COURT: Mr. Elliott? This is --

23 MR. SLADE: I'm sorry, Mr. --

24 THE COURT: I don't know who he is.

25 MR SLADE: Mr. Douglas. I apologize. I misread.

1 He has a charge on here for giving false
2 information to police, Brad Elliott Douglas.

3 THE COURT: Brad Elliott Douglas, that's the
4 subject of this report.

5 MR. SLADE: I'm assuming. Have you asked him
6 about that?

7 MS. LESKANIC: No.

8 MR. SLADE: Okay. Well, it's -- under his
9 criminal history, Your Honor, there is a Brad Elliott Logan,
10 so I don't know. It's an arrest, but that -- I would think
11 that would have an impact in this issue. I don't know what
12 happened to it, or if it's him, but it's on his record, on
13 his history.

14 MS. LESKANIC: I don't know. This is new
15 information.

16 THE COURT: There's a suggestion that he gave
17 false information which might have been the subject on this
18 report.

19 MR. SLADE: If he perhaps has done that in the
20 past, along with his history of drug involvement.

21 THE COURT: All right. I'm going to dismiss the
22 jury at this time.

23 You don't have any problem with the one?

24 MR. SLADE: Well, I have got a huge problem with
25 him, but I don't have a motion on him, Your Honor. I don't

1 have anything we need to hear on him, so --

2 THE COURT: And then I'll hear from you on this
3 one --

4 MR. SLADE: Sure.

5 THE COURT: -- in the morning.

6 MR. SLADE: Yes, sir.

7 THE COURT: Now, requests for charge. I have
8 gotten yours, Mr. Slade, which you submitted pretrial.

9 MR. SLADE: Yes, sir.

10 THE COURT: Does the State have any specific
11 requests for charge?

12 MS. LESKANIC: I believe a request on flight, Your
13 Honor, evidence of flight.

14 THE COURT: You can't charge flight.

15 MR. SLADE: You can't charge flight.

16 THE COURT: I looked it up today.

17 MS. LESKANIC: Okay. I haven't looked --

18 MR. SLADE: We have got a memo on this.

19 THE COURT: You know, that you can't charge, but
20 you can argue it.

21 MS. LESKANIC: Okay.

22 THE COURT: But I can't charge it.

23 MS. LESKANIC: All right, very good. I will look
24 at it tonight, Your Honor.

25 I do not have any specific requests written up at

1 this time.

2 THE COURT: Okay. Let me get the jury in and send
3 them home for the evening.

4 MS. LESKANIC: Thank you Your Honor.

5 THE COURT: I'll tell you, though, what I am
6 considering doing with your charges before we go.

7 MR. SLADE: Yes, sir.

8 THE COURT: Bring the jury in.

9 (The following takes place in the presence of the
10 jury panel)

11 THE COURT: Ladies and gentlemen of the jury, it
12 does appear that there may be additional witnesses, and I
13 also know that it's about ten minutes to five o'clock, so I
14 am going to at this point in time send you home for the
15 evening and ask that you be back in the jury room in the
16 morning. Be there at 9:30. It's a little later than we
17 have been doing that, because I will be taking up some
18 things with the lawyers starting at nine o'clock. So if you
19 would be here a little later.

20 The same instructions I have given you all along,
21 that you probably could tell me now, but I'll tell you
22 again. Don't listen to, watch, or read any media reports.
23 Don't try to gather information on your own. Don't discuss
24 the case with anyone. Don't allow anyone to discuss it with
25 you. Should anyone contact you about your service, please

1 let me know and I'll take care of that action.

2 9:30 in the morning back in the jury room. I hope
3 you have a good evening. You are free to go.

4 (The following takes place outside the presence of
5 the jury panel)

6 THE COURT: All right, Mr. Slade, in your requests
7 for charge, I will just take them -- they are not
8 specifically numbered, but I will identify the ones as I
9 take them up.

10 MR. SLADE: Yes, sir.

11 THE COURT: You had requested the charge that the
12 jurors must view the legal confrontation from the
13 defendant's viewpoint.

14 MR. SLADE: Yes, sir.

15 THE COURT: I think my standard charge would take
16 care of that, although it will not give a charge that they
17 should put themselves in the place of the defendant. I
18 don't think -- you can argue that, and I don't think that
19 the law would allow me to charge that, but I think my
20 standard charge will tell them that they should consider the
21 factors or the circumstances of the case from a view of what
22 an ordinary reasonable person confronted with the same or
23 similar circumstances would have done, and they will
24 consider themselves, hopefully, to be ordinary reasonable
25 people, I don't know.

1 MR. SLADE: Well, Your Honor, I was more in line
2 with your thinking, but when I found the Rash case and this
3 language in it, I decided to --

4 THE COURT: I understand, but, you know, Rash is
5 1936.

6 MR. SLADE: I understand.

7 THE COURT: It's got a little age on it, and I
8 would suspect that sometime between 1936 and the present, if
9 the court had adopted that position, we would have seen
10 something since that time, sir.

11 MR. SLADE: Yes, sir.

12 THE COURT: We probably will not charge it in that
13 fashion.

14 MR. SLADE: Yes, sir..

15 THE COURT: The next one is a homicide excused
16 where the defendant is acting lawfully and the gun fires
17 accidentally.

18 Based on the evidence in the case thus far I don't
19 believe this is an accidental firing. Your client indicated
20 he shot the gun on purpose trying to scare the defendant off
21 of him, and so I'm not going to charge accident in this
22 case.

23 MR. SLADE: Yes, sir.

24 THE COURT: The next case -- the next one is words
25 accompanied by hostile acts my justify the use of deadly

1 force. I will charge that.

2 MR. SLADE: Yes, sir.

3 THE COURT: That's part of my charge and that will
4 be in there.

5 The next case from the Rash case again, I will
6 charge that the defendant has the right to act on
7 appearances.

8 I'm not going to charge that he may be mistaken,
9 in those exact words.

10 MR. SLADE: Right.

11 THE COURT: But I think my charge will cover that,
12 that he can act on appearance. And even if the appearances
13 later appear not to have been true, he can act on the
14 appearances as they existed at that time.

15 MR. SLADE: Appearances as they existed at that
16 time?

17 THE COURT: Yes, something along those lines. I'm
18 not saying, in fact.

19 MR. SLADE: Sure.

20 THE COURT: My charge will talk about the fact
21 that you should act as things appear right then, not
22 common and cool -- not cool reflection later on.

23 MR. SLADE: Right, okay, I think that makes my
24 point.

25 THE COURT: The next one, no duty to retreat if it

1 would increase danger. That will be my charge. It may not
2 be in those exact words, but I will charge that.

3 But I will charge that he was not on his property.
4 He was not in his business.

5 MR. SLADE: Right.

6 THE COURT: And, therefore, he did have a duty to
7 retreat, if he could do so safely --

8 MR. SLADE: Right.

9 THE COURT: -- is the way the charge would go.

10 Let's see. The decedent continued to advance on a
11 drawn gun.

12 Again, I'm not going to charge anything in those
13 exact words that you have used, but I think my standard
14 charge will cover something along those lines.

15 MR. SLADE: The reason that I thought this was
16 appropriate, Your Honor, is in Dickey, which is the most
17 recent case where the Supreme Court visits that --

18 THE COURT: Uh-huh.

19 MR. SLADE: -- they used that as a specific factor
20 in determining whether or not the defendant was in danger.
21 And -- because it seems to me in Day and the line of cases,
22 you know, that Day represents or Day typifies, in a
23 self-defense case, the defendant is probably entitled to a
24 more fact-based charge than they are in any other --

25 THE COURT: I'm trying to steer away from the

1 fact-based charges, if I can. I understand what you are
2 saying.

3 MR. SLADE: Yes, sir.

4 THE COURT: And when I complete my charge, if you
5 want to object to it, you certainly can.

6 MR. SLADE: Certainly, yes, sir.

7 THE COURT: But I also try to avoid commenting on
8 the facts, and I think when you start including facts in the
9 charge, you run some risks, some high risks, of saying
10 something perhaps you shouldn't have said.

11 MR. SLADE: And I think that's certainly the
12 general rule. I just think that's modified somewhat in
13 these cases.

14 THE COURT: All right.

15 MR. SLADE: Thank you.

16 THE COURT: Okay.

17 MR. SLADE: And I apologize, Your Honor, I had one
18 more.

19 THE COURT: Yes, sir. I'm not sure that I have
20 even read that one in full yet, but I'll talk to you about
21 that one in the morning.

22 MR. SLADE: Yes, sir.

23 THE COURT: I think I have covered them all but
24 the last one.

25 All right. We will be -- I'll see you at nine

1 o'clock. I have got the jury at 9:30. We are in recess
2 until then.

3 The defendant remains in custody.

4 Thank you very much.

5 (Whereupon, proceedings were recessed until
6 December 7, 2012)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 HAYWORD TONY CHAMBERS,) 2010-GS-11-00607
7 DEFENDANT.) DECEMBER 7, 2012
GAFFNEY, SOUTH CAROLINA

8
9 (VOLUME IV)

10
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14
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17 MATT KENDALL, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

18 MITCH SLADE, ESQUIRE
ATTORNEY FOR THE DEFENDANT

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1 (PROCEEDINGS, DECEMBER 7, 2012)

2 THE COURT: All right, one housekeeping matter
3 from yesterday before we get started on the other issues
4 before us. You had asked me about your final or last
5 request for charge.

6 MR. SLADE: Yes, sir.

7 THE COURT: And I think I would describe it as who
8 gets the drop on who first charge?

9 MR. SLADE: Yes.

10 THE COURT: Here is what intend to charge in that
11 regard. I'm not going to use that language about getting
12 the drop on somebody, if you follow what I'm saying.

13 MR. SLADE: Yes, sir.

14 THE COURT: I do intend to charge once the right
15 to act on self-defense arises, a defendant is not required
16 to wait until his adversary is on equal terms or until his
17 adversary has fired or aimed a weapon in order to act.

18 MR. SLADE: Yes, sir, and I think that's precise
19 language from one of the cases.

20 THE COURT: That's precise language, or almost
21 precise language. I have changed it slightly from State v.
22 Hendricks, 1978.

23 MR. SLADE: Is it okay in argument that I
24 translate that to my own colloquial terms?

25 THE COURT: You can use whatever terms you would

1 like, as long as it doesn't vary with what the law is.

2 The statement of the law is correct. I'm just
3 concerned if I talk in terms of getting the drop on someone,
4 that I may be somehow commenting on the facts of this case.

5 MR. SLADE: Yes, sir.

6 THE COURT: And I don't want to get close to that,
7 so I changed the wording a little bit so that I don't do
8 that. So that's -- does that respond to your question?

9 MR. SLADE: Yes, sir.

10 And the only further thing I had with regard to
11 charges is I would like to put on the record my objection to
12 the court's ruling on the other ones that you have told us
13 that you are not going to charge that I have --

14 THE COURT: You can reserve your objections until
15 after I have made the charge. I will give you an
16 opportunity to charge then, and what you may find after you
17 have heard my charge is that I have covered those using
18 different language in a different manner.

19 MR. SLADE: Yes, sir.

20 THE COURT: You have the right to object once I
21 have completed the charge.

22 Now, Ms. Leskanic, do I have anything from you on
23 the questions before the court?

24 MR. KENDALL: Your Honor, we have a written memo
25 we would like to submit up to support our proposition..

1 THE COURT: Please, do.

2 MR. KENDALL: We have the case law as well. I
3 know the court likes that before the --

4 THE COURT: Give me a moment to take a look at
5 that.

6 MR. KENDALL: If I may, Your Honor, I would like
7 to pass up the supporting case law as well.

8 Mr. Slade, I have got a copy.

9 THE COURT: All right. I have had an opportunity
10 to review the brief. At this time I'll hear argument in
11 favor of the request to present testimony, from the State.

12 Mr. Kendall, are you going to make this?

13 MR. KENDALL: Your Honor, we would like to call
14 this witness to the stand just to proffer the testimony.

15 THE COURT: Do you want to make a proffer
16 concerning his testimony?

17 MR. KENDALL: Yes, Your Honor.

18 THE COURT: All right, you may do so.

19 MR. KENDALL: We would advise -- he speaks with
20 a -- he has a tracheotomy and he speaks with a voice box.
21 If he's -- it's kind of a day by day thing, as far as how
22 good he is at communicating. We have only met him --

23 THE COURT: We will do the best to hear him.

24 MR. KENDALL: Yes, sir.

25 THE COURT: You can bring him in.

1 Sir, if you would come forward to my left and be
2 sworn.

3 BRAD DOUGLAS, having been first duly sworn,
4 testified as follows:

5 THE COURT: And I would ask that you state your
6 name and you can use your device, if you would like.

7 THE WITNESS: Brad Douglas.

8 THE COURT: All right. You may proceed.

9 DIRECT EXAMINATION BY MS. LESKANIC:

10 Q. Mr. Douglas, you have a tracheotomy. Can you tell us
11 briefly what caused you to have a tracheotomy?

12 A. Throat cancer.

13 Q. Throat cancer?

14 A. Yes.

15 Q. I would like you to take a look over at the defense
16 table. Do you recognize the man sitting at the defense
17 table?

18 A. Yes, ma'am.

19 Q. And who is he to you? How do you know him?

20 A. "New York".

21 Q. "New York"?

22 A. Yes.

23 Q. And how do you know "New York"?

24 A. From on the streets.

25 Q. From on the streets?

1 A. Yes, ma'am.

2 Q. Okay. How long have you known "New York"?

3 A. About two years. About two to three years.

4 Q. Two to three years?

5 A. Yes.

6 Q. Did you have an incident involving "New York" back in
7 February of 2009?

8 A. Yes, ma'am.

9 Q. Was he giving you a ride?

10 A. Yes, ma'am.

11 Q. Do you remember the type of car that you were riding
12 in?

13 A. A red Volvo.

14 Q. Red Volvo?

15 A. Yes.

16 MS. LESKANIC: I don't want it to appear I am
17 trying to testify for him, Your Honor, so --

18 THE COURT: I'm trying to think how we might do
19 this to make it more easily understandable. Let's go ahead
20 and proffer it and see what we can do with him using the
21 voice box. It may be he will have to use an unconcerned
22 third party to pass along whatever he's saying.

23 MS. LESKANIC: Very well, Your Honor.

24 THE COURT: As long as he verifies that that
25 person is correctly stating what he has said.

1 All right, let's go ahead and give it a try.

2 BY MS. LESKANIC:

3 Q. Will you please tell the court what happened on
4 February 12th of 2009, when you were in the car with "New
5 York".

6 A. He was giving me a ride.

7 Q. He was giving you a ride?

8 A. We got to fussing.

9 Q. The two of you got to fussing?

10 A. Yes, and about money.

11 Q. About paying him?

12 A. Yes, ma'am.

13 Q. And what were you fussing about?

14 MR. SLADE: Your Honor, I do have an objection to
15 the solicitor -- I mean, I -- I just think at this point we
16 need to do this a little differently if --

17 THE COURT: What would you suggest?

18 MR. SLADE: Your Honor, I -- I don't know.

19 THE COURT: Okay, I don't either, so I'm trying
20 to -- in the proffer I don't think is as important as when
21 then jury is here.

22 MR. SLADE: Yes, sir.

23 THE COURT: I understand your feelings, Mr. Slade.
24 And as we go through this, I'm trying to develop a strategy
25 by which we can do it so it doesn't appear that the State is

1 testifying for him.

2 MR. SLADE: Right.

3 THE COURT: And, as I said, I may use someone from
4 the clerk's office --

5 MR. SLADE: Right.

6 THE COURT: -- or something of that nature, in
7 order to help translate for him, but I'm hoping that maybe
8 our ability to understand him may become better as we get
9 used to this.

10 MR. SLADE: Right.

11 THE COURT: So I understand your position.

12 MR. SLADE: I just wanted to put it on the record,
13 Your Honor.

14 THE COURT: And with the proffer and the jury is
15 not present, I don't have any problem with the solicitor --

16 MR. SLADE: Right.

17 THE COURT: -- repeating it, but I understand when
18 the jury comes in we will try to make other arrangements.

19 Go ahead.

20 MS. LESKANIC: Thank you.

21 BY MS. LESKANIC:

22 Q. And, Mr. Douglas, if I say something incorrectly, if
23 I'm not repeating what you have said correctly, please let
24 us know.

25 A. Yes, ma'am.

1 Q. What was the argument about payment?

2 A. He wanted drugs, but I had money.

3 Q. He wanted drugs, but you had money?

4 A. Yes, ma'am.

5 Q. And what happened?

6 A. We got to fussing and I told him to let me out.

7 Q. You got to fussing and you told him to let you out of
8 his car?

9 A. Yes, ma'am.

10 Q. Did he stop the car?

11 A. Yes, ma'am.

12 Q. Did he let you out of his car?

13 A. Yes, ma'am.

14 Q. And what happened next?

15 A. I started walking. I started walking up the street and
16 this happened.

17 Q. You started walking up the street and he stopped you?

18 A. Yes, ma'am.

19 Q. How did he stop you?

20 A. Called my name.

21 Q. He called --

22 THE COURT: Get as close to the microphone as you
23 can. That works pretty good. Thank you.

24 A. He called my name.

25 BY MS. LESKANIC:

1 Q. He called your name?

2 A. Yes, ma'am.

3 Q. And what did you do when he called your name?

4 A. I stopped.

5 Q. You stopped?

6 A. I turned around and he had the gun in his hand.

7 Q. When you turned around he had a gun in his hand?

8 A. Yes, ma'am.

9 Q. Where was the gun pointed?

10 A. At me.

11 Q. It was pointed at you?

12 A. Yes, ma'am.

13 Q. And do you remember what the gun looked like?

14 A. Chrome.

15 Q. Chrome, is that what you are saying?

16 A. Yes, ma'am.

17 Q. All right. And after he pointed the gun at you, what

18 happened?

19 A. I turned around, I threw my hands in the air and he hit

20 me with it over my eye.

21 Q. You put your hands in the air?

22 A. Yes, ma'am.

23 Q. And then what happened?

24 A. He hit me. He hit me with it.

25 Q. He hit you with it?

1 A. Yes, ma'am.

2 Q. Over your eye?

3 A. Over my eye.

4 Q. All right.

5 A. And took off running.

6 Q. And you took off running?

7 A. Yes.

8 Q. Did he chase after you?

9 A. Yes, ma'am.

10 Q. All right. And did he chase you on foot --

11 A. Yes, ma'am.

12 Q. -- or in his car?

13 A. On foot.

14 Q. And what happened?

15 A. I ran. Some people stopped and picked me up.

16 Q. Some people stopped and picked you up?

17 A. Yes, ma'am, and took me to the police station.

18 Q. Took you to the police station?

19 A. Yes, ma'am.

20 Q. All right. Did you make a report in this case?

21 A. Yes, ma'am.

22 Q. Did you know his name was Hayward Chambers at the time?

23 A. No, ma'am.

24 Q. What name did you give law enforcement?

25 A. "New York".

1 Q. Did you follow up with this report after it happened,
2 or did you have any more contact with law enforcement after
3 this happened?

4 A. No, ma'am.

5 Q. Did you have any more incidents with the defendant?

6 A. No, ma'am.

7 Q. All right. Mr. Douglas, on a scale of zero to one
8 hundred, with one hundred being absolute certainty, how
9 certain are you that that man seated at the table is the one
10 that pulled the gun on you?

11 A. One hundred percent.

12 Q. One hundred percent?

13 A. Yes, ma'am.

14 Q. All right. Thank you.

15 Please answer any questions that Mr. Slade or the court
16 has for you.

17 THE COURT: Mr. Slade, your witness.

18 MR. SLADE: Thank you, Your Honor.

19 CROSS EXAMINATION BY MR. SLADE:

20 Q. Mr. Douglas, you made -- you testified a moment ago you
21 made a report to the police, correct?

22 A. Yes, sir.

23 Q. And the officer that you made a report to is this
24 officer right here, Jeff Sizemore, correct?

25 A. I can't really remember what officer it was.

1 Q. Well, Officer Sizemore filled out this incident report.

2 A. Yes, sir.

3 Q. Do you see the incident report here?

4 A. Yes, sir.

5 Q. And do you see J. Sizemore down here at the bottom?

6 A. Yes, sir.

7 Q. And did you tell him what you have just told the
8 prosecutor in this case?

9 A. Yes, sir.

10 Q. Did you tell him that "New York" had chased you down
11 the street on foot?

12 A. I told him about the gun, yes, sir.

13 Q. I'm sorry?

14 A. Yes, sir, I told him he hit me with the gun.

15 Q. All right. Did you tell him that the argument was
16 over -- you wanted to pay him for the ride --

17 A. Yes, sir.

18 Q. -- but he wanted drugs?

19 A. Yes, sir. I told him that it was about something like
20 that.

21 Q. Something like that?

22 A. Yes.

23 Q. Well, you told him -- perhaps not in those words, but
24 you told him that "New York" wanted drugs?

25 A. Yes.

1 Q. All right. And you told that to him at the time that
2 you were giving him this report, correct?

3 A. Yes.

4 Q. Did you describe for Officer Sizemore getting hit on
5 the side of the head with a weapon?

6 A. There was blood on my head and it come from being hit
7 by the gun.

8 Q. All right. You are saying there was blood on your head
9 and you told him that the blood was caused by being hit by a
10 weapon?

11 A. Yes, sir.

12 Q. Did you tell him that Hayward Chambers, or the person
13 that you knew as "New York", chased you down the street
14 holding a weapon?

15 A. Yes, I told him.

16 Q. Now, Officer Sizemore, nor anybody else, made an
17 arrest, correct?

18 A. No.

19 Q. And they went and talked with Hayward Chambers, right?

20 A. I don't know.

21 Q. You have a lengthy record for drug involvement,
22 correct?

23 A. Yes.

24 Q. You were convicted in 2003, correct --

25 A. Yes.

1 Q. -- for distribution of crack cocaine?

2 A. Yes.

3 Q. Did you do some time for that?

4 A. Yes.

5 Q. You were arrested in 2005 for possession of less than
6 one gram of crack and you pled guilty to a marijuana charge
7 coming out of that, correct?

8 A. Yes.

9 Q. And you have a conviction from 2002 for possession with
10 intent to distribute crack, for which you got fifteen years,
11 correct, suspended to thirteen months?

12 A. Yes.

13 Q. Did it appear to you -- was any further action taken
14 after you made this report to Officer Sizemore? Did
15 anything happen?

16 A. No, sir.

17 Q. Did it appear to you that Officer Sizemore even
18 believed your report?

19 A. Yes.

20 MR. SLADE: I don't have any other questions for
21 this witness, Your Honor.

22 THE COURT: Anything further, Ms. Leskanic?

23 MS. LESKANIC: The State calls Officer Sizemore.

24 THE COURT: Sir, you can step down. Just have a
25 seat in the courtroom, sir.

1 OFFICER JEFF SIZEMORE, having been first duly
2 sworn, testified as follows:

3 THE COURT: Once seated, state your name, please.

4 THE WITNESS: Officer Jeff Sizemore.

5 THE COURT: Thank you.

6 Your witness.

7 MS. LESKANIC: Thank you, Your Honor.

8 DIRECT EXAMINATION BY MS. LESKANIC:

9 Q. Officer Sizemore, I have given you a copy of an
10 incident report that was taken on February 12th, 2009. Do
11 you have that in front of you?

12 A. I do, ma'am.

13 Q. All right. And is that a report that you took while
14 employed with the Gaffney City Police Department?

15 A. Yes, ma'am.

16 Q. All right. Do you recall this incident?

17 A. Not really.

18 Q. Okay. Based on your incident report, you can use that
19 to refresh your recollection, would you have made this
20 report if Mr. Douglas had not come to you and made the
21 report?

22 A. No, ma'am, he had to come to me to make a report like
23 this.

24 Q. All right. And in that report did he tell you that he
25 was riding in a burgundy station wagon on West Floyd Baker

1 Boulevard?

2 A. Yes, ma'am.

3 Q. And did he tell you that the victim wanted to get out
4 of the subject's vehicle?

5 A. Yes, ma'am.

6 Q. Or that the subject told him to get out of the vehicle?

7 A. Yes, ma'am.

8 Q. All right.

9 MS. LESKANIC: If the court doesn't have an
10 objection, I would like Officer Sizemore -- he doesn't
11 recall this incident, to be able to read what information he
12 put in his report.

13 MR. SLADE: I'm satisfied just to admit the
14 report, Your Honor. I mean, we can -- but he can read from
15 it. I have no objection.

16 THE COURT: No objection.

17 BY MS. LESKANIC:

18 Q. If you would, Officer Sizemore, would you just read the
19 narrative part of your report?

20 A. Sure.

21 "On the above dates and times C/V," which would be the
22 complainant/victim, "states that he was riding in a burgundy
23 station wagon on West Floyd Baker Boulevard. The C/V states
24 that the sub then told the C/V to get out of the sub's
25 vehicle. C/V states that after he got out of the vehicle

1 the sub then got out of the vehicle and pulled out a small
2 handgun. C/V states that the sub then struck the C/V in the
3 side of the face with the small handgun. C/V states then he
4 left the scene and went to the CCDC, " Cherokee County
5 Detention Center, "for help. R/O," which is me, "reporting
6 officer was called out to bingo where Officer Brian Green
7 states that the sub stated to Brian Green," or excuse me B.
8 Green, "that the sub was giving C/V a ride. Subject states
9 that the C/V was going to pay the sub for the ride. Subject
10 stated to Green that the C/V jumped out of the car and was
11 not paying the C/V. Sub stated to Green a fight took place
12 and the sub went back to the sub's vehicle and left the
13 scene."

14 Q. Okay. So when you saw Brad Douglas, he had reported to
15 you that he had been struck in the side of the face with a
16 small handgun, is that correct?

17 A. Yes, ma'am.

18 Q. And did you note anything under visible injuries to
19 Brad Douglas?

20 A. Yes, ma'am. Underneath visible injuries to the victim
21 one, I explained bleeding from left side of eye.

22 Q. So you did see a visible injury on him consistent with
23 what he had reported?

24 A. Yes, ma'am.

25 Q. All right. And Officer Green, it appears from the

1. report, went out and spoke with the defendant?

2 A. By the report, yes, ma'am.

3 Q. All right. And during his conversation with the
4 defendant, he admitted that he was giving Brad Douglas a
5 ride, is that correct?

6 A. Correct.

7 Q. And that the defendant then told him that the victim
8 was going to pay the subject for the ride, but he had not
9 done so?

10 A. Correct.

11 Q. And then the defendant stated to Officer Green that the
12 victim got out of the car when he was not going to pay the
13 victim and then a fight took place between the two of them?

14 A. Yes, ma'am.

15 Q. Because the fare had not been paid for the ride?

16 A. According to the report, yes, ma'am.

17 Q. And where it says subject number one, it looks like
18 something is marked through. Can you tell me what that is?

19 A. Yes, ma'am. If we don't know what a subject's name is,
20 we put a UNK for unknown right there.

21 I'm trying to remember the best I can. I do believe I
22 put unknown right there until I found out later who the
23 subject was.

24 Q. So at the time the report was made you did not have the
25 name of Hayward Chambers?

1 A. No, ma'am.

2 Q. All right. And what name did you later get?

3 A. Hayword Chambers.

4 Q. Okay.

5 MS. LESKANIC: Your Honor, for purposes of the
6 hearing I would like to have this marked.

7 THE COURT: Any objection.

8 MR. SLADE: Well --

9 THE COURT: Is that the report?

10 MR. SLADE: Well, it's not the one I had, Your
11 Honor. It's apparently the handwritten. I haven't had a
12 chance to look at it. I'm assuming it's roughly the same.
13 The one I have is typed up. If you could just let me look
14 at it.

15 THE COURT: I'll give you a minute to look over
16 it.

17 MR. SLADE: Yes, sir.

18 THE COURT: Thank you.

19 (Off the record)

20 (Back on the record)

21 MS. LESKANIC: I don't have any further questions
22 for this witness, Your Honor.

23 MR. SLADE: I don't believe there are any
24 differences. I don't -- I don't have any objection to the
25 report going in.

1 THE COURT: All right, it would be marked as an
2 exhibit for purposes of this hearing from the State.

3 (Incident Report marked as State's No. 32 for
4 identification)

5 MR. SLADE: We got it marked, but it would be just
6 for the purposes of this hearing?

7 THE COURT: Yes, sir.

8 CROSS EXAMINATION BY MR. SLADE:

9 Q. Officer Sizemore, you are familiar with the crime
10 called assault and battery of a high and aggravated nature?

11 A. Yes, sir.

12 Q. And if a person strikes another person in the head with
13 a pistol, that's an aggravated assault, assault and battery
14 of a high and aggravated nature, correct?

15 A. Yes, sir.

16 Q. And, in fact, at the top of this incident report, this
17 State's Exhibit No. 32, in your handwriting you had written
18 ABHAN, aggravated assault, right?

19 A. Assault and battery of a high aggravated nature.

20 Q. Okay. Aggravated assault was my word. I apologize.
21 You had written ABHAN?

22 A. Yes, sir.

23 Q. So at the time that you filled this out, you recognized
24 that at least the allegation that Mr. Douglas was making, if
25 it was true, or even if it was probably true, fit into a

1 crime, correct?

2 A. Yes, sir.

3 Q. And you put down the chief and most important details
4 about this that he told you, correct?

5 A. Yes, sir.

6 Q. Can you find in your report, that is State's Exhibit
7 No. 32, anything about Hayword Chambers chasing him down the
8 street with a weapon?

9 A. No, sir.

10 Q. Can you find in your report anything in there about
11 this transaction or this dispute being about Mr. Douglas
12 wanting to pay Hayword Chambers with money and Mr. Chambers
13 insisted on being paid with some form of drug?

14 A. No, sir.

15 Q. If he had told you that, that would have been important
16 in your case, correct?

17 A. Yes, sir.

18 Q. And you didn't write that down?

19 A. No, sir.

20 Q. So the inference from that is he didn't tell you that,
21 did he?

22 A. Yes, sir.

23 Q. Now, for the record, when a person comes to you with a
24 complaint about aggravated assault and battery, especially
25 involving drugs and a weapon, there is some concern that

1 there may really be a crime, right?

2 A. Yes, sir.

3 Q. No matter who the person alleging it is, correct?

4 A. Yes, sir.

5 Q. So if you really think it's a crime, you have an
6 obligation to take some further steps, correct?

7 A. Yes, sir.

8 Q. And one of those steps that you are obligated to take
9 when you think there has really been a crime committed is
10 have the alleged victim fill out a statement form, correct?

11 A. Yes, sir.

12 Q. I mean, we have seen a number of them in this case here
13 that we are trying today, right?

14 A. Yes, sir.

15 Q. And you didn't have Mr. Douglas fill one of those out,
16 did you?

17 A. No, sir, not that night.

18 Q. Did you have him fill it out at any time?

19 A. No, sir.

20 Q. And the reason is, we can draw an inference from that,
21 you didn't believe a crime had been committed, correct?

22 A. No, sir.

23 Q. And the only evidence of a crime that you had was what
24 Mr. Douglas was telling you, correct?

25 A. That's the only thing I had at that time, yes, sir.

1 Q. At that time.

2 That's all you ever had, correct?

3 A. Yes, sir.

4 Q. Now, you knew that Mr. Douglas had an extensive
5 involvement with drugs, correct?

6 A. No, sir.

7 Q. And at the time that he told you this, you had an
8 officer go out and talk with Mr. Chambers, correct?

9 A. According to the report, it just says that the subject
10 talked to Officer Brian Green.

11 Q. Okay. You were the person responsible -- y'all
12 didn't -- the city police department didn't know anything
13 about this alleged crime until Mr. Douglas showed up, right?

14 A. Correct.

15 Q. And talked to you?

16 A. Correct.

17 Q. And the only action that you took was have another
18 officer -- I mean, how did the other officer know to talk to
19 somebody fitting that description with that kind of car?

20 A. It could have been anything. It could have been radio
21 traffic, previous knowledge of the red Volvo. I -- I don't
22 know.

23 Q. More than likely you had him talk to Mr. Chambers,
24 correct?

25 A. I don't know.

1 Q. Well, he certainly contacted -- after he talked to Mr.
2 Chambers, he certainly contacted you so you could put it in
3 the incident report, right?

4 A. I got in touch with Brian -- Officer Green got in touch
5 with me, yes, sir.

6 Q. Okay. So somehow or another you knew he had talked to
7 Hayword, right?

8 A. Yes, sir.

9 Q. Or you wouldn't have put it in -- I'm sorry. Were you
10 finished? I'm sorry.

11 So you put it in the incident report. You didn't
12 believe a crime had been committed, right?

13 A. No, sir.

14 MR. SLADE: I don't have any other questions, Your
15 Honor.

16 THE COURT: Redirect?

17 MS. LESKANIC: Thank you, Your Honor.

18 REDIRECT EXAMINATION BY MS. LESKANIC:

19 Q. So when you took the report from Mr. Douglas, you
20 didn't think he had been the victim of a crime?

21 A. Oh, yes, ma'am, I did believe -- I didn't understand
22 his question there at the very end.

23 Yes, ma'am, I believe that there was a crime that took
24 place and he was the victim to a crime.

25 Q. Okay. Now, what was your job back in 2009?

1 A. I was a patrol officer.

2 Q. Okay. When you -- when somebody comes into the police
3 department to file a report, what would your duties be?

4 A. Take the initial incident report, gather as much
5 information as I can, type the report and send it to the
6 detective squad.

7 Q. Okay. So after you did the initial incident report,
8 you met with the victim, you noted the injuries that you
9 saw?

10 A. Yes, ma'am.

11 Q. Apparently somehow Officer Green was able to speak with
12 the defendant and confirm that the two individuals had been
13 together?

14 A. Yes, ma'am.

15 Q. And that this was a dispute over payment for a ride?

16 A. Yes, ma'am.

17 Q. All right. And after that did you investigate the case
18 further?

19 A. No, ma'am.

20 Q. Was that your job to investigate the case further?

21 A. No, ma'am.

22 Q. Did you believe what Mr. Douglas was telling you?

23 A. Yes, ma'am.

24 Q. And the facts that he told you, the majority of those
25 facts were agreed to by the suspect when Officer Green spoke

1 with him, is that correct?

2 A. Yes, ma'am, according to the report.

3 Q. Now, do you know why this matter wasn't pursued further
4 after you did the incident report?

5 A. No, ma'am.

6 MS. LESKANIC: Thank you. I have no further
7 questions for this witness.

8 THE COURT: Mr. Slade?

9 RECROSS EXAMINATION BY MR. SLADE:

10 Q. Officer Sizemore, I'm puzzled by one of your responses
11 back to Ms. Leskanic. You said in response to her first
12 question you didn't understand what I was asking you. I
13 believe I asked you if you believed him, right?

14 A. I misunderstood what had you said, sir. You --

15 Q. Go ahead.

16 A. You asked me if I believed that there was a crime. I
17 misunderstood what you had said.

18 Yes, I believe that there was a crime that took place.
19 That's the reason I did the incident report.

20 Q. You know what probable cause is?

21 A. Yes, sir.

22 Q. You know what a statement form is --

23 A. Yes, sir.

24 Q. -- right?

25 A. Yes, sir.

1 Q. And you didn't ask this alleged victim to fill out one
2 of those, did you?

3 A. No, sir.

4 Q. You were sitting down at the police department, right?

5 A. No, sir.

6 Q. Where were you?

7 A. At Cherokee County Detention Center.

8 Q. All right. And they have those forms down there,
9 correct?

10 A. Not our forms, sir.

11 Q. And nothing was done about this case, right?

12 A. As far as I know of.

13 Q. Well, y'all have been checking into that, correct?

14 A. I'm sorry?

15 Q. Y'all have been checking into whether or not anything
16 was done about it, right?

17 A. As far as I'm aware of.

18 Q. Well, who got this incident report?

19 A. Ms. Leskanic.

20 Q. And you have been involved -- you have been involved in
21 helping with that, right?

22 A. Yes, sir.

23 Q. And you know if anything further was done, other than
24 filling out this incident report at the time this man
25 reported this, or made that complaint, right?

1 A. Up until today there has been no other action made
2 except for the police report.

3 Q. You didn't fill out a statement form. Nobody went back
4 and tried to interview Hayward Chambers, right?

5 A. That I'm aware of, yes.

6 Q. And no arrest was ever made?

7 A. No, sir.

8 MR. SLADE: I don't have any other questions, Your
9 Honor.

10 THE COURT: Ms. Leskanic?

11 REDIRECT EXAMINATION BY MS. LESKANIC:

12 Q. Do you have any idea why investigators did not pursue
13 the case further?

14 A. No, ma'am.

15 Q. I'm not trying to make you speculate, but if a victim
16 couldn't be reached, would the case go further, if
17 investigators could not find the victim to get additional
18 information?

19 A. No, ma'am, once we can't locate a victim, they can't
20 gather any more information from the victim.

21 Q. And I'm not saying that that happened in this case, but
22 there are -- there -- tell me some reasons why a case may
23 not go beyond an incident report.

24 A. Can't find the victim. Lack of evidence. There is
25 several reasons.

1 Q. Okay. And do you have any idea what the reason is in
2 this case?

3 A. No, ma'am.

4 Q. Okay. Thank you.

5 THE COURT: Mr. Slade, last chance.

6 MR. SLADE: I don't have anything further.

7 THE COURT: All right. Sir, you may step down.

8 The State may call its next witness.

9 MR. KENDALL: Your Honor, I don't believe the
10 State wishes to call any more witnesses with respect to this
11 matter.

12 THE COURT: All right. Let me see if the defense
13 wishes to put any testimony or offer anything.

14 MR. SLADE: We do not, Your Honor.

15 THE COURT: All right. I'll hear from the State.

16 MR. KENDALL: Your Honor, the State would assert
17 this evidence is proper to be admitted as reply evidence in
18 this case. We certainly acknowledge that the standard in
19 this is clear and convincing evidence.

20 In this matter we have what appears to be based on
21 the incident report a very similar situation, very similar
22 in large part when things have already been acknowledged by
23 both the defendant and the State. He is giving people a
24 ride. He's accepting payment for it. He's doing so in a
25 maroon Volvo or a red Volvo station wagon, and he is, in

1 fact, carrying a firearm.

2 We acknowledge that in this incident report -- the
3 incident report specifically mentioned a firearm.

4 The victim in the prior case acknowledged on the
5 stand and was able to identify and give a description that's
6 very, very similar to the firearm used in the subsequent
7 charge, in the subsequent case.

8 Based on this, Your Honor, I think we have a
9 common scheme or plan, or at least a common set of facts,
10 that go -- both the 2012 -- the February of 2012 assault on
11 Mr. Douglas, who just testified, as well as the murder of
12 Hayword Chambers.

13 I think we have established at minimum that -- or
14 excuse me, backing up.

15 The first thing we have to show by a preponderance
16 of clear and convincing evidence that the event in February
17 of 2012 happened. I think basically the incident report is
18 largely agreed on. The only thing that's different, as far
19 as I can tell from the incident report and what I imagine
20 the defense is going to assert, is whether or not a firearm
21 was used. Based on the fact that, one, we are talking as a
22 concealed firearm. And then, number two, he was able to
23 identify that concealed firearm was very, very similar. I
24 think that by itself would establish a fairly good piece of
25 evidence as to this actually happening, this event actually

1 taking place.

2 Additionally, Your Honor, it's important to note
3 this February of 2012 incident occurred prior to this
4 murder. This incident report was written prior to this
5 murder taking place. This isn't something that just got
6 dreamed up and everybody just subsequently remembered right
7 now.

8 I would also offer to the court that the second
9 incident, the homicide, makes it more likely, makes it a
10 more reasonable fact the first incident took place. I think
11 it would be very different if these case were, say, tried
12 before a jury together; that having the second incident take
13 place, it would, in fact, make it more likely the one first
14 took place. Obviously the police were taking their first
15 report, they didn't know that nine months down the road
16 there would be a murder under very similar facts. Under
17 these facts it makes it very probable that he was able that
18 he was in a fight, or they just couldn't get in touch with
19 the victim. The fact that he's subsequently claiming,
20 following again a dispute over drugs, that he now -- that he
21 pulled this in self-defense or in some other reason, I think
22 it kind of refutes that claim, Your Honor.

23 We would also offer this evidence in response to
24 defendant's assertion or characterization of himself as a
25 lawful gun owner. One of the things he's put forth in great

1 detail in the first portion of his case, in his testimony,
2 was his status as a concealed weapons holder. He went into
3 great detail to tell why he obtained the firearm, why he
4 obtained a concealed weapons permit. He went into very,
5 very great detail about what he had to do to get that
6 weapons permit, what it looked like, the classes he had to
7 take to get the permit, all pointing out that he did this in
8 a context of being a peaceable gun owner.

9 Gun ownership in this country, Your Honor, has a
10 very interesting kind of distinction. On the one hand, the
11 State and the people in the United States very clearly
12 recognize a right to lawful gun ownership. We have also,
13 though, I think there is general discontent to unlawful gun
14 ownership. A concealed weapons permit is something that's
15 done by the state that really, at least in theory,
16 acknowledges lawful gun ownership, and that's why they put
17 that into evidence and why they went into great detail, is
18 to establish that he was a lawful peaceable gun ownership,
19 who uses his firearm for peaceful purposes.

20 What this evidence establishes, the testimony of
21 Mr. Douglas, is that he's not using that firearm in
22 defensive purposes, peaceful defensive purposes, that he
23 instead is using it aggressively to solve disputes.

24 In the second incidence he pulled a firearm, which
25 at least left a mark on the individual's head. We have had

1 testimony, I believe, from both the officer and the victim
2 that there was a gash across his head, but he pulled the
3 firearm in these disputes.

4 He's using the firearm, Your Honor, in an
5 offensive manner and not in a defensive manner.

6 Based on the matter of attention that was given to
7 that in the defense case, I think we have a right now to
8 refute that with this new evidence.

9 He stated, additionally, he never pulled a firearm
10 on anybody.

11 We also think, Your Honor --

12 THE COURT: My understanding your position this
13 morning is, and you tell me if I'm wrong, it's not that this
14 is being offered necessarily for impeachment purposes, but
15 to show some common scheme or intent on his part? Is
16 that -- am I understanding that argument? Because if you
17 are offering it strictly for impeachment purposes, there is
18 a whole different standard that goes into whether or not
19 that comes in for impeachment purposes. So --

20 MR. KENDALL: We would be primarily offering this,
21 Your Honor, really under 404(a) and also 404(b).

22 I think that this gives --

23 First with respect to 404 (a), I think that this
24 is being used to rebut a character trait that's been put
25 forward by the defense. The defense has put forward the

1 character trait of this is somebody who is a lawful owner of
2 a firearm; who owns that to protect his family, because he's
3 moving into a bad neighborhood; who took the steps of
4 maintaining or obtaining it lawfully a concealed weapons
5 permit; and then he does this really to protect himself.
6 He's a defensive gun owner.

7 What this evidence shows is that he's, in fact,
8 not a defensive gun owner. He was specifically asked "have
9 you ever done it before?" Were there any instances of his
10 offensiveness, that this was ever cloudy, it was murky water
11 here and he says no, and this is a defensive firearm. He
12 goes into this great detail. I believe on cross-examination
13 it was --

14 THE COURT: I believe his testimony was that he
15 got it solely for protection.

16 MR. KENDALL: Yes, sir.

17 THE COURT: Protection of his family.

18 MR. KENDALL: And when asked to clarify about
19 that, this was more murkier than this, he very clearly said
20 no.

21 Additionally, Your Honor, we would offer this
22 under 404(b) of evidence of other crimes, wrongs, or acts
23 that are not admissible -- or excuse me, that they may be
24 admissible to prove, in this case, the existence of common
25 scheme or plan and intent.

1 One of the major issues in this case, arguably
2 what the entire case, is why he pulled out that firearm. If
3 the jury believes that he pulled out that firearm to protect
4 himself, we are going to be -- the State will not succeed.

5 If they believe that he pulled out that firearm in
6 response to non-threatening words or did not have sufficient
7 provocation and pulled that firearm, if he did it
8 offensively, I think the State has a much greater chance of
9 success in this case.

10 So the issue becomes whether or not he did this.

11 Now, the fact he has done this before, pulled out
12 a firearm on somebody else following a dispute over drugs,
13 able to identify the same car, the same basic -- you know,
14 the transportation of individuals with the same gun
15 following a similar dispute I think goes to whether or not
16 this was done as a defensive move, that he's not doing this
17 defensively.

18 Additionally, kind of just again to reenforce the
19 common scheme or plan, the State would also argue that I
20 know we were subject to a 403 analysis on this, none of the
21 stuff we are offering here is not stuff the jury -- is not
22 heard -- we are not branching out in different crimes the
23 defendant has done, at least topically. This isn't -- we
24 are not starting that -- he's admitted he's given people
25 rides for narcotics. He admits that he carries a firearm

1 when he's taking these ride. We are not changing what they
2 don't already know about him. We are just expanding it to
3 one other incident in which he -- not -- we are not putting
4 up pictures of the blood or, you know, anything like that.

5 THE COURT: I think his testimony was that he on
6 occasion did give people rides and expected payment, either
7 in drugs or in money.

8 MR. KENDALL: Yes, sir.

9 THE COURT: He said that.

10 MR. KENDALL: Yes, sir.

11 It's just generally his fault statement would go
12 to the general truthfulness as well.

13 THE COURT: Well, again, my research on that is
14 that generally you cannot use specific instances of bad acts
15 to attack someone's credibility, so I don't think you are
16 going to get very far with that.

17 MR. KENDALL: Yes, sir.

18 THE COURT: All right. I am more open to argument
19 that it may come in under 404.

20 Yes, sir, Mr. Slade.

21 MR. SLADE: Thank you, Your Honor.

22 I wanted to start where the solicitor said that we
23 agreed on the facts. I don't agree on the facts.

24 If their claim of similarity is based on the fact
25 that now Mr. Douglas testifies that this was an argument

1 over payment, argument over payment and whether or not he
2 was going to get drugs or money, none of that appears in
3 this incident report.

4 The first hurdle is they got to get over, the
5 solicitor, is a pretty high burden. They have got to get
6 over the burden of showing that this happened by clear and
7 convincing evidence.

8 Your Honor, what has been described, and the
9 officer who took the report has admitted, that what was
10 described here is an aggravated assault. And obviously at
11 the time there was nothing done any further after the other
12 officer talked to Hayward Chambers.

13 Your Honor, there was testimony, as I understood
14 it from the officer, that he didn't believe the person
15 making the allegation, making the complaint.

16 So the standard, Your Honor, for following up on a
17 crime is probable cause, and probable cause is far from
18 clear and convincing evidence.

19 I think at the very beginning, whatever we are
20 going to deal with here on similarities, and I'll deal with
21 that in just a moment, the actions of the agency that now
22 wants to come forward to say that there is clear and
23 convincing evidence this happened at the time that it
24 happened, there is almost an admission by them that they
25 didn't believe it. Probable cause --

1 THE COURT: Did the officer testify he didn't
2 believe the gentleman? I don't think he testified to that.

3 MS. LESKANIC: No, sir, he said that he did
4 believe him.

5 MR. SLADE: I'm thinking he came back and said
6 that, Your Honor, but I may be --

7 THE COURT: I'll review the testimony again.

8 MR. SLADE: All right.

9 THE COURT: But I don't recall him ever saying he
10 didn't believe the reporting.

11 MR. SLADE: And it may be that I'm remembering it
12 wrong. I thought he said he didn't believe him, or he
13 didn't believe a crime had been committed.

14 THE COURT: Well, he corrected it. He did say
15 that on one occasion, but then he corrected it and said he
16 misunderstood your question and then he said he did believe
17 there was a crime committed.

18 MR. SLADE: Well, we bring up the question of why
19 nothing further was done. I mean, there the agency charged
20 specifically --

21 THE COURT: Oh, I agree that you would think that
22 if they thought a crime was committed, that action would
23 have been taken. I don't know a lot of -- there are a lot
24 of decisions that go into whether or not prosecutions are
25 brought.

1 MR. SLADE: Yes, sir, including --

2 THE COURT: For one reason or another.

3 MR. SLADE: And it's their burden to show that
4 it's not, because they didn't disbelieve the complainant, I
5 think, in these circumstances posited now and the position
6 we find ourselves in now.

7 Secondly, Your Honor, and I'm sure that the
8 officer testified that had the complainant told him that
9 Hayword was arguing with him over being paid in drugs, that
10 he would have put that in the report.

11 If he had done some of the other things he was
12 claiming now to make this a violent sounding offense where
13 he was chasing him down the street in order to continue the
14 argument, he would have put that in his report. None of
15 that is in this report, Your Honor.

16 So, again, the connection that they are trying to
17 make here, the similarities that they are trying to make,
18 this being based on some kind of drug transaction, there is
19 no similarity in the report that we were provided
20 documenting what happened at the time. So --

21 THE COURT: But the only testimony I have in front
22 of me right now is from the alleged victim of this
23 particular incident, who says that's what happened.

24 MR. SLADE: Yes, sir. And my --

25 THE COURT: I don't have any other evidence to

1 show that that didn't happen.

2 MR. SLADE: And I apologize, I may not be getting
3 my argument correctly on this point, Your Honor. I'm
4 questioning the credibility of this witness.

5 THE COURT: Oh, I understand.

6 MR. SLADE: And --

7 THE COURT: That's an issue too.

8 MR. SLADE: It would seem, given the extravagant
9 nature of his claim that he was chased down the street
10 and -- Your Honor, I apologize. I'm thinking he was
11 claiming he was chased down a fairly well-traveled street.
12 But, anyway, he doesn't say he was chased down a street.

13 THE COURT: Not in the report he didn't.

14 MR. SLADE: Not -- and the officer said if he said
15 it, he would have put it in there.

16 THE COURT: It's not in the report.

17 MR. SLADE: And he has significant credibility
18 issue with his prior drug convictions. So I just -- my
19 point was at this point, now three years later, this witness
20 is not credible, or certainly doesn't reach the level
21 required for clear and convincing evidence.

22 The second --

23 THE COURT: Go ahead.

24 MR. SLADE: I apologize.

25 THE COURT: No, I thought that you were through.

1 Go ahead.

2 MR. SLADE: The second point that I wanted to make
3 is on the actual lack of similarity. What the testimony has
4 been in this case, if they are depending on similar --
5 similar circumstances, common scheme or plan, what the
6 testimony has been is that simply that Hayward was giving
7 somebody a ride, or giving Scottie Mayberry, or "Pookie", I
8 guess, a ride and he was waiting to be paid. He wanted to
9 be paid. None of -- he didn't start any kind of violence
10 over not being paid. They are trying --

11 THE COURT: That depends on whose testimony you
12 believe I think in this case. That's what the jury is going
13 to decide who was the aggressor.

14 MR. SLADE: Right. Well, I agree with that, but
15 my recollection of the testimony is -- the question is how
16 did -- how did it arrive that one or the other was the
17 aggressor?

18 And their testimony has been that the reason that
19 Hayward was drawn into the argument was because Todd Morgan
20 started cussing him about something and he responded to
21 that. That's not -- he hadn't given Todd Morgan a ride
22 anywhere. That's not an argument over giving somebody a
23 ride.

24 THE COURT: I think the testimony, depending on
25 who you believe, that he's giving "Pookie" a ride --

1 MR. SLADE: That's correct.

2 THE COURT: -- and that Todd was arguing with
3 "Pookie" --

4 MR. SLADE: Right.

5 THE COURT: -- about having taken his drugs.

6 MR. SLADE: Right.

7 THE COURT: And he was waiting, either patiently
8 or impatiently, depending on who you are to believe --

9 MR. SLADE: Right.

10 THE COURT: -- to get something from "Pookie"
11 while Todd was --

12 MR. SLADE: That's correct.

13 THE COURT: -- excoriating her about something
14 else.

15 MR. SLADE: Exactly. And he got drawn into that
16 argument. This wasn't an argument over a drug deal
17 transaction for being paid for the ride. This was -- he
18 just either voluntarily or involuntarily stepped into a
19 domestic partnership argument. And this -- my contention is
20 there is no similarity to that. The only similarity is the
21 fact he was giving people rides. That's not enough. We got
22 to talk about the --

23 THE COURT: Well, I think -- you might want to
24 address one thing for me --

25 MR. SLADE: Yes, sir.

1 THE COURT: -- on that, Mr. Slade, and that is
2 Rule 404 does allow, under Subsection (a)(1), evidence of a
3 pertinent trait of character offered by an accused or by the
4 prosecution to rebut the same.

5 MR. SLADE: Right.

6 THE COURT: Now, they're arguing that in your case
7 in chief --

8 MR. SLADE: Right.

9 THE COURT: -- the defendant's testimony, he
10 testified extensively about the fact that he was a concealed
11 weapons permittee.

12 MR. SLADE: Right.

13 THE COURT: That he got the gun solely for his
14 protection.

15 MR. SLADE: Right.

16 THE COURT: That he had never drawn the gun on
17 anyone else.

18 So he gave the testimony to the jury that he was
19 of the character and using a weapon solely to be defended,
20 never for any other purposes. And, of course, your
21 allegation in this case is that's what he did here.

22 MR. SLADE: Right.

23 THE COURT: He was defending himself.

24 MR. SLADE: Yes, sir.

25 THE COURT: They are offering this evidence to

1 rebut that character trait where he is a peaceable defensive
2 person, it appears to me. And they are saying that this
3 would rebut that character trait that the defendant put into
4 evidence. The defendant got on the stand and made himself
5 out to be a person, peaceable, law-abiding gun carrier, that
6 he never used his gun for any other purpose, other than to
7 defend himself.

8 MR. SLADE: Right. Your Honor, I -- go ahead.

9 THE COURT: The rule appears to allow them to do
10 that, to rebut that character trait, once that character
11 trait is put into evidence by the defense.

12 Now, I realize that before that can happen the
13 clear and convincing test as to this prior act has to be
14 met, and I'm weighing that right now, but you haven't spoken
15 to whether or not if we get over the clear and convincing
16 question whether or not it's even admissible or not under
17 404.

18 MR. SLADE: Well, Your Honor, I think when you
19 analyze it in terms of the three hurdles that they have to
20 come over. They have to come over the one we just talked
21 about, they have to come over the character trait, and they
22 have to come over the prejudice versus --

23 THE COURT: Yes, sir.

24 MR. SLADE: -- probative.

25 THE COURT: Then it has to be weighed on 404.

1 MR. SLADE: The probative value.

2 And, Your Honor, I went into the fact that he had
3 a concealed weapons permit simply to show that he had the
4 right to carry a gun.

5 They went into some of the --

6 And that he got it for the purpose of defending
7 his family or protection of his family, which is a
8 legitimate reason. I don't think that in and of itself
9 rises to the level to combat or rebut that with this kind of
10 evidence on character, Your Honor.

11 I concede of those three issues --

12 THE COURT: Uh-huh.

13 MR. SLADE: -- that's the one they got the better
14 chance on. I'm just saying that when you consider the
15 height of the hurdle that they have to come over, when you
16 take an incident report that wasn't acted on in these
17 circumstances --

18 THE COURT: You know, had it been acted on, the
19 prosecution had been done, a conviction had resulted, we
20 wouldn't be having this discussion right now. That's the
21 reason we are having this discussion, because a conviction
22 didn't result, but obviously in cases where convictions have
23 not resulted, the court recognizes those can come in, but
24 you have got a higher standard.

25 MR. SLADE: Right.

1 And I beg to differ with you slightly on -- I
2 think we are skill probably would be having this discussion
3 just because of the highly prejudicial nature.

4 THE COURT: Oh, I'm talking about discussion on
5 the level of proof.

6 MR. SLADE: I agree. I agree with that.

7 If they had even filled out a statement form and
8 gone forward on it, you know, it would certainly not be the
9 argument that it is, but the clear and convincing test for
10 whether or not it happened is pretty high.

11 THE COURT: Anything else you want to say about
12 the -- and he's right, that's a pretty high burden.

13 MR. KENDALL: Yes, Your Honor, just a couple of
14 very quick things.

15 First with respect to the defendant's -- or to the
16 victim's drug report in this case --

17 THE COURT: Uh-huh.

18 MR. KENDALL: -- this is a case that a lot of
19 witnesses have had a significant --

20 THE COURT: I'm not sure we have had a witness
21 that doesn't have a drug record, or maybe I'm missing
22 something, but --

23 MR. SLADE: Well, my client doesn't have a record,
24 Your Honor.

25 THE COURT: He did not have a record. You are

1 right. I was speaking mainly with the rest of them, but
2 most of the witnesses in this case have had a drug record.
3 You are right. It doesn't disqualify him from testifying.

4 MR. KENDALL: No, sir.

5 THE COURT: It certainly goes to the believability
6 or credibility, which could be argued by the defense.

7 MR. KENDALL: In this case, Your Honor, we would
8 also argue that because of what the allegation is, he's
9 giving someone a ride for narcotics, that using narcotics
10 isn't something that's even necessarily adverse to that
11 individual's testimony.

12 I think if somebody got up on the stand and said
13 that Ms. Leskanic had offered them narcotics for a ride,
14 that would be somewhat unbelievable.

15 The fact that somebody who has used drugs in the
16 past and continues to use drugs, I don't think it's
17 something that necessarily eliminates them as a witness in a
18 case like this, or makes their testimony wholly irrelevant.
19 I don't think narcotic usage would be a crime of dishonesty
20 in and of itself.

21 Additionally, Your Honor, I would point out with
22 respect to --

23 THE COURT: You know, there has been a recent case
24 on that as to whether or not what cases or kind of
25 convictions you can consider on credibility issues and it

1 has to restrict it to a greater degree to the cases you
2 could use on that, Mr. Kendall.

3 MR. KENDALL: Yes, sir.

4 THE COURT: And taking away a lot of these things
5 like drug offenses and things like that that shouldn't be
6 considered as to credibility when you are using and
7 admitting those for purposes of impeachment.

8 MR. KENDALL: Yes, sir. Yes, sir.

9 We would also, just addressing the fact that no
10 arrest was made in this case. We, of course, find that law
11 enforcement, you know, we certainly respect their work, is
12 not the determining factor before the court of law.

13 Sometimes --

14 THE COURT: Well, I pointed that out to you --

15 MR. KENDALL: Yes, sir.

16 THE COURT: -- that cases that don't result in
17 convictions are permitted, but, again, it's got a higher
18 standard.

19 MR. KENDALL: Yes, sir. And as the court knows,
20 sometimes logistics is ultimately what is the determining
21 factor in cases like this. We are dealing with people who
22 are -- knows them from the street, using narcotics, paying
23 small amounts of money for rides, getting in touch with
24 people and contacting people can be difficult and actually
25 can provide some form of obstacle for cases.

1 Additionally, I would like to point out the
2 evidence that's been presented here in the Hayward Chambers
3 trial would tend to support the previous conviction -- or
4 excuse me, the previous sequence of events. If those two
5 were taken together, if you knew -- if they knew back in
6 February that November he was going to be giving somebody a
7 ride; he was going to be carrying with him a silver pistol;
8 he was going to be involvement; it was going to be "New
9 York"; he was going to be expecting payment for this; and
10 either -- it would make it more likely -- and that he had
11 pulled a firearm on somebody shortly thereafter, I think it
12 would make it more likely the person was not some form of
13 self-defense.

14 We have here, what appears from the police report,
15 is two instances where he is saying that this was some sort
16 of mutual fight.

17 I would draw the court's attention as well to the
18 incident report where it states at the bottom the subject
19 was giving the victim a ride. Subject states, this is Mr.
20 Chambers, that he was going to pay the subject for the ride.
21 He stated to Green, who was officer, that the victim jumped
22 out of his car, he was not going to pay him.

23 What we are offering is not that this should be
24 the subject -- I don't believe we are held to the standard
25 of clear and convincing that a crime was committed. I think

1 we are held to the clear and convincing that this act was
2 committed.

3 THE COURT: I think you are right. I mean, it's
4 not a question whether it was a crime. It could be a bad
5 act. It doesn't have to be a crime.

6 MR. KENDALL: It would appear that based on what
7 the defendant has said in the police report, that one of the
8 reasons that they wouldn't have prosecuted him was that he
9 did, in fact, give him a ride; that he did jump out of a car
10 when he was not going to pay him.

11 I would also point out, Your Honor, the pistol,
12 because I think this is very, very important. We are
13 talking about a concealed pistol, which by the very nature
14 of the object is not something somebody is going to see,
15 unless it's pulled out.

16 I'm willing to say that he could have known the
17 defendant drove a Volvo. That's fair. He could have known
18 he gives people rides, or he's got rides from him, that
19 fair, but he's not going to know about that pistol, unless
20 he pulls that pistol out. This gentleman hasn't been in the
21 courtroom the last three days and he noticed a pistol in his
22 initial police report that happened before the murder took
23 place. I think --

24 THE COURT: That is an interesting factor that all
25 of the different things do match up in the two stories; the

1 car, the color of the car, the type of pistol, the color of
2 the pistol --

3 MR. KENDALL: Yes, sir.

4 THE COURT: -- and that they all do match up.

5 MR. KENDALL: Yes, sir.

6 And this also just generally goes to the
7 defendant's state of mind, Your Honor, when he's not paid.

8 I disagree with Mr. Slade's kind of assertion that
9 he stepped into a domestic dispute. I believe what his
10 testimony was he was down at the other end of the hall.
11 "Pookie" got there before, got into her room before and he
12 came in to get paid.

13 THE COURT: As is have indicated, that's -- the
14 question in this case is who is the aggressor and why things
15 happened the way they did, and there is some radically
16 different stories as to what happened, so the jury is
17 deciding what they believe and what they don't believe.

18 MR. KENDALL: Yes, sir.

19 THE COURT: We are talking about this particular
20 incident you are trying to get in, whether or not there is
21 sufficient evidence to justify it coming in.

22 The last word, Mr. Slade. We have got to make a
23 decision and move on.

24 MR. SLADE: Certainly, Your Honor.

25 THE COURT: Okay.

1 MR. SLADE: The point I want to make is that I
2 agree, it's not -- the rule is not confined to crimes,
3 clearly, but the question is whether this bad act,
4 incidentally is a crime and was reported, actually happened
5 the way that the witness claims that it happened.

6 And I would also point out, Your Honor --

7 THE COURT: And the cases say, you know, again it
8 has to be by clear and convincing evidence that it occurred.
9 That's not proof beyond a reasonable doubt. That's not that
10 far. It's more of a preponderance.

11 MR. SLADE: I agree with that, but they can't
12 reach it by speculating, and their speculation wants to be
13 that there is some logistical reason or is they just said
14 that he couldn't be reached.

15 THE COURT: I mean, whether or not it was
16 prosecuted I don't think is necessary -- that's a factor I
17 should consider --

18 MR. SLADE: Right.

19 THE COURT: But it's not determinative of whether
20 it comes in or not.

21 MR. SLADE: Right.

22 THE COURT: There is various reasons why
23 prosecutors don't prosecute. You know, there is lot of
24 them. I have been doing this a long time and --

25 MR. SLADE: Right.

1 THE COURT: You used to be a prosecutor. You know
2 what that means.

3 MR. SLADE: Yes, sir, and sometimes it's not done
4 because they don't believe them.

5 THE COURT: That's right.

6 MR. SLADE: And, Your Honor --

7 THE COURT: It might just be that it's not
8 something that they want to waste their resources on. I
9 don't know.

10 MR. SLADE: I agree, and I guess my point is all
11 that's speculation. We don't know.

12 THE COURT: Uh-huh.

13 MR. SLADE: So I think we are entitled at that
14 point to believe that they didn't go forward on it because
15 it was some element of disbelief there. His -- the witness'
16 telephone numbers, contact numbers, are in this incident
17 report.

18 Your Honor, I just --

19 And one of the similarities in regard to the
20 silver pistol, maybe that would make a difference if silver
21 or chrome pistols weren't the color of -- or silver or
22 chrome wasn't the color of half the pistols on the face of
23 the earth. So --

24 THE COURT: There is all kind of -- it's amazing.
25 I have seen pink pistols.

1 MR. SLADE: Yes, sir, you see them now.

2 THE COURT: There are a lot of different colors of
3 pistols out there.

4 MR. SLADE: And, again, Your Honor, there is
5 nothing about identification of a pistol as a silver one, or
6 anything else in this instance --

7 THE COURT: Again, that's a factor that I have to
8 take into consideration as to whether or not this is
9 believable or not.

10 MR. SLADE: My final point on this, two sentences,
11 final point, Your Honor.

12 THE COURT: Yes.

13 MR. SLADE: This is, as you can see, highly
14 prejudicial in this instance. And I think given the
15 questions concerning whether or not it reaches the clear and
16 convincing dictates against admission of it. The courts
17 have been very, very -- looked very, very hard at admission
18 of this kind of evidence. That's why there's all those
19 cases on it. This is very prejudicial.

20 THE COURT: All right. Anything further?

21 MR. KENDALL: Just very briefly.

22 Again, Your Honor, with respect to the prejudice
23 issue, this is all -- this isn't new behavior. This isn't
24 gratuitous violence or anything. We are not going to put in
25 medical records or anything like that. He's already said he

1 gives people rides. He expects payment for it. He already
2 says he carries a handgun, drives the burgundy Volvo, or
3 maroon Volvo station wagon. It's the same thing. It's just
4 how he's reacting in another situation. I don't think this
5 would prejudice the jury.

6 THE COURT: All right, I'm going to take a short
7 break and let me take a look at this memo and maybe look at
8 some of the cases and then I'll make a ruling.

9 Court is in recess briefly.

10 MR. KENDALL: Thank you, Your Honor.

11 (Whereupon, proceedings were recessed)

12 (Whereupon, proceedings were reconvened)

13 THE COURT: All right, I have had an opportunity
14 to review the incident report and also to go back over some
15 of the testimony that was given during the proffer.

16 In this case the State is offering this particular
17 testimony I think for two purposes that I am considering in
18 this, and that is, number one, under Rule 404(a)(1)
19 concerning the character trait which was offered by an
20 accused during his testimony. And in this case the
21 testimony of the accused was a licensed gun carrier; he had
22 a concealed weapons permit; and he went to a great deal of
23 care to testify that he had gotten that weapon solely for
24 defensive purposes, that he got it solely to protect himself
25 and/or his family. I think the testimony was even because

1 that he had moved to a particular housing project or area
2 that he needed to have that, that he felt like he needed to
3 have that gun. So he portrayed himself as a peaceful
4 law-abiding citizen who had the right to carry a gun for
5 self-protection.

6 The prosecution is offering this evidence in an
7 effort to rebut that particular character trait that was put
8 into the record by the accused.

9 The other analysis is whether or not this evidence
10 is being -- is properly admitted under Subsection (b) of
11 that same Rule 404 as a prior bad act which is being offered
12 to show either motive, identity, the existence of a common
13 scheme or plan, or the absence of mistake, accident or
14 intent. And in that analysis --

15 I think in the first analysis I'm not so sure that
16 I'm required to find that this evidence is being presented
17 in such a fashion that it convinces the court by clear and
18 convincing evidence of its truth.

19 But now as to the second analysis, that would be
20 required, so I'm going to discuss that as well.

21 I have looked over other cases. In particular, I
22 have looked at State v. Ford. That case discusses a similar
23 analysis concerning the clear and convincing nature of the
24 evidence and whether it should come in or not.

25 And in this particular case I have got a person

1 who claims to have direct knowledge of the incident. In
2 fact, the victim of that particular incident is testifying.
3 He's testifying as to what he alleges happened. His
4 statement, while in the incident report as related by a
5 police officer on the report, did not include all of the
6 details of his statement in court. It is -- I didn't find
7 any inconsistencies in that statement. I don't see anyplace
8 where he has stated something that was placed into the
9 report that he has stated differently today.

10 The defense did properly point out several
11 omissions from the report that was contained, other than
12 what was contained in the statement here today.

13 And the police officer, in reviewing his testimony
14 concerning this matter, he stated that he did believe that a
15 crime was committed at that time; could not offer an
16 explanation as to why further prosecution wasn't developed,
17 but did state that he believed what had occurred on that
18 occasion.

19 There was no evidence presented by the defense at
20 all to rebut what was presented to the court. I didn't hear
21 any rebuttal evidence concerning that.

22 So it's going to be my finding that the evidence
23 that's been presented does rise to the level of clear and
24 convincing evidence.

25 I find that it would be admissible under

1 subsection -- the subsection on character trait having been
2 placed into the controversy by the defense's testimony, as
3 well as under the prior bad acts, so I'm going to allow it
4 to come in.

5 MR. KENDALL: Thank you, Your Honor.

6 MR. SLADE: We just need to note our objection to
7 that for the record.

8 THE COURT: It is noted.

9 MR. SLADE: And I have two further questions, Your
10 Honor. This is first time I knew of this when we heard
11 about it late yesterday. I'm -- I'm assuming that we can
12 offer surrebuttal to their rebuttal -- to their rebuttal
13 state, we can offer evidence ourselves?

14 THE COURT: Well, I would normally allow you to do
15 that, I would think. However, I don't know how it's going
16 to play out.

17 MR. SLADE: Yes, sir.

18 THE COURT: So we will make that decision when we
19 get there.

20 MR. SLADE: Okay. And if -- and just so we can --
21 so you will know where I would like to go with this, I mean,
22 I think the defendant would be entitled to testify
23 specifically to the allegations made by this witness and not
24 be cross-examined over a broader area. I mean, they don't
25 get a second bite at cross-examining him for this case.

1 THE COURT: Again, I don't know what he's going to
2 say on his testimony. I'm not going to limit
3 cross-examination until I hear what he -- if he testifies,
4 exactly what he testifies to.

5 MR. SLADE: Right.

6 THE COURT: So I can't make that ruling at this
7 time, Mr. Slade. I'll be glad to consider it when he
8 testifies, if you have an objection that their
9 cross-examination is outside of the scope at issue in
10 followup. And I would agree with you that I would think
11 that cross-examination should be limited to the matters
12 contained in the rebuttal testimony and his rebuttal to
13 that.

14 MR. SLADE: Yes, sir.

15 THE COURT: However, I don't know at this stage
16 outside of that and they don't stop him and he opens the
17 door. You know how we go around here.

18 MR. SLADE: I certainly understand.

19 THE COURT: I agree with you on principle, let's
20 put it that way.

21 MR. SLADE: Thank you.

22 THE COURT: However, I will see where it goes.
23 I'm hoping to get this case to the jury today.

24 MR. SLADE: Yes, sir.

25 THE COURT: So let's not -- I'm going to try to

1 urge the attorneys to try to stay on the subject and
2 hopefully the witnesses will as well.

3 As you know, in this case the witnesses have not
4 always followed the court's or the attorneys instructions.
5 We will see how that goes.

6 All right. Are we ready to proceed?

7 MS. LESKANIC: Yes, Your Honor.

8 THE COURT: Defense ready to proceed?

9 Mr. Slade, are you ready to proceed?

10 MR. SLADE: I apologize. Yes, Your Honor.

11 THE COURT: Let's bring the jury in.

12 I would ask the attorney to approach, please.

13 (Whereupon, the lawyers approached the bench for
14 an off-the-record discussion)

15 (Off the record)

16 (Back on the record)

17 MR. SLADE: Your Honor, could we let the record
18 reflect we had a conference at the bench.

19 THE COURT: Uh-huh.

20 MR. SLADE: This witness that's been the subject
21 of this motion all this time has a tracheotomy and has to
22 have one of those talking devices. We may have put that on
23 the record earlier, but we discussed it. And in light of
24 the fact that his tracheotomy was four months ago, what we
25 decided to do is just have a member of the clerk's office

1 sworn to make his testimony a little more understandable,
2 readily understandable to the jury.

3 THE COURT: All right. I'm going to ask Ms. McBee
4 if she would like to do that, but would you please swear Ms.
5 McBee to correctly interpret his testimony, please?

6 THE CLERK: Do you solemnly swear that the
7 translations that you make will be true and accurate and
8 that you will not add or amend any part of the testimony
9 given, so that help you God?

10 CLERK OF COURT: I do.

11 THE COURT: When he's called I'll be asking you,
12 Ms. McBee, to repeat what he says to the jury so that the
13 jury will understand.

14 All right, do you agree with that process as well?

15 MS. LESKANIC: Yes, Your Honor, the State is in
16 agreement.

17 THE COURT: All right. Let's bring the jury in.

18 (The following takes place in the presence of the
19 jury panel)

20 THE COURT: The record will reflect the jury has
21 returned to the courtroom.

22 Now, if any member of the jury panel was unable to
23 comply with my instructions during your absence, please
24 stand.

25 It appears that all jurors have been able to

1 comply with my instructions.

2 I apologize for our delay this morning, but we had
3 some matters we had to take care of before bringing you in
4 and I want to thank you for your patience in waiting for us
5 to get started this morning.

6 At this time the State is going to call witnesses
7 in reply testimony.

8 You may call your first witness.

9 MS. LESKANIC: Thank you, Your Honor.

10 The State calls Roscoe Morris.

11 THE COURT: Come forward and be sworn, please.

12 Right over here to my left, sir.

13 ROSCOE MORRIS, having been first duly sworn,
14 testified as follows:

15 THE COURT: Have a seat, please.

16 And, sir, state your name.

17 THE WITNESS: Roscoe Morris.

18 THE COURT: Thank you.

19 Your witness, Ms. Leskanic.

20 MS. LESKANIC: Thank you, Your Honor.

21 DIRECT EXAMINATION BY MS. LESKANIC:

22 Q. Mr. Morris, are you currently in the South Carolina
23 Department of Corrections?

24 A. Yes, ma'am.

25 Q. And what are you serving time for?

1 A. Serving time for third offense shoplifting.

2 Q. Now, were you in the Cherokee County detention center
3 back in 2009, with the defendant Hayward Chambers?

4 A. Yes, ma'am.

5 Q. All right. Do you recognize the defendant Hayward
6 Chambers?

7 A. Yes, ma'am.

8 Q. And how do you know him?

9 A. I knew him from the streets before I was in the
10 Cherokee County jail. He picked me up a couple of times,
11 and took me home one time, and we done went and another guy
12 went and done something together one time.

13 Q. I'm sorry, you what?

14 A. We went on a what I call a mission one time.

15 Q. Okay. So he would give you rides and you would pay him
16 for those rides?

17 A. Yes, ma'am.

18 Q. Would you pay him in money or drugs?

19 A. At that time it was money, and at another time it was
20 some merchandise.

21 Q. Okay. Money and merchandise?

22 A. Yes, ma'am.

23 Q. All right. Did you ever see the defendant with a gun?

24 A. Yes, ma'am.

25 Q. On how many occasions?

1 A. Only a couple of occasions, but on the streets we
2 stayed in about the same area. He was known to carry it at
3 all times and draw it on a lot of people. He was known for
4 that.

5 Q. All right. Did the two of you talk about his case
6 while you were in jail together?

7 A. Yes, ma'am.

8 Q. Did he give you a version of facts that happened that
9 night?

10 A. Yes, ma'am, he did.

11 Q. And what did he tell you happened the night Todd Morgan
12 was shot?

13 A. Well, when he came in, once he recognized me and, you
14 know, he felt comfortable, and me and him started to talk
15 and I could see he was in distraught, so I tried to comfort
16 him.

17 So when he recognized me and what we had did at one
18 time together, he begin to open up and asked me what do I
19 think was going to happen. And I said "I don't really know
20 what's going to happen, but you need to tell me what
21 happened and then that way I can tell you what's going to
22 happen."

23 Then he basically told me from point A to point Z
24 exactly what happened.

25 Q. All right. Do you remember what he told you happened?

1 A. Yes, ma'am, I do.

2 Q. And can you tell the ladies and gentlemen of the jury
3 what he told you happened?

4 A. He told me that that day that him and Mr. Scottie
5 Mayberry was riding around and they ended up on west end at
6 the house where this murder took place.

7 He said he picked up a girl named "Pookie" and he took
8 her to get some drugs. And when he took her to get some
9 drugs and he got back, he went inside and he was waiting to
10 get his pay for taking her to get the drugs. So him and Mr.
11 Calvin Morgan got in an argument. And once they got in the
12 argument, he drewed his gun. They got in a scuffle when he
13 drewed his gun. And while they were scuffling, he had a
14 premonition in his mind that he ended up getting killed with
15 his own gun. So at that time he got the leverage on Mr.
16 Calvin Morgan and pointed to his head and shot him point
17 blank, period.

18 Q. And why was the defendant discussing this with you?
19 Was he asking you for something?

20 A. At that time that, you know, me, because I have been in
21 trouble myself before, I was trying to find an easy way out
22 for him. So I was trying to get the very details of that
23 night so that I could coach him into saying the right things
24 so he won't get himself in deeper trouble.

25 First I asked him was anybody else in the room when

1 this took place, and he told me no, that it was only two
2 that was in there, Michelle and "Pookie", and once he drew
3 the gun, they ran out of the room, so it was only him and
4 Calvin Morgan that was in the room. So when he told me
5 that, then I began to come up with the story to tell him
6 that what he needs to tell the detectives, or whoever is
7 going to question him, that it was -- if he told it a
8 different way, that he could tell it that he made it look
9 like it had been an accident instead of him just killing
10 him.

11 Q. All right.

12 MR. SLADE: I have an objection at this point.

13 THE COURT: Yes.

14 MR. SLADE: Could we approach the bench for just a
15 moment?

16 THE COURT: Yes, sir.

17 (Whereupon, the lawyers approached the bench for
18 an off-the-record discussion)

19 THE COURT: Ladies and gentlemen of the jury,
20 there is a matter I'll have to take up outside of your
21 hearing, so I'm going to ask you to step back to the jury
22 room, but do not discuss it until I ask you to do so.

23 (The following takes place outside the presence of
24 the jury panel)

25 THE COURT: All right, Ms. Leskanic, we had a

1 conference at the bench and at that conference the defense
2 has raised the question of whether or not this witness may
3 be getting into questions that would be covered in the Doyle
4 case, which has to do with the State or witnesses making
5 comments on the defendant's exercise of his right to remain
6 silent, which apparently he did during the interviews with
7 the detectives later on.

8 I'm going to take a short break and allow you to
9 discuss this issue with your witness.

10 I would caution you that the court does not want
11 the witness to testify concerning matters that might involve
12 whether or not statements were made to investigators or
13 whether or not this defendant exercised his right to remain
14 silent.

15 I don't know how long he was in jail with this
16 gentleman and what they discussed, but I want to be sure
17 that we don't inadvertently violate the rule of no comments
18 concerning the fact that the defendant did exercise his
19 right to remain silent.

20 MS. LESKANIC: Certainly, Your Honor.

21 THE COURT: So I'm going to take short break.

22 Is that a correct statement of our conference, Mr.
23 Slade?

24 MR. SLADE: Yes, sir.

25 THE COURT: All right, I'll take a short break and

1 give you an opportunity to talk to the witness.

2 The court is in recess for about five minutes.

3 (Whereupon, proceedings were recessed)

4 (Whereupon, proceedings were reconvened)

5 THE COURT: Ms. Leskanic, are we ready to proceed?

6 MS. LESKANIC: Yes, Your Honor.

7 If I could just say I have asked him only to
8 comment on the conversation that they had, but not that that
9 conversation was intended for law enforcement.

10 THE COURT: That would be helpful. Thank you very
11 much.

12 MS. LESKANIC: Thank you, Your Honor.

13 THE COURT: Call the jury in.

14 (The following takes place in the presence of the
15 jury panel)

16 THE COURT: The record will reflect the jury has
17 returned to the courtroom.

18 I did not rule on a specific objection. I did
19 give instructions to these attorneys and the witness.

20 You may proceed.

21 MS. LESKANIC: Thank you, Your Honor.

22 BY MS. LESKANIC:

23 Q. Mr. Morris, when the jury was sent out, you were
24 testifying to a conversation you had with the defendant.

25 I guess, first of all, what did he tell you or what --

1 what advice did you give him and what did the two of you
2 discuss?

3 A. Well, we discussed -- like I say, first he told me how
4 everything happened and -- I left out a part that when he
5 killed Calvin, that he took a pillow and put it over his
6 head. And on the way out the door he still seen him moving
7 at the time that he left. That's the part I left out in the
8 story that what he told me.

9 As far as what we discussed, I let him know that since
10 nobody wasn't really in there to see it, he could basically
11 come up with whatever he wanted to come up with about what
12 happened. So he looked to me --

13 And at that time I was actually trying to help him. I
14 wasn't trying to get any information to turn against him or
15 anything. I was actually trying to help him get out of, you
16 know, the heavy stuff anyway, so I came up with the idea of
17 just presenting that it was an accident. That's basically
18 what we agreed on for him to try to do at that time.

19 Q. Did you have any other conversations with the defendant
20 while the two of you were in the jail together?

21 A. We basically had conversation every day. This just
22 wasn't no one-time conversation. We conversated on an
23 every-day basis.

24 He basically told me about his family, his daughter is
25 in New York, his wife in New York. We told about some stuff

1 that we did on the street together. We laughed together,
2 you know, and I sing gospel. I sing a lot, so I basically
3 was, you know, being a friend to him at that time, you know
4 what I mean, just trying to help him out.

5 Q. And then were you -- did you see him again later?

6 A. Yes, after getting out again and coming back -- he had
7 been out on bond and came back to the jail and I seen a
8 different person that I seen the first time. He was really
9 irritated and really bitter about a lot of things and going
10 against all the rules and regulations.

11 And then he was trying to get his bond restored to get
12 back out on bond. And once he didn't get that, he made some
13 statements about -- he made a statement about that he wished
14 he would have went back in and kicked the victim.

15 And then I asked him about the family in the courtroom,
16 and then he made a statement about the family and all they
17 was doing was just bawl-walling in the courtroom. And I
18 said to myself at that time that, I mean, if you took
19 somebody's family member, I mean, I'm pretty sure it's going
20 to upset them and they are going to cry about it.

21 Then it kind of made me uncomfortable and this is part
22 of the reason why I'm here today, but -- the main reason why
23 I'm here today. I'm not going to say part of the reason,
24 that he showed no remorse for the guy that he killed or
25 showed no sympathy for the family, and that kind of made me

1 feel uncomfortable knowing what I knew about what actually
2 took place.

3 So after -- after getting all of this in my mind and
4 being uncomfortable with that decision when it was coming
5 down to court time, I got to myself and not being able to
6 sleep, trying to make a decision over should I say anything
7 about it, I just got up one day and then that's when I wrote
8 the district attorney and telling them, giving them a
9 statement.

10 Q. Thank you very much, Mr. Morris.

11 THE COURT: Your witness, Mr. Slade.

12 MR. SLADE: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 CROSS EXAMINATION BY MR. SLADE:

15 Q. Mr. Morris, back on August the 2nd of this year you sat
16 down with Detective Blanton to give him a sworn statement,
17 correct?

18 A. Yes, sir.

19 Q. I'm going to ask you to take a look at your sworn
20 statement.

21 MR. SLADE: I beg the indulgence of the court just
22 one moment, sir.

23 THE COURT: Yes, sir.

24 (Off the record)

25 (Back on the record)

1 BY MR. SLADE:

2 Q. Take a moment and the read over your sworn statement.

3 A. (Witness reviewing document).

4 Q. Are you finished?

5 A. No.

6 (Off the record)

7 (Back on the record)

8 A. Yes, sir.

9 BY MR. SLADE:

10 Q. You re-familiarized yourself with that?

11 A. Excuse me?

12 Q. You re-familiarized yourself with what you said then?

13 A. Do I agree with this statement? That's what you are
14 asking me?

15 Q. I asked you have you now re-familiarized yourself with
16 what you wrote?

17 A. Yes, sir.

18 Q. Or what Detective Blanton wrote for you?

19 A. Yes, sir.

20 Q. Now, let's talk just for a minute to these folks to
21 tell them about how the jail works.

22 On August the 2nd of 2012 you wrote that statement for
23 Detective Blanton, right?

24 A. I don't remember the date, but I did write this
25 statement for Detective Blanton, yes, sir.

1 Q. All right. Why don't you look on that first page of
2 this document that you have just been reviewing here and
3 where it says witness interview form, do you see that?

4 A. The first page?

5 Q. The first page of the document.

6 A. Yes, sir.

7 Q. What date is on it?

8 A. It say 8-2-12.

9 Q. That's August the 2nd of 2012, right?

10 A. Yes, sir.

11 Q. And once you gave that statement -- you and he were
12 both in E-Unit, correct, when you gave that statement?

13 A. When I gave this statement?

14 Q. Yes, sir.

15 A. Yes, sir.

16 Q. And immediately after that you were separated from him,
17 right? He was moved to another unit the very next day,
18 correct?

19 A. Yes.

20 Q. So you have not seen Hayword Chambers since you gave
21 this statement, have you?

22 A. Since I gave this statement, no, sir, I haven't.

23 Q. So you haven't had a chance to give him any advice,
24 right?

25 A. No, sir, I haven't.

1 Q. Haven't had a chance to comfort him, as you were doing
2 at this time, right?

3 A. No, sir.

4 Q. All right. Now, I'm going to ask you to take a look at
5 your statement for the next several questions.

6 At the time that you gave this statement to Detective
7 Blanton, you were swearing to tell the truth, right?

8 A. Yes, sir.

9 Q. You were swearing to him that what you were telling him
10 in this statement was accurate, right?

11 A. Yes, sir.

12 Q. You were swearing to tell him what was in your memory
13 about Hayword Chambers, right?

14 A. What was in my memory at that time, yes, sir.

15 Q. Okay. You were going to tell him everything that was
16 in your memory about Hayword Chambers, right?

17 A. At that time, yes, sir.

18 Q. Now, look in that statement. It's about, what,
19 three-fourths of a page, right?

20 A. Yes, sir.

21 Q. Tell me where it says "Hayword told me I took a pillow
22 and put it over his head," his head being Todd Morgan's
23 head, right?

24 A. Yes, sir.

25 Q. Tell me where in your sworn statement where you were

1 swearing to tell Detective Blanton everything that you knew
2 about Hayward Chambers, tell me where that is in your
3 statement?

4 A. It's not in this written statement, sir.

5 Like I say, at that time I gave him everything that Mr.
6 Chambers told me. I didn't say I gave him everything at
7 that time. I gave him everything that I could remember at
8 that time.

9 Q. So it was in your memory and you just couldn't find it?

10 A. Sir, this statement came almost two and a half years
11 later. Details of what happened that night, sir, I will not
12 forget it. Very few details that I was being questioned by
13 the detective at that time. He didn't question me about
14 what exactly took place, but today I can stand before you,
15 this jury, and everybody else and tell you and anybody else
16 exactly what took place that night that Mr. Chambers told me
17 himself, sir.

18 Q. Well, was it a -- since you have told us now that
19 Hayward told you while he was in the room he took a pillow
20 and put it on Todd Morgan's head, when did that memory come
21 to you?

22 A. Sir, after the time that -- I had no idea that I was
23 going to be even questioned by detectives, so when
24 detective -- they came and got me and they questioned me by
25 the detective, I answered his questions at that time.

1 Okay. Then I realized what had happened. When I went
2 back, I examined myself and made sure I was telling
3 everything that what happened that night, because I didn't
4 want to leave out nothing and I didn't want to a lie about
5 nothing.

6 So after me and Chambers -- after I went back to the
7 dorm I begin to recollect that story that he told me what
8 happened that night for everything that he said word for
9 word. And today I have sit here and told you, the jury, and
10 everybody out here word for word what Mr. Chambers told me
11 out of his own mouth, sir, and that's all I can tell the
12 jury and that's all I can tell the court. That's it.

13 Q. At the time that Detective Blanton came down there to
14 get you to swear to what you knew about Hayword Chambers,
15 the reason that Detective Blanton was there was because you
16 said -- you said on direct testimony that you had sent them
17 a letter, right?

18 A. Sir, I didn't say I wrote and sent the detective no
19 letter. I didn't say that today.

20 I said I wrote a letter to the DA saying that I had
21 information concerning the murder of Calvin Morgan.

22 Q. All right. And the two people that you talked to when
23 Detective Blanton came down there, I haven't asked you, but
24 the other one was Greg Phillips, back there in the gray
25 jacket, right?

1 A. Yes, sir.

2 Q. The investigator for the district attorney, as you call
3 her, right?

4 A. Yes, sir, he is.

5 Q. And that's who you wrote the letter to saying you
6 wanted to talk to them about Hayward Chambers, right?

7 A. Yes, sir.

8 Q. And the reason that Investigator Phillips and Detective
9 Blanton came down there and asked you to tell them
10 everything you knew and swear to it about Hayward Chambers
11 was because you had sent a letter, right, asking them to
12 come?

13 A. I didn't ask them to come, no, sir.

14 Q. You told them that you would like --

15 A. I sent a letter that told them that I had information
16 concerning the murder of Calvin Morgan. I did not ask them
17 to come and see me, or nothing else, no, sir.

18 Q. You told them that you had -- you told them that you
19 had information and you wanted to talk about it?

20 A. I didn't say I wanted to talk about it. I had said I
21 had information that concerning the -- concerning the murder
22 of Mr. Calvin Morgan, sir. I let them make a choice did
23 they want to come and hear it or not. I didn't ask them to
24 come and see me.

25 Q. Okay. It was a surprise to you that they came in

1 response to your letter?

2 A. It was a surprise to me that they came, because I
3 figured it was already already over with.

4 Q. Now, tell me in your sworn statement given August the
5 2nd, the last day that you saw Hayword Chambers, where you
6 told them you gave him advice and were trying to find a way
7 out for him? Tell us where that is in your sworn statement
8 given August the 2nd.

9 A. Sir, I go back to the beginning. At the time that the
10 detective questioned me about what took place that night, I
11 only answered questions at that time, so I didn't go in no
12 details about exactly everything that took place and
13 everything that took place in that jail. But since I'm
14 involved in this case now, I had to go back and go word for
15 word about everything happened without leaving anything out.
16 So my initial statement would be what I knew from just blank
17 point, be short. But from whatever happened, I could tell
18 from Mr. Hayword's wife, from his kids, and everything else,
19 because we talked on a day-to-day basis, sir.

20 He volunteered this information. It wasn't like I was
21 trying to get this information out of him, and it ain't like
22 I want to be here today, but I'm here and I'm going to tell
23 the truth why I'm here, sir. That's all I can do.

24 Q. Did Detective Blanton or Investigator Phillips ever
25 tell you "if you got stuff about it, that's okay. Just

1 don't tell us. Maybe you can remember it later on." Did
2 they tell you anything like that? Did they tell you to
3 withhold any memory that you really had?

4 A. Sir, I never been involved in a murder trial before. I
5 figured if I just told them point blank of what happened
6 when he said he had a premonition in his mind and then
7 that's when he took the advantage of his gun and put it to
8 Mr. Calvin Morgan's head and shot him, that was enough, that
9 they didn't need all this other stuff that suggested he had
10 the intentions of killing him, in which he did. That's all
11 that I figured that they needed. I have no idea about
12 murder trials. I never testified in a murder trial, or no
13 other trials, sir, but I can stand here and tell the truth
14 of what happened and what Mr. Hayword told me word for word,
15 and I still might not be wording it all, because we had long
16 conversations every day and not just about the murder trial,
17 sir. So if I left something out, which I doubt I did after
18 all this right here, because I recollected in my mind day
19 and night and wasn't able to even sleep over this. I mean,
20 this ain't like something that I volunteered myself just to
21 come up here to do to make Mr. Hayword go to jail or
22 anything. I come here to tell the truth, okay, because he
23 showed no remorse or no sympathy for the family and that
24 provoked me to go ahead and tell exactly what happened.
25 Whoever it may hurt or whoever it may help, I don't know,

1 but I'm telling the truth today. That's all I can say, sir.

2 Q. Was there anything about what Detective Blanton or
3 Investigator Phillips told you that made you decide to
4 withhold your memory that you advised Hayword to, quote,
5 "try to make it look like an accident?" Was there anything
6 in what they told you that made you decide to withhold that
7 memory from Detective Blanton and Investigator Phillips?

8 A. Sir, I say it again. At that time that Mr. Blanton
9 questioned me, I only answered the questions that he
10 questioned me specifically about. I didn't volunteer
11 anything else, and that's why all this other stuff was not
12 in my original statement.

13 If he would have asked me, told me to go from point A
14 to point Z, I would have went from point A to point Z and
15 told you everything that I sat here and testified in front
16 of the jury in this courtroom exactly at that time would
17 have been written on this paper, sir.

18 Q. At the point that you talked to Detective Blanton and
19 Investigator Phillips to swear to him you were telling the
20 truth, that was after you claimed that you and Hayword had
21 had discussions about all this incident from A to Z, right?

22 A. Excuse me, sir, can you say that again, because you
23 kind of missing me on that right there?

24 Q. At the time that you talked with Detective Blanton and
25 Investigator Phillips, you and Hayword, according to you,

1 had already had an A to Z discussion of all the things about
2 that night, right?

3 A. Sir, me and Mr. Chambers discussed this case for many,
4 many days, probably a month and a half or two months, or
5 even more, sir. I ain't for sure.

6 At that time that the investigator for the solicitor's
7 office and Mr. Blanton questioned me, sir, I'll say it
8 again, I'll say it a thousand times, the only thing that I
9 did then was answered their questions concerning the murder.
10 So if they didn't ask me specific questions, I didn't give
11 them specific of what took place that night or what Mr.
12 Chambers told me. So if my testimony today ain't giving all
13 the details that it gave in this original statement, sir,
14 it's only because I was never asked them questions.

15 When the prosecutor asked me today exactly what
16 happened, I told her from exactly what happened from meaning
17 Mr. Chambers and Mr. Mayberry was riding around, when they
18 picked up "Mr. Poochie", put "Ms. Poochie" to took her to
19 get some drugs and came back to that house; when they got in
20 an argument and what took place after that.

21 I didn't even tell the detectives that he was with
22 Scottie Mayberry at the beginning riding around in town and
23 all that. He told me all this, sir. I'm just telling you
24 what Mr. Chambers told me, sir.

25 Q. Okay. You testified in your direct testimony with Ms.

1 Leskanic that Hayward was, quote, "known for drawing a
2 weapon on other people."

3 A. Yes, sir, he was, and he is.

4 Q. Was that fact in your memory at the time that you
5 talked with Detective Blanton and Investigator Phillips?

6 A. Was that fact in my mind or in my memory at that time
7 that they questioned me? Yes, sir, it was. But did they
8 ask me that question? No, sir, so I didn't even volunteer
9 that information, sir.

10 Q. So they are asking you to tell them the bad facts about
11 Hayward Chambers, and did you decide to withhold your
12 information or your facts about Hayward Chambers being known
13 for drawing his gun on other people? Did you decide to
14 withhold that, or you just slipped your mind, or --

15 A. Sir, I haven't decided to hold back anything, sir.

16 One thing I did hold back that I will tell you the
17 night that me and Mr. Chambers picked me up and we went to
18 the motel room and kicked in a door and went in to rob this
19 guy. And I took -- I went in -- and Chambers didn't go in.
20 I took his stuff and then I paid Chambers in the stuff.
21 That's when the prosecutor asked me that question earlier,
22 did -- did -- did I pay him in money or did I pay him in
23 dope. It wasn't dope, but I paid him with some of the stuff
24 we took out of this motel room where this guy was, we went
25 and kicked his door in. I'll tell you that's what I left

1 out, sir. That's the only thing I left out.

2 Q. Okay. That's the only thing that you left out when you
3 were talking to Detective Blanton and investigator --

4 A. That's the only thing that I left out when I was
5 talking to them and the only thing that I left out in my
6 testimony today, sir.

7 Q. And --

8 A. Outside of the conversation with his family and about
9 his wife and why he left his wife, and he stayed about a
10 half a mile or a mile from where from I lived at, sir, on
11 the streets. So me and Mr. Chambers was kind of like had a
12 little -- we seen each other about basically every other
13 day, or whatever, passing by, or whatever. It ain't like
14 that I just met Mr. Chambers in the jailhouse, sir. I
15 mean --

16 Q. Had you met him before --

17 Now, are you saying now that in your memory you are
18 telling us that you have a recollection, an accurate
19 reliable memory, of you and Mr. Chambers going to a hotel --
20 or excuse me, a motel and kicking a door in to do a robbery?

21 A. It ain't -- it ain't -- it ain't no recollection in my
22 mind, sir. It's a fact. It's a fact that Mr. Chambers
23 picked me up and another known dope dealer, picked us up,
24 took us to the Gaffney Inn. We kicked in a door. He stayed
25 in the car. He had no part about kicking in the door, but

1 he was our driver that night. We went in and went in the
2 motel room and rambled through the guy's stuff. We went to
3 get him because he owed us some money and he just happened
4 to not be there. So when he wasn't there, we took what
5 stuff we could out of the room, yes, and we got back in the
6 car and we paid him what we could get out of the room, yes,
7 sir.

8 Q. Now, at the time that you talked to Detective Blanton
9 and Investigator Phillips to tell them your reliable, true,
10 accurate memory of what you knew about Hayword Chambers,
11 this robbery you are telling us about had already occurred,
12 right?

13 A. Yes, sir, it had.

14 Q. And did it just slip your mind, or was it because they
15 didn't --

16 A. Sir --

17 Q. -- ask you about it?

18 A. -- the robbery was no concern when Detective Blanton or
19 the investigator for solicitor's office came to question me
20 about the murder. What was concerned about them was what
21 took place that night at the murder. It had nothing to do
22 with what took place that night at that robbery, sir, so I
23 had no intentions of telling them that, or I didn't feel the
24 need to tell them that, but they would have asked me about
25 it, yes, sir, I would have told them, sir.

1 Q. Now, you said in your direct testimony that the main
2 reason that you went from being a friend at that time was
3 that you felt like it was making you uncomfortable that he
4 had no remorse for the family, correct? The main reason.

5 A. Sir, I -- I'll put it like this. I have nothing
6 against Mr. Chambers, okay, so don't even try to make me
7 feel like I got something against him, because I don't.

8 I really feel bad about being here today having to give
9 this information. When I gave this information, I never
10 thought that it could boil down to me having to come and get
11 on the stand and testify against the man and tell them
12 everything that happened. I really thought in my mind that
13 he would take into consideration that he actually did kill a
14 man and he would own up to at least voluntary manslaughter,
15 or something, and take the charge and go on about his
16 business. But then it came down to he was trying to get out
17 of everything, so I had no choice but to go ahead and do
18 what I had to do, yes, sir.

19 Q. Now, in preparation for your testimony, have you
20 discussed what you were going to testify to with Ms.
21 Leskanic and Detective Blanton?

22 A. Preparation to my testimony?

23 Q. Yes.

24 You explained to them what you were going to say before
25 you got up --

1 A. I didn't explain to them what I was going to say. I
2 gave them a statement about what took place and what Mr.
3 Chambers told me. I didn't give them nothing about what I
4 was going to say on this stand today. All I know what I was
5 going to get on this stand and say today is what actually
6 happened that night, sir. That's it.

7 To be honest with you, I didn't know what I was going
8 to say on this stand today, but I know I was going to tell
9 the true, if I was asked a question.

10 Q. You are not denying that you met with Ms. Leskanic on
11 Friday, November the 30th, are you?

12 A. No, sir, I'm not denying that I met with Ms. Leskanic.
13 I didn't say I didn't meet with her. You hadn't asked me
14 that question.

15 You said did I discuss what I was going to say of
16 preparations for getting on this stand. Ms. Leskanic, when
17 she came to see me Friday, sir, the only thing she did was
18 asked me questions concerning the murder all over again.
19 And I told her just basically the same thing that I wrote in
20 the detective's questions when he questioned me two years
21 ago about what happened that night. The only thing that I
22 added was to that. Outside of that was stuff that came to
23 my mind that I memorized what me and Mr. Hayword said from
24 day-to-day basis, which I might have left out a few details,
25 but it wouldn't have really mattered when it came down do

1 this, if it came down to this.

2 Q. Well, you certainly discussed possible ways or
3 scenarios that Mr. Chambers could beat the charge with Ms.
4 Leskanic, didn't you?

5 A. Yes, sir, I discussed that, because me and Mr. Chambers
6 discussed that. She asked me a question what did we
7 discuss, so I told her that we was discussing a way to try
8 to get him out of the charge that he was in.

9 Q. Now, you also discussed some of your prior dealings
10 with Mr. Chambers on the street with her, right?

11 A. My prior dealings, yes. We are from a drug area where
12 we both bought drugs, and he go to some of the same drug
13 houses that I go to and know some of the same people that I
14 go to. And also I discussed about the night that we went
15 and kicked that door in at the Gaffney Inn, yes, sir, I told
16 her about all of this.

17 Q. You told her y'all had committed a robbery?

18 A. I didn't say it was a robbery, but you can call it a
19 robbery if you want to. I told her a guy owed us some money
20 and, yes, I went and knocked on the door and didn't nobody
21 come to the door and I kicked the door in. Yes, sir, I told
22 them that.

23 Q. All right. Did you tell her that he was known for
24 drawing a weapon on other people?

25 A. Yes, sir, I told her that too.

1 Q. So these accurate, true, reliable memories have come
2 back to you at least by the time that you had talked with
3 Ms. Leskanic on November the 30th?

4 A. Those accurate memories, you can insinuate all you want
5 to, but they was in my memory all the time. It ain't like I
6 just come up with it or made it up, sir. I knew about all
7 this at the time.

8 Like I say, when I was questioned, Mr. Blanton and
9 investigator came to me, they only questioned me about that
10 murder that what took place and what me and Mr. Chambers
11 discussed that night. So I only gave them answers
12 concerning what took place that night that Mr. Chambers told
13 me actually happened. That's the only information that I
14 gave them at that time.

15 Q. Now, you said that you told -- excuse me.

16 You are saying now that Mr. Chambers told you that he
17 and Scottie Mayberry picked up somebody named "Poochie"?

18 A. (No response).

19 Q. Was that your testimony just a short while ago?

20 A. Sir?

21 Q. Uh-huh.

22 A. I didn't say that him and Scottie Mayberry picked up
23 "Poochie". Him and Scottie Mayberry was riding around
24 together earlier that day and ended over at the dope house,
25 the same house that Mr. Morgan got killed. And Mr. Chambers

1 ended up taking "Poochie" to buy some drugs from Mr. Paul
2 Linder on the other side of town. Okay. When they got
3 back, Mr. Morgan was there. And if you want me to, I'll go
4 through the whole story again.

5 Him and Mr. Morgan got in an argument, okay? They got
6 in a scuffle. And then while they was in this scuffle, Mr.
7 Chambers said he had in his mind a premonition of him
8 getting killed with his own gun. He then took the gun and
9 put it to Calvin Morgan's head, shot him point blank,
10 period.

11 After he shot him point blank, period, he seen him
12 laying on the floor and he seen him still moving, so he took
13 a pillow off the chair and put it on his head.

14 Once he went to go out the door, he went to go out the
15 door and when he looked back he still seen the man moving.

16 Q. Was that the story you had advised him to tell?

17 A. No, sir, it wasn't the story that I advised him to
18 tell. That's the truth that he told me that what happened
19 that night.

20 Once he told me the truth to what happened that night,
21 I turned around and tried to get him another story so he
22 could tell -- so it -- so it wouldn't look so bad on him.

23 Q. Okay.

24 A. So he could get a better deal when it came down to
25 whenever he had to plead guilty to whatever he had to plead

1 guilty to, instead of going and taking it to a jury trial,
2 which we are in today.

3 Q. Right.

4 My question -- my question, sir, was what story --
5 since he came to you as a friend for comfort and counseling,
6 what story did you advise him to tell when he got here to
7 help him get out of this?

8 A. The story that I advised and that me and him come
9 together on was to make -- to say that they was wrestling,
10 fighting.

11 Q. Right.

12 A. And while they was fighting the gun accidentally just
13 went off. That's the story I advised him to say. That way
14 he could say he just accidentally shot the man and he could
15 be -- no more they could probably get him was voluntary
16 manslaughter, or involuntary manslaughter. So I was trying
17 to help the guy out, man.

18 Q. And you just did that because you thought you had some
19 knowledge and experience with this system and that would be
20 helpful to him?

21 A. Sir, I did that because I went through the details. I
22 did that really to try to help him out. It wasn't that I
23 had knowledge and experience with the system, which I do
24 have. I talk to plenty of people in murder trials and I
25 talk to plenty of people that done been committed murders

1 and they done told me their whole story, how they did
2 murders and what went down and all this and all that, so I
3 have experience in with dealing with the law, because I have
4 been in trouble myself all my life, but I'm trying to change
5 my life right now. I having been addiction in a program. I
6 teaches the youth down there at Wateree where I'm at now
7 helping them to educate to get their education and work keys
8 and all this stuff. I also am one of them motivational
9 speakers, helping these guys to not to commit the crimes
10 that I have committed in my past like for me to having to be
11 behind these bars. I committed myself to doing that, sir,
12 and that's helping other people.

13 Q. Okay. Have you advised any --

14 Now, let me back up a step. There are a lot of inmates
15 down there at the detention center, correct? A lot of folks
16 incarcerated, right?

17 A. Yes, sir, it is.

18 Q. Now, do any of -- do you go to any of the others with
19 your counseling or your comforting and advice on how the
20 beat charges?

21 A. Sir, I don't go to nobody trying to advise them how to
22 beat no charges, sir. When they come to me and ask me
23 questions about them, I ask them to tell me exactly what
24 happened. When they tell me exactly what happened, I try to
25 give them the best knowledge that I know, as far as being

1 involved in the law, to try to come up with the best deal
2 that they could get with the DA, which is if you are guilty,
3 plead guilty.

4 Q. Now, when -- when you give that advice to people, is it
5 based on your assessment of whether or not they show
6 remorse? I mean, do you give your advice to everybody on
7 how to beat these charges? Do you give it to everybody that
8 comes to you, or just the people that you think are
9 remorseful?

10 A. Sir, I tell you and I'll tell you this court, I'm a
11 spiritual man. Okay, I believe in God, and I believed in
12 God all my life and I don't want to bring him into this, but
13 I will, since you are asking me those questions, okay? So I
14 have a conscience, okay? Here is a man that who has a
15 family, which I have nothing against, but here is a man who
16 also took another man's life, okay? So he did kill a man.
17 Simple fact. And he's not denying that, from what I
18 understand. The thing is, sir, that if you kill a man, you
19 show no remorse or you show no sympathy for the family, you
20 are, to me, just a killer. So, okay, don't just say it
21 point blank that. So for me to try to comfort anybody in
22 that state of mind to try to get them to get out of anything
23 that they are involved in, so they can go out in the street
24 and maybe kill anybody else, sir, no, that will bother my
25 conscience. So, yes, it bother my conscience and that's why

1 I'm here today so I could tell the story exactly what
2 happened. Whatever happen after this jury trial, whether
3 they find him guilty or not guilty is not on me. All I can
4 say is that I came here and I told the truth. I did not lie
5 about anything.

6 MR. SLADE: I don't believe I have any other
7 questions, Your Honor.

8 THE COURT: Thank you.

9 Redirect?

10 MS. LESKANIC: Nothing, Your Honor.

11 THE COURT: You may step down, sir. Thank you
12 very much.

13 The State may call its next witness.

14 MS. LESKANIC: Your Honor, the State calls Brad
15 Douglas, and we would ask that Mr. Morris be excused.

16 THE COURT: Any objection to his being excused,
17 Mr. Slade?

18 MR. SLADE: None, Your Honor.

19 THE COURT: You are free to go, sir.

20 Come forward, Mr. Douglas.

21 BRAD DOUGLAS, having been first duly sworn,
22 testified as follows:

23 THE COURT: Have a seat, please, sir.

24 Before we begin Mr. Douglas' testimony, let me
25 explain. Mr. Douglas has had surgery, a tracheotomy placed

1 in his throat about four months ago. For that reason he has
2 to talk with the aid of what's called a voice box or a
3 vibrator.

4 I have had the clerk sworn to repeat his answers
5 to you, because earlier when I took some testimony from this
6 witness, it was very difficult for us to understand exactly
7 what he was saying. I found that somebody who is closer and
8 could listen a little closer perhaps can be able to repeat
9 what he says to you. So in an effort to be sure that you
10 don't miss his testimony or that somehow you are unable to
11 hear what he says, I have asked the clerk to repeat what his
12 answers are to you, and she has been placed under oath to
13 accurately repeat those answers to you.

14 So at this time, Ms. Leskanic, and with that
15 understanding --

16 And both counsel have agreed on this process that
17 we are going to use so that this witness can give his
18 testimony.

19 Ms. Leskanic, your witness.

20 MS. LESKANIC: Thank you, Your Honor.

21 DIRECT EXAMINATION BY MS. LESKANIC:

22 Q. Mr. Douglas, if you could take a look at the table, the
23 defense table. The gentleman that's standing up, do you
24 recognize him?

25 A. Yes, ma'am.

- 1 Q. And who is he?
- 2 A. "New York".
- 3 Q. And how do you know "New York"?
- 4 A. From the streets.
- 5 Q. And did you know him back in February of 2009?
- 6 A. Yes, ma'am.
- 7 Q. And were you in a vehicle with him back in February of
- 8 2009?
- 9 A. Yes, ma'am.
- 10 Q. And why were you in a vehicle with him back on February
- 11 12th of 2009?
- 12 A. He was giving me a ride.
- 13 Q. What car were you in?
- 14 A. A station wagon. A red -- a red one.
- 15 Q. Whose vehicle was that?
- 16 A. His.
- 17 Q. Do you mean "New York's", the defendant's?
- 18 A. Yes, ma'am.
- 19 Q. Where was he taking you?
- 20 A. To the club.
- 21 Q. And did something happen on your way to the club?
- 22 A. We started arguing. We started fussing.
- 23 Q. What were you arguing and fussing about?
- 24 A. Payment.
- 25 Q. And can you tell us a little bit more? What was the

1 argument of the payment?

2 A. Drugs.

3 Q. Can you tell us more details?

4 A. He wanted drugs, but I wanted to pay him cash.

5 Q. And what happened during the course of that argument?

6 A. I told him to let me out.

7 Q. Did he stop his car?

8 A. Yes, ma'am.

9 Q. Did you get out?

10 A. Yes, ma'am.

11 Q. And what happened when you got out of his car?

12 A. I started walking off. He got out, stopped me, so I
13 stopped. I turned around. He had a gun pointed at me, so I
14 threw my hands in the air, and he walked up to me and hit me
15 with the gun. I took off running and he was in behind me,
16 told you to stop -- a car stopped. A car stopped and picked
17 me up and took me to the police station.

18 Q. All right. On a scale of zero to one hundred, with one
19 hundred being absolute certainty, how certain are you that
20 the defendant, Hayword Chambers, is the one that pulled a
21 gun on you that day over payment for a ride?

22 A. One hundred percent.

23 Q. How did he act when you did not have drugs to give him
24 for the ride?

25 A. He got angry.

- 1 Q. How angry?
- 2 A. Really angry.
- 3 Q. And when you got out of the car, you had not paid him
- 4 anything for the ride?
- 5 A. No, ma'am.
- 6 Q. And he called you back to the car?
- 7 A. Yes, ma'am.
- 8 Q. And when you turned around, what did you see?
- 9 A. The gun in his hand.
- 10 Q. And where was the gun pointed?
- 11 A. At me.
- 12 Q. Did you have a weapon in your hand?
- 13 A. No, ma'am.
- 14 Q. Were you going towards him when he pulled the gun on
- 15 you?
- 16 A. No, ma'am.
- 17 Q. Were you walking away from him when he told you to
- 18 stop?
- 19 A. Yes, ma'am.
- 20 Q. What color was the gun that he pulled on you?
- 21 A. Silver.
- 22 Q. And this happened in February of 2009?
- 23 A. Yes, ma'am.
- 24 Q. Was this on Floyd Baker Boulevard here in Gaffney?
- 25 A. Yes, ma'am.

1 MS. LESKANIC: No further questions. Please
2 answer any questions that Mr. Slade has.

3 THE COURT: Mr. Slade, your witness.

4 MR. SLADE: Thank you.

5 THE COURT: Yes, sir.

6 CROSS EXAMINATION BY MR. SLADE:

7 Q. You have been convicted of distribution of crack
8 cocaine in 2005?

9 A. Yes, sir.

10 Q. Now, when you -- you are familiar then with the
11 Criminal Justice System, correct?

12 A. Yes, sir.

13 Q. Now, when you made this claim back in February of 2009,
14 you went and talked with this Gaffney city police officer
15 here, correct?

16 A. Yes.

17 Q. And did you -- and when -- strike that.

18 When -- excuse me.

19 When -- when you went to talk to him, did he take down
20 information you told him?

21 A. Yes, sir.

22 Q. And did you tell him everything that you are telling us
23 today?

24 A. Except for most of it.

25 Q. Except for most of it?

1 A. Yes.

2 Q. All right. Did -- well, today you are telling us that
3 Hayword Chambers chased you down Floyd Baker Boulevard with
4 a weapon, correct?

5 A. Yes.

6 Q. Well, what part of Floyd Baker Boulevard did he chase
7 you down?

8 THE CLERK: I heard street.

9 Off the street?

10 I'm not getting the --

11 THE COURT: Repeat that answer for her, please.

12 THE CLERK: In the middle of town?

13 A. In the middle of town.

14 BY MR. SLADE:

15 Q. So he chased you down the part of Floyd Baker Boulevard
16 that's in the middle of town. And how far did he chase you
17 down Floyd Baker Boulevard?

18 A. Not too far.

19 Q. Well, was it a block? Two blocks? Three blocks?

20 A. Maybe a half a block.

21 Q. Half a block.

22 And in that half a block, according to what you are
23 telling us today, Hayword had a weapon, right?

24 A. Yes.

25 Q. And you told Officer Sizemore that you were chased down

1 Floyd Baker Boulevard by somebody that had a weapon,
2 correct?

3 A. I told him what happened.

4 Q. My question was did you tell Officer Sizemore that
5 Hayword Chambers chased you down Floyd Baker Boulevard in
6 the middle of town with a weapon, with a handgun?

7 A. No.

8 Q. Did you forget to tell him that part?

9 A. I was scared at first, so I just told him basically
10 what happened.

11 Q. You told him -- you went to -- you went to Officer
12 Sizemore. You told him -- correct?

13 A. Yes.

14 Q. -- that Hayword Chambers struck you in the side of the
15 head -- in the side -- excuse me, is the side of the face
16 with a small handgun?

17 A. Yes.

18 Q. And your explanation to us here today for why you left
19 out the part about him chasing you down Floyd Baker
20 Boulevard was you were scared to tell him that part?

21 A. No, I was just trying to let him know what happened
22 right then. I didn't think to tell him why -- why we were
23 fussing. I just wanted to tell him that he had hit me with
24 the gun.

25 Q. Well, we are going to get to why -- we are going to get

1 to what you left out about why you were fussing in just a
2 minute.

3 I'm asking you why you left out the part that you now
4 say is true about him chasing you down Floyd Baker Boulevard
5 with a weapon.

6 A. I don't recall if I forgot it or not. I just remember
7 trying to tell him what had happened.

8 Q. All right. The night -- or -- the night that you
9 talked to Officer Sizemore, this event that you are telling
10 us happened had just happened, you had gotten in a car or
11 gotten somebody to give you a ride and gone straight to the
12 police to talk to Officer Sizemore, right?

13 A. Yes.

14 Q. And in that period of time you forgot to tell him that
15 somebody chased you down the middle of town with a weapon?

16 A. I didn't forget to tell him nothing. I just wanted to
17 tell him he assaulted me, yes.

18 Q. Now, at the time that you went to talk to --

19 Well, you are telling us today that your dispute with
20 Hayword Chambers arose over you wanted to pay him with money
21 and you say he wanted crack?

22 A. Yes.

23 Q. Now, when you were talking with --

24 In other words, you wanted to give him money for a
25 ride?

1 A. Yes.

2 Q. Did you have the money?

3 A. Yes.

4 Q. Did you take money out of your pocket and show it to
5 him?

6 A. No.

7 Q. Well, you offered him the money?

8 A. No.

9 Q. You told him that you were going to pay him with money?

10 A. Yes.

11 Q. And he said "no, I don't want any money."

12 A. Yes.

13 Q. "I want crack."

14 A. Yes.

15 Q. So you telling us with all the crack houses we talked
16 about here that you can go to, he didn't want money, he
17 wanted crack?

18 A. Yes.

19 Q. And wanted it from you?

20 A. Yes.

21 Q. Right then?

22 A. Right then.

23 Q. Now, he wanted crack from you right then. Did you tell
24 Officer Sizemore that part of what you are telling us today?

25 A. I didn't think that was of reference to.

1 Q. You didn't --

2 MR. SLADE: I apologize, Brandy, what?

3 A. He didn't -- I didn't think I needed to tell him all of
4 that.

5 BY MR. SLADE:

6 Q. Okay. You went to the police department because you
7 wanted -- you wanted something done about it?

8 A. Yes.

9 Q. Now, he took a report from you, right?

10 A. Yes.

11 Q. And that was in February of 2009, right?

12 A. Yes.

13 Q. Did he ask you to write a statement, write a -- write
14 up a paper, a piece of paper with what happened?

15 A. No.

16 Q. Did he tell you to go talk to a detective?

17 A. No.

18 Q. And did you have any more contact with the police about
19 that?

20 A. No.

21 Q. All right. So February went by and you realized
22 nothing was done, right?

23 A. He told me --

24 THE CLERK: I can't get that.

25 He tried to take it down? He tried to run the

1 name down? He tried to -- the name, or the tag?

2 A. Name. He tried to get the name down. His real name.
3 He tried to get his real name.

4 BY MR. SLADE:

5 Q. All right. And that was -- and that was when you
6 talked to him the first time, right?

7 THE CLERK: Let me finish that, Mitch. He said "I
8 tried to get his real name so I could take out a warrant,"
9 is what he's trying to say.

10 BY MR. SLADE:

11 Q. Now, so February went by and nothing happened, right?

12 A. Yes.

13 Q. Of 2009.

14 March went by and nothing happened on what you are
15 saying happened to you, right? Nothing happened?

16 A. No.

17 Q. April, May, June go by, right?

18 A. Yes.

19 Q. Nothing happened.

20 July, August, to the end of the year '09 go by and
21 nothing happens, right?

22 A. No.

23 Q. Do you go back to talk to Detective Sizemore -- excuse
24 me, Officer Sizemore about it?

25 A. No.

1 Q. Do you go talk to Detective Blanton, or anybody else at
2 the city, about it?

3 A. No.

4 Q. So you are saying this crime happened, somebody chased
5 you down the middle of Floyd Baker -- the middle of town on
6 Floyd Baker Boulevard, and February through December of '09
7 go by and no police investigation that you know of?

8 A. No.

9 Q. Did any detective come talk to you in 2009?

10 A. No.

11 Q. Now, 2010, did you go talk to the police again about
12 this?

13 A. No.

14 Q. Did -- and you were aware, of course, that Hayward
15 Chambers, "New York", got arrested in November of 2009,
16 right?

17 A. Yes.

18 Q. I mean, you know Todd Morgan, don't you?

19 A. Yes.

20 Q. And you knew that "New York", Hayward Chambers, was
21 charged, arrested, for shooting -- or for murder of Todd
22 Morgan, right?

23 A. Yes.

24 Q. And in all of 2009, you didn't go back to the police
25 department, talk to them, ask them what was going on with

1. your case, right?

2. A. I figured he was going down for the murder --

3. Q. Now --

4. A. -- so that was good enough.

5. Q. And in 2010, you didn't go down to the police
6. department to tell them anything?

7. A. No.

8. Q. They didn't come to talk to you?

9. A. No.

10. Q. Being chased down Floyd Baker Boulevard?

11. A. Yes.

12. Q. 2011 goes by?

13. A. Yes.

14. Q. You don't go talk with them and they don't come talk to
15. you?

16. A. No.

17. Q. And most of 2012 goes by, right?

18. A. Yes.

19. Q. And then we get up for preparation of this case.

20. When did you first talk with Ms. Leskanic? When did
21. you first talk with Ms. Leskanic?

22. A. The other day.

23. Q. The other day?

24. A. Yes.

25. Q. You said that you told Officer Sizemore that Hayword

1 had chased you down Floyd Baker Boulevard with a weapon.

2 Did you tell Ms. Leskanic that?

3 A. Yes.

4 Q. Was she the second person that you told then after
5 Officer Sizemore?

6 A. No, I told the investigator.

7 Q. Mr. Phillips? I believe he's left, but you told Mr.
8 Phillips, Greg Phillips?

9 A. Yes.

10 Q. And that was a week or two ago when you talked with Ms.
11 Leskanic, too, right?

12 A. No.

13 Q. When did you tell him?

14 A. The other day too.

15 Q. Okay.

16 MR. SLADE: I don't have any other questions of
17 this witness.

18 THE COURT: Redirect?

19 MS. LESKANIC: Thank you, Your Honor.

20 REDIRECT EXAMINATION BY MS. LESKANIC:

21 Q. Did you speak with Mr. Phillips and myself this week?

22 A. Yes, ma'am.

23 Q. The night that this happened, was it daytime or
24 nighttime?

25 A. Nighttime.

1 Q. So it was dark?

2 A. Yes.

3 Q. And how far did you go down Floyd Baker Boulevard until
4 you got in the car with someone else?

5 A. About from here to the door.

6 Q. And you -- as soon as that happened you went and filed
7 a report?

8 A. Yes, ma'am.

9 Q. Did you have a visible injury on your head?

10 A. Yes, ma'am.

11 Q. Do you know whether the officer made a notation of
12 that?

13 A. No, ma'am.

14 Q. You don't know?

15 A. No, ma'am.

16 Q. And did you give the police officer all of the facts
17 that you thought were relevant to explain that something had
18 happened to you that shouldn't have?

19 A. Yes, ma'am.

20 Q. Okay.

21 MS. LESKANIC: Thank you.

22 THE COURT: Anything further, Mr. Slade?

23 MR. SLADE: No, sir, Your Honor.

24 THE COURT: All right, you may step down. Thank
25 you very much.

1 Do you wish to have the witness excused, Ms.
2 Leskanic?

3 MS. LESKANIC: Yes, Your Honor.

4 THE COURT: Any objections?

5 MR. SLADE: Nothing.

6 THE COURT: Sir, you are free to go. Thank you
7 very much.

8 Does the State wish to call any additional
9 witnesses?

10 MS. LESKANIC: No, Your Honor.

11 THE COURT: All right. That completes the
12 presentation of evidence in this case. There is some
13 matters that I have to take up with the lawyers.

14 I do note that it's about ten minutes to twelve,
15 so what I'm going to do is excuse you for lunch at this
16 point in time.

17 As always, when you leave the courthouse I'm going
18 to give you the same instructions I always give you. Don't
19 attempt to gather any information on your own about this
20 case, or discuss the case with anyone. Don't allow anyone
21 to discuss the case with you.

22 Should someone contact you about your service on
23 the jury, report it upon your return.

24 I'm going to ask you to be back in the jury room
25 at 1:30 this afternoon. We should be in a position to

1 resume at that point in time.

2 At this point in time you are free to go to lunch.
3 1:30 in the jury room. Thank you very much.

4 (The following takes place outside the presence of
5 the jury panel)

6 THE COURT: All right. I'll hear any motions at
7 this point in time.

8 MS. LESKANIC: Not from the State, Your Honor.

9 MR. SLADE: Could I just have a brief moment with
10 my client?

11 THE COURT: Yes, sir.

12 (Off the record)

13 (Back on the record)

14 MR. SLADE: Thank you, Your Honor.

15 THE COURT: Yes.

16 MR. SLADE: I wanted to speak to my client about a
17 surrebuttal issue and I have resolved that, so we have
18 nothing further.

19 THE COURT: Okay.

20 So he does not intend to testify?

21 MR. SLADE: He does not intend to testify.

22 THE COURT: Okay.

23 MR. SLADE: We don't intend to ask the court to
24 call any other -- or ask if we could call any other
25 witnesses.

1 THE COURT: And then followed by the State.

2 MR. SLADE: Yes, sir.

3 THE COURT: All right. Then we will be in recess
4 until 1:30. I'm going take some bond hearings with these
5 attorneys that are present. We will start back at 1:30.

6 Court is in recess at this time.

7 (Whereupon, proceedings were recessed)

8 (Whereupon, proceedings were reconvened)

9 THE COURT: All right, before we begin with
10 closing arguments, I do want to discuss with counsel whether
11 or not the lesser included offense of voluntary manslaughter
12 could be charged in this case.

13 Is the State requesting the charge?

14 MS. LESKANIC: Yes, Your Honor.

15 THE COURT: All right. And defense is --

16 MR. SLADE: We are opposed to it, Your Honor.

17 THE COURT: Okay. Now, the issue that's before
18 the court at this point in time would be the level of
19 provocation or fear on the part of the defendant and whether
20 there is any evidence to indicate that he in the sudden heat
21 of passion perhaps fired a shot.

22 I have reviewed the Dickey case, which is the most
23 recent case that addresses that issue, and I would like to
24 hear from the State on that, just because you requested it
25 doesn't mean you are entitled to that charge. There has to

1 be some showing of some evidence or sufficient legal
2 provocation for which could have created a sudden heat of
3 passion upon which the defendant allegedly acted, so I'll
4 hear from you on that point.

5 MS. LESKANIC: Thank you, Your Honor.

6 It's my understanding that the elements of
7 voluntary manslaughter are the unlawful killing of another
8 in sudden heat of passion soon after legally sufficient
9 provocation without malice aforethought.

10 Essentially murder requires malice aforethought.
11 Voluntary manslaughter does not.

12 The courts have set forth ways in which there is
13 sufficiently legal provocation and they have said that words
14 have been found to constitute sufficient legal provocation
15 in some cases, but only if accompanied by the appearance of
16 an assault or some overt act which could have produced the
17 heat of passion and only where the killing is caused by a
18 deadly weapon.

19 In this case there was testimony that the victim
20 was calling this defendant an MF.

21 THE COURT: We have heard that many times.

22 MS. LESKANIC: We have, Your Honor.

23 That he was calling him that. The defendant
24 stated that he then made an overt act, along with those
25 words, and then this struggle began over the gun and at some

1 point he pulled the trigger. So I think -- and so it is --
2 their is a deadly weapon in that also.

3 So I believe, at least based on the defendant's
4 presentation of testimony we have words accompanied with an
5 overt act.

6 It's still the State's position that it was an
7 unlawful killing, and I know that voluntary manslaughter and
8 self-defense can both be charged in the same case.

9 Additionally, in State v. Wiggins the court stated
10 that fear can constitute sufficient legal provocation in
11 voluntary manslaughter. During the defendant's testimony he
12 stated that he was in fear.

13 THE COURT: Well, the Dickey case says that fear,
14 though, having been tested, created an uncontrollable urge
15 to do violence. Fear -- if you are using fear for that.

16 MS. LESKANIC: Well, he said he was afraid and
17 that is the reason that he pulled the trigger, was to get
18 this man off of him. So that -- I would say that that does
19 support fear causing him to do violence. He -- according to
20 the defendant he had to pull the trigger in order to save
21 himself, if you take his testimony.

22 Also fighting has been deemed to be sufficient
23 legal provocation. And the defendant stated that they were
24 fighting over the gun when he had to pull the trigger.

25 So I think, especially based on the testimony

1 provided by the defense, that there is sufficient
2 information in this case to submit the charge of voluntary
3 manslaughter to the jury.

4 THE COURT: Anything you would like to argue on
5 that, Mr. Slade?

6 MR. SLADE: Just briefly, Your Honor.

7 I don't think that under the circumstances -- I
8 mean, the manslaughter charge is very circumstance driven
9 and the sort of fear that the Dickey case is talking about I
10 don't think is analogous to the fear that the State is
11 referring to in its argument for that.

12 It's an argument basically that I think that fear
13 drove you to take some more overt act than simply just
14 firing in response to get him off of him, so that's more of
15 a self-defense perception of it.

16 I'm -- you know, I can see they can make an
17 argument on that, but I just don't think under the
18 circumstances that that's what it is.

19 THE COURT: Well, I think if there is any evidence
20 to support a lesser included, I am required to offer that
21 instruction.

22 And, quite frankly, up until one of the reply
23 witnesses I had some doubts about that. However, the reply
24 witness who talked about him seeing a vision of himself
25 being killed with a gun and he had to do something puts me

1 in the position where I think there is evidence from which a
2 jury could determine that he had lost control and felt like
3 he had to do violence, so I'm going to charge it.

4 MR. SLADE: And for the record, Your Honor, we
5 object to it on -- we object to a manslaughter charge on
6 that basis, and I would like to renew my objection to
7 charging the jury on manslaughter based on my argument that
8 the murder indictment itself is insufficient.

9 THE COURT: I recall you making that motion and I
10 deny it at this time.

11 Again, as I stated, along with the other evidence
12 that's been presented, I find that there is some evidence
13 from which a jury could reach a verdict as to voluntary
14 manslaughter and, therefore, I intend to charge it, so you
15 will be aware it's going to be in the charge for your
16 arguments.

17 MR. SLADE: Thank you.

18 THE COURT: All right, you will be going first,
19 Mr. Slade. Are you ready?

20 MR. SLADE: Yes, sir.

21 THE COURT: All right, bring the jury in.

22 (The following takes place in the presence of the
23 jury panel)

24 THE COURT: All right, the record will reflect the
25 jury has returned to the courtroom.

1 At this time the attorneys would be allowed to
2 make their final statement or closing argument, and in this
3 case the defense will be going first.

4 Mr. Slade, you may proceed.

5 MR. SLADE: Thank you, Your Honor.

6 THE COURT: Yes, sir.

7 MR. SLADE: May it please the court?

8 THE COURT: Yes, sir.

9 MR. SLADE: Any time that the State, the
10 government, makes an accusation, brings a charge against
11 somebody in criminal court, there is some questions that
12 they have to answer in order to get what it is they want, a
13 conviction.

14 And in a case where they are accusing a man of
15 murder, and when they accuse a man of murder in a
16 self-defense case, there is some questions that they have to
17 answer with evidence. And y'all are the ones who are going
18 to have to answer -- excuse me, who are going to ask them
19 these questions, because the law holds them to a standard
20 that they have to prove their case, their murder case,
21 beyond any reasonable doubt.

22 And not only that, these are the questions we are
23 going to deal with right now, in the first part of what I
24 needed to talk with you about, but when we raise, when we
25 say this is not a murder case; now, it was a murder case,

1 it's a self-defense case, then there are questions that they
2 have to answer, and they have to answer them with evidence.

3 And the first question that they are going to have
4 to deal with is, is it reasonable, is it reasonable, to be
5 afraid of Todd Morgan when he's in a rage? Because the key
6 question here is who was the aggressor? Who was the
7 instigator of the attack?

8 And when you are looking at the issue of is it
9 reasonable to be afraid of Calvin Todd Morgan, please
10 remember that they have to disprove self-defense beyond any
11 reasonable doubt.

12 There's basically four elements to self-defense.
13 There are four circumstances that have to exist in order
14 for you to use self-defense.

15 And the first one is that the other person, the
16 person that you have to shoot, has to be the aggressor. You
17 can't -- you can't be the aggressor, the attacker.

18 And so in this case what the State has to do is
19 disprove beyond any reasonable doubt that Todd Morgan was
20 the aggressor, that Todd Morgan was starting this with all
21 his MF, and this isn't any of your MF business, and that
22 kind of thing.

23 And so what -- the question that they are going to
24 have to answer is, is it reasonable to be afraid of Calvin
25 Todd Morgan when he's in the kind of rage that Debra

1 Littlejohn saw -- excuse me, that "Big Momma" Michelle Davis
2 saw and testified to that she saw that night in Todd Morgan?
3 That night at 311 Sarratt Avenue she said she saw him when
4 he stood up and started toward Hayword Chambers. She saw
5 the same level of anger and aggression in him that she saw
6 in him when he stomped Debra Littlejohn's head in again and
7 again..

8 So the question that the State is going to have to
9 answer is, is it reasonable to be afraid of Calvin Todd
10 Morgan when he was in the same level of rage that he had
11 when he attacked Georgia Smith, despite the fact that she
12 had a gun; despite the fact that when he grabbed ahold of
13 her and was trying to grab her gun, she wound up shooting
14 him in the shoulder and in the chest, and he was at such a
15 level of rage he kept beating her.

16 So when you are looking at whether or not the
17 State has disapproved that Calvin Todd Morgan was the
18 aggressor, the attacker, you have to look at the fact that
19 he was at the same level of rage that he was when he
20 attacked Debra Littlejohn; that he had the same intent, the
21 same motive to beat somebody that he had when he beat
22 Georgia Smith.

23 Each of these things, looking back on who Calvin
24 Todd Morgan is and the way he acts when he gets angry with
25 some woman, some domestic partner, some girlfriend in his

1 life. He was mad with Georgia Smith, because she didn't do
2 something he asked her to do, "don't go help your brother to
3 get your momma's car unstuck."

4 He was mad with Debra Littlejohn, because she was
5 going out with someone else, her main boyfriend, when he
6 asked her to go out with him.

7 And on the night that these folks were at 311
8 Sarratt Avenue, he was mad with "Pookie" Byers and for
9 whatever reason decided that he was going to take that rage
10 out, because he kept -- take that rage out on Hayward,
11 because he kept telling him "stay out of this, stay out of
12 this," even though, as you heard "Big Momma" Davis say, he
13 really hadn't said anything. He was just standing there
14 around the door.

15 One of the questions that they are going to have
16 to -- that the State is going to have to answer is, is it
17 reasonable to be afraid of Calvin Todd Morgan when he is at
18 the level of rage he was at that night at 311 Sarratt
19 Avenue.

20 And the thing of it, and I ask you to bear in
21 mind, that the solicitor's office knows full well that they
22 have to disprove beyond any reasonable doubt that Todd
23 Morgan was the aggressor. In other words, they have to
24 refute the evidence, prove beyond any reasonable doubt that
25 Todd Morgan was not the aggressor. That's their

1 responsibility. And I ask you -- and I ask you to hold them
2 to this burden. I ask you when you are looking at that, did
3 they meet that burden, remember that they know that they
4 have that burden.

5 So what evidence did they bring y'all to decide
6 who the aggressor was in that confrontation at the white
7 house at 311 Sarratt Avenue?

8 Well, there were three people in the room. And
9 "Pookie" Byers, when she talked to Detective Blanton three
10 days after this incident, said that Todd said "this ain't
11 any of your FM business and stay out of this." Todd --
12 excuse me, "New York" told Todd "to back up off me and I
13 didn't take his dope." At that time Todd stood up and
14 started towards "New York".

15 And she goes on to say that at the time she left
16 the room where the shooting occurred she remembered Todd and
17 "New York" wrestling in the doorway where "New York" had
18 been standing. In other words, according to her testimony,
19 y'all remember that she said her room was about from here to
20 the wall. And in that time that Todd had stood up,
21 according to the first fact she told about this, that Todd
22 had come across the room to where Hayward was standing. And
23 that's the first statement that they -- that's the first
24 statement of a witness in that room is saying that Todd
25 Morgan is coming across that room in the face of somebody

1 holding a gun on him, and that makes Todd Morgan the
2 aggressor.

3 The next witness to what went on in that room on
4 whether or not Todd Morgan was the aggressor is Michelle
5 "Big Momma" Davis, and she said Todd stood up. He was
6 sweating with rage. He was so angry, popping with rage I
7 think was one of her expressions, and that she had seen him
8 that angry before when he had stomped Debra Littlejohn's
9 head, and she said he started around that coffee table and
10 she knew that something -- he was fixing to do something to
11 Hayword.

12 Now, the third witness is Hayword. So what --
13 they know that they have to show that -- they have to
14 disprove that Todd Morgan was the aggressor. They have to
15 prove he was not the aggressor. And Hayword Chambers
16 testified that he is holding a gun on him and he keeps
17 coming and he can tell he is really, really angry.

18 And when they decided to try to meet their burden
19 of showing you, trying to prove to you, that Todd Morgan was
20 not the aggressor, they brought you "Pookie" Byers. And she
21 didn't tell -- she didn't swear to, she didn't testify to
22 the facts that she gave Detective Blanton three days after
23 her boyfriend had died. She came and told y'all that Todd
24 Morgan did not move, period, okay?

25 So when they are trying to meet their burden of

1 proving to y'all beyond any reasonable doubt that Todd
2 Morgan didn't start this, they couldn't use the facts
3 "Pookie" Byers gave in her first statement, because that
4 says Todd starts across the room and winds up wrestling with
5 a man with a gun in the door. So "Pookie" Byers changes her
6 facts. And her facts -- y'all heard her testify. Her facts
7 were changed to "oh, Hayword was the aggressor. Todd Morgan
8 didn't move, period." She was very emphatic. You know,
9 when you say period, that means that's the way it was.
10 "Todd Morgan didn't move, period," and Hayword Chambers kept
11 coming toward him saying all that stuff she testified to.

12 So, in order to prove to y'all that Todd Morgan
13 was not the aggressor, not the person that started this,
14 they brought "Pookie" Byers with some changed facts, changed
15 to show that Todd never moved toward Hayword, like she first
16 said; that Hayword instead moved toward Todd.

17 So I ask y'all -- well, I think I told y'all in
18 the beginning of the statement when we first talked to y'all
19 about this case that one of the questions that we are going
20 to have to deal with here, y'all are going to have to deal
21 with now as the case is in y'all's hands, is can you get
22 convicted in a self-defense case? Can you get convicted of
23 murder on changed facts, because you are going to have to
24 look at whether or not they have carried their burden of
25 disproving that Todd Morgan was the aggressor.

1 And when you are looking at that, when you are
2 asking that question when you get back in the jury room did
3 they do that, did they carry that burden, I'm going to ask
4 you to take a hard look at the fact that they have known,
5 Detective Blanton has known, from 4:15 in the morning on
6 November the 28th that there were two eyewitnesses in that
7 room.

8 And leave aside the fact that he charged Hayword
9 with murder without talking to either one of them, but when
10 you are looking at the fact of whether they meet the burden
11 that they know they have, did they bring you the eyewitness
12 that didn't help? Michelle "Big Momma" Davis.

13 So I'm going to ask y'all to ask these questions
14 and hold them to the burden that the law says that they have
15 that they want to make a murder case out of a self-defense
16 case.

17 They know that "Big Momma" does not help them, so
18 they didn't call her. So what they did was they called
19 "Pookie" to disprove her first statement with the second
20 statement with the changed facts that she gave y'all.

21 One of the main fact questions that we are going
22 to have to deal with, or now y'all are going to have to deal
23 with, and we had to deal with earlier, but now it's y'all's
24 case, one of the -- one of the main questions that we are
25 going to have to deal with is do you have the right to

1 self-defense when you find yourself in a room with somebody
2 as violent as Todd Morgan?

3 What you are going to hear over and over and over,
4 I believe, when the State gets a chance to make its closing
5 argument in this case, is comments about 311 Sarratt Avenue,
6 the white house, with references to it being a crack house.
7 And so the question is do you have the right to self-defense
8 in a crack house? That's what they want to call it, if
9 that's how they want to portray it, do you have the right to
10 self-defense in a place like the white house? And the
11 answer to that is yes.

12 Judge Couch is going to -- I think I told y'all in
13 the beginning of the case when we got a chance to talk to
14 y'all that he is the voice of the law in this case. He's
15 going to tell y'all what the law is that you are going to
16 apply. I can tell you all a little bit about it. Of
17 course, I tell you how I think it ought to be, but he's
18 going to tell you what the law is that you are going to have
19 to apply to the facts in this case, and he's going to tell
20 y'all that you have the right to self-defense when certain
21 circumstances apply. And those circumstances apply in every
22 part of this city, and every part of this county, and every
23 part of this country; from the white house on Sarratt Avenue
24 to the White House on Pennsylvania Avenue. This is the law
25 of this country, this county, this city. The question is do

1 the circumstances apply. Did the facts apply? Do the facts
2 meet a self-defense case?

3 And it's really a fact question. And the fact
4 question is does self-defense apply when you are in a place
5 where you find yourself, when you find yourself in a room
6 with Todd Morgan, because Todd Morgan is not going to be in
7 any kind of good place most of the time. And you just have
8 to -- you have to look at the fact that nobody finds
9 themselves in a room with Todd Morgan if you have made good
10 decisions. But is that a reason that the law says that you
11 can't defend yourself against Todd Morgan when he gets in
12 that kind of rage? Because what you see every time somebody
13 gets in a room or winds up being in a room with somebody
14 like Todd Morgan and has to defend themselves, the question
15 from the people who make charges against -- from the State,
16 the people who make charges against people, is why do they
17 wind up there?

18 You see it in cases of people like Georgia Smith.
19 When somebody is in a relationship with somebody like Todd
20 Morgan and they keep beating on them and beating on them,
21 and finally, as you heard her say from the witness stand
22 when she brought you the evidence, "I just told him you
23 can't do me this way any more."

24 Well, when you wind up having to shoot somebody --
25 people always say "well, why did you stay with him?" And

1 you can't answer that in a good way. You just find yourself
2 in a relationship and find yourself in a room with him and
3 you have the right to use self-defense when they start
4 acting under rage that is who they are.

5 You see that from people like Debra Littlejohn get
6 stomped on. She was in a relationship with him. When you
7 find yourself in a room, when you find yourself in a place
8 with Todd Morgan when he's acting on rage, on the kind of
9 rage he has when he gets upset, you got a right to
10 self-defense, no matter where you are.

11 If you are in a room with somebody with that level
12 of rage, you have got the right to self-defense, just like
13 Hayword Chambers did.

14 One of the questions that you are going to have to
15 ask the State and whether or not they have met their burden
16 of proving, or disproving self-defense beyond any reasonable
17 doubt, is the question of when Todd Morgan -- when Todd
18 Morgan decides to focus his rage on you, does even having a
19 gun keep him from beating you, because that's how you judge
20 the level of fury that Todd Morgan had.

21 You heard from the witness stand Georgia Smith say
22 that when he was beating her and trying to get her gun away
23 from her and she started shooting just to unload the
24 magazine, unload the clip so that he couldn't get her gun
25 and shoot her, she shot him in the shoulder and in the

1 chest, and what did he do? He kept on beating her. He had
2 that level of rage. That's the way he acts when he gets
3 angry. He didn't stop, even after -- even after she shot
4 him.

5 And so when one of the things -- one of the
6 elements of self-defense is that you are entitled to use
7 self-defense if turning your back on somebody like Todd
8 Morgan is more dangerous than standing up to him and using
9 self-defense. That's characterized in the law, and when
10 Judge Couch gives you the law, he's going to call it the
11 duty to retreat. In self-defense you have a duty to
12 retreat, and you are going to hear a lot about that when the
13 State gets up here to talk to you about their view of this
14 case, how they are going to make this into a murder case.

15 And, in general, you do have a duty to retreat,
16 but if retreating, if turning your back on the aggressor, is
17 going to make it more dangerous for you rather than less
18 dangerous, you have a right to use self-defense.

19 And so what I would -- the point I was making to
20 y'all about can you turn your back on Todd Morgan? He's
21 coming across -- he's coming from around this couch -- or
22 excuse me, coming from around this coffee table and Hayword
23 is over there by the door. Michelle Davis said she knew
24 what was going to happen.

25 Now, bear in mind that when he's in that level of

1 anger, as he was with Georgia Smith. -- remember, a little
2 part of her testimony that she was talking about when the
3 day that she had to shoot him, she left for work, leaving
4 him behind, hoping to get out of the house. And when she
5 looked in her rearview mirror, he was running behind her.
6 So when you are looking at whether or not it's more
7 dangerous to turn your back on Todd Morgan when he's a few
8 feet away from you, you have to consider, when he is that
9 angry, is it safer to try to get out of the house or safer
10 to try to scare him off with your gun?

11 Now, one of the questions that you are going to
12 ask the State to hold them to their burden that the law puts
13 on them when they try to use these circumstances to make a
14 murder case is what can you expect from somebody who
15 advances on a drawn gun? What level of hostility are they
16 demonstrating?

17 When Georgia Smith testified, she said that she
18 had her gun out. She said that Todd saw her from her house,
19 from a window in her house, go out to her car, get her gun
20 and bring it back in. And when he's angry, he's the kind of
21 person who she is standing there with a gun and he still
22 attacks her.

23 So when you are looking at whether or not Hayword
24 has the right to take a look at Todd Morgan and see is it
25 reasonable to expect that somebody who advances on a drawn

1 gun is going to hurt you? Is it reasonable to think that
2 you have got -- you are in fear of him beating you, or great
3 bodily injury? Is it reasonable to think, because he was --
4 he was coming across the room, according to Hayward's
5 testimony, according to Michelle "Big Momma" Davis
6 testimony, he's coming from around the couch, around the
7 coffee table. And according to "Pookie" Byers, her
8 statement, he stood up and started toward him.

9 And, you know, ordinarily you would think who
10 advances on a drawn gun? Who keeps coming when you are
11 pointing a gun at them? You heard Hayward testify that he
12 pulled his gun thinking he could scare him back, thinking he
13 could scare him off, and he kept coming and kept coming,
14 until he -- until he grabbed him and they started to
15 struggle for the gun, because he was afraid that Todd was
16 going to get his gun from him. I mean, it's just not
17 reasonable for a person to run up on somebody holding a gun
18 on them.

19 And, so, first of all, it would be hard to
20 believe, if there weren't other clear instances of that. I
21 mean, he's got that kind of -- he's got that kind of
22 character for violence. He's that kind of person. He's
23 that violent when he gets angry. He's going to keep coming,
24 even when you are pointing a gun at him. And so when you
25 see that in that minute, or so, in that three or four

1 minutes in that room on Sarratt Avenue, in that house on
2 Sarratt Avenue, you have got somebody coming towards you
3 with that look in his eye, with that level of rage, is it
4 reasonable for you to anticipate that he's going to hurt you
5 if he gets to you?

6 Now, one of the things that Judge Couch is going
7 to tell you when he tells you what the law is, is that when
8 you are using self-defense, when you feel like you have to
9 use a deadly weapon in self-defense, you have a right to act
10 on the appearances. You have a right to act on what it
11 looks like to you at the time.

12 You know, the State, in one of their questions to
13 "Big Momma" Davis, said "well, you weren't in the room when
14 the shot was fired. You don't know. Todd could have gone
15 back and sat down." Well, maybe he could. I mean, maybe he
16 would have, but we know how he acts now when he gets in a
17 rage and he's coming toward you, then you have a right to
18 act on the appearance of somebody who is running up on you,
19 whether it's turned out you are right or not. So you have a
20 right to act on appearances.

21 One of the reasons that we brought --

22 Well, they know that they have to disprove that
23 Todd Morgan was the aggressor.

24 And in order to show you what Todd Morgan is like,
25 how violent he is in those situations, we brought you

1 Georgia Smith and Debra Littlejohn.

2 They brought -- to show you who the aggressor was,
3 they brought Roscoe Morris, the fellow who testified this
4 morning, the guy who said sir, he told me whatever he said
5 about, you know, "I ran up on him. We wrestled, I pulled
6 out the gun and shot him in the head." That's who they
7 bring. That's who they bring y'all, rather than bringing
8 Michelle Davis to tell you all what happened in that room.

9 Do you remember, when they started their case,
10 when they did their opening remarks, they didn't get into
11 what happened in that room. They said we would have some
12 witnesses. They didn't bring one of the eyewitnesses,
13 Michelle Davis.

14 Now, I have to say that everything that Michelle
15 Davis has to say doesn't help my case, doesn't help our
16 case, but don't you want to hear from both of the people
17 that were in the room? Don't -- when you get back there,
18 don't -- you know, to make a decision of this nature, don't
19 you want to know what both people are saying, whether they
20 help a party or whether they help this side or help us?

21 And to prove the things that they have to prove to
22 make this a murder case, they are bringing y'all "Pookie"
23 Davis -- "Pookie" Byers with her changed statement. They
24 are bringing Roscoe Morris, with all the stories that he's
25 come up with to show that -- to show that Hayword Chambers

1 goes around neighborhoods where Roscoe Morris knows about
2 pointing guns at people, okay? That's supposed to show
3 y'all that Hayword Chambers is some kind of violent person
4 who is going to start -- start -- walk over towards Todd
5 Morgan and calling him all those names and shooting, as
6 "Pookie" Byers said.

7 Now, when the judge tells you that you have the
8 right to act on appearances; in other words, when somebody
9 is coming towards you, when you got a gun drawn on them and
10 they don't stop, you have got a right to assume, right to
11 think that they are fixing to hurt you.

12 Bear this in mind, that even with that, even
13 though given the fact when Todd Morgan comes around the
14 coffee table and is at that level of anger, Hayword is
15 afraid he's fixing to hurt him, that's why he's pulling his
16 gun, but he doesn't shoot. He holds off. And Todd Morgan
17 gets closer and closer and closer until he's on him. And
18 the whole time, even though Hayword, under the law of
19 self-defense has the right as soon as he realizes this guy
20 is coming toward him and fixing to hurt him, to shoot, he
21 doesn't. He holds off.

22 And when you are analyzing, when you are asking
23 the questions that it's your obligation to ask the State's
24 case, ask the State, because it's their burden to prove to
25 you beyond any reasonable doubt that this is a murder case,

1 when you are looking at the way "Pookie" Byers changed her
2 facts, ask this question: How reasonable is it to think
3 that somebody is going to pull a gun, as "Pookie" Byers
4 said, and walk all the way across the room, cussing somebody
5 who is standing behind a coffee table, period, standing
6 behind the coffee table, to give them a chance as you are
7 holding the gun on them, to grab you and fight you for the
8 gun? The whole point of having a gun is to try to be able
9 to use it in self-defense. And so instead of using it in
10 self-defense by firing it, there were six rounds in that
11 magazine, and you heard testimony on that, that instead of
12 shooting it, Hayward said he didn't want to shoot.

13 "Pookie" Byers is claiming in order to make
14 Hayward the aggressor that he walked across the room to give
15 Todd Morgan a chance to grab him, so that they could wrestle
16 over the coffee table for the gun.

17 And when Judge Couch gives you the law in this
18 case, he's going to tell you that you have got a right to
19 consider, in fact, an obligation to weigh, whether the
20 witnesses who were bringing you this evidence that they are
21 using to try to make this a murder case, you have got an
22 obligation to weigh it, is it reasonable? Is it believable?
23 Is it credible? You have to weigh "Pookie" Byers statement.
24 You have to weigh Roscoe Morris statement.

25 So even though you have a right to act on

1 self-defense and that when you see somebody coming towards
2 you fixing to hurt you, you have got a right to use deadly
3 force, Hayword didn't do that. As Todd Morgan charged
4 across the room he wasn't firing. He wasn't shooting.

5 And one of the points that the State brought up
6 when they were talking, when they were asking one question
7 of Hayword was, "well, you say that you were scared. How
8 many bullets did you have in that magazine? How many
9 bullets did you have in that pistol? Why didn't you shoot
10 again?" Well, he was scared. As soon as he got Todd Morgan
11 off of him, he is leaving. He wants to get out of there.

12 So even though he had the right to use
13 self-defense at an earlier point, he held off, and you got a
14 right to consider that when you are deciding whether or not
15 they have met their obligation in disproving self-defense.

16 And in addition in trying to disprove
17 self-defense, they have an obligation to prove murder to
18 you, killing with malice aforethought. They have the
19 additional obligation of proving to you proving murder
20 beyond any reasonable doubt.

21 And when you are looking at have they -- when you
22 are asking have they carried that burden of proving murder
23 beyond any reasonable doubt, you have got a right to
24 consider the fact that they have conflicting or
25 contradictory theories of murder.

1 Remember the medical examiner who came up to
2 testify about the gunpowder residue, or lack of gunpowder
3 residue, on Todd Morgan's forehead? And I asked her some
4 questions about "could it have been washed off? Could it
5 have been rubbed off when they were trying to clean the
6 wound?

7 "Absolutely not. Absolutely not."

8 She's dead certain that had the gun been close to
9 within two feet of Todd Morgan's head, there would be marks
10 on his head, stippling and tattooing I think is the term for
11 it. Remember that? And their -- they put that witness up
12 to try to convince y'all that Hayward shot Todd Morgan from
13 more than two feet away. She said if he had been within two
14 feet, there would be those marks, that stippling. Because
15 there wasn't, therefore, he was more than two feet away.
16 That's one theory. It's murder, according to them, because
17 Hayward shot Todd Morgan from more than two fee away. He
18 really wasn't in danger is their point. He really wasn't
19 scared is their point.

20 But they have another theory for y'all to try to
21 make this a murder case and that is the "Pookie" Byers
22 theory. And that is -- you remember her statement. She
23 says Hayward comes across the room, pointing the gun, and
24 her testimony was Todd had to get him in a bear hug as they
25 stood over that coffee table. Remember?

1 So, on one hand they got a theory with "Pookie",
2 who they had to put up to try to prove that Hayward wasn't
3 the -- excuse me, that Todd Morgan wasn't the one who
4 instigated that violence with all his talk and getting up
5 and coming towards Hayward. But she also said -- told that
6 she's got, you know, her facts, her new facts, her changed
7 facts are that Hayward came across the room and got in the
8 bear hug, and that's how the shooting happened.

9 So when you are looking at have they proved beyond
10 any reasonable doubt that this is a murder case, you need to
11 ask yourself why you have two completely contradictory
12 theories, because any time if it's -- if one fact is true,
13 the other fact can't be. If it's true that they were in a
14 bear hug and it was -- and Hayward went across the room to
15 shoot Todd, it can't be true that he shot him from a
16 distance. But in order to make it a murder case, they
17 will -- whichever fact you want to believe. They will take
18 either one.

19 You also, in deciding whether or not they have
20 proved murder, the unlawful killing with malice
21 aforethought, in that two, or three, or four minutes there
22 in that room on Sarratt Avenue, if they have proved murder
23 beyond any reasonable doubt, you have a right to consider
24 that their scientific evidence contradicts each other.
25 Their medical examiner said he shot from a distance of more

1 than two feet. They want you to believe he shot from a
2 distance, that Hayword wasn't in danger, and yet when you
3 look at these pants, this exhibit here, you will see that
4 Mr. Morgan's blood is on his pants, on the front of his
5 pants. He was close to Todd Morgan, just as he said. He
6 was in a life and death struggle with him for the gun.
7 That's how Todd Morgan's blood winds up on his britches.

8 And when you are looking at this undisputed
9 scientific evidence, then there is no question that's Todd
10 Morgan's -- excuse me, that's Todd Morgan's DNA. We didn't
11 contest it. We didn't argue with it. Then you have a right
12 to ask, and a duty to ask, if they are proving this beyond
13 any reasonable doubt, how come their scientific evidence
14 contradicts itself, contradicts each other?

15 You have -- when you are considering whether or
16 not they have proved murder beyond any reasonable doubt, you
17 have the obligation to look at all the evidence and consider
18 what the source of it, how did they -- how did they get
19 ahold of this evidence? Where did this evidence come from?
20 How was it produced? And so in looking at that, when you
21 are looking at whether or not that evidence proves anything
22 beyond a reasonable doubt, you have to consider does the
23 written evidence contradict what they testified to in court.

24 "Pookie" Byers is the first one that you think of,
25 because when she first gave a statement to Detective

1 Blanton, she said Todd Morgan stood up, came around -- or
2 stood up and started toward Hayword and was wrestling with
3 him in the doorway.

4 But you also have to look at the other written
5 statement that were directly contradicted by what these
6 people testified to, the witnesses that they called to
7 testify to in front of y'all, to persuade y'all, or to try
8 to persuade y'all this is a murder case.

9 You had this guy who testified this morning,
10 Roscoe Morris. You can question whether or not the little
11 bit of information that he wrote down and swore to back on
12 August the 2nd of this year, why is it so different? Why is
13 it so -- why is there such a gap between it? Why does it --
14 why does it contradict the things that he said today in
15 court?

16 And when you are looking at the facts that are in
17 the written statement, because it's important to look at
18 what people write down, especially investigators write it
19 down when they are making a record of what they see and what
20 they observe, because the reason -- the whole reason that
21 they are writing it down is so that when they come to court,
22 or when they have some contested issue on what it was they
23 saw, what it was they heard, that they can look at their
24 notes and have an accurate recollection. And what's --
25 what's their whole purpose in making these notes? It's to

1 obtain a conviction. So what they want to do is put into
2 their report the incriminating evidence, the evidence that
3 helps them convict. And when they come to court and testify
4 to evidence that they say they heard or saw that's not in
5 their report, then you have an obligation in deciding
6 whether or not they have proved their case beyond any
7 reasonable doubt.

8 And it happens even to the best of these guys.

9 You saw and heard Steve Green. Remember, the kind
10 of bald headed fellow who went over to Hayward's house that
11 morning about, oh, 5:15, or so, I think is when he said he
12 got there. And you are going to hear a lot, I would guess,
13 from the State claiming that Hayward -- one of the things
14 that you can use, and she said this in her opening to y'all,
15 that you can tell what happened in that room, I mean, if you
16 want to put aside what the eyewitnesses say. What they want
17 y'all to do is draw a conclusion of what happened in that
18 room from what Hayward did afterwards. And what they are
19 going to call that is evidence of flight. When you have
20 done something terrible, you run. And they know whether or
21 not that evidence is good or valid. But even somebody as
22 nice, easy going as Officer Green, felt the need to add to
23 it. Remember? When Hayward went to his house, he explained
24 to y'all why he went, did what he did? He said he knew he
25 was going to jail and wanted to see his family. And so they

1 go there. Steve Green and the other officer go there and
2 knock on the door. And according to their report, according
3 to what Steve Green wrote down shortly after -- I mean that
4 morning after he had heard these things, watched these
5 things, he wrote down that the other officer asked "do you
6 know anybody named "New York", or do you know "New York"?"
7 And what they wrote down or what he wrote down was "I'm the
8 man that you are looking for. I'm "New York"." Remember
9 that? And they want to use that -- I'm sure that you are
10 going to hear from them on that, but even that isn't good
11 enough when they are trying to convince y'all that this is a
12 murder case, because, remember, he added at first that now
13 he says when he comes to testify to y'all that Hayword said
14 no. They asked "do you know "New York"? Have you heard of
15 "New York"? Do you know somebody named "New York"?"

16 No."

17 So you have an obligation when you are looking. I
18 mean, they know what they have to prove, and if they are --
19 if their evidence is added to enlarged, made different in
20 order to help them get a conviction, you have to ask why did
21 they do it? And if that proves beyond any reasonable doubt
22 the murder that they want y'all to convict him of, then you
23 have an obligation I think to ask a question when there is a
24 contradiction, not in the evidence of "Pookie" Byers or
25 between the evidence of the two witnesses like "Pookie"

1 Byers and Michelle "Big Momma" Davis, when it's even
2 contradiction in the little evidence, in the smaller
3 evidence, the sort of stuff that sort of lands on the side
4 and you really wouldn't think about, unless you are looking
5 at it.

6 But do you remember when we were looking at those
7 pictures from the first responder, Kevin Ward I think was
8 his name, and he was saying -- he was taking about how
9 careful they are in making sure that they don't disturb a
10 crime scene. And Ms. Leskanic, the State's attorney, asked
11 a series of questions to try to show y'all everything was
12 carefully attended to and we know where Mr. Morgan fell,
13 because we were very careful with all that evidence.

14 And then -- I can't work that machine, so I
15 apologize. I can't show you on that, but you see this is
16 State's Exhibit No. 9, and remember when the guy who took
17 this picture came, Sergeant Kennedy, and we were talking
18 about whether or not he saw the scene there the way that it
19 was when the first responders left, and he said that this
20 white piece of cloth here could easily be, or could be --
21 excuse me, could be something left there by the first
22 responders. They are leaving stuff, that they could be
23 leaving stuff at the scene. There is contradictions between
24 what -- they are very careful, but they are leaving stuff.
25 There is contradictions that they have in their case trying

1 to prove beyond a reasonable doubt in the big stuff and the
2 small stuff, and witnesses that said one thing three days
3 after the death of their boyfriend and something exactly
4 opposite when it comes time for trial.

5 You have a right, when you are looking at whether
6 or not they have proved murder beyond any reasonable doubt,
7 to look at the fact that they are going to ask you to
8 consider convicting Hayword not of murder, but of
9 manslaughter.

10 You heard in Detective Blanton's testimony to you
11 that even though he charged Hayword with use of deadly force
12 about an hour and forty minutes after he got into the case,
13 that even now he didn't make a mistake, it's a murder case.
14 What you are going to hear, I believe, is the State lay out
15 good reasons that if y'all don't want to convict him of
16 murder, there is another option available; manslaughter.

17 So when you are looking -- they know what they
18 have to prove. They know, and you heard Roscoe Morris say
19 they know the testimony that's coming. They talked to these
20 witnesses that they are bringing here for y'all. And now
21 that they have brought them, they are going to ask y'all to
22 consider conviction, and if you can't go for murder, perhaps
23 there is manslaughter.

24 The basic issue in this case is was Todd Morgan a
25 very violent person when he was angry. You heard people who

1 have known him for years. Georgia Smith, she knew what he
2 was capable of. That's an exact quote from her. And she
3 knew when she saw that anger building, because he was upset
4 about something in their relationship, that she was going to
5 get a beating.

6 Was Todd Morgan a violent person? Was he the kind
7 of person that instigates a very violent confrontation?
8 Well, you heard Debra Littlejohn say that when she just told
9 a guy that she had, not a boyfriend-girlfriend relationship
10 with, but just kind of a casual relationship with tell her
11 that -- tell him that she didn't want to go out with him for
12 a particular occasion, he stomped her head and stomped her
13 head until she had to go to the hospital. That's the kind
14 of violence. That's the kind of violent person Todd Morgan
15 was.

16 And when you wind up in a room with him, wherever
17 you are, and he gets upset with you, then he's coming
18 towards you, you have to ask yourself has the State
19 disapproved the right to use self-defense? That's what you
20 are going to have to ask yourself after you get through
21 hearing them talk about the white house, and the crack house
22 at 311 Sarratt Avenue, and all of that. Are there places in
23 this county, are there places in this town where we allow
24 very violent people, like Todd Morgan, to do whatever it is
25 they want to do and you can't use self-defense on them? Are

1 there -- are we just going to say you can't use self-defense
2 on Sarratt Avenue if Todd Morgan starts after you?

3 What Hayword Chambers testified to was that he
4 went in that house. He was going in there to do something
5 illegal, to smoke some crack, something that he done over
6 the years, not expecting anything bad to happen. He's in
7 that room and Todd Morgan starts with this kind of violence,
8 with this kind of hostility towards him. And when he told
9 y'all, he testified to y'all that he was -- that when he saw
10 the rage and anger in his eyes, he knew this was going to be
11 bad, and so he pulled his gun, hoping to scare him off.

12 And the people that they brought in here to
13 disprove what Hayword said are people like Roscoe Morris and
14 that guy who followed him on the stand, the guy with the
15 tracheotomy, who is talking about Hayword pointing a gun at
16 him. That's somebody that they brought in to disprove. Do
17 you remember the solicitor, Ms. Leskanic, asked "have you
18 pointed a gun at anybody else?"

19 And so what -- what they brought -- the evidence
20 that they brought y'all to try to prove that he's not the
21 person he says he is, to try to prove that, they took a
22 person who went to this Officer Sizemore in February of '09,
23 to tell him that somebody, Hayword Chambers, chased him down
24 Floyd Baker Boulevard in the middle of town and that proves
25 that Hayword Chambers is a violent person.

1 Well, you got a right to ask if they are bringing
2 that kind of evidence, is it believable? Well, he talked to
3 Jeff Sizemore, this guy that claims this, claims that
4 Hayword chased him down Floyd Baker Boulevard with a weapon.
5 The police department is right up beside the police
6 department is on Floyd Baker Boulevard in the middle of
7 town. Now, if what that fellow who testified to is true and
8 if -- here is the primary thing. If Jeff Sizemore had
9 believed it were true, do you think that the police don't
10 care about people with guns chasing people down the street
11 beside where their police department headquarters are?

12 My point is they didn't believe it then. They
13 didn't arrest anybody, although they knew who he was. They
14 didn't even fill out one of those statement forms that you
15 have seen from practically every witness that -- they didn't
16 get that guy to fill out one of those statement forms that
17 you have seen from practically every other witnesses that
18 they had. They didn't arrest anybody. They must not have
19 thought that there was much -- that there was any truth in
20 what he said, but they didn't believe him, but three years
21 later when they want to make a murder case, when they are
22 trying to convince you that Hayword Chambers is a violent
23 person, that he is not the person that he said he was, they
24 are going to find this guy, just like they are going to find
25 Roscoe Morris to come in here and say "sir, he told me, sir,

1 that as I comforted him as a friend, as I counseled with him
2 how to beat this case, sir, he told me that" -- now, they
3 are bringing him in primarily to quote what Hayward said,
4 right? Remember? They are bringing him in to quote what
5 Hayward says and his quote of what Hayward says is "I shot
6 Todd Morgan. Then I went over there to the couch and I put
7 a pillow on his head." Now, y'all have sat through now
8 three days of testimony about this case, seen numerous
9 pictures, heard all these witnesses that they brought. Have
10 you heard anything about a pillow being put on Todd Morgan's
11 head?

12 Then he goes on to quote, to say, that he and
13 Hayward -- and he says he told this to the prosecutor before
14 she brought him in here, that he and Hayward kicked in -- or
15 Hayward took him and some other guy over to the Gaffney
16 motel to kick a door in and then help him leave, robbed the
17 place and took the money. That's the level of witness that
18 they are bringing in here to use to show that Hayward
19 Chambers is not the guy that y'all heard testify yesterday,
20 the guy who sat here calmly, who sat here patiently as Ms.
21 Leskanic cross-examined him, to tell y'all that he went in
22 the house just waiting to get paid, there was an argument
23 going on. Just as Todd Morgan is arguing with other women
24 in his life, getting angrier and angrier, and Hayward said
25 "your argument is with her, not with me," starts to leave,

1 but their witness, "Pookie" Byers, calls him back, and then
2 Todd uses all this language and starts towards him, grabs
3 him. They are struggling, just like Todd and Georgia Smith
4 struggled, and Hayword realizes, just again like Georgia
5 Smith realized, he's going to get this gun and he's going to
6 kill me. He is going to shoot me with my own gun.

7 Well, what she did is she started shooting just to
8 try to empty it. Hayword was just trying to get him off, as
9 he said, pulled the trigger. It didn't make any difference
10 where it went, as long as it went in him to get him off of
11 him. And as soon as he dropped he left. He is scared.
12 He's panicked. And as he said, "I went by James house," got
13 James to carry him over to the wife's house, or his
14 girlfriend's house, and the police show up asking the
15 questions. He tells him he's the man they were looking for.

16 So, when you are looking at whether or not the
17 State has carried its two burdens of disproving self-defense
18 beyond any reasonable doubt and proving unlawful killing
19 with malice aforethought and proving that beyond any
20 reasonable doubt, you have to look at the witnesses that
21 they have brought in here to try to prove that to y'all.

22 The theories that they have brought in here, are
23 there contradictions? Are there contradictions between what
24 their witnesses said three years ago right after it happened
25 and now when they are looking for a conviction? Are there

1 contradictions in the evidence that they brought y'all
2 between the scientific evidence and the other evidence? Is
3 there contradiction in the scientific evidence, between the
4 scientific evidence itself? And your obligation is to hold
5 them to that burden, because anytime somebody finds
6 themselves in a room with somebody like Todd Morgan, that
7 violent, who will act that way when they are filled with
8 rage, you have a right to self-defense. And even if the
9 State government turns around and charges you with murder
10 less than two hours later, you hope that the kind of facts
11 that they use, that they have changed, that the jury will
12 take a hard look at them, that there are contradictions in
13 that evidence, you use self-defense, that the jury will take
14 a hard look at it, and find that they have not carried their
15 burden beyond any reasonable doubt. So we ask you for a
16 verdict of not guilty for self-defense. Thank you.

17 THE COURT: Ms. Leskanic, you may proceed for the
18 State.

19 MS. LESKANIC: Thank you, Your Honor.

20 Good afternoon, ladies and gentlemen. I know that
21 you have been sitting for a long time. I'm going to try not
22 to be too much longer, but I would like to start out by
23 saying that as the assistant solicitor I believe a
24 conviction in this case is for murder. And I am not looking
25 for a conviction. I am looking for justice. That's what

1 prosecutors do and that's what juries do, looking for
2 justice for Todd Morgan.

3 Now, the defense wants you to listen to incidents
4 that Todd had with some of his domestic partners seven,
5 fifteen years ago, and say because he did that to those
6 women, he's no longer entitled to justice. That's not the
7 State's position for anyone. We look at things on a
8 case-by-case basis. Did he make mistakes in the past with
9 those women, absolutely. And if I were here prosecuting at
10 the time, would I have prosecuted him, if the evidence said
11 that I should? Absolutely.

12 But then I look at this case. I look at a murder
13 case where he's killed and I don't say well, because he did
14 bad things in the past, he doesn't get justice. He gets it.
15 I hope they got it.

16 It's not about conviction. It's not about wins
17 and loses. It's about justice for individuals who live in
18 our community. That's my job and that's why I'm here today.

19 I want to go through some things with you about
20 Calvin Todd Morgan, things that are relevant to this case.
21 What do we know, because I know there is conflicting
22 testimony in this case, and I told you in my opening that
23 it's a crack house and people in the house were on crack
24 cocaine, and it's still true now at closing, four days
25 later, but what do we know?

1 Well, let's look at what we all agree on and what
2 the forensic evidence shows us.

3 Todd Morgan was shot in the head when he was at
4 311 Sarratt Avenue about three o'clock in the morning. That
5 man right there pulled the trigger that fired the bullet
6 through his skull, lacerated his brain and left him in the
7 exact place he was when the gun was fired. Dr. Ross, who
8 has performed over six thousand autopsies, said he would
9 become unconscious immediately. He wasn't at the door. He
10 wasn't by the TV. He wasn't anywhere else in the living
11 room. Do you know where he was? He was right there where
12 he started when everyone walked in the room. He was between
13 the couch and the table. And not just the table, but the
14 undisturbed table. Not a table where two grown men had been
15 fighting across a room, a battle to the death, and things
16 were knocked all over the table. You are going to have all
17 of these exhibits, ladies and gentlemen. Here is a water
18 bottle that is still sitting on the table. This isn't
19 evidence of a struggle that went across the room and Todd
20 Morgan just happens to end up shot dead in the place where
21 he starts. He was found by the first responders and a
22 firefighter laying between that couch and that coffee table
23 in the fetal position, and he was found unarmed. Those are
24 the last few seconds of the last bit of life that he
25 remembers.

1 And I would like you, when you go back, to look --
2 I know some of these are hard to look at, but I'm just going
3 to put up State's Exhibit 11. That's part of the couch and
4 the floor where Todd Morgan lay after they moved the coffee
5 table and his blood is on the couch and on the floor.

6 And his blood is on the bottom, the bottom, of his
7 pants. The lower portion of the front and back of the
8 pants. None up high. None on his shirt. None seen by SLED
9 on his jacket.

10 Do you think Todd Morgan was still standing when
11 he was shot? He was shot in the head, the blood is on the
12 couch, on the floor, and down below on the pants.

13 Does it sound like Hayword Chambers got the upper
14 hand when he decided to point the gun from two feet away
15 from his head and pulled the trigger? Sounds like it.

16 Let's talk about Hayword Chambers. He left his
17 house about 11:30 that night. He told his girlfriend he was
18 going to get a pack of cigarettes. He ends up at 311
19 Sarratt Avenue. He ends up at the crack house. When he's
20 there, did he use crack? He transports crack while he's
21 there. He takes "Pookie" Byers to get some. Knows where
22 he's going, because he wants to get some more crack, and all
23 of this is while he's carrying a gun.

24 You heard a lot of testimony from him about
25 getting his concealed weapons permit and the training that

1 he went through. He was a good shot. He was a good shot,
2 but he wanted to tell you that so you would think that he's
3 a responsible gun owner, someone that members of the
4 community would be glad that a man like him has a gun. But
5 he's using it and pulling it while he's engaged in illegal
6 drug activity. He's using it and pulling it out when he's
7 high on crack cocaine.

8 Did he have a concealed weapons permit? Yes. And
9 a lot of people have driver's permits, and you have a right
10 to drive at certain times, but not when you are drunk. And
11 just because you have a concealed weapons permit doesn't
12 give you the right to pull a gun and use a gun. It gives
13 you a right to carry a gun responsibly, and he didn't. You
14 know that from Brad Douglas. You know what he used this gun
15 for? When he was dealing with people on the street is how
16 he got his upper hand.

17 Brad Douglas didn't have crack cocaine to give
18 him, so Brad Douglas said "let me out of this Volvo station
19 wagon." And when he gets out, that defendant calls him.
20 When he turns around, he is pointing a silver gun at him
21 because he hadn't gotten paid. Brad Douglas didn't have a
22 gun. He was walking away. He brought a gun to a fight
23 because he hadn't gotten paid for the ride. What did Brad
24 Douglas do? He told you he put his hands up and then he
25 gets knocked in the head.

1 What did Todd Morgan do when he came towards him
2 with the gun? He acted different from Brad Douglas. Todd
3 Morgan was up against a couch in his room. The doorway is
4 over there. And you know what's between Todd and the
5 doorway? A man with a gun that he has never met before
6 pointing it at him. And so he comes toward him with the
7 gun, instead of reacting like that man thought he would,
8 because that's the way the man had reacted a few months
9 earlier. Todd is going to try to get the gun to save
10 himself.

11 If anybody in this case had a right to
12 self-defense, it's Todd Morgan. He is in a room where he
13 has a right to be. He came over to that house to see his
14 girlfriend, not to get crack, not to use crack, not to
15 transport crack. Everyone said Todd Morgan did not use
16 crack. He was the only person in that room not using crack,
17 and he can't tell you what happened because that man killed
18 him.

19 That's the difference. When he pulled this gun in
20 February, Brad Douglas put his hands up, because he's not
21 going to mess with a man with a gun. Todd Morgan didn't.
22 He reacted differently, and he had every right to. He's
23 going to try to get that gun away from him, because a man is
24 pointing a gun at him as he comes toward him, and then he
25 made a decision to shoot him.

1 What was he mad about with Brad Douglas? He
2 hadn't gotten paid.

3 What was he mad about this night? He hadn't
4 gotten paid. He brought "Pookie" Byers back. And when he
5 came in the room, "Pookie" and Todd, they start having an
6 argument.

7 Now, "Pookie" said he never put his hands on her.
8 It wasn't anything out of control. It was the way they were
9 used to. Some couples argue. Some couples yell, but it was
10 between them. He was mad because he had given a ride and
11 I'm standing here and I'm waiting on my crack and I don't
12 have time for this, give me my crack. And it worked for him
13 back in February, when he pulled that gun and he got to hit
14 Brad Douglas, but it turned out differently this time,
15 unfortunately, for Todd Morgan.

16 Roscoe Morris testified that he was known in the
17 community for drawing a gun on people. Brad Douglas proves
18 that. It was under very similar circumstances.

19 Common sense. I still want to talk about
20 everything we can agree on. How do you respond if you just
21 killed somebody in self-defense? What do you do? Sometimes
22 homeowners have to do it. Sometimes store owners have to do
23 it. Somebody comes in to rob you or somebody breaks into
24 your home in the middle of the night, somebody has to be
25 killed in self-defense.

1 He did it. Number one, I think you stay at the
2 scene.

3 None two, I think you call the police.

4 And number three, it's your first opportunity to
5 talk to the police, you do.

6 Let's look at what the defendant did after he shot
7 Todd Morgan. He told Roscoe Morris he wished he would have
8 went back and kicked him. But after he shot him, he ran out
9 of the house. He got in his car. He went to his relative's
10 house, James Webb. He hid his car back near that building
11 off the road from Rutledge Avenue. He didn't stay in his
12 car. He didn't go to the police station. He didn't call
13 the police. He went and put the gun in a bag, the gun in
14 the bag, car hidden beside a building. He goes home, takes
15 off his blood-stained clothes. That's what he did. Does
16 that sound like somebody who killed somebody in
17 self-defense?

18 What did he tell his girlfriend?

19 "I just shot somebody. I'm going to jail."

20 Why do you go to jail? You go to jail because you
21 know that you did something wrong. If you had the right to
22 pull the trigger, you don't say "I'm going to jail and I
23 need to go see my family before I turn myself in." That's a
24 guilty conscience. That's him knowing when he did it that
25 what he did was wrong. "I'm going to jail." He just

1 murdered somebody.

2 Maybe his plans were to try to get away, I don't
3 know. He wanted you to believe, I think, that the car was
4 over on Rutledge Avenue because his aunt owns the car, but
5 when I questioned him about it, it's his. He behaved like a
6 guilty man. He spoke like a guilty man.

7 And he testified that he wanted to do all this
8 before he turned himself in, but he didn't have to go and
9 turn himself in. Officer Green came to his house very soon
10 after this happened. A great job by your Gaffney City
11 Police Department.

12 They want you to punish Detective Blanton and the
13 Gaffney City Police Department because they caught a
14 murderer too quickly. I commend them for the job that they
15 did and how quickly they did it, and they caught the
16 defendant off guard, because the first thing he said was
17 "no." And then "I'm "New York". I'm the one you are
18 looking for. You got me", but he didn't tell Officer Green
19 anything else on the way to the station. Is that what you
20 would do if you killed someone in self-defense?

21 "Pookie" Byers and Michelle Davis both stated that
22 Todd Morgan was at the couch, or no further than the table
23 when they left the room.

24 Now, Mr. Slade made a point. I didn't call "Big
25 Momma", and the reason, and I asked her on the stand,

1 because the last time I spoke with her she said she was so
2 high on crack she didn't remember anything. That's not
3 right for me bring that person in here to you.

4 When she came in here and I asked her about it,
5 she said she just didn't want to get involved and it's
6 because of situations like this that she stopped using crack
7 cocaine, but she testified that when she left the room, Todd
8 Morgan wasn't past the table.

9 "Pookie" Byers testified he wasn't past the table.

10 He's the only one that puts him past the table and
11 his version doesn't make sense; that Todd comes to him and
12 they struggle, Todd gets the upper hand on him; he's losing
13 his balance and he has to pull the trigger, and then Todd is
14 dead over here. It doesn't match up.

15 Roscoe Morris was right, he tried to come up with
16 a story. Roscoe Morris knows a lot about him. They were
17 friends in jail and Roscoe thought he would be trying to
18 help him to do something less than murder; "let's come up
19 with a story," because he told him -- the defendant told
20 Roscoe "we are the only two left in the room." And that's
21 when Roscoe said "we can work with that."

22 And you know what, ladies and gentlemen? If
23 "Pookie" had time to leave the room, and "Big Momma" had
24 time to leave the room, guess who else had time to leave the
25 room? That man right there.

1 "Pookie" made a decision to leave the room when a
2 gun was pulled. Then "Big Momma" made a decision to leave
3 the room when a gun was pulled.

4 Hayword Chambers made a decision to stay when the
5 gun was pulled, because he wasn't going to be talked to by
6 Todd in a disrespectful way; and he was used to pulling his
7 gun and he was used to using it to gain the upper hand, and
8 that's what happened on this occasion. He made a decision
9 to stay. He could have walked out the door. No doubt. If
10 he was standing in front of that door where he wants you to
11 think he was, and "Pookie" can leave, and "Big Momma" said
12 that no struggle had started when she walked out of the
13 room. Todd was at the table, and he was across the room
14 pointing the gun at Todd, and she's trying to get him to put
15 the gun down. "Put the gun down. Todd, you sit down.
16 Y'all quit this," and Todd is standing up by the table and
17 he won't put the gun down. She didn't leave because of
18 Todd's anger. That wasn't what her testimony was. She left
19 because there was a gun brought into a verbal altercation
20 and she knew that was going to end badly. She was
21 absolutely right.

22 Now, Luis Callazo was in that house and he said
23 shortly before the shooting he had made a comment "I'm going
24 to kill this bitch." Do you think he's mad about not
25 getting paid for the ride, not getting his crack as soon as

1 he walked back in the door or on the way back from Paul
2 Linder's?

3 The defendant walks back to the room and within a
4 few seconds pow. His only regret was that he didn't go back
5 in the room to kick him.

6 Mr. Slade says this is a self-defense case. It's
7 not. It's a murder case. He's charged with murder.

8 All right. I just want to show this to you,
9 because the judge is going to read the instructions on the
10 law and it's going to read like this, and it's a lot of
11 legal terminology, and so I just want to show you what has
12 to be shown for self-defense.

13 Now, a person is justified in using deadly force
14 in self-defense when: There are four things. All four
15 things have to be present to get self-defense.

16 The State doesn't have to disprove all four
17 elements beyond a reasonable doubt. We only have to
18 disprove one. We can disprove one, two, three, four, but we
19 don't have to disprove all four.

20 To have self-defense, to be entitled to
21 self-defense, you have to have all four of these elements.

22 Let's talk about whether or not Hayword Chambers
23 has those.

24 Number one, the defendant was without fault in
25 bringing on the difficulty.

1 Was he at fault in bringing on the difficulty that
2 happened? He is in that house engaged in illegal drug
3 activity. He is in that room waiting to receive payment in
4 crack cocaine. He is using crack cocaine and he is pulling
5 out a gun. He is at fault in bringing on the difficulty.
6 And according to the testimony, he pulled that gun before
7 anybody put their hands on anybody, and Todd was across the
8 room from him when he pulled out his gun. He's at fault on
9 bringing on the difficulty. He doesn't get self-defense.

10 Number two, was he in actual imminent danger of
11 losing his life or sustaining serious bodily injury? Was he
12 in actual imminent danger?

13 Todd Morgan didn't have a weapon. Even the
14 defendant admitted that, and he's across the room at a table
15 with nowhere to go. Mr. Chambers has the door next to him.
16 I would say Todd Morgan was in actual imminent danger of
17 losing his life, but not the defendant. The defendant is
18 not in actual imminent at that moment danger of losing his
19 life or sustaining serious bodily injury.

20 When he pulled the gun, he was at fault in
21 bringing on the difficulty. He doesn't get self-defense,
22 because he was not in actual imminent danger of losing his
23 life. Neither one of them had marks on their body, other
24 than the gunshot wound to Todd Morgan's head. There was no
25 fight. There may have been a scuffle over the gun when the

1 defendant approached Todd and Todd tried to defend himself.

2 Or he must have actually believed he was in
3 imminent danger of losing his life.

4 Now, the defense wants you to think that because
5 Todd wasn't good to past girlfriends, that this rage can be
6 used against the State. The defendant didn't know him. He
7 didn't know how he responded when he got angry with a
8 girlfriend. He never met him before. So regardless of how
9 he responded in other situations with women, not men, he
10 didn't know anything about it. So you can't say well, he
11 knew he was going to do this, that, or the other. He didn't
12 have a clue. He never seen the man before. So number two
13 is not -- he doesn't have it.

14 Number three, if the defense is based upon his
15 actual belief of imminent danger, then a reasonably prudent
16 person or ordinary firmness and courage would have
17 entertained the same belief, which means if he actually
18 believed he was in danger, that somebody else that's
19 reasonable and in the same situation would have reacted the
20 way that he did. He's high on crack cocaine, and I would
21 say right there that's not how an ordinary reasonable person
22 is going to respond. You are not going to respond like an
23 ordinary reasonable person when you have been using illegal
24 drugs.

25 And number four, the defendant had no other

1 probable means of avoiding the danger of losing his own life
2 or sustaining serious bodily injury than to act as he did in
3 this particular instance. That's his duty to retreat. He
4 is at the door. He has a gun.

5 And Mr. Slade wants you to think that if he did
6 this and stepped out, that maybe two steps, that Todd Morgan
7 was just going to take him. There is more than one way to
8 exit a door. You can go down the hallway; or you can
9 close -- go this way three steps and go out the front door.
10 Nothing was standing between that man and an exit.

11 Todd Morgan had a man pointing a gun at him
12 standing between the exit. The only person that would be
13 entitled to self-defense, if he were still alive today,
14 would be Todd Morgan.

15 One other piece of forensic evidence shows where
16 the fatal blow was fired, where the shell casing was. It
17 was between the couch and Todd's body, laying between the
18 couch and the table when he was shot. The shell casing was
19 found when Officer Kennedy lifted up the blanket and found
20 the shell casing near Todd's body. It wasn't in another
21 room. It wasn't a scuffle in there. Todd Morgan was
22 advanced on by a man with a gun. He reached for the gun.

23 They may have scuffled for the gun, and according
24 to Roscoe Morris, he then had some thought that oh, no, now
25 I'm going to get killed with my own gun, even though I

1 brought this on myself. He got the upper hand, possibly by
2 pushing Todd to the ground and he shot him in the head.
3 They rushed him to the hospital and the next day he did die.

4 Roscoe Morris and Brad Douglas didn't have a dog
5 in this fight. Roscoe Morris came in and told you that he
6 just wanted to do the right thing; admitted to things that
7 he had done wrong. He even admitted that at one time he
8 tried to help him come up with a way to get a lesser charge,
9 but he couldn't do it any more when he came back in and said
10 "the only regret is that I didn't kick him in head."

11 The defense says we went out and found an officer,
12 and we did, and the officer said I got some information
13 here. We were, and that's our job. We are here to do
14 justice.

15 Was the information that Hayword Chambers didn't
16 do it, or was the information that he had -- that Hayword
17 Chambers had told him what had happened that night and had
18 come up with ways to get out of this, and he wanted to kick
19 Todd Morgan in the head.

20 That's what the State does, justice, and that's
21 what I ask the twelve of you to do is justice for Todd
22 Morgan.

23 The defendant is charged with murder. That is the
24 unlawful killing of someone with malice aforethought.

25 What does that mean? Unlawful killing is they

1 don't have a right to pull the trigger.

2 Malice aforethought. Malice means a wickedness,
3 an evil heart bent on mischief. Did he have an evil heart
4 bent on mischief when he pulled the trigger?

5 Aforethought? Seconds before he pulled the gun.
6 It's not premeditation. I know on TV a lot of times murder
7 you have to plan it out, it has to be premeditation. That's
8 not the law in South Carolina.

9 It's malice aforethought. An evil heart a second
10 before he pulled the trigger.

11 Now, the judge is going to charge you also on
12 voluntary manslaughter based on facts presented in the case,
13 and that's an unlawful killing when there is sufficient
14 legal -- sufficient provocation to pull the trigger due to
15 fighting, or something else. I'm not going to go into that
16 law. The judge is going to instruct you on it. The State's
17 position is this is a murder case.

18 It's certainly not self-defense, and the State has
19 proven that beyond a reasonable doubt. He pulls guns on
20 people. He uses drugs. He was using drugs and he's guilty
21 as charged, and I ask that you do justice in this case and
22 you find him guilty of murder. Thank you.

23 THE COURT: All right, we have been going for
24 almost two hours and I'm going to take a short break and let
25 you step back and stretch your legs before I charge you

1 concerning the law. So we will take about a five minute
2 break.

3 And as I told you every time you have walked out
4 of the courtroom, and I'll struck you again, don't begin any
5 discussions about this case until I have asked you to do so.

6 You may retire to the jury room.

7 (The following takes place outside the presence of
8 the jury panel)

9 THE COURT: Court would be in recess for a short
10 period of time.

11 (Whereupon, proceedings were recessed)

12 (Whereupon, proceedings were reconvened)

13 THE COURT: Are we ready to proceed at this time?

14 MS. LESKANIC: Yes, Your Honor.

15 THE COURT: Defense ready?

16 MR. SLADE: We are, Your Honor.

17 THE COURT: Bring the jury in.

18 (The following takes place in the presence of the
19 jury panel)

20 THE COURT: All right, the record will reflect
21 that the jury has returned to the courtroom.

22 (Whereupon, at 3:30 p.m., the Court jury
23 instructions were given to the jury panel)

24 THE COURT: We have reached the stage of the
25 proceedings when I told you that I would charge you

1 concerning the law in this case.

2 When we began the case several days ago I went
3 over with you the indictment in this matter, and I will do
4 that again at this time.

5 The indictment in this case is the case number
6 2010-GS-11-607. The indictment is for the offense of
7 murder.

8 The document states, in part, that Hayword Tony
9 Chambers, did, in Cherokee County, between November 28th of
10 2009 and November 29th of 2009, feloniously, willfully, and
11 with malice aforethought kill one Calvin Todd Morgan by
12 shooting the victim and that the victim died as a proximate
13 result thereof, all in violation of Code Section 16-310 and
14 20 of the Code of Laws of South Carolina, 1976, as amended,
15 against the peace and dignity of the State and contrary to
16 the statute in such case made and provided.

17 I'm going to remind you the fact that a defendant
18 has been arrested, charged and indicted in the case is not
19 evidence in this case and it cannot be considered by you as
20 evidence of guilt in this case, nor does an indictment
21 create any presumption or inference of guilt.

22 The document I went over with you is simply the
23 document, the formal written instrument, which contains the
24 charges made against the defendant. It's the formal
25 document that brings the case into this court. It informs

1 this court of the charge to be tried. It informs the
2 defendant of the charge that has been lodged against him.

3 The defendant has pled not guilty to this
4 indictment. Under the laws and the Constitution of this
5 state and of the United States that plea places the burden
6 upon the State to prove the defendant guilty.

7 A person charged with the committing of a crime or
8 offense in South Carolina is never required to prove himself
9 innocent.

10 I charge you that it's an important rule of law
11 that a defendant in a criminal trial, no matter what the
12 seriousness of the crime charged in the indictment might be,
13 will always be presumed to be innocent of the crime for
14 which that document has been issued, until and unless guilt
15 has been proven to you, the jury, by proof of guilt beyond a
16 reasonable doubt.

17 The presumption of innocence doesn't end when you
18 begin your deliberations. It continues into your
19 deliberations. It accompanies the defendant throughout the
20 trial, until such time as you might reach a verdict of guilt
21 and that verdict must be based on guilt beyond a reasonable
22 doubt.

23 Many people describe the presumption of innocence
24 that the defendants have in this courtroom somewhat like
25 that robe that I wear into the courtroom every day. That

1 presumption of innocence or robe remains about the
2 defendant's shoulders throughout the trial. It stays on the
3 defendant's shoulders as you enter your deliberations and
4 into your deliberations. It remains on his shoulders until
5 such time as it may have been stripped from him by proof
6 that satisfies you of the defendant's guilt beyond a
7 reasonable doubt.

8 Now, the presumption of innocence is not just a
9 legal phrase and it's not just a legal theory. It's a
10 substantial right that every citizen or every defendant is
11 entitled to, unless and until you, the jury, are satisfied
12 from the evidence of the defendant's guilt beyond a
13 reasonable doubt.

14 Now, you have heard me use that standard of proof,
15 that phrase beyond a reasonable doubt, several times already
16 in my charge, and you may ask yourself well, just what is
17 meant by that phrase, that legal standard of proof? What is
18 a reasonable doubt?

19 A reasonable doubt has been defined under the law
20 as that kind of a doubt that would cause a reasonable person
21 to hesitate to act. And the State has the burden of proving
22 the defendant guilty beyond a reasonable doubt.

23 Now, I want to caution you, because some of you
24 may have been involved in legal cases that are what are
25 called civil cases in nature. Now, civil cases where

1 someone is seeking monetary damages, that could be for a
2 breach of contract, a failure to pay debt, an injury case
3 from an accident, things of that nature. In civil cases the
4 standard of proof that entitles a party to verdicts is by
5 the greater weight of the preponderance of the evidence.
6 It's been described as the Scales of Justice tilting ever so
7 slightly in favor of the plaintiff or every so slightly in
8 favor of the defendant. That tilt would entitle that party
9 to a verdict in a civil case.

10 Now, this is a criminal case, and in a crime case,
11 as I have told you, the burden of proof is greater than
12 that, more substantial than that. It's proof beyond a
13 reasonable doubt.

14 I will tell that you proof beyond a reasonable
15 doubt would be that kind of proof that would leave you
16 firmly convinced of the defendant's guilt.

17 Now, I'm going to tell you there is very few
18 things that go on in this world that can be proven beyond
19 any doubt whatsoever, and the State is not put to the burden
20 of offering proof to you that overcomes every possible
21 doubt.

22 What I will tell you is, if, based on your
23 consideration of the evidence, that once you consider the
24 evidence, if you are firmly convinced that the defendant is
25 guilty of the crime charged, you must find the defendant

1 guilty.

2 However, on the other hand, if you find that there
3 is a real possibility that the defendant is not guilty, then
4 you would have to give the defendant the benefit of the
5 doubt and find the defendant not guilty.

6 At the beginning of the trial I told you a little
7 bit about the roles and responsibilities that we would have
8 during the trial of this case. We have had certain duties
9 to perform.

10 As the trial judge it's been my responsibility to
11 preside over the trial of the case. I have had the duty of
12 ruling on the admissibility of certain evidence offered
13 during the trial and concerning the appropriateness of
14 questions that have been asked, and you are to consider only
15 the evidence that was put into the record of this case
16 during the trial. If there was anything that I ruled out of
17 order or ruled inadmissible, you should not consider those
18 matters at all in reaching a verdict in this case. You must
19 disregard that information in its entirety. You are to
20 consider only the testimony which has been presented from
21 the witness stand and the exhibits that have been made a
22 part of the record and any stipulations, that would be
23 agreements by counsel that they have agreed to certain facts
24 might be true.

25 I have the additional duty now of charging you

1 concerning the law in this case. I told you at the
2 beginning of the trial as the presiding judge I am the sole
3 judge of the law in this case. It's your duty as jurors to
4 accept the law and apply it to the facts as you find those
5 facts to be.

6 I told you earlier if you had an idea as to what
7 the law is or you have a notion as to what the law ought to
8 be, leave those ideas and notions outside of the jury room
9 before you begin your deliberations.

10 It's your responsibility under the oath that you
11 have taken to take the law exactly as I give it to you,
12 apply that law to the facts as you determine those facts to
13 be, and thereby you should be in a position to reach a just
14 and a true verdict in this case.

15 I told you just as I am the sole judge of the law
16 in this case, you are the sole judges of the facts in this
17 case. I can't in any way indicate to you by any comment or
18 any decision that I may have made during the trial that I
19 have an opinion one way or the other as to how you determine
20 the facts in this case. I told you earlier the law doesn't
21 allow me an opinion on that subject, and I have no opinion
22 as to how you determine the facts in this case. You are the
23 sole judges of the facts in this case.

24 The determination of the facts is a matter solely
25 for you, the jury, to determine. As jurors, it's your duty

1 to determine the effect, the value, the weight, and the
2 truth of the evidence that you have heard during this trial.
3 In doing that you have the right to consider two types of
4 evidence. And you may ask yourself well, what do you mean
5 by two types of evidence in the case. Well, the law breaks
6 down evidence into two types, one of which is what we call
7 direct evidence. The other type of evidence is what we call
8 circumstantial evidence.

9 Direct evidence is the testimony of a person who
10 claims to have actual knowledge of a fact, such as an
11 eyewitness or a participant in an event. It's evidence
12 which when given immediately attempts to establish the fact
13 that they are seeking to prove.

14 Circumstantial evidence, on the other hand, is
15 proof of a chain of facts or circumstances that indicates
16 the existence of a fact. It is evidence which has been
17 described as immediately establishing collateral facts from
18 which a main fact might be reasonably inferred. So
19 circumstantial evidence is based on inference and not on
20 personal knowledge or observation.

21 I give a very simple example of what might be
22 proof of a fact by circumstantial evidence. Let's say last
23 night before you went to bed you looked outside the window
24 of your bedroom and stars may have been shining, might have
25 been a pretty night, and you went to bed and you slept well

1 all night, didn't wake up at all. The next morning you got
2 up and you walked over to that very same window and you
3 looked outside, and while the sun might be shining, you
4 noticed there is water dripping from all the trees, there is
5 puddles in the driveway, the road out in front of your house
6 is soaking wet.

7 Now, during the night you didn't hear it rain and
8 you didn't see it rain, so you didn't directly experience
9 that, but from the facts, the collateral facts that you know
10 to be true, you could infer or determine that at some time
11 during the night it, in fact, did rain. So that's what we
12 mean by proof of collateral facts from which you might infer
13 some other fact to be true.

14 Now, the law makes no distinction between the
15 weight of the value that you, the jury, can give to either
16 direct or circumstantial evidence, nor is there a greater
17 degree of certainty required of circumstantial evidence than
18 that of direct.

19 I will tell you as jurors you should weigh all of
20 the evidence in the case. If after weighing all of the
21 evidence in this case, if you are not convinced of the guilt
22 of the defendant beyond a reasonable doubt, you must find
23 the defendant not guilty.

24 However, on the other hand, if you are firmly
25 convinced of the defendant's guilt beyond a reasonable

1 doubt, you must find the defendant guilty.

2 Now, in determining the facts of any case it's
3 necessary for jurors to determine the credibility or the
4 believability of the witnesses that have testified, and
5 that's what credibility means. It means believability.
6 It's your duty as jurors to analyze and evaluate the
7 evidence and determine which evidence convinces you of its
8 truth.

9 In determining the believability of witnesses who
10 may have testified in this case, you, the jury, are the sole
11 judges of the facts have the right to believe one witness
12 against all the others. You can believe all the others
13 against one. As the sole judges of the facts you have the
14 right to believe all of, part of, or none of what a witness
15 may have told you.

16 I have asked you to use your own good common sense
17 in weighing the question of believability.

18 You have the right to consider factors, such as
19 whether or not a witness may have an interest in the case, a
20 bias or a prejudice somehow, or that they may have some
21 other motive for testifying in this case.

22 You may also consider the manner or the weight in
23 which the witness has testified.

24 Use any of the factors I have mentioned as your
25 common sense tells you to use those factors to make a

1 determination as to the credibility or the believability of
2 the testimony that you have heard in this case.

3 Now, during the trial we had several witnesses who
4 testified who were qualified as experts. I told you that I
5 would talk to you a little bit more about that testimony
6 during my charge. And I told you when that evidence started
7 coming in, that the Rules of Evidence that govern our courts
8 ordinarily do not allow witnesses to testify concerning
9 opinions or conclusions. An exception to that general rule
10 is made for a witness who is determined or called an expert
11 witness. That's a witness who because of their education or
12 experience or their work in some field, art, science, or
13 profession or calling have reached the state where the court
14 has declared that they might be testifying as an expert.
15 Those witnesses may state an opinion as to any relevant or
16 material matter in which the witness claims to be an expert
17 and may also state the reasons for giving that opinion.

18 You should consider the testimony given by experts
19 like any other evidence in the case. You give it the weight
20 you think it deserves.

21 I'll tell you, should you decide that an opinion
22 of an expert was not based on sufficient education or
23 experience, or the reasons given for having an opinion by an
24 expert do not appear to be sound to you, you have the right
25 to -- or the opinion might be outweighed by other evidence,

1 you have the right to disregard an opinion in its entirety.

2 An expert witness' testimony is not to be given
3 any greater weight just because we have named that person as
4 an expert. In other words, you weigh and evaluate the
5 evidence and the evidence of expert testimony. You give it
6 the weight that you think it deserves. You are not required
7 to accept the opinion of an expert, even though that opinion
8 may not be contradicted by any other testimony.

9 Now, I'm going to go over the law of intent. In
10 order to establish criminal liability, generally a level of
11 intent is required. That's the mental state that is
12 required by a statute or by law to be proven for a
13 particular crime to exist, and that standard of proof is
14 applied to the State.

15 Now, the level of intent might be purpose, it
16 might be intent, it could be knowledge, recklessness or
17 criminal negligence.

18 Criminal intent must be proven by the State beyond
19 a reasonable doubt, and criminal intent is always a matter
20 that has to be determined from the circumstances surrounding
21 the situation, because there is no way when an event occurs
22 that we can stop everything, open up someone's head and look
23 at their brain and determine scientifically what they
24 intended to do, so there is no way that medical science, or
25 math, or anything else can determine scientifically what a

1 person is intending to do in any circumstance. So,
2 therefore, intent is always a matter to be inferred from the
3 circumstances that are shown to have existed at the time of
4 an event.

5 Criminal intent is a mental state, it's a
6 conscious wrongdoing, and it's up to you to determine what a
7 defendant intended to do, based on the circumstances shown
8 to have existed at the time of the incident.

9 Now, also I'm going to caution you during the
10 trial evidence has been presented that witnesses may have
11 made prior statements which are not consistent with that
12 witness' testimony during a trial. You may use this
13 evidence to decide whether to believe the witness. You may
14 also use such evidence of earlier contradictory statements
15 to determine the truth of those statements. It's up to you
16 to decide whether to believe the earlier statements or the
17 testimony given at trial.

18 If a witness has shown to have knowingly testified
19 untruthfully about any matter or material matter, you can
20 consider this in determining whether to trust the witness'
21 testimony as to other matters as well.

22 You may, again, reject all of, part of, or none of
23 what a witness may have testified to. You give it the
24 weight that you think it deserves.

25 Also there were persons who testified during this

1 trial who had past criminal records. And I will tell you
2 that a person who has a past criminal record is competent to
3 testify at trial. A past record does not affect the ability
4 of that witness to testify. The past record can be
5 considered by you, if at all, in determining the witness'
6 believability. Again, remember, you are the sole judges of
7 the facts in this case and the believability of any and all
8 witnesses who testified during the trial.

9 Now, the charge in this case is for the charge of
10 murder, and the State must prove beyond a reasonable doubt
11 for the offense of murder to exists that the defendant
12 killed another person with malice aforethought.

13 Now, malice is hatred, ill will, or hostility
14 towards another person. It's the intentional doing of a
15 wrongful act, without just cause or excuse, and with an
16 intent to inflict an injury or under circumstances that the
17 law might refer an evil intent.

18 Malice aforethought does not require that the
19 malice exists for any particular length of time before the
20 act is committed, but malice must exist in the mind of the
21 defendant just prior, just before, and at the time the act
22 is committed. Therefore, there must a combination of an
23 evil intent and the act that was accomplished.

24 Malice aforethought may be expressed or inferred.

25 The terms expressed or inferred do not mean

1 different types of malice, but it means differences in the
2 way malice might be shown to exist; that is, either by
3 direct evidence or by inference from the facts and
4 circumstances which have been proven.

5 Express malice is shown when a person speaks words
6 which express hatred or ill will for another person, or when
7 the person prepares beforehand to do the act which was later
8 accomplished, such as lying in wait for a person, or any
9 other acts of preparation that would show the deed was
10 within the defendant's mind. That would be express malice.

11 Now, should you find that the State has failed to
12 prove beyond a reasonable doubt that the defendant committed
13 murder, then you may consider whether the State has proven
14 beyond a reasonable doubt that the defendant committed
15 voluntary manslaughter.

16 Now, to prove voluntary manslaughter, the State
17 must prove beyond a reasonable doubt that the defendant took
18 the life of another person in the sudden heat of passion,
19 based on sufficient legal provocation.

20 Both heat of passion and sufficient legal
21 provocation must be present at the time of the killing to
22 constitute a voluntary manslaughter.

23 Sudden heat of passion may for a time affect a
24 person's self-control and temporarily disturb a person's
25 reason. The sudden heat of passion must be the type that

1 would make an ordinary person unable to coolly reflect on
2 his actions and would produce an uncontrolled impulse to do
3 violence.

4 Sufficient legal provocation must be of the type
5 that would make a person of ordinary reason and caution
6 become enraged and lose control temporarily.

7 The provocation needed for involuntary
8 manslaughter must come from some act of or related to an act
9 by the victim.

10 However, the mere fact that a person is afraid is
11 not sufficient to constitute voluntary manslaughter.

12 In order to constitute sudden heat of passion upon
13 sufficient legal provocation, the fear must be the result of
14 sufficient legal provocation and cause the defendant to lose
15 control and create an uncontrollable impulse to do violence.
16 Succinctly stated, to constitute voluntary manslaughter, the
17 defendant's fear must manifest itself in an uncontrolled
18 impulse to do violence.

19 Now, words alone, however vulgar or insulting, are
20 not enough to be a legal provocation where death is caused
21 by the use of a deadly weapon. The words must be
22 accompanied by some overt or threatening act which could
23 have produced the heat of passion.

24 The exercise of a legal right, no matter how
25 offensive to another, is never sufficient provocation for

1 voluntary manslaughter.

2 If the heat of passion has cooled or if there has
3 been enough time between the provocation, if any, and the
4 killing, or the passion of a reasonable person to cool,
5 the killing would not be voluntary manslaughter.

6 In deciding whether a reasonable person would have
7 had enough time to cool off, you should consider all of the
8 circumstances surrounding the killing.

9 You may consider the nature of the provocation, if
10 any; the defendant's mental and physical state; and the
11 circumstances and relationships that might exist between
12 the parties.

13 Now, the defendant has raised the defense of
14 self-defense in this matter. Self-defense is a complete
15 defense and if it is established, you must find the
16 defendant not guilty. That would be of either of the
17 charges that I just went over with you.

18 The State has the burden of disproving
19 self-defense by proof beyond a reasonable doubt.

20 If you have a reasonable doubt of the defendant's
21 guilt after considering all of the evidence, including the
22 evidence of self-defense, then you must find the defendant
23 not guilty.

24 On the other hand, if you have no reasonable doubt
25 of the defendant's guilt, after considering all of the

1 evidence, including the evidence of self-defense, then you
2 must find the defendant guilty.

3 Now, the following are the elements required to be
4 shown to establish the defense of self-defense:

5 First of all, without fault. First, the defendant
6 must be without fault in bringing on the difficulty.

7 If the defendant's conduct was of a type which was
8 reasonably calculated to and did provoke a deadly assault,
9 the defendant would be at fault in bringing on the
10 difficulty and would not be entitled to an acquittal based
11 on self-defense.

12 Self-defense is not available to a person who uses
13 language which is so contemptuous that a reasonable person
14 would expect it to bring on a physical encounter and which
15 actually did contribute to a physical encounter.

16 The second element of self-defense is that the
17 defendant was actually in imminent danger of death or
18 serious bodily injury, or the defendant actually believed
19 that he was in imminent danger of death or serious bodily
20 injury.

21 If the defendant was actually in imminent danger,
22 it must be shown that the circumstances would have warranted
23 a person of ordinary firmness and courage to strike the
24 fatal blow to prevent serious death or bodily injury.

25 If the defendant believed he was in imminent

1 danger of death or serious bodily injury, it must be shown
2 that a reasonably prudent person of ordinary firmness and
3 courage would have had that same belief in those
4 circumstances.

5 In deciding whether the defendant actually was or
6 believed that he was in imminent danger of death or serious
7 bodily injury, you should consider all of the facts and
8 circumstances surrounding the event, including the physical
9 condition and the characteristics of both the defendant and
10 the victim.

11 Now, the defendant does not have to show that he
12 was in actual danger. It is enough that if the defendant
13 believed he was in imminent danger and a reasonably prudent
14 person of ordinary firmness and courage would have had that
15 same belief. The defendant has a right to act on
16 appearances, even though the defendant's beliefs may have
17 been mistaken. It is for you to decide whether the
18 defendant's fear of immediate danger or death or serious
19 bodily injury was reasonable and would have been felt by an
20 ordinary person in the same situation.

21 Words accompanied by hostile acts may, depending
22 on the circumstances, establish self-defense.

23 The relative sizes, ages, weights of the defendant
24 and the victim may be considered in deciding the apparent or
25 actual need for force in self-defense in the amount of force

1 needed.

2 Threats made by a victim may be considered in
3 determining whether the defendant actually was or believed
4 he was in imminent danger.

5 Now, the final element of self-defense is that
6 there was no other way to avoid danger. The final element
7 of self-defense is that the defendant had no other probable
8 way to avoid danger or death or serious bodily injury than
9 to act as the defendant did in this particular instance.

10 The defendant has no duty to retreat, if by doing
11 so the danger of being killed or suffering serious bodily
12 injury would increase by that retreat.

13 A person cannot be required to make an exact
14 calculation as to the degree or amount of force which might
15 be needed to avoid death or serious bodily injury.
16 Therefore, in self-defense a defendant has the right to use
17 the force needed to avoid death or serious bodily harm.

18 The force used in self-defense does not have to be
19 limited to the degree or the amount of force used by the
20 victim. The defendant has the right to use as much force as
21 appears to be necessary for complete protection and which a
22 person of ordinary reason and firmness would have believed
23 to be needed to prevent the death or serious bodily harm.

24 Now, once the right to act in self-defense arises,
25 a defendant is not required to wait until his adversary is

1 on equal terms or until the adversary has taken any
2 particular action in order to take action in self-defense.

3 Now, Ms. Gena Henderson, raise your hand, please.
4 You are going to be the foreperson of the jury. That means
5 that you will be the person who will be responsible to
6 conduct the discussions of the jury, the deliberations.

7 Now, let me explain to you if during those
8 deliberations the jury has a question concerning this
9 matter, you will be the person who will write that question
10 down on a piece of paper. You would knock on the door and
11 pass it to the bailiff. The bailiff would deliver the
12 question to me.

13 I have already told you that I can't get involved
14 in your decisions about the facts. You are the sole judges
15 of the facts. I can answer questions concerning the law
16 that I have charged you on; some questions about the
17 evidence, but that's very limited; and I can answer
18 questions about the procedure that we follow, things of that
19 nature, but I'm not going to ask you to edit any question.
20 Whatever the question the jury has, once they have agreed on
21 the question, write it on a piece of paper, pass it to the
22 bailiff, and I will decide what the appropriate answer will
23 be. I will have you bring can back into the courtroom to
24 give you those answers.

25 Also it would be your job to write the verdict in

1 this case, and I'm going to give you a form for that purpose
2 and in a few minutes I'll go over that form with you so that
3 you will understand what has to be done to complete the
4 form.

5 Now, even though I have appointed Ms. Henderson as
6 the foreperson of the jury, I explained to you at the
7 beginning of the trial each of you have an equal say in the
8 outcome of the case. Your verdicts must be unanimous. That
9 means each and every one of you has to agree on the verdict
10 before it's the verdict of the jury, so the foreperson has
11 no greater say in the outcome of the case than any other
12 juror on the jury panel.

13 I have gone over a lot of things with you. I want
14 to be sure that I haven't misspoken.

15 We have a lot of evidence, that we have to be sure
16 that that evidence when it goes into the jury room with you
17 is the proper evidence and doesn't include things that
18 hasn't been put into the record, so we are going to have to
19 get all that together, so there is a little bit the
20 housekeeping things that we have to do before I finally turn
21 the case over to you to begin deliberation.

22 So, Ms. Henderson, I'll ask you to take the jury
23 back to the jury room. Again, don't begin any discussions
24 until I have brought you back here for your final
25 instructions. When you come back, Ms. Henderson, you will

1 be seated in this front seat right here on my left, your
2 right. Okay.

3 You may retire to the jury room.

4 (The following takes place outside the presence of
5 the jury panel)

6 THE COURT: Objections to the charge, from the
7 State?

8 MS. LESKANIC: None, Your Honor.

9 THE COURT: Defense?

10 MR. SLADE: Your Honor, I may have missed it. I
11 just didn't check off the word accompanied by hostile acts.

12 THE COURT: I think I did say that, but let me go
13 back and look at it.

14 Words accompanied by hostile acts may, depending
15 on the circumstances, establish self-defense.

16 MR. SLADE: All right. Thank you.

17 THE COURT: I think I did say that. I'll get Mike
18 to double check and be sure that it is.

19 MR. SLADE: Yes, sir.

20 THE COURT: All right. I will ask you to -- any
21 other objections?

22 MR. SLADE: No, sir.

23 THE COURT: If you will step over and go over the
24 exhibits and let's get everything on that table so the
25 bailiffs will know what to take back. Be sure we agree.

1 I have the verdict form up here. Once you have
2 done that, step up and take a look at the form.

3 MS. LESKANIC: May we also send back gloves, Your
4 Honor?

5 THE COURT: Yes, I think that would be wise.

6 MS. LESKANIC: Okay.

7 (Off the record)

8 (Back on the record)

9 MS. LESKANIC: The State has no objection to the
10 verdict form.

11 THE COURT: Any objection from the defense?

12 MR. SLADE: No, Your Honor.

13 THE COURT: Bring the jury in.

14 (The following takes place in the presence of the
15 jury panel)

16 THE COURT: All right, the record will reflect the
17 jury has returned to the courtroom.

18 I'll ask the bailiff to pass over the verdict
19 form.

20 Ms. Henderson, I'll go over that form with you.
21 At the top you will see it has the court that we are in, the
22 State and county that we are located in, the name of the
23 case.

24 Down below that, after we get through the caption,
25 what we call the caption, the first question that's asked is

1 we, the jury, unanimously find the defendant Hayword
2 Chambers concerning the offense of murder, and there is two
3 choices below that: Not guilty or guilty.

4 There is a little line in front of those words.
5 And once the jury has reached a unanimous verdict on that
6 particular charge, you need to put an X or a check on the
7 line beside the appropriate verdict.

8 Now, the second question there is if you find the
9 defendant not guilty of the offense of murder, then you must
10 decide the question concerning the offense of voluntary
11 manslaughter. And, again, the choices are not guilty or
12 guilty.

13 And, again, I'll ask you to check the appropriate
14 block, if it becomes necessary for you to answer that
15 question.

16 If you find the defendant guilty of murder, there
17 is no need to consider the lesser included offense, so there
18 would be no verdict required on that particular question.

19 And I will tell you that if you find that the
20 defendant is entitled to the defense of self-defense, then
21 the verdicts would be not guilty as to both. There is no
22 separate verdict for self-defense. Do you follow what I'm
23 saying?

24 JURY FOREPERSON: Yes.

25 THE COURT: Now, ma'am, also I want to tell you

1 that the order in which I have put these choices on the form
2 shouldn't indicate to the jury that I have a preference.
3 Some people are concerned that if a judge puts them in any
4 particular order, that it shows that I prefer one verdict
5 over the over. I can tell you I have been doing this about
6 nine years. Every verdict form I have done in every case I
7 have tried is in the same order that that one is. That's
8 the way it is on my computer and it always is the same, so
9 it doesn't show a preference on my part. Those are the two
10 choices. That's the order that I put them in on the form.

11 Now, the exhibits are in the bag and the bailiffs
12 are going to take all the evidence back into the jury room
13 for you to have available to you to look at during your
14 deliberations.

15 I will caution you, the gun is in there, as well
16 as a clip to the gun, but they are separated. I would urge
17 you to leave those things in the bags. Don't take them out,
18 unless it's absolutely necessary that you take them out,
19 because guns are dangerous. And when guns and bullets get
20 together, that could be dangerous too. So try to leave them
21 in the bag. You are welcome to look at them. If you feel
22 it necessary to take them out, just be cautious. Don't try
23 to load the gun or operate the gun in any fashion.

24 Now, at this point in time I'm going to --

25 Well, let me go just a couple more things.

1 It's a little after four o'clock at this point in
2 time. We are going to go into the evening tonight, as far
3 as your deliberations as long as it takes.

4 Now, if you feel like you need to order dinner, we
5 would order dinner for you and pay for it, the court would
6 pay for that meal. Let the bailiff know that you are
7 interested in us doing that for you. It takes about I would
8 say, what, forty-five minutes or so, Ms. Clerk?

9 THE CLERK: About an hour.

10 THE COURT: About an hour to get the food here.
11 So if you feel like it's going to be necessary for us to do
12 that, just let the bailiff know that.

13 Now, the clerk will send somebody into your
14 chambers there to get the order from you. When that person
15 is in the room, stop deliberations. Don't discuss the case
16 while that person is in the room. In other words, your
17 deliberations are only among yourselves. There should not
18 be anyone else in the room when you are discussing this
19 case. Do you understand that, ma'am?

20 JURY FOREPERSON: Yes, sir.

21 THE COURT: And also if we look like we are going
22 fairly late, if any of you feel that we need to call a
23 family member, or a friend, or someone to let them know what
24 you are doing, if you will give us your name, the person's
25 name that you would like for us to call and the phone number

1 that you would want for us to call, we will be glad to get
2 in touch with people for you and let them know what's going
3 on.

4 Any questions, Madam Forelady?

5 JURY FOREPERSON: No.

6 THE COURT: All right, at this point in time I'm
7 going to ask the jury to retire and begin your
8 deliberations. The bailiff will bring you in the exhibits
9 for you.

10 (Whereupon, at 4:06 p.m., the Jury Panel retired
11 to the jury room to begin deliberations)

12 Any objections to my final instructions to the
13 jury, from the State?

14 MS. LESKANIC: Not from the State.

15 THE COURT: Any from the defense?

16 MR. SLADE: None from us.

17 THE COURT: All right, we will be in recess until
18 such time as the verdict might be reached. Thank you very
19 much.

20 (Whereupon, at 4:07 p.m., proceedings were
21 recessed, pending the verdict of the jury panel)

22 (Whereupon, at 4:40 p.m., proceedings were
23 reconvened)

24 THE COURT: I'll need to see Mr. Slade and Ms.
25 Leskanic.

1 (Jury Note marked as Court's Exhibit No. 2 for
2 identification)

3 THE COURT: I have received a question from the
4 jury. I'm going to ask the jury to be brought back in the
5 courtroom, please.

6 (Whereupon, at 4:43 p.m., the jury panel returned
7 to the courtroom)

8 THE COURT: The record will reflect the jury has
9 returned to the courtroom.

10 I have received an inquiry from the jury "can we
11 get written copies of statutes for self-defense, murder, and
12 voluntary manslaughter?"

13 Let me explain to you that while there is a
14 statute for the offense of murder and voluntary
15 manslaughter, that the defense of self-defense is a common
16 law defense, which means there is no statute for that
17 defense. It's one that's been established over the years
18 through case decisions that go on in our court systems, and
19 so there is no statute I could give you for that. And I'm
20 always reluctant to give a jury a portion of what you have
21 asked for and not the rest of it, so what I propose that I
22 do, Madam Forelady, is that I go back over my charge on
23 these points with you. Would that be satisfactory, do you
24 believe, to the jury?

25 JURY FOREPERSON: I think so, Your Honor.

1 THE COURT: All right. Let me go back over these
2 things with you and perhaps that will give you the answers
3 that you might want.

4 I'm going to start with my charge where I charged
5 you concerning the offenses that were alleged.

6 First of all for murder. The defendant has been
7 charged with the offense of murder.

8 The State must prove beyond a reasonable doubt
9 that the defendant killed another person with malice
10 aforethought.

11 Now, malice is hatred, it's ill will, or it's
12 hostility towards another person. It's the intentional
13 doing of a wrongful act without just cause or excuse and
14 with an intent to inflict an injury or under circumstances
15 that the law will infer an evil intent.

16 Now, malice aforethought does not require that
17 malice exist for any particular length of time before the
18 act is committed, but malice must exist in the mind of the
19 defendant just before and at the time the act is committed.
20 Therefore, there must be a combination between the previous
21 evil intent and the commission of the act.

22 Malice aforethought can be expressed or inferred.

23 Now, those terms expressed or inferred don't mean
24 different kinds of malice. I have already explained what
25 malice is, but merely the manner in which malice can be

1 shown to exists; that is neither by direct evidence or by
2 inference or circumstantial evidence from the facts and
3 circumstances which are proven.

4 Express malice is shown when a person speaks words
5 which express ill will or hatred for another person, or when
6 the person prepares beforehand to do the act which is later
7 accomplished. For example, lying in wait for a person or
8 any other act of preparation going to show that the deed was
9 within the defendant's mind would be express malice.

10 Now, the lesser included charge is voluntary
11 manslaughter. And if you find the State has failed to prove
12 beyond a reasonable doubt that the defendant committed
13 murder, you may consider whether the State has proven beyond
14 a reasonable doubt that the defendant committed voluntary
15 manslaughter.

16 To prove voluntary manslaughter, the State must
17 prove beyond a reasonable doubt that the defendant took the
18 life of another in the sudden heat of passion, based on
19 sufficient legal provocation.

20 Both the heat of passion and sufficient legal
21 provocation must be present at the time of the killing to
22 constitute voluntary manslaughter.

23 Sudden heat of passion for a time -- excuse me.
24 Sudden heat of passion may for a time affect a person's
25 self-control and temporarily disturb a person's reason.

1 The sudden heat of passion must be the type which
2 would make an ordinary person unable to coolly reflect on
3 his actions and would produce an uncontrollable impulse to
4 do violence.

5 Sufficient legal provocation must be that type
6 that would make a person of ordinary reason and caution
7 become enraged and to lose control temporarily.

8 The provocation needed for a voluntary
9 manslaughter must come from some act related to or an act of
10 the victim.

11 However, the mere fact that a person is afraid is
12 not sufficient to constitute voluntary manslaughter.

13 In order to constitute sudden heat of passion upon
14 a sufficient legal provocation, the fear must be the result
15 of sufficient legal provocation and cause the defendant to
16 lose control and create an uncontrollable impulse to do
17 violence.

18 Succinctly stated, to constitute voluntary
19 manslaughter the defendant's fear must manifest itself in an
20 uncontrollable impulse to do violence.

21 Words alone, however vulgar or insulting, are not
22 enough legal provocation -- not enough to be legal
23 provocation.

24 Where death is caused by the use of a deadly
25 weapon, the words must be accompanied by some overt

1 threatening act which could have produced the heat of
2 passion.

3 The exercise of a legal right, no matter how
4 offensive it might be to someone else, is not sufficient
5 provocation for voluntary manslaughter. If the heat of
6 passion has cooled or if there is enough time between the
7 provocation, if any, and the killing for the heat of passion
8 for a reasonable person to cool, the killing would not be
9 voluntary manslaughter.

10 In deciding whether a reasonable person would have
11 had enough time to cool off, you should consider all of the
12 circumstances surrounding the killing.

13 You may consider the nature of the provocation, if
14 any; the defendant's mental and physical state; and the
15 circumstances and relationship that may have existed between
16 the parties.

17 Now, the defense of self-defense.

18 The defendant has raised the defense of
19 self-defense. Self-defense is a complete defense and if
20 it's established you must find the defendant not guilty.

21 The State has the burden of disproving
22 self-defense by proof beyond a reasonable doubt.

23 If you have a reasonable doubt of the defendant's
24 guilt after considering all of the evidence, including the
25 evidence of self-defense, then you must find the defendant

1 not guilty.

2 On the other hand, if you have no reasonable doubt
3 of the defendant's guilt after considering all of the
4 evidence, including the evidence of self-defense, you must
5 find the defendant guilty.

6 Now, the following are the elements necessary to
7 establish a defense of self-defense:

8 First of all, the defendant must be without fault
9 in bringing on the difficulty.

10 If the defendant's conduct was the type which was
11 reasonably calculated to and did provoke a deadly assault,
12 the defendant would be at fault in bringing on the
13 difficulty and would not be entitled to an acquittal based
14 upon self-defense.

15 Self-defense is not available to a person who uses
16 language which is so contemptuous that a reasonable person
17 would expect it to bring on a physical encounter and which
18 did actually contribute to a physical encounter.

19 The second element of self-defense is that the
20 defendant was actually in imminent danger of death or
21 serious bodily injury, or that the defendant actually
22 believed that he was in imminent danger of death or serious
23 bodily injury.

24 If the defendant was actually in imminent danger,
25 it must be shown that the circumstances would have warranted

1 a person of ordinary firmness and courage to strike the
2 fatal blow to prevent death or serious bodily injury.

3 If the defendant believed he was in imminent
4 danger of death or serious bodily injury, it must be shown
5 that a reasonably prudent person of ordinary firmness and
6 courage would have had that same belief.

7 In deciding whether the defendant actually was or
8 believed he was in imminent danger of death or serious
9 bodily injury, you, the jury, should consider all of the
10 facts and circumstances surrounding the event, including the
11 physical condition and characteristics of the defendant and
12 the victim.

13 The defendant does not have to show that he was
14 actually in danger. It's enough that a defendant believed
15 he was in imminent danger and a reasonably prudent person of
16 ordinary firmness and courage would have had that same
17 belief in those circumstances.

18 The defendant has the right to act on appearances,
19 even though the defendant's beliefs may have been mistaken.

20 It's up for you to decide whether the defendant's
21 fear of immediate danger or death or serious bodily injury
22 was reasonable and would have been felt by an ordinary
23 person in the same situation.

24 Words accompanied by hostile acts may, depending
25 on the circumstances, establish self-defense. The relative

1 sizes, ages, weights of the defendant and the victim should
2 be considered, or may be considered, in deciding the
3 apparent or actual need for force in self-defense and the
4 amount of force that might be needed.

5 Threats made by the victim may be considered in
6 determining whether the defendant actually was or believed
7 that he was in imminent danger.

8 The final thing that you should consider or
9 element that you should consider in the defense of
10 self-defense is that the defendant had no other probable way
11 to avoid the danger or death or serious bodily injury than
12 to act as the defendant did in this particular instance.

13 The defendant has no duty to retreat, however, if
14 by doing so the danger of being killed or suffering serious
15 bodily injury would increase because of that retreat.

16 A person cannot be required to make an exact
17 calculation as to the degree or the amount of force which
18 may be needed to avoid death or serious bodily harm.

19 Therefore, in self-defense the defendant has the right to
20 use the force that's needed to avoid the death or serious
21 bodily harm.

22 The force used in self-defense does not have to be
23 limited to the degree or the amount of force used by the
24 victim. The defendant has the right to use so much force as
25 appeared to be necessary for complete self-protection and

1 which a person of ordinary reason and firmness would have
2 believed to be needed to prevent death or serious bodily
3 harm.

4 Once the right to act in self-defense arises, a
5 defendant is not required to wait until his adversary is on
6 equal terms or until his adversary has taken any particular
7 action in order for the person defending themselves to take
8 actions in self-defense.

9 That's the charge on those things that you have
10 asked about; murder, voluntary manslaughter, and
11 self-defense.

12 I'm going to ask you at this time that you return
13 to the jury room and resume your deliberations. Thank you
14 very much.

15 (Whereupon, at 4:55 p.m., the jury returned to the
16 jury room to continue deliberations)

17 THE COURT: Any objections to my response to the
18 inquiry, from the State?

19 MS. LESKANIC: None, Your Honor.

20 THE COURT: Any from the defense?

21 MR. SLADE: None from us, Your Honor.

22 THE COURT: All right, the question itself would
23 be made a Court's Exhibit and part of the record, and we
24 will be in recess in this case until the verdict is reached.

25 (Whereupon, at 4:55 p.m., proceedings were

1 recessed, pending the verdict of the jury panel)

2 (Whereupon, at 6:52 p.m., proceedings were
3 reconvened)

4 THE COURT: All right, I have been informed by the
5 bailiff that the verdict has been reached.

6 Is the State ready to receive the verdict?

7 MS. LESKANIC: Yes, Your Honor.

8 THE COURT: Is the defense ready to receive the
9 verdict?

10 MR. SLADE: We are, Your Honor.

11 THE COURT: All right. Ladies and gentlemen those
12 of you who are in the gallery watching, let me caution you,
13 the court doesn't tolerate emotional outbursts in the
14 courtroom. If you have difficulty in controlling your
15 emotions at a time like this, it might be a good idea that
16 you step outside while the verdict is being taken. Any
17 outburst would be treated as contempt of court and you could
18 be taken into custody and sentenced to jail time, should
19 that occur. So, again, I'm going to caution you, if you
20 have trouble in controlling your emotions at a time like
21 this, step outside the courtroom and we won't have a
22 problem. And, of course, you will be given the information
23 in a manner that won't result in some problem for you.

24 Does anyone want to leave the courtroom? This is
25 your opportunity to do so.

1 (No response).

2 THE COURT: All right, if you stay in here, you
3 are expected to be able to control your emotions.

4 Bring the jury in.

5 (Whereupon, at 6:54 p.m., the jury returned to
6 open court to report its verdict)

7 THE COURT: Madam Forelady, I have been told by
8 the bailiffs that a verdict has been reached. Is that true?

9 JURY FOREPERSON: Yes, sir.

10 THE COURT: Pass the form to the bailiff, please.
11 Thank you.

12 All right, Madam Clerk, you may publish the
13 verdict.

14 THE CLERK: Indictment 2010-GS-11-607, the State
15 of South Carolina versus Hayword Tony Chambers, we, the
16 jury, unanimously find the defendant Hayword Chambers
17 concerning the offense of murder not guilty.

18 As to the lesser included offense of voluntary
19 manslaughter, we, the jury, unanimously find the defendant
20 Hayword Tony Chambers guilty.

21 Signed by foreperson Gena Henderson.

22 Ladies and gentlemen of the jury, if this is the
23 verdict of you all, please indicate by raising your right
24 hand.

25 (Whereupon, all jurors raised their hand)

1 THE CLERK: Thank you.

2 THE COURT: Anything further from the State before
3 I release the jury?

4 MS. LESKANIC: No, Your Honor. Thank you.

5 THE COURT: Anything further from the defense?

6 MR. SLADE: Nothing from us, Your Honor.

7 THE COURT: All right. Ladies and gentlemen, this
8 completes your work on this case and I want to thank you
9 very much for your attention to your duties in this case.

10 Let me mention to you throughout the trial I have
11 told you not to discuss the case with anyone. I will tell
12 you you now have the right to do so. You also have the
13 right not to do so. A citizen owes no one an explanation
14 for your service on the jury panel. You are not required to
15 discuss this case, unless you choose to do that.

16 Now, if someone harasses you or bothers you
17 concerning your participation on this jury, please report
18 that to the clerk's office and the appropriate action will
19 be taken.

20 Now, do you have their documentation?

21 THE CLERK: Yes, sir.

22 THE COURT: All right, she's going to give you
23 some information. I will let her tell you about that and
24 then she will be calling the roll and you will be free to
25 go. Again, thank you for your attention to your duties in

1 this case.

2 (Whereupon, the jury panel was discharged from
3 further service)

4 (Off the record)

5 (Back on the record)

6 THE COURT: Anything further from the State before
7 we go into sentencing?

8 MS. LESKANIC: No, Your Honor.

9 THE COURT: Defense?

10 MR. SLADE: No, sir.

11 THE COURT: All right. Do you want to go -- the
12 documents, I think there are some things that need to be
13 signed before we can go forward.

14 (Off the record)

15 (Back on the record)

16 THE COURT: All right, the defendant can approach
17 the bar.

18 All right, Mr. Chambers, having been found guilty
19 of voluntary manslaughter by a jury of your peers, at this
20 time I'm going to hear from your attorney. When he's
21 finished, I'll give you an opportunity to speak. If there
22 are those who are here who would like to speak on your
23 behalf, I'll be more than happy to hear from them as well.

24 Mr. Slade?

25 MR. SLADE: Thank you, Your Honor.

1 Your Honor, first I would like to say that
2 manslaughter is an imperfect self-defense case. And I think
3 that's exactly the situation we find ourselves in.

4 You have heard a lot of the background information
5 on Hayward. I think that -- I think the fundamental issue
6 in this case, the wrongdoing, is the gross stupidity of
7 taking a gun into a place like 311 Sarratt Avenue, knowing
8 the mixture of crack cocaine, three o'clock in the morning.
9 And, you know, if they're going to be violent people hanging
10 around, that's likely to be a place where they are going to
11 be. I'm satisfied that Hayward knows that and I'm sure in a
12 minute or two he's going to address that for you, but, Your
13 Honor, what I really think is important to say is that he
14 got to that point in life, you know, just living a kind of a
15 low key life. He wasn't getting in any kind of trouble,
16 other than his crack use. I have talked to Hayward about it
17 in the very beginning of my representation of him. I didn't
18 start out representing him. He had someone else.

19 THE COURT: I understand.

20 MR. SLADE: But when I started, I talked to him
21 about it and he has told me, and I think Ms. Poole was here
22 earlier, who he was living with, has confirmed this, and I
23 think she told Ms. Leskanic this, that Hayward wasn't a
24 crackhead. He could use it like some people use alcohol.
25 I'm not saying that to justify anything about going -- you

1 know, going to this place at three o'clock in the morning.
2 I just didn't want you to think, and I'm hoping that some of
3 the testimony about what he had done during the time he was
4 unemployed can show that as well, but, you know, it wasn't
5 like he was living quite the same lifestyle or the same
6 lifestyle as Ms. Byers, or Ms. Davis, or some of those
7 folks. He had worked. He came down here to work. When he
8 got laid off and, you know, a lot of people find themselves
9 in that position. There might have been other things he
10 could do, but he was staying at home, working, cooking --
11 excuse me, cooking, taking care of the baby. And I went
12 through a fairly extensive thing with him in preparation for
13 his testimony, you know, assuming that he was going to be
14 cross-examined when we say, you know, you are staying home
15 taking care of the baby, on some of those issues, but he
16 took her to the doctors, did all those kind of things. So
17 we are dealing with somebody, Your Honor, who in most parts
18 of his life has been responsible. He has done the right
19 things.

20 He has two children who are here, who have been
21 here most of the week, and there were a couple of things
22 that he had done for them, even though he has been in jail
23 pretty much the whole time. I'm sure we did a bond hearing
24 in front of you. I think we done a bond hearing in front of
25 everybody that's in the circuit at some point, but he was

1 concerned about one of his children who had done something
2 that was wrong. He's in jail. Their mom has moved
3 somewhere.. I'm not sure he knows where they are.

4 THE DEFENDANT: Back in New York.

5 MR. SLADE: Back in New York.

6 And so he had gotten to know the people on staff
7 at the detention center. And basically what they did for
8 his daughter was put her through one of those Scared
9 Straight things. So he had, at least down there when he was
10 there, had established enough of a rapport with the jail
11 staff that they brought her in. She thought it was just an
12 ordinary visit. They put her in an orange jumpsuit. And I
13 think what Hayword told me was they tried to scare the
14 bejesus out of her. So he has tried throughout all this to
15 at least exert a very little parental influence that he
16 could, but I'm just telling you that so you will know he
17 just hadn't quit or given up.

18 And, you know, nothing can take away the pain and
19 heartache that that three or four minutes at Sarratt Avenue
20 is going to cause for everybody, but I think Hayword
21 recognizes that, you know, he put himself in a position
22 where, you know, when stuff starts going wrong in that three
23 or four minutes, you don't have much margin for error.

24 And, Your Honor, I just would hope that when you
25 sentence him, that we can look at this as an imperfect

1 self-defense case.

2 We, through this trial and through negotiations
3 leading up to this trial, had rejected manslaughter offers,
4 as well as I attempted to reject the manslaughter charge,
5 and that's on me. That's a -- that's a strategic or a
6 tactical move. Obviously it was an error on my part to
7 reject that, but that's -- that's my thing. So I just
8 wanted you to have at least a perspective on him.

9 And if he has anything to say, this is the time.

10 THE COURT: All right. Mr. Chambers, it's your
11 opportunity to speak to the court. I'll caution you your
12 remarks should be addressed to the court. Of course,
13 everyone in the courtroom can hear you.

14 THE DEFENDANT: Well, I just want to tell the
15 court that I'm very, very sorry this incident occurred. It
16 really wasn't that initiated by me, but the jury seen
17 otherwise.

18 I want to apologize to the family of Morgan, and I
19 want them to know that I am remorseful. I don't wish death
20 on anyone, and I hope that somewhere in their heart find it
21 to forgive me for what happened, but things turned out the
22 way they did. I'm here and he's not and I'm very sorry for
23 that, but under the circumstances I did what I felt I had to
24 do at the time.

25 I don't know what else to say, Your Honor. I'm a

1 little at a loss right now.

2 THE COURT: I understand.

3 All right, now, I know he has family here. Does
4 any of them wish to speak?

5 MR. SLADE: I haven't spoken to them, Your Honor.

6 THE COURT: Check with them and see before we go
7 forward.

8 (Off the record)

9 (Back on the record)

10 THE COURT: Yes, sir, I've met you already, but
11 you need to state your name for the record.

12 JAMES WADE: James Wade.

13 THE COURT: Yes, sir.

14 JAMES WADE: We've had a lot of big family at one
15 time and now we are down to a very small family.

16 Now, his children right now live next door to me
17 with my aunt, who is the last sibling of our brother -- of
18 our parents, which was twelve of us. She's eighty-nine
19 years old and she can't take care of them, and I'm doing the
20 best I can. I'm sixty years old myself and I work hard. I
21 still go to school and everything and it's hard for me to do
22 this, with their mother leaving them, you know. And I don't
23 have no -- I have already raised my children. My children
24 are grown and they are in parts of Massachusetts, where I
25 was born and raised.

1 THE COURT: Uh-huh.

2 JAMES WADE: My parents were raised in Blacksburg,
3 South Carolina. They all migrated to north when they were
4 young to work and then they started passing away.

5 Then when my aunt next door retired, she moved
6 back down here, and about twelve years ago I moved back down
7 here.

8 We have cousins that are still in different parts
9 of the country, you know, on the East Coast, D.C., North
10 Carolina, and other places that really it's hard for them to
11 come assist us with them.

12 THE COURT: I understand.

13 JAMES WADE: We're just hoping that he's not taken
14 away from his children.

15 THE COURT: I understand. Thank you, sir.

16 All right, ma'am, if you will step up and I need
17 your name, please.

18 HALEY CHAMBERS: Haley Chambers.

19 THE COURT: Yes.

20 HALEY CHAMBERS: I'm -- I'm seventeen years old
21 and my father has been in my life my whole life. And it
22 would really hard for me, you know, not to see my dad home
23 with me. He's -- he's a good dad. He's a good person and
24 something happens, I'm sorry.

25 And my dad always wanted me to -- he wanted to see

1 me graduate. This is my last year of high school and next
2 year I will be eighteen and I would love for me dad to see
3 me graduate. That's all I have to say.

4 THE COURT: Thank you, ma'am.

5 All right. Thank you.

6 MR. SLADE: Thank you, Your Honor.

7 THE COURT: Ms. Leskanic.

8 MS. LESKANIC: Just briefly, Your Honor.

9 You have heard all the facts of the case.

10 I don't think I need to remind the court that just
11 the reputation in the community, not the first incident with
12 a gun. I would just ask the court to take that into
13 consideration at the time of the sentencing.

14 THE COURT: I think during the trial it was
15 apparent this gentleman did not have a prior record, is that
16 correct?

17 MS. LESKANIC: That is correct, Your Honor.

18 MR. SLADE: That's correct.

19 THE COURT: Okay.

20 MS. LESKANIC: And then the victim's sister would
21 like to address Your Honor.

22 THE COURT: Your name is?

23 ANGIE MORGAN DAVIS: Angie Morgan Davis.

24 THE COURT: Yes, ma'am.

25 ANGIE MORGAN DAVIS: On behalf of the family and

1 my late brother and with certain knowledge that my words
2 will not adequately -- will not be adequate to convey our
3 thoughts and emotions at this difficult time or to properly
4 advocate for Todd at this last legal opportunity, I would
5 like to share a few thoughts.

6 Todd loved working in the yard. He loved
7 gardening. Just working with his hands, anything really. I
8 know that if you asked anyone he ever worked for that they
9 would tell you that he was a good worker and a hard worker.
10 He handled the difficult tasks without complaints. If there
11 was ever anybody I have known in my lifetime who was not for
12 money it was Todd. Todd would do anything for you; dig a
13 ditch, cut firewood all day. Just about anything. It
14 didn't matter how hard it was. All you had to do was just
15 treat him decently and give him a meal.

16 His term of endearment for our mother was more
17 chow. She won't ever be able to hear those words again from
18 his lips. Todd loved scrambled eggs with salmon. He loved
19 NFL football and was an Oakland Raiders fan. Todd loved
20 fishing. He adored children and children loved him back.

21 When my youngest daughter, who is now nineteen,
22 could barely walk and talk, Todd used to take her daily for
23 a walk to a creek near our home. This went on for a number
24 of years. I thought she had forgotten about it. She
25 recently said to me "momma, when I was little and Uncle Todd

1 used to walk me to the creek all the time, he would say to
2 me when I get old, you are going to have to walk me around
3 and I will need you. And I would also say you bet I will
4 Uncle Todd." Momma I just realized I'll never get that
5 opportunity.

6 As you deal with our frustration and anger in
7 whatever sentence this court may hand down, I can only pray
8 that you with certain knowledge at least understand that a
9 lot of people are left to feel and deal with the terrible
10 pain caused by Mr. Chambers acts for the rest of our lives.

11 THE COURT: Thank you, ma'am.

12 Any other members of the family wish to be heard?

13 MS. LESKANIC: Ms. Willingham is speaking with his
14 mother, Your Honor.

15 THE COURT: I see that.

16 (Off the record)

17 (Back on the record)

18 MS. LESKANIC: That's all, Your Honor. Thank you.

19 THE COURT: All right. Thank you.

20 The time that he has already served, do we have an
21 agreement on how much time that is, or --

22 MR. SLADE: I don't think it would be hard to
23 figure out, Your Honor, but I'm not certain what it is. He
24 went in jail on November the 28th of 2009.

25 THE COURT: Has he been there continuously since

1 then?

2 MR. SLADE: No, sir, he bonded out.

3 Do you remember the date?

4 THE DEFENDANT: February 12th on home detention.

5 MR. SLADE: February the 12th.

6 THE DEFENDANT: 2011.

7 MR. SLADE: 2011.

8 THE COURT: Is somebody taking notes that you can
9 do the math on this? I prefer to put down the exact number
10 of days of service so we don't have a controversy about it.

11 MR. SLADE: Sure.

12 November the 28th, 2009 he went into jail, and I
13 know he got out in February 11th.

14 MS. LESKANIC: It looks like February the 12th of
15 2011.

16 MR. SLADE: All right.

17 And then he was revoked on June the 26th, I
18 believe, in front of Judge Miller. It would have been
19 what --

20 MR. KENDALL: Is that 2011?

21 MR. SLADE: Well, don't get stuck on the 26th. It
22 was June something. June 30th of 2011.

23 And then he has been incarcerated continuously
24 ever since.

25 THE COURT: Well, let's get somebody to do the

1 math on that for me.

2 (Off the record)

3 (Back on the record)

4 THE COURT: I would like to get an agreement
5 tonight, if we can, so that all parties agree.

6 MR. SLADE: Sure.

7 THE COURT: So let's see if we can get it.

8 Is 970 days credit?

9 (Off the record)

10 (Back on the record)

11 THE COURT: All right, we've got an agreement it's
12 970, if the State may agree to that. That's what the jail
13 says.

14 MS. LESKANIC: I'm just --

15 For the record, what I'm showing is he was
16 arrested on November 28th of 2009.

17 He made bond on February 12th of 2011.

18 His bond was then revoked on June 30th of 2011,
19 and he's been incarcerated.

20 And today is December the 7th of 2012.

21 THE COURT: Do you agree to 970 days credit?

22 MS. LESKANIC: Yes, Your Honor.

23 THE COURT: Okay. Then I'll put that on the
24 sheet.

25 MS. LESKANIC: Thank you, Your Honor.

1 THE COURT: All right, and sentencing is always
2 it's difficult thing for the court. And, of course, there
3 is nothing that will bring the decedent back no matter what
4 sentence is rendered.

5 I have taken into consideration the fact that Mr.
6 Chambers spent fifty-three years, or up until today, without
7 a conviction on his record. Of course, this event occurred
8 a couple years ago, but still he lived a life virtually
9 without any kind of incident with the law up until this
10 occurred.

11 What happened on this occasion is certainly
12 unfortunate.

13 I do find that the jury's verdict is justified and
14 that there is -- I understand why they have done what they
15 have done.

16 I have also noted Mr. Chambers is fifty-three
17 years of age. He's getting up in age and has relatively
18 short life expectancy, when compared with the remainder of
19 the population.

20 I try to take all those things into consideration,
21 but also the taking of a life, a penalty must be paid when a
22 jury reaches a verdict, such as they have in this case.

23 Based on all of those factors, it's the sentence
24 of this court, Mr. Chambers, that you be confined to the
25 State Department of Corrections for a period of fifteen

1 years.

2 I have given you credit for 970 days.

3 I have made a finding that the crime did not
4 involve criminal sexual conduct or any additional violent
5 crimes. That maybe of some assistance to you later on,
6 should you apply for parole.

7 Good luck to you, sir.

8 THE DEFENDANT: Thank you, Your Honor.

9 MR. SLADE: Thank you, Your Honor.

10 THE COURT: Court is adjourned.

11 MS. LESKANIC: Thank you, Your Honor.

12 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for CHEROKEE County, South Carolina, on the date of DECEMBER 4TH, 2012 THRU DECEMBER 7TH, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

JUNE 21, 2013

Michael R. Watts

Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF GENERAL SESSIONS
SEVENTH CIRCUIT

The State,)
)
vs.)

Indictment No. 2010-GS-11-0607

Hayword Tony Chambers,)
)
Defendant.)
_____)

DEFENDANT'S REQUEST TO CHARGE NO.

**A HOMICIDE IS EXCUSED WHERE THE DEFENDANT IS
ACTING LAWFULLY AND THE GUN FIRES BY ACCIDENT**

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 DEC 10 AM 11 37
BRANDY W. MCBEE

Our law provides that in circumstances where the Defendant has the right to arm himself in self-defense, and his weapon fires by accident, the Defendant is not guilty. If you find that the State has not disproved beyond a reasonable doubt that the Defendant had the right to arm himself because of a threat to his safety created by the decedent, and that the gun fired accidentally, you must find the Defendant not guilty.

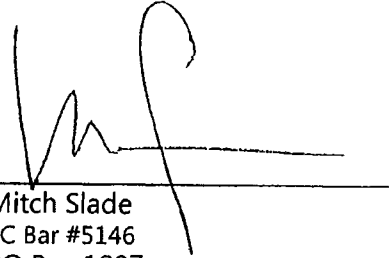
SUPPORTING LAW

"The trial judge also erred in failing to charge that if appellant lawfully armed herself in self-defense because of a threat to her safety created by the decedent, and the gun accidentally discharged, the jury would have to find her not guilty. The trial judge's traditional self-defense charge which focused only on the right to *use* the weapon in self-defense was inadequate."

State v. McCaskill
300 S.C. 256, 259
387 S.E.2d 268, 270 (1990)

"[A] homicide is excused when caused by the discharge of a gun...where the accused is lawfully acting in self-defense and the victim meets death by accident, through the unintentional discharge of a gun or the like."

State v. Bussis
334 S.C. 256, 260
513 S.E.2d 104, 106-107 (1999)

A handwritten signature in black ink, appearing to read 'MS', is written over a horizontal line.

Mitch Slade
SC Bar #5146
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Attorney for Defendant

November 28, 2012
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF GENERAL SESSIONS
SEVENTH CIRCUIT

The State,)

vs.)

Hayword Tony Chambers,)
Defendant.)

Indictment No. 2010-GS-1-0607

DEFENDANT'S REQUEST TO CHARGE NO.

FILED IN OFFICE OF
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CHEROKEE COUNTY, S.C.
BRANDY W. MCBE
2012 DEC 10 AM 11:37

THE DECEDENT CONTINUED TO ADVANCE ON A DRAWN GUN

As I have told you, one element of self-defense requires that either the Defendant must actually believe he is in danger of sustaining serious bodily injury or losing his life, or the Defendant must actually have been in such immediate danger.

I charge you that the law provides that when the Defendant is evaluating whether he is in immediate danger of serious bodily injury, the Defendant has a right to consider that the decedent is continuing to advance toward him even after the Defendant has drawn his pistol.

SUPPORTING LAW

See *State v. Dickey*¹: "[W]ords accompanied by hostile acts may, depending on the circumstances, establish a plea of self-defense (cite omitted)." We believe such circumstances were present in this case.² The *Dickey* court then lists the circumstances it is referring to, which include "[The decedent] began advancing toward [Defendant] quickly with the purpose of assaulting him, that he continued advancing toward [Defendant] after [Defendant] pulled the gun...."

And see *State v. Day*²: "...a trial judge should specifically tailor the self-defense instruction to adequately reflect the facts and theories presented by the Defendant."

November 28
October 2012

Spartanburg, South Carolina

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¹ *State v. Dickey*, 394 S.C. 491, 501, 716 S.E.2d 97, 102 (2011) (emphasis added)

² *State v. Day*, 241 S.C. 410, 418, 535 S.E.2d 431, 435 (2000)

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF GENERAL SESSIONS
SEVENTH CIRCUIT

The State,)
vs.)
Hayword Tony Chambers,)
Defendant.)

Indictment No. 2010-GS-11-0607

DEFENDANT'S REQUEST TO CHARGE NO.

**WORDS ACCOMPANIED BY HOSTILE ACTS MAY
JUSTIFY THE USE OF DEADLY FORCE**

Our law provides that in certain circumstances, the decedent's words accompanied by his hostile acts, will justify the Defendant's use of deadly force. You must decide from the evidence presented in this case if such circumstances existed. If they did, then the decedent's words, accompanied by his hostile acts, will permit the Defendant to use deadly force against the decedent.

SUPPORTING LAW

*State v. Dickey*¹: "[W]ords accompanied by hostile acts may, depending on the circumstances, establish a plea of self-defense." *State v. Fuller*, 297 S.C. 440, 444, 377 W.E.2d 328, 331(1989) (quoting *State v. Harvey*, 220 S.C. 506, 68 S.E.2d 409 (1951)).

November 28
October 28, 2012

Spartanburg, South Carolina



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¹ *State v. Dickey*, 394 S.C. 491, 501, 716 S.E.2d 97, 102 (2011).

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF GENERAL SESSIONS
SEVENTH CIRCUIT

The State,)
vs.)

Indictment No. 2010-GS-11-0607

Hayword Tony Chambers,)
Defendant.)

DEFENDANT'S REQUEST TO CHARGE NO.

**THE DEFENDANT HAS A RIGHT TO ACT ON
APPEARANCES, EVEN IF HE IS MISTAKEN**

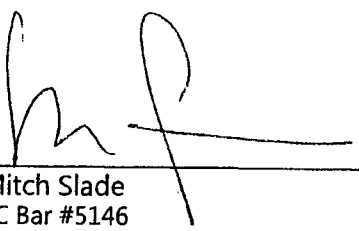
The Defendant has a right to act on the circumstances as they appear to him. He may be mistaken in his perception of the danger and still be justified in using deadly force. As long as he acts as a person of ordinary coolness and courage would have acted in the circumstance, the law of self-defense allows him to act on appearances..

SUPPORTING LAW

In *State v. Rash*¹, the Supreme Court upheld a charge which stated: "And as I stated to you, one may act on appearances. **He may be mistaken.** The law does not hold him to a refined assessment of the danger, provided, of course, he acted as the person of ordinary coolness and courage would have acted or should have acted in meeting the appearance of danger."

November 28
October 2012

Spartanburg, South Carolina



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¹ *State v. Rash*, 182 S.C. 42, 188 S.E. 435, 438 (1936) (bold added) (emphasis in original).

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF GENERAL SESSIONS
SEVENTH CIRCUIT

The State,)
vs.)
Hayword Tony Chambers,)
Defendant.)

Indictment No. 2010-GS-11-0607

DEFENDANT'S REQUEST TO CHARGE NO.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 OCT 10 PM 11 37
BRANDY W. MCREE

**NO DUTY TO RETREAT, IF RETREAT WOULD INCREASE THE
DANGER TO DEFENDANT OR IF THERE IS NO OTHER
PROBABLE MEANS TO AVOID THE DANGER**

The law does not require the Defendant to retreat if he has no other probable means of avoiding the danger of sustaining serious bodily injury or death than to act as he did.

The Defendant has no duty to retreat if by doing so he would increase his danger of suffering serious bodily injury or being killed.

SUPPORTING LAW

*State v. Dickey*¹: 'A defendant is not required to retreat if he has "no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in [the] particular instance" (cite omitted).'

*State v. Fuller*²: "Finally, the trial judge erred in not charging that an individual had no duty to retreat if by doing so he would increase his danger of being killed or suffering serious bodily injury. Our court approved such a charge in *State v. Jackson*, 227 S.C. 271, 87 S.E.2d 681 (1955) and *State v. Hardin*, 114 S.C. 280, 103 S.E. 557 (1920)."

November 28
October 28, 2012

Spartanburg, South Carolina

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¹ *State v. Dickey*, 394 S.C. 491, 503, 716 S.E.2d 97, 102 (2011).

² *State v. Fuller*, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989).

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF GENERAL SESSIONS
SEVENTH CIRCUIT

The State,)
vs.)
Hayword Tony Chambers,)
Defendant.)

Indictment No. 2010-GS-11-0607 - Murder

MEMORANDUM

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 DEC 10 AM 11 37
BRANDY W. MCBRIDE

PROOF OF PRIOR BAD ACT MUST BE
BY CLEAR AND CONVINCING EVIDENCE

"Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations to be established."

State v. Fletcher
379 S.C. 17, 24
664 S.E.2d 480, 483

In this incident report, there is a box labeled: DATE/TIME OF ARREST. It is blank, leading to the inference that no arrest was made, especially since the box immediately beside it, labeled: DATE/TIME OF OFFENSE is filled out.

The body of the incident report records that the Investigating officer had another officer talk with the subject (the accused) about the complainant's allegation. Apparently upon receiving that officer's report from the accused, along with the investigator's interview with the complainant, the investigator decided there was no probable cause for an arrest warrant to be issued.

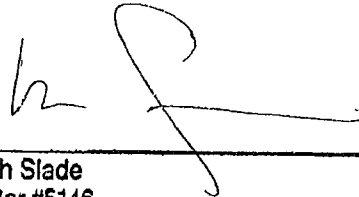
"Such proof [clear and convincing evidence] is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal."

State v. Fletcher
379 S.C. 17, 24

**UNDER THE COMMON SCHEME OR PLAN EXCEPTION,
A CLOSE DEGREE OF SIMILARITY IS REQUIRED**

"A close degree of similarity establishes the required connection
between the two acts and no further 'connection' must be shown."

State v. Wallace
384 S.C. 428
683 S.E.2d 275
(SC, 2009)



December 7, 2012
Spartanburg, South Carolina

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Attorney for Defendant

State of South Carolina)
)
County of Cherokee)
State of South Carolina,)
)
v.)
)
)
Hayword Tony Chambers,)
Defendant.)
_____)

In the Court for General Sessions
Seventh Judicial Circuit

2010-GS-11-607

**State's Memo in Support of the Testimony of
Bradley Douglas**

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 DEC 10 AM 11 37
BRANDY W. MCBEE

This matter comes before the Court upon the State's motion to introduce reply evidence the State seeks to introduce relating to the defendant's brandishing of a firearm during a drug-related incident approximately nine months before the murder in 2009. This testimony is proper for three separate and distinct reasons each of which separately and independently supports the introduction of the evidence. First, the offer of contradictory evidence is proper upon reply. Second, the evidence offered rebuts the Defendants assertion that he was a lawful and peaceful gun owner who possessed a firearm for defensive purposes. Third, the presentation of a firearm in similar circumstances, demonstrates the defendant's intent and a common scheme or plan.

I. Facts Presented at Trial

This case involves the 2009 killing of Hayward Chambers. It appears that the parties agree on the following facts:

- 1) The defendant went by the alias "New York"
- 2) The defendant drove a maroon Volvo station wagon
- 3) The defendant owned a silver pistol
- 4) The defendant served as transportation to various individuals including those involved in the narcotics trade.
- 5) The defendant frequently requires the payment of crack cocaine for providing these rides.

Moreover, during the Defendant's presentation of evidence he offered evidence before the court insinuating he acted to protect "Pookie," the victim's girlfriend. In addition, the defendant himself indicated that he pulled his firearm only as the victim was advancing toward him. Moreover, the defendant made issue of the fact that he was a concealed weapons permit holder and had taken an eight hour class to obtain this classification. Moreover, the defendant testified on direct that he had carried and obtained a firearm in order to protect his family. On cross, this defendant indicated that he had never pulled a firearm on anyone before. Accordingly, the defendant's testimony suggests altruistic intent in his carrying and brandishing his firearm. Specifically, that he is a peaceful person who uses his firearm for defensive purposes.

II. Testimony Offered in Reply

In reply, the State seeks to present the testimony of Brad Eric Douglas relating to prior wrongful acts. In order to be admissible, the State must prove these facts by a preponderance of the evidence. State v. Smith, 300 S.C. 216, 218, 387 S.E.2d 245, 247 (1989). On February 12, 2009, Mr. Douglas alleges that he was assaulted by the defendant in the area of the 200 Block of Floyd Baker Blvd. Mr. Douglas states that on February 12, 2009, he was riding with the defendant in his burgundy station wagon when the defendant told him to get out of his car. Following his discharge from the vehicle, the defendant demanded payment in the form of crack cocaine. Mr. Douglas refused, and the defendant brandished and hit him with a small silver pistol similar to the one used by in the homicide of Hayward Chambers. Mr. Douglas had an abrasion on his forehead. Mr. Chambers claimed in this instance that the altercation was the result of a fight.

The factual consistency between the 2009 assault of Mr. Douglas and Mr. Chambers behavior in the case at bar helps to establish this event by clear and convincing evidence. In both instances, the defendant was being given a ride by the defendant. In both instances, the defendant sought crack cocaine as a payment method for his services. Additionally, the nonpayment for the ride was an issue of aggravation for the defendant. In both instances, the was operating a burgundy Volvo station wagon. In both instances, he produced a small silver handgun against an unarmed victim. Moreover, this claim and its similarities with respect to the pistol and vehicle were documented prior to the 2009 murder.

A. The evidence offered by the State contradicting portions of the Defendant's case is proper upon reply.

The State seeks to offer reply testimony to the court in response to the defendant's claims that his brandishing and carrying a firearm were for the altruistic and legal purposes of the protection of others as part of a larger classification of him as a peaceful and defensive gun owner and that he had not pulled his firearm on anybody in the past. "The admission of reply testimony is a matter within the sound discretion of the trial judge. The admission of testimony which is arguably contradictory of and in reply to earlier testimony does not constitute an abuse of discretion." State v. Stewart, 283 S.C. 104, 106, 320 S.E.2d 447, 449 (1984) (internal citations omitted). South Carolina Courts have allowed rebuttal testimony in a variety of cases to allow the State to offer evidence contradicting claims raised by the defendant in their presentment of evidence.

For example in State v. Huckabee, reply evidence was permitted to contradict a self-defense claim. State v. Huckabee, 388 S.C. 232, 237, 694 S.E.2d 781, 783 (Ct. App. 2010). In this case,

the Defendant testified that he had approached the vehicle and the victim pulled a firearm out of her purse to fire it at the defendant. The Court allowed the State to call this witness for the purpose of offering testimony that she had never owned a purse in her life, and instead used a men's wallet. Id. In reaching this decision, the Court specifically noted the State's testimony, "was not admitted to complete the State's case-in-chief. Furthermore, an abuse of discretion does not occur solely because the reply testimony is contradictory to the previously presented testimony." Huckabee, 388 S.C. at 243, 694 S.E.2d at 786; see also State v. Williams, 222 S.C. 354, 358, 72 S.E.2d 830, 832 (1952) (holding reply proper by the State when the Defendant's wife testified for the defense and was asked on cross-examination about a statement she gave an investigating officer).

In addition, the South Carolina Court of Appeals recently upheld the use of reply testimony in State v. Singleton, 395 S.C. 6, 16, 716 S.E.2d 332, 337 (Ct App. ,2011). In this case, the court found that it was not prejudicial to allow the State to produce a witness to testify to the ownership of jewelry that was found in the possession of the defendant at the time of her arrest after the defendant presented evidence that she owned the same jewelry. Id.

B. The Evidence Offered by the State is Proper under Rule 404(b)

The evidence offered against Mr. Chambers is permissible under South Carolina Rule of Evidence 404(a)(1). Generally, "Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion." SCRE 404(a)(1). However, the State may present evidence to rebut a pertinent trait offered by the accused. Id.

In this instance, Mr. Chambers has offered testimony attempting to demonstrate a peaceful nature. Chambers testified that he possesses a pistol for the protection of his family from a dangerous neighborhood. In addition, he went into great depth explaining the procedure he underwent in obtaining a Concealed Weapons Permit including informing the jury of the length of the class, the appearance of the card. Moreover, when asked if he had ever pointed his firearm at anyone before, he responded that he had not.

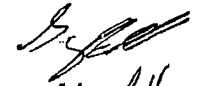
In addition, he characterized his behavior on November 28, 2009 as in defense of e of himself or others. He testified that he remained in Pookie's room at her request to protect her from the victim. Moreover, he indicated that he both brandished and fired the gun only for his own protection while fearing for his life. As such, the defendant has offered himself and his purchasing and carrying of a firearm as evidence of a defensive and peaceful character. In short, the testimony of Brad Douglas will rebut the claims of peacefulness and help establish that the defendant is the type of person willing to pull a firearm to resolve a dispute. Accordingly, the testimony of Brad Douglas provides a proper means of rebuttal.

C. Evidence Offered by Brad Douglas is relevant to show a common scheme or plan.

Similarly, the testimony of Brad Douglas should be relevant to demonstrate the intent of the Hayward Chambers under Rule 404(b) of the South Carolina Rules of Evidence. Rule 404(b) provides, "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." SCRE Rule 404(b). In this instance, the evidence presented by Bradley Douglas will demonstrate his intent as well as a common scheme or plan.

The testimony of Bradley Douglas will help to establish Hayward Chambers' intent to use his firearm as an offensive capacity to obtain the upper hand in a disputer. This follows a common pattern of behavior to that involving Mr. Douglas. In both instances, Mr. Chambers introduced a gun to a verbal altercation in order to gain the upper hand. Moreover, the nonpayment in drugs for transportation remains a common theme in both instances. In short, Mr. Chambers's behavior in his assault on Mr. Douglas demonstrates an intention to use a firearm offensively as opposed to the defensive posture put forth by the Defense.

Finally, the testimony before the court is not more prejudicial than probative. See State v. Braxton, 343 S.C. 629, 634, 541 S.E.2d 833, 836 (2001). The testimony of Mr. Douglas has substantial probative value. The primary issue in this case is whether mental state the defendant had when he shot Hayward Chambers. It is largely uncontested that the defendant Mr. Chambers shot and killed Todd Morgan. However, the parties differ as to whether Mr. Chambers was using his weapon in an offensive or defensive capacity. Moreover, the prejudicial value is limited. The offense against Mr. Douglas was not so horrendous or egregious to as to inflame the passions of the jury, and had no real aggravating factors.

Respectfully Submitted

Michael Kendall

AGENCY I.D.
SCO 0110200INCIDENT REPORT
CITY OF GAFFNEY POLICE DEPT.

CASE NUMBER

2009 1711

NCIC

INQ. ENT0

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. AB Han		YES	NO	YES	NO	Roadway
2.		YES	NO	YES	NO	
3.		YES	NO	YES	NO	
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)					ZIP CODE	WEAPON TYPE
200 Block W Floyd Baker Blvd					29340	Handgun
INCIDENT DATE		24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE / TIME 24 HR. CLOCK
2-12-09		2228		2-12-09	2228	7-12-09 2243 2243
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
See Victim		#1 #2 #3		J S O U		
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
Douglas, Brad Elic		#1 #2 #3		J S O U	B M	
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		
5'11"	190	Blk	BRO	DOB: [REDACTED]		
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
[REDACTED]		[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]
VISIBLE INJURY (VICT. 1)		YES	NO	EXPLAIN		COMPLAINT OF ANY NON-VISIBLE INJURIES: YES NO
[REDACTED]		YES	NO	Bleeding from side of Left Eye		YES NO
VICTIM (NO. 1) USING: ALCOHOL		YES	NO	UNK. DRUGS: YES NO UNK.		TYPE:
TWO-MAN VEH.		ONE-MAN VEH.	DETECTIVE/SPLASMT.	OTHER	ALONE	ASSISTED
SUSPECT		NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE
[REDACTED]		[REDACTED]		B M		
RUNAWAY		[REDACTED]		ETH.	DATE OF BIRTH	HEIGHT WEIGHT HAIR EYES
[REDACTED]		[REDACTED]		N		5'05 200 Blk BRO
WARRANT		FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				
ARREST		ADDRESS		CITY	STATE	ZIP CODE
[REDACTED]		[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]
JAIL		SUBJECT (NO. 1) USING: ALCOHOL		YES	NO	UNK.
[REDACTED]		YES		NO	UNK.	
SUMMONS		DRUGS: YES NO UNK.		TYPE:		TOTAL # ARRESTED
[REDACTED]		YES		UNK.		See Above

On the Above dates and times I state that he was riding in a Burg station wagon on W Floyd Baker. I state the sub then told the I to get out of the sub vehicle. I state that after he got out of the vehicle the sub then got out of the vehicle and pulled out a small handgun. I state that the sub then struck the I in the side of the face w/ the small handgun. I state that he then left the scene and went to the CCDC for help. I was called out to bingo where officer B. Green states that the sub was giving stated to B. Green that the sub was giving the I a ride. Sub states that the I was going to pay the sub for the ride. Sub stated to Green that the I jump out of the car and was not going to pay the I. Sub stated to Green a fight took place and sub went back to the sub vehicle and left the scene.

TYPE (GROUP)	TOTAL VALUE
STOLEN	
DAMAGED	
BURNED	
RECOVERED	
SEIZED	

STATE'S EXHIBIT 32

SUBJECT IDENTIFIED	SUBJECT LOCATED	ACTIVE	ADM CLOSED	ARRESTED UNDER 18	EX-CLEAR UNDER 18
YES	YES	NO	NO	ARRESTED 18 AND OVER	EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE 1 OFFENDER DEATH 2. NO PROSECUTION 3. EXTRADITION DENIED 4. VICTIM DECLINES COOPERATION 5. JUVENILE - NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
SR Sizemore	2-12-09	427	Officer [REDACTED]	02-17-09	465

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee
 STATE VS.
Hayword Tony Chambers

AKA:

Race: BLACK Sex: M Age: 53DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Voluntary Manslaughter [2-30 years]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS110607A/W#: I068954Date of Offense: 11/28/2009S.C. Code § : 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-3-20 of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

KIM LESKAMIC
LESKAMIC, KIM110837
SC Bar#
77213

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 970 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$ 390
TOTAL	\$	\$ 133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: Crime did not involve criminal
sexual conduct or an additional violent
crime

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2135Sentence Date: 12/7/12

ROA_758

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHEROKEE COUNTY
Court of General Sessions

Roger L. Couch, Circuit Court Judge

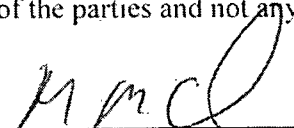
Case No. 2010-GS-11-00607

The State of South Carolina..... Respondent,
v.
Hayword Tony Chambers..... Appellant.

CERTIFICATION OF COUNSEL

Pursuant to rule 210(g), SCACR, I certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By:


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ATTORNEYS FOR APPELLANT

Columbia, South Carolina
This 6th day of JUNE, 2014

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHEROKEE COUNTY
Court of General Sessions

Roger L. Couch, Circuit Court Judge

RECEIVED
JUN 06 2014
SC Court of Appeals

Case No. 2010-GS-11-00607

The State of South Carolina,..... Respondent,

v.

Hayword Tony Chambers,..... Appellant.

PROOF OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 6th day of June, 2014.

Brandon Hall
Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 6th day of June, 2014.

Rhonda Denise Foxworth (S.)
Notary Public for South Carolina

My Commission Expires: October 17, 2021..

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHEROKEE COUNTY
Court of General Sessions

Roger L. Couch, Circuit Court Judge

Case No. 2010-GS-11-00607

The State of South Carolina,..... Respondent,

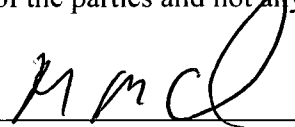
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