

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge

Opinion No. 5346 (S.C. Ct. App. filed 8/26/2015)

12-GS-38-00911-00912

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

PETITIONER

APPELLATE CASE NO. 2013-001342

A P P E N D I X

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Lamont Antonio Samuel, Appellant.

Appellate Case No. 2013-001342

Appeal From Orangeburg County
Diane Schafer Goodstein, Circuit Court Judge

Opinion No. 5346
Heard February 12, 2015 – Filed August 26, 2015

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, Senior
Assistant Attorney General W. Edgar Salter, III, all of
Columbia; and Solicitor David Michael Pascoe, Jr., of
Orangeburg, for Respondent.

HUFF, J.: Lamont Antonio Samuel appeals his conviction for murder, arguing the trial judge erred in refusing to allow him to represent himself. We affirm.

FACTUAL/PROCEDURAL HISTORY

Samuel, who was indicted for the murder of Taneris Hamilton, was provided appointed counsel. Prior to trial, Samuel moved to represent himself. The trial judge conducted a hearing to consider the motion. Samuel explained he wanted to represent himself because he had been in jail for fourteen months despite maintaining his innocence. He complained his appointed counsel would not let him contact the solicitor on the case and bring the solicitor a letter Samuel's co-defendant had written in which the co-defendant confessed. Samuel asserted he understood he was charged with murder and the maximum sentence the charge carries. He stated he was twenty-one years old and graduated from high school in 2010 with a 4.0 in honors classes. He claimed he was enlisted and waiting to go into the Navy. He declared while he was waiting, he worked with the recruiting office at Fort Jackson.

Samuel testified he had been reading a book entitled *Criminal Law Handbook*, which his mother helped him obtain at the recommendation of attorney Carl Grant. He also claimed Grant had coached him on the South Carolina Rules of Evidence. Samuel acknowledged Grant was not representing him but maintained the attorney was going to coach him. He explained:

[M]y mama, basically paid Mr. Grant a good bit amount of money. The reason why he couldn't represent me is because my family--I guess his paralegal is related, you know, in some manner. So he had decided to just go over the steps with me day by day. I go through the trial, I got back to him. I talk to him, he'll tell me things or he won't -- he's not going to be in the courtroom, present.

After completing the *Faretta*¹ colloquy, the trial judge noted Samuel was bright, educated, and did not have drug, alcohol, or mental health problems. She acknowledged to Samuel: "You don't have a problem that I'm aware of that I can use, in all candor, to keep you from representing yourself." The judge then summoned Grant to come to the courtroom to explain his relationship with Samuel.

Grant testified he had not been retained to represent Samuel. He explained the only discussion he had with Samuel's mother pertained to the legal fees to represent Samuel but the mother never brought him the fees. He maintained he had not given Samuel a copy of the rules of evidence or of criminal procedure or offered his assistance in any way. He stated: "Either you're going to retain me to

¹ *Faretta v. California*, 422 U.S. 806 (1975).

represent you or you're not." He informed the judge he would not be available to provide Samuel with any assistance in any capacity if Samuel represented himself.

Samuel thanked Grant "for your information you provided me. I thank you for your advice and everything" When the judge asked him what advice and information he meant, Samuel responded: "Everything he said." The judge further questioned Samuel if he meant what was said that day. Samuel stated: "I'm just saying in general. Everything he said makes a whole lot of sense." Samuel acknowledged he understood the extent of Grant's relationship and he could not depend on Grant's assistance. However, after Grant left the courtroom, Samuel claimed the reason Grant testified as he did was because of the kinship between Grant's paralegal and Samuel and Grant's "reputation was on the line." Samuel explained the reason his expression did not change during Grant's testimony was "because he already had told me and stated if it came down to him coming in front of a judge in front of the attorneys he was going to state that."

After taking a brief recess, the trial judge informed Samuel she did not believe what Samuel had told her concerning his relationship with Grant and Grant's willingness to coach him. She ruled: "The reason that I am disallowing your self-representation is because it is impossible for me to [try] a case if I do not have candor from those who are making representations to the court." Even after the judge made the ruling, Samuel continued to claim Grant said what he did because "he did not want his reputation ruined."

After delays unrelated to Samuel's request for self-representation, the case proceeded to trial with appointed counsel representing Samuel. The jury found Samuel guilty of murder. The trial judge sentenced him to fifty years imprisonment. This appeal followed.

ISSUE

Did the trial judge err by refusing to allow Samuel to represent himself?

STANDARD OF REVIEW

"The question of whether court appointed counsel should be discharged is a matter addressed to the discretion of the trial judge. Only in a case of abuse of discretion will this [c]ourt interfere." *State v. Sims*, 304 S.C. 409, 414, 405 S.E.2d 377, 380 (1991); *see State v. Barnes*, 407 S.C. 27, 48, 753 S.E.2d 545, 556 (2014) (Toal, C.J., dissenting) (applying abuse of discretion standard to review of denial of

motion for self-representation). An abuse of discretion occurs when the decision of the trial judge is based upon an error of law or upon factual findings that are without evidentiary support. *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

LAW/ANALYSIS

Samuel argues the trial judge erred in refusing to allow him to represent himself. We disagree.

A defendant has a constitutional right to self-representation under the Sixth and Fourteenth Amendments. *Faretta v. California*, 422 U.S. 806, 807 (1975). However, the right of self-representation is not absolute. *United States v. Frazier-El*, 204 F.3d 553, 559 (4th Cir. 2000). The Supreme Court in *Faretta* noted "the trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct." *Faretta*, 422 U.S. at 834 n.46. It explained: "The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." *Id.* "Even at the trial level . . . the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." *Martinez v. Court of Appeal of Cal., Fourth Appellate Dist.*, 528 U.S. 152, 162 (2000).

A defendant's assertion of his right to self-representation must be: "(1) clear and unequivocal; (2) knowing, intelligent and voluntary; and (3) timely." *Frazier-El*, 204 F.3d at 558 (citations omitted). The right of self-representation does not exist to be used as a tactic for delay, for disruption, for distortion of the system, or for manipulation of the trial process. *Id.* at 560. A trial judge may refuse to permit a criminal defendant to represent himself when he is "not able and willing to abide by rules of procedure and courtroom protocol." *United States v. Lopez-Osuna*, 242 F.3d 1191, 1200 (9th Cir. 2001) (quoting *Savage v. Estelle*, 924 F.2d 1459, 1463 (9th Cir. 1991)). "A trial court must be permitted to distinguish between a manipulative effort to present particular arguments and a sincere desire to dispense with the benefits of counsel." *Frazier-El*, 204 F.3d at 560.

In *United States v. West*, 877 F.2d 281, 287 (4th Cir. 1989), the Fourth Circuit held a trial court was not required to make a finding the defendant disrupted a trial to support its removal of him as pro se counsel. It found the defendant "directly attacked the [trial] court's integrity and dignity by characterizing it as the 'home team' on the side of the government and accusing it of imposing upon him a

presumption of guilt." *Id.* The Fourth Circuit explained, "By asserting his right of self-representation, [the defendant] assumed the responsibility of acting in a manner befitting an officer of the court. By flouting the responsibility, he forfeited the right." *Id.*

As the Fourth Circuit recognized in *West*, a defendant like Samuel who chooses self-representation assumes the responsibility of acting as an officer of the court. *See id.* This responsibility includes displaying candor toward the court. *See* Rule 3.3(a)(1), RPC, Rule 407, SCACR (stating a lawyer shall not knowingly "make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer"). The trial judge considered Samuel's and Grant's conflicting testimony concerning Grant's alleged assistance for Samuel's trial and found Samuel not credible. It was within the province of the trial judge, as the fact-finder in the *Faretta* hearing, to weigh the credibility of the witnesses. *See State v. Dorce*, 320 S.C. 480, 483, 465 S.E.2d 772, 773 (Ct. App. 1995) ("The trial judge was presented with contradicting testimony, and it was within his province, as the trier of fact, to weigh the credibility of the evidence presented to determine which witnesses he deemed credible."). As the record supports the trial judge's determination Samuel displayed an unwillingness to act as an officer of the court through his lack of candor, we find the trial judge did not abuse her discretion in denying his request to represent himself.

AFFIRMED.

FEW, C.J., and WILLIAMS, J., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

APPELLANT

APPELLATE CASE NO. 2013-001342

Appeal from Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge

Opinion No. 5346
Filed August 26, 2015

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR appellant petitions this Court for rehearing in the following points that may have been overlooked or misapprehended. The trial judge in this case did everything she could think of to keep appellant from representing himself which the Sixth Amendment to the United States Constitution allows him to do. In State v. Barnes, 407 S.C. 27, 753 S.E.2d 545 (2014) the Court held that the trial court was required to apply the Faretta standard for waiver of the right to counsel. "So long as the defendant makes his request prior to trial, the only proper inquiry is that mandated by Faretta... Under Faretta, the trial judge has the

responsibility to make sure that the defendant is informed of the dangers and disadvantages of self-representation, and that he makes a knowing and intelligent waiver of his right to counsel.” 407 S.C. at 35-36, 753 S.E.2d at 550. Like the defendant in State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999), appellant was dissatisfied with his attorney and he was not trying to delay the trial or hinder the administration of justice. Appellant was not deliberately engaging in “serious and obstructionist misconduct” as this Court’s opinion suggests by quoting Faretta, 422 U.S. at 834 n. 46. Unlike United States v. West, 877 F.2d 281, 287 (4th Cir. 1989), which this Court cites, appellant did not attack the trial court’s “integrity and dignity.” This court suggests that a criminal defendant is bound by the same ethical standards as an attorney, but in the second State v. Barnes, 413 S.C. 1, 774 S.E.2d 454 (2015) the South Carolina Supreme Court suggested otherwise. 774 S.E.2d at 455 n. 1. Just recently the Fourth Circuit held in United States v. Phillip Ductan, No. 14-4220 (4th Cir. September 2, 2015) that it is error for a “magistrate to find that Ductan forfeited his right to counsel by his frivolous argument and answers to questions.” Likewise, counsel should not be foisted on a defendant for the same reason if he wishes to represent himself.

The trial court in this case was playing “gotcha” jurisprudence to deny appellant the right to represent himself. It took the extraordinary step of having another lawyer come to court to try to contradict appellant. But the court did not ask appellant’s mother’s side of what she conveyed to her son about this attorney. The trial court was obligated to apply the Faretta standard for the waiver of appellant’s right to counsel. It did not.

Rehearing should be granted.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

This 10th day of September, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

APPELLANT

APPELLATE CASE NO. 2013-001342

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon William Edgar Salter, III, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Mr. Lamont Antonio Samuel, #355793, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 10th day of September, 2015.

Robert M. Pachak
Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 10th day
of September, 2015.

Diane Goodstein (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

The South Carolina Court of Appeals

The State, Respondent,

v.

Lamont Antonio Samuel, Appellant.

Appellate Case No. 2013-001342

ORDER

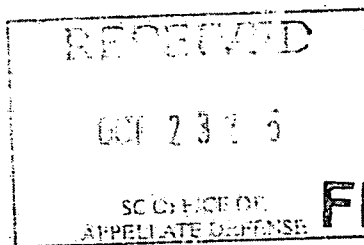
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

John Cannon Jr C.J.
Thomas El Suf J.
H B Wilson J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
 Robert M. Pachak, Esquire
 Donald J. Zelenka, Esquire
 W. Edgar Salter, III, Esquire
 John W. McIntosh, Esquire



FILED

October 23, 2015

David Michael Pascoe, Jr., Esquire
The Honorable Diane Schafer Goodstein

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

APPELLANT

APPELLATE CASE NO. 2013-001342

RECORD ON APPEAL

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State of South Carolina,)
)
 Plaintiff,)
)
 v.) Transcript of Record
)
 Lamont Antonio Samuel,)
)
 Defendant.)

May 13 - 14, 2013
Orangeburg, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein, Judge, and a jury

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

Don Sorenson, Esquire
Attorney for the State

Margaret Hinds, Esquire
Doug Mellard, Esquire
Attorneys for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

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1 E4HIBITS:

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1 MR. SORENSON: The next matter would be our first trial
2 up this week. State verses Lamont Antonio Samuel,
3 Indictment 2010-GS-38-912. He was indicted by the
4 Orangeburg Grand Jury back on our November term for one
5 count, murder. We are prepared, at this point in time, to
6 go forward. He is represented by Mr. Mellard and Ms. Hinds.
7 I know they have some matters we need to address with the
8 Court prior to us getting into any pre-trial matters.

9 THE COURT: Okay.

10 Yes, ma'am, yes sir.

11 MR. MELLARD: Your Honor, he has a motion that he would
12 like to make before the court. Mr. Samuel's, I believe he
13 would like to represent himself in this case.

14 THE COURT: Okay.

15 MR. MELLARD: We would ask the Court to consider
16 clearing the courtroom to allow him to make his motion.

17 THE COURT: Absolutely. Absolutely, I will do that,
18 with the exception of my court reporter and my clerk and my
19 security.

20 And just for informational purposes, the reason that it
21 is necessary for me to do this is to preserve disclosures
22 that may be attorney-client privilege.

23 (Courtroom is cleared.)

24 THE COURT: All right, here's what we're going to do.
25 First of all, I should say good morning Mr. Samuel.

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1 MR. SAMUEL: How are you, ma'am?

2 THE COURT: I'm fine. How are you?

3 MR. SAMUEL: I'm fine

4 THE COURT: Wonderful. Here's what we're going to do.

5 First of all, Mr. Samuel it is really important to me that
6 you to understand exactly why we're doing what we're doing.

7 The reason that I've asked everyone to leave except,
8 obviously, our security, the court reporter and our clerk,
9 is because I'm going to preserve your attorney-client
10 privilege.

11 Now, what I'm going to do for the record, just so you
12 understand, is I'm going to ask everyone who is present the
13 courtroom, I'm going to ask them to identify themselves for
14 the record, so there will never be any question who was in
15 the courtroom at this time, okay?

16 MR. SAMUEL: Yes, ma'am.

17 THE COURT: And I'm going to ask them to identify what
18 their role is; if they're security or bailiff or your
19 lawyer, court reporter. So that's what I'm going to do, and
20 then I'm going to issue an order telling everyone that what
21 we talk about nobody can talk about it, because what that
22 does is that that preserves your attorney-client privilege.

23 Does that make sense to you, Mr. Samuel?

24 MR. SAMUEL: Yes, ma'am.

25 THE COURT: Okay. Very well.

1 First of all, we're going to start with you, and I want
2 you to state your name for our record.

3 MR. SAMUEL: Lamont Samuel.

4 THE COURT: Lamont Samuel. What's your middle name?

5 MR. SAMUEL: Antonio.

6 THE COURT: Lamont Antonio Samuel. Is that with an S?

7 MR. SAMUEL: No, ma'am.

8 THE COURT: You're one Samuel?

9 MR. SAMUEL: That's right.

10 THE COURT: You're not more than one, you're one
11 Samuel.

12 MR. SAMUEL: Yes, ma'am.

13 THE COURT: Are you a junior?

14 MR. SAMUEL: No, ma'am.

15 THE COURT: Okay. So you are Lamont --

16 MR. SAMUEL: Antonio Samuel.

17 THE COURT: Lamont Antonio Samuel.

18 MR. SAMUEL: Yes, ma'am.

19 THE COURT: Now, that's Lamont with a T?

20 MR. SAMUEL: Yes, ma'am.

21 THE COURT: Thank you, very much. And you are the --
22 you have brought this motion, so I got that.

23 We'll start -- we're going to start the record that I
24 am present. Our court reporter is Hilda Jordan, she is
25 present. My law clerk, Anna Richter Welch is present. And

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1 Mr. Richardson?

2 MR. RICHARDSON: Raymond Richardson, bailiff.

3 MS. GLENN: Vernetha Glenn, criminal court clerk.

4 MS. SIMS: Ashley Sims, parole/probation agent. Teresa
5 (inaudible), probation/parole.

6 OFFICER BROWN: Officer Fred Brown, Detention Center
7 Officer.

8 OFFICER BONAPARTE: Sgt. Eric Bonaparte, courtroom
9 security.

10 OFFICER GREEN: Captain James Green, captain over
11 security.

12 DEPUTY KISSAM: Deputy Kissam, security.

13 DEPUTY ASBURY: Olin Asbury, security.

14 MS. HINDS: Margaret Hinds, defense attorney.

15 MR. MELLARD: Doug Mellard, defense attorney.

16 THE COURT: Now, Mr. Samuel.

17 MR. SAMUEL: Yes, ma'am.

18 THE COURT: I want you to take a look around the
19 courtroom; is there anyone that I have missed?

20 MR. SAMUEL: No, ma'am.

21 THE COURT: I think we have everyone, don't we?

22 MR. SAMUEL: Yes, ma'am.

23 THE COURT: Now, I'm going to issue an order that no one
24 is to discuss the proceedings here today, because it is my
25 intention to preserve the attorney-client privilege of Mr.

1 Samuel.

2 Ms. Jordan, this part of the record would be sealed and
3 it can be unsealed when necessary by an order of the Circuit
4 Court, not an order of me because -- but an order of the
5 Circuit Court.

6 (The following Exparte In Chambers hearing is sealed by
7 Order of the Court.)

8 THE COURT: Now, I've said that because I do not know
9 -- I don't know what the motion is about. It may be
10 necessary for your lawyers to have a conversation with you
11 about it. I'm not going to keep them from having a
12 conversation with you about it, okay.

13 MR. SAMUEL: Yes, ma'am.

14 THE COURT: If that becomes necessary.

15 And counsel, at the end of this proceeding, remind me
16 if I need to extend that, okay.

17 MS. HINDS: Yes, ma'am.

18 THE COURT: I don't know -- I can't imagine that I
19 would need to extend that, but if I do, I want to be sure
20 I've done that.

21 MS. HINDS: Yes, ma'am.

22 THE COURT: For everyone else, you will be in contempt
23 of court if this matter is discussed in any way whatsoever.
24 Now, does anyone in the courtroom at this moment have
25 any questions about that, if so, let me hear from you this

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1 point.

2 And I'm hearing no one.

3 Thank you all so much.

4 Now, tell me what has you so concerned, Mr. Samuel?

5 MR. SAMUEL: All right. Well, first of all, I explained
6 to them I been in jail for 14 months. I been ask to speak
7 to Mr. --

8 THE COURT: You have been in jail for 14 months?

9 MR. SAMUEL: Yes, ma'am.

10 I ain't went up before a judge, I ain't went up before
11 anybody, and I been telling them I'm innocent for the 14
12 months I was present in the jail.

13 THE COURT: Yes.

14 MR. SAMUEL: So I indicated that I had -- that -- that
15 he -- that my co-defendant has written me, which in them he
16 confessed. So I asked that I could bring them down to Mr.
17 Sorenson, but somehow every time I ask Mr. Mellard and Ms.
18 Peggy Hinds to do so they said, well, you don't need to talk
19 to Mr. Sorenson, you don't need to do that.

20 Well, this is something that indicates my life and if
21 you're looking at me as a lawyer -- if you looking at - if
22 you supposed to be my lawyer -- first of all, I'm going to
23 respect you. If you're looking at me like I'm supposed to
24 be your son or anybody, your interest to get me out of jail,
25 which mean 14 months I had time --

1 THE COURT: I'll have to ask you to slow down just a
2 little bit. I'm following you --

3 MR. SAMUEL: Oh, I'm sorry.

4 THE COURT: -- completely.

5 MR. SAMUEL: Yes, ma'am.

6 THE COURT: -- but I want Ms. Jordan to be able to
7 follow you, too. I'm following you, great. Don't think --
8 I'm not being critical at all.

9 MR. SAMUEL: All right.

10 THE COURT: Because I'm with you.

11 MR. SAMUEL: Yes, ma'am, and I'm sorry.

12 THE COURT: I do the same thing.

13 MR. SAMUEL: All right.

14 THE COURT: She turns to me and slows me down all the
15 time.

16 MR. SAMUEL: Yes, ma'am.

17 THE COURT: So just a little bit.

18 MR. SAMUEL: All right.

19 THE COURT: Okay.

20 MR. SAMUEL: So I been with them for 14 months. Just as
21 well as they be interviewing me, I been interviewing them,
22 myself.

23 THE COURT: Sure.

24 MR. SAMUEL: So while I was interviewing them, I
25 interpret everything I say to them, it always said -- well,

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1 in the case of Mr. Sorenson going to do this, Mr. Sorenson
2 going to do that. Like they talk to Mr. Sorenson before
3 they even come talk to me. Like everything rehearsed -- so
4 me, my life is on the line; and if I rather go down -- like
5 I been telling them like they said in the end of the day,
6 like last week, like when the other judge was here, they
7 said, well, Mr. Samuel, we know that you not the trigger
8 man, you didn't commit the murder. So first thing Mr.
9 Samuel think, well, if you been knew that, if you knew I'm
10 innocent, nobody think that y'all think that I shot him why
11 was I charged with murder. And I asked them the questions,
12 and I couldn't get it, so I turned right around and ask Ms.
13 Hinds what is your interest in my case, because you're
14 allowed to do that. I mean, when I ask her what is her
15 interest in my case, it wasn't the answer that I was looking
16 for. It wasn't the correct answer I was looking for, even
17 though she gave me an answer. Everybody can have different
18 interest in somebody else case. What my point is --

19 (Officer Revander enters courtroom.)

20 THE COURT: I need you to stop.

21 MR. SAMUEL: Oh. All right.

22 THE COURT: Now, Revander is fine to be in here but he
23 hasn't been under the order. This is an exparte hearing, in
24 camera exparte hearing. So that's why I stopped you, not to
25 cut you off, okay?

State v. Samuel 5/13/13

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1 MR. SAMUEL: Yes, ma'am.

2 THE COURT: State your name for the record?

3 OFFICER REVANDER: Officer Martin Revander.

4 THE COURT: And you're part of the transport team for
5 the jail is that right?

6 OFFICER REVANDER: Correct.

7 THE COURT: But you also serve as additional security
8 when needed?

9 OFFICER REVANDER: Yes.

10 THE COURT: And so you're in the courtroom for that
11 purpose?

12 OFFICER REVANDER: Yes.

13 THE COURT: All right. Now, everyone else is under an
14 order not to discuss beyond -- not to discuss what is
15 occurring during this hearing because I'm doing so to
16 protect Mr. Samuel's attorney/client privilege; do you
17 understand that?

18 OFFICER REVANDER: Yes.

19 THE COURT: Is this your first time to be in a hearing
20 like this that I have held?

21 OFFICER REVANDER: No.

22 THE COURT: Do you understand those orders?

23 OFFICER REVANDER: Yes.

24 THE COURT: You've heard them many times; yes?

25 OFFICER REVANDER: Yes.

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1 THE COURT: Very well. Now, Mr. Revander is here, too.

2 MR. SAMUEL: All right.

3 THE COURT: Now.

4 MR. SAMUEL: While I'm going on my 14 months, I mean,
5 like I was telling her, you got to understand, okay.
6 Everybody you're looking at ain't -- Ms. Goodstein, you can
7 tell somebody that committed a crime when you seen one.
8 Just as well, I stated to Doug and Peggy, so I'm stating
9 something to you for a reason, if I'm saying I'm innocent --
10 I'm stating for 14 months I am innocent for a reason, and
11 I've been going through so much trauma, so much drama to
12 get what I needed to get done. Like I said, if you had an
13 auntie that was present at the jail, with all that being
14 said, it took me a lot -- I was already under a lot of
15 stress doing all I can do to help them, but it seems like
16 everything I do, everything I did, everything I tried to
17 help them, they're not helping me, period. Which means, I
18 mean, I don't understand why I waited this long while you
19 saying you want me to go to trial and then we're going to
20 try to find you -- we're going to try to find you guilty of
21 a lesser charge. I mean, right then and there, I don't
22 understand. I mean, I guess --

23 THE COURT: I'm with you.

24 MR. SAMUEL: -- it's not for me to understand, but if
25 you're going to charge somebody with murder and then you're

1 going to come a week before trial saying that you -- we know
2 that you didn't do it, that right there, that's injustice.
3 If you never did thought I murdered him up until a week --
4 now, why is you telling me this. That's why I say --
5 another thing, I asked to speak to Don Sorenson a number of
6 times before we went to trial. So by me sitting in there,
7 that's when I know, that's when I said, you know what, I
8 helped y'all all I can. I'm the reason why Alan Fields is
9 supposed to plead guilty today. I'm the reason what brought
10 Alan Fields out to plea. I'm the reason why Mr. Sorenson
11 where he at today -- but to take the initiative to offer
12 somebody else a deal, but then somebody being I'm six feet
13 under for 20 years and allow them back on the streets. I'm
14 just concerned if you in it for money or you in it for
15 yourself. I mean, basically, if I was your son and if
16 you're looking at me as your son and I took -- I said, well,
17 mama, you know what, I got something that will prove my
18 innocence, and I think I need to take it down to the police
19 station; do you mind. Okay. Well, with them it's a
20 difference. When I tell them I have something to prove my
21 innocence before I even made it to this trial. I never
22 asked for at trial. I never was initiated a plea. All I
23 was doing was basically, well, he was going to do this --
24 well, basically what I'm saying is talking to those two is
25 like talking outside, talking to somebody outside, because

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1 everything I'm currently stating you are supposed -- I gave
2 her a copy that she was supposed to give to the expert that
3 I never seen to look at Mr. Fields handwriting and to see
4 whether or not it was his handwriting. I know his
5 handwriting. I told Ms. Peggy Hinds, I will allow you to
6 take it, because I know this is his handwriting. She said,
7 well, we need to see what's in it so it don't incriminate
8 you. Why would I give you something that incriminates me.
9 Regardless, I don't care if it incriminate me or not,
10 because I know I'm innocent. I know that the charge that
11 I'm on --

12 THE COURT: I'm with you. I got it. I got it. I got
13 it.

14 All right. I want you to listen to me for just a
15 little bit, okay?

16 MR. SAMUEL: Yes, ma'am.

17 THE COURT: Just a little bit. I want you to know that
18 -- I want you to ask me any questions about what I'm going
19 to tell you.

20 MR. SAMUEL: Yes, ma'am.

21 THE COURT: First of all. I'm going to be straight up
22 with you, okay, because I know exactly where you're coming
23 from. I really do. I want you to know that I know that.

24 MR. SAMUEL: Yes, ma'am.

25 THE COURT: And I want to talk to you a little bit about

1 what I know.

2 MR. SAMUEL: Yes, ma'am.

3 THE COURT: What I want you to ask me questions and I
4 want you to feel free to, but I want you to listen a little
5 bit because I think you will.

6 MR. SAMUEL: Yes, ma'am.

7 THE COURT: What I want you to also ask me questions
8 about why I say what I say.

9 MR. SAMUEL: Yes, ma'am.

10 THE COURT: When I say that, okay, because I want you to
11 know.

12 First of all, Mr. Samuel, I'm going to start by telling
13 you a couple of things, and then I want to explain a little
14 bit and I want you to answer the questions, okay?

15 MR. SAMUEL: Yes, ma'am.

16 THE COURT: But before I do anything I'm going to ask
17 you a couple of questions because you seem incredibly bright
18 to me.

19 MR. SAMUEL: Yes, ma'am.

20 THE COURT: Tell me, I want to know how far -- first of
21 all, tell me -- you look like a baby. How old are you?

22 MR. SAMUEL: I just turned 21.

23 THE COURT: Okay. Tell me how far you went in school?

24 MR. SAMUEL: I graduated with a 4.0 in Honors classes.

25 THE COURT: See, I'm not surprised. Okay.

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1 MR. SAMUEL: Yes, ma'am.

2 THE COURT: You are A, articulate and B, you're -- you
3 are incredibly articulate, make very strong contract. I got
4 that. Okay. So I'm not surprised.

5 MR. SAMUEL: Yes, ma'am.

6 THE COURT: You come across as exceptionally bright.
7 Good. So my perception of that is accurate.

8 I want you to ask me questions about what we're going
9 to talk about, okay?

10 MR. SAMUEL: Yes, ma'am.

11 THE COURT: But first of all, I need to tell you a
12 couple of things.

13 MR. SAMUEL: All right.

14 THE COURT: First thing I need to tell you is I've been
15 doing this for a very long time. I know I look very young,
16 but I've been doing this for going on 16 years, okay.

17 MR. SAMUEL: Yes, ma'am.

18 THE COURT: And I need you to know that I'm motivated
19 by only one thing, and I'm only motivated by making sure
20 that justice is done, and, right now, that is focused on
21 you. Do you understand that?

22 MR. SAMUEL: (Nods head in the affirmative.)

23 THE COURT: Okay. Because I could do lots of other
24 things, but that is my focus.

25 MR. SAMUEL: Yes, ma'am.

1 THE COURT: That is my purpose, okay?

2 MR. SAMUEL: Yes, ma'am.

3 THE COURT: So when I tell you some things some of the
4 things that we're going to talk about are going to be
5 frustrating for you to hear. I want you to know that I know
6 they're going to be frustrating to hear, too. I know that.

7 MR. SAMUEL: Yes, ma'am.

8 THE COURT: So I want you to know that when you get
9 frustrated when I say what I'm about to say, a couple of
10 things, that I understand that they are incredibly
11 frustrating, okay?

12 MR. SAMUEL: Yes, ma'am.

13 THE COURT: And I want you let's -- us to have a
14 dialogue about that, okay?

15 MR. SAMUEL: Yes, ma'am.

16 THE COURT: All right. And the other thing that I want
17 you to know is that I've done both sides. I've represented
18 -- I used to represent the Aviation Authority, which is the
19 airport in Charleston. They have a police force. One of my
20 duties was to present the police force but in criminal court
21 I've primarily defended people. So I've done both sides.
22 I've got a little bit of knowledge about both, but all of
23 that going on 16 years ago. I get to sit -- It's kind of
24 like umpiring baseball, calling balls and strikes, okay?

25 MR. SAMUEL: Yes, ma'am.

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1 THE COURT: All right. And the other thing I want you
2 to understand is I really have no dog in the fight. My
3 number one focus is to be sure that justice is done, okay?

4 MR. SAMUEL: Yes, ma'am.

5 THE COURT: All right. Now, here's what I want you to
6 know. Couple of things. I want you to know that the fact
7 that you've been in jail for 14 months is too long. I want
8 you to know that these people have nothing to do with it.
9 Okay. There is an enormous debate that is on-going in the
10 judiciary far beyond them, beyond the solicitor's office.
11 It really finds itself at the Supreme Court about the fact
12 that we have people too long on various charges and there's
13 a lot going on about that. 14 months is too long.

14 I tried a case three weeks ago and a person who had
15 been in jail for over 1,000 days, 1,057 days, all right.

16 MR. SAMUEL: Yes, ma'am.

17 THE COURT: He has actually been charged with murder in
18 Charleston and those charges had been dismissed, okay.

19 MR. SAMUEL: Yes, ma'am.

20 THE COURT: He has been in jail for 1,057 days. Okay.
21 You and I can agree --

22 MR. SAMUEL: Yes, ma'am.

23 THE COURT: That's like a third-world country. That's
24 not even like America, right?

25 MR. SAMUEL: You're right.

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1 THE COURT: I kind of think 14 months is not like
2 America, too. Okay.

3 MR. SAMUEL: Yes, ma'am.

4 THE COURT: Too long. But here's what you have to
5 know, it's got nothing to do with them, because they are a
6 part of the movement to make all that change. Our chief
7 justice is all over that issue right now. It's the hottest
8 topic in South Carolina in the legal profession. There's a
9 case called Langford that came out that said that the
10 solicitor's ability to keep people in jail is
11 unconstitutional, okay?

12 MR. SAMUEL: Yes, ma'am.

13 THE COURT: That's just -- you were sitting in jail
14 when that decision came out in November.

15 MR. SAMUEL: Yes, ma'am.

16 THE COURT: We're all about that right now. So when you
17 tell me I've been in jail for 14 months. It's too long. I
18 would tell you you are 100 percent right. It's too long.
19 Okay?

20 MR. SAMUEL: Yes, ma'am.

21 THE COURT: Okay. What happens when you're in jail for
22 14 months and your case is not resolved, what happens to
23 people especially when they're very, very, bright like you
24 are, nothing good happens. Nothing good happens, and the
25 first thing that get eroded is the relationship between you

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1 and your lawyer. It just happens, okay. Because you're too
2 smart to just sit there deadhead for 14 months, okay?

3 MR. SAMUEL: Yes, ma'am.

4 THE COURT: All right. Now, here's the the other thing
5 that I have to tell you. This is going to be frustrating
6 for you to hear.

7 To be a public defender is incredibly difficult and
8 it's incredibly difficult because on the one hand you have a
9 desire to protect your client. They have a desire to
10 protect their client, who is you. The other piece of it is
11 that they have to give you the absolute worst possible
12 scenario. What our law requires is that you understand the
13 worst possible scenario.

14 MR. SAMUEL: (Nods head in the affirmative.)

15 THE COURT: Even if they don't believe it, they have to
16 be sure that you understand that, and that is the obligation
17 that the law puts on them. If they don't do that, they
18 don't do their duty under the law.

19 So here's where you are for 14 months. You've got
20 somebody that you are counting on to protect you, and
21 they're giving you this rotten news every time you see them.
22 And it's like they've got to tell you, we don't really think
23 this, but we've got to tell you this, but here it is.
24 That's the talking about Mr. Sorenson every time you talk to
25 them. Okay. They have to do that. And what's tough about

1 that is that it has a natural eroding effect on your
2 relationship with your lawyers, but they have to do it. The
3 law says they have to do it, whether they want to do it or
4 not they have to. And it's -- it's -- it is difficult but
5 under the law it is appropriate, because you are bright you
6 and you have to be able to hold on. They have to help you hold
7 on. Okay.

8 MR. SAMUEL: Yes, ma'am.

9 THE COURT: Now, let me tell you why they didn't want
10 you to talk with Mr. Sorenson. That is the absolute worse
11 thing you could do is to talk to Mr. Sorenson. It doesn't
12 matter what you have, okay. And if they don't have to turn
13 it over in discovery, again, this is the worse thing that
14 they can do, because Mr. Sorenson will simply spend his
15 time, if he believes -- he is committed to prosecuting you,
16 okay?

17 MR. SAMUEL: Yes, ma'am.

18 THE COURT: Well, he's just going to spend his whole
19 time explaining why that doesn't mean a thing. Okay. And
20 they have to make those value judgments with the desire
21 towards protecting you, okay?

22 MR. SAMUEL: Yes, ma'am.

23 THE COURT: I don't know what this document says, but
24 assuming what you tell me is true, that it is done, and it
25 does exonerate you, if they in their discussions believe

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1 that A, they don't have to disclose it and B, it will be
2 helpful to you they've got to hold onto it until trial, they
3 have to. If they don't think it will make a difference and
4 that's a value judgment they have to make.

5 You, after 14 months, you're saying, you're not helping
6 me. I've got this document that exonerates me and you're
7 doing nothing with it. I don't know whether they are or
8 they aren't, but they have to make that value judgment
9 whether or not -- if it's not something that they have to
10 disclose, that they will use it at a potential trial, if
11 they don't think that it's going to stop it. They have to
12 make this value judgments.

13 May I tell you what I know?

14 MR. SAMUEL: Yes, ma'am.

15 THE COURT: Here's what I know. Mr. Mellard I've known
16 for a very long time. Ms. Hinds, I've known for a an
17 extraordinarily long time. I've known Ms. Hinds ever since
18 I've been a judge. I have never known her not to care
19 deeply about her clients. I have always known her to have
20 to give them everything they need to know, which is the
21 absolute worst scenario, because otherwise she's not doing
22 what she's supposed to do. I gotta tell you, she's a
23 terrific lawyer. If she was on the street neither you nor I
24 could afford her. Okay?

25 MR. SAMUEL: Yes, ma'am.

1 THE COURT: But she's chosen to make her life a life
2 where she serves people. And she's the chief public
3 defender up here. It's very rare that Mr. Leiendecker is
4 ever up here because she's in charge.

5 Now, having said all of that, I know how frustrating it
6 is, but -- and this is in an environment that is
7 frightening. It is. I would be scared -- If they said --
8 if somebody walked in here and said, Mr. Schmoie walked in
9 and says that he's an eye-witness and you shot somebody last
10 night and they took me over to the jail and I knew I was
11 innocent --

12 MR. SAMUEL: Yes, ma'am.

13 THE COURT: -- I would be scared to death. And this is
14 a place where I spend every day of my life. So to be
15 concerned, to be bright and to be concerned -- it is very,
16 very appropriate. Are you with me?

17 MR. SAMUEL: Yes, ma'am.

18 THE COURT: It's appropriate. Okay.

19 Now, here's where we are, and I want you to give some
20 thought to this, if you want to talk to them, that's fine.
21 If you don't that's fine, because you are driving this
22 train, okay?

23 MR. SAMUEL: Yes, ma'am.

24 THE COURT: Here's what happens next. I'm going to
25 tell you that you have a constitutional right to represent

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1 yourself, and I've had my law clerk pull up the colloquy
2 that you and I will go through.

3 MR. SAMUEL: Yes, ma'am.

4 THE COURT: If that's what you want to do, okay.

5 MR. SAMUEL: Yes, ma'am.

6 THE COURT: I want you to also know that that just
7 scares me to death for you. But, I respect your right to do
8 that.

9 Let me ask you this question, just as an illustration.
10 Before you were locked up, you're just 21 years old, were
11 you working outside your home or were you in school?

12 MR. SAMUEL: I was actually enlisted, waiting to go
13 into the Navy.

14 THE COURT: Okay. What did you want to do in the Navy?

15 MR. SAMUEL: I was going to be a diesel mechanic.

16 THE COURT: Okay. That is a wonderful example.

17 Okay. Let's -- You've got some information about motors?

18 MR. SAMUEL: Yes, ma'am.

19 THE COURT: You've probably worked on cars?

20 MR. SAMUEL: Yes, ma'am.

21 THE COURT: I've got a brother that loves to work on
22 cars. I got a brother that loves cars, motorcycles better
23 than food, okay.

24 All right. Let me tell you something.

25 MR. SAMUEL: Yes, ma'am.

1 THE COURT: I usually make a pretty big mess just
2 putting gas in mine, okay.

3 MR. SAMUEL: Yes, ma'am.

4 THE COURT: In fact, I was driving my daughter's car, I
5 had a car that I can put the alcohol in.

6 MR. SAMUEL: Yes, ma'am.

7 THE COURT: I put alcohol in her car, okay, and I
8 ruined it. I had to run over and drain the car because
9 her's is a gas car. I put alcohol in her gas car, okay.

10 MR. SAMUEL: Yes, ma'am.

11 THE COURT: That's my answer to being a mechanic. I
12 could tell you a part, a spark plug from where you put the
13 washer fluid. You understand. Complete ignorance. So, I
14 mean -- so you wouldn't want me to touch your car and your
15 engine. You wouldn't want me to change the oil, because I
16 promise you that I would mess it up, okay?

17 MR. SAMUEL: Yes, ma'am.

18 THE COURT: The reason that I use that as an
19 illustration is that while I know you are bright, and most
20 people think that I's fairly bright.

21 MR. SAMUEL: Yes, ma'am.

22 THE COURT: I know how to be a judge and I know how to
23 be a lawyer. I don't have a clue about what to do with a
24 car. I understand -- I barely know how to put gas or
25 alcohol in a car.

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1 MR. SAMUEL: Yes, ma'am.

2 THE COURT: It's the same with you. If you had an
3 opportunity to go to law school there is no question in my
4 mind you would probably be a spectacular lawyer because
5 you're smart, okay.

6 MR. SAMUEL: Yes, ma'am.

7 THE COURT: Different only -- if I wanted to know about
8 cars, but there's a special part of your brain that deals
9 with that. I'm not interested in cars.

10 MR. SAMUEL: Yes, ma'am.

11 THE COURT: I might could learn that, but I don't know.
12 I know you could learn how to be a lawyer. The problem is
13 you find yourself in here, it just happens to be information
14 you don't have. Okay. You've got some. I've listened to
15 you and you've got some --

16 MR. SAMUEL: Yes, ma'am.

17 THE COURT: -- but you don't -- that's not a place that
18 you're an expert. Interestingly enough there's a fellow
19 that -- his name is Malcolm Gladwell, I think his name is.
20 He's written some interesting books. One of them is called
21 The Outliers and he said that it takes 3000 hours to become
22 an expert. It doesn't matter what it is, it takes 3000
23 hours to be come an expert in that field. My problem is
24 that you haven't had 3000 hours worth of training to be a
25 lawyer. That's my fear.

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1 MR. SAMUEL: Yes, ma'am.

2 THE COURT: Having said that, they've had ridiculous
3 amounts of time, and they're experts lawyers. And they are
4 expert lawyers. So I want you to know that. That's the
5 frustrating part. I don't want you to represent yourself.
6 However, having said that, I respect you, and I respect,
7 most of all, our constitution that says you have that right.

8 So here's where we are at this juncture.

9 MR. SAMUEL: Yes, ma'am.

10 THE COURT: You tell me you want to represent yourself
11 in this matter?

12 MR. SAMUEL: Yes, ma'am.

13 THE COURT: And you're firm in that?

14 MR. SAMUEL: Firm.

15 THE COURT: Well, here's what we're going to do. I'm
16 going to go through the colloquy with you now, and I want
17 you to know that every moment of this that that's not where
18 I want you to do. It is not my choice at all. It is your
19 choice, okay?

20 MR. SAMUEL: Yes, ma'am.

21 THE COURT: Okay?

22 MR. SAMUEL: Yes, ma'am.

23 THE COURT: Now, we'll go through the colloquy and at
24 the end of the colloquy if I don't think you can represent
25 yourself, I'm not going to let you do it. I'm going to

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1 follow the law. So if I think you are, I will allow you to
2 represent yourself, but I am going to keep them as standby
3 counsel and all standby counsel means is that they are here
4 if you have questions for them. If you have no questions
5 for them -- they just sit, if you have questions for them
6 they may answer your questions, okay?

7 MR. SAMUEL: Yes, ma'am.

8 THE COURT: And let me say this, even if I find that
9 you are capable of representing yourself and you -- you need
10 to know up front that you can change your mind at any time,
11 okay?

12 MR. SAMUEL: Yes, ma'am.

13 THE COURT: Are we straight?

14 MR. SAMUEL: Yes, ma'am.

15 THE COURT: All right. I'm going to go through the
16 colloquy now, all right?

17 MR. SAMUEL: Yes, ma'am.

18 THE COURT: You've sworn in Mr. Samuel, right?

19 CLERK OF COURT: No, ma'am.

20 Please raise your right hand.

21 (WHEREUPON, Lamont Antonio Samuel was sworn to tell the
22 truth.)

23 CLERK OF COURT: Thank you.

24 THE COURT: All right, now everything you told me up to
25 this point has been the truth, the whole truth and nothing

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1 but the truth?

2 MR. SAMUEL: Yes, ma'am.

3 THE COURT: Do you want to change or alter anything
4 you've told me up to this point?

5 MR. SAMUEL: No, ma'am.

6 THE COURT: Very well. Now, Mr. Samuel, I'm just going
7 to read this because it's something you need to know. And
8 ask me any questions that you have.

9 If I ask you any of these questions and you don't know
10 what I'm asking don't answer it.

11 MR. SAMUEL: Uh-huh. (Affirmative response.)

12 THE COURT: If you want me to explain whatever I say in
13 a different way let me know, and we'll get through this
14 together, okay?

15 MR. SAMUEL: Yes, ma'am.

16 THE COURT: All right. I'm just going to read you
17 this. It says, questions to ask the defendant who plans to
18 proceed pro se. Pro se just means self-representation,
19 okay?

20 MR. SAMUEL: Yes, ma'am.

21 THE COURT: It's Latin. Now you know about all the
22 Latin I know.

23 All right. And it says United States Supreme Court has
24 held that the Sixth Amendment -- the Sixth Amendment is your
25 right to counsel -- merely requires that a defendant -- that

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1 would you. You are a defendant, and you know that -- be
2 advised of the nature of the charges. You know what they
3 are, yes?

4 MR. SAMUEL: Yes, ma'am.

5 THE COURT: Okay. The right to be counseled regarding
6 that representation and the range of the allowable
7 punishment.

8 All right.

9 Now, it's my understanding that at this point you're
10 charged with murder?

11 MR. SAMUEL: Yes, ma'am.

12 THE COURT: You know that murder carries up to life in
13 prison without the possibility of parole, yes?

14 MR. SAMUEL: Yes, ma'am.

15 THE COURT: It has a minimum sentence of 30 years in
16 prison. You know that, as well?

17 MR. SAMUEL: Yes, ma'am.

18 THE COURT: Okay. You're 21 years old?

19 MR. SAMUEL: Yes, ma'am.

20 THE COURT: You graduated school with a 4.0?

21 MR. SAMUEL: Yes, ma'am.

22 THE COURT: In all Honors class?

23 MR. SAMUEL: Yes, ma'am.

24 THE COURT: When did you graduate?

25 MR. SAMUEL: 2010.

1 THE COURT: Thank you for telling me that. I'm
2 terrible at math.

3 All right.

4 Now, and you also told me that you were getting ready
5 to go into the military?

6 MR. SAMUEL: Yes, ma'am.

7 THE COURT: Before though -- after you graduated from
8 you, and I know you've been locked up for 14 months, did you
9 work outside your home while you were waiting to go in the
10 military?

11 MR. SAMUEL: No. Well, I was -- while I was waiting I
12 was going to Ft. Jackson doing recruit training and trying
13 to help with other kids -- I was kind of ahead of where I
14 was going, because I was an E-3, so what they was wanted to
15 do is sit me down to see if I was smart enough to help
16 people enlist, see whether or not I could do recruit
17 training. So I did that without pay through the military.

18 THE COURT: Had you already been to basic training?

19 MR. SAMUEL: No, ma'am. Basic training -- While I was
20 doing that before basic training they was trying to see if I
21 wanted to go to school first. I was telling them I wanted
22 to go straight into the military, and they was telling me
23 you doing pretty good with interviews. We think that you
24 should go to school and try to be a recruit counselor.

25 THE COURT: I'm with you completely. So you -- if I

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1 asked you were you working at that point, were they paying
2 you?

3 MR. SAMUEL: Oh, yes, ma'am.

4 THE COURT: So you were working on Ft. Jackson?

5 MR. SAMUEL: Yes, ma'am.

6 THE COURT: And you were working with the recruiting
7 office?

8 MR. SAMUEL: Yes, ma'am. Sgt. Jennings.

9 THE COURT: Say again?

10 MR. SAMUEL: Sgt. Jennings.

11 THE COURT: And he was your supervisor?

12 MR. SAMUEL: Yes, ma'am.

13 THE COURT: Tell me how you spell that?

14 MR. SAMUELS: Jennings. It's J-e-n-n-i-n-g. I mean,
15 i-n-g-s.

16 THE COURT: Jennings?

17 MR. SAMUEL: Uh-huh. (Affirmative response.)

18 THE COURT: Okay. Now, in your life, have you ever been
19 treated for alcohol or drug abuse? In other words, any kind
20 of substance abuse in your life?

21 MR. SAMUEL: No, ma'am.

22 THE COURT: Okay. All right, and in your life have you
23 ever received any counseling or any treatment at all for any
24 mental health challenges or emotional challenges?

25 MR. SAMUEL: No, ma'am.

1 THE COURT: Have you had any medicine in the last 72
2 hours?

3 MR. SAMUEL: No, ma'am.

4 THE COURT: Not even a Tylenol?

5 MR. SAMUEL: No, ma'am.

6 THE COURT: Okay. Have you had any drugs the last 72
7 hours?

8 MR. SAMUEL: No, ma'am.

9 THE COURT: Or alcohol?

10 MR. SAMUEL: No, ma'am.

11 THE COURT: Okay. Are you aware of any physical or
12 emotional or nervous problems or issues or challenges that
13 you have that might keep you from understanding what you're
14 doing here today?

15 MR. SAMUEL: No, ma'am.

16 THE COURT: Have you ever been examined by any doctor
17 or other health care professional to determine your mental
18 competency to stand trial?

19 MR. SAMUEL: No, ma'am.

20 THE COURT: Okay. Have you ever studied law?

21 MR. SAMUEL: Yes, ma'am.

22 THE COURT: All right. Tell me about that?

23 MR. SAMUEL: I studied a little bit of law during the
24 -- a law book I used during the course of -- to look at the
25 procedure to stand trial, self-representation. And I look

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1 at all the rules and regulations that's supposed to be
2 appropriate while I'm standing trial. I know --

3 THE COURT: And tell me where you got those books?

4 MR. SAMUEL: I got that book through the mail at the
5 jailhouse.

6 THE COURT: What do you know -- what is the name of the
7 book?

8 MR. SAMUEL: It's called Criminal Law Handbook.

9 THE COURT: All right. Where did it come from?

10 MR. SAMUEL: I can't -- All I know I got it through
11 the mail.

12 THE COURT: Okay. And did somebody help you find that
13 or did you order it or how did you find it?

14 MR. SAMUEL: Yes. Mr. Carl Grant told my mama.

15 THE COURT: Carl Grant. Okay, and your mother helped
16 you get it?

17 MR. SAMUEL: Yes, ma'am.

18 THE COURT: Got it. All right. And you looked at that
19 book?

20 MR. SAMUEL: Yes, ma'am.

21 THE COURT: And how much of that book have you read?

22 MR. SAMUEL: I read, basically, the trial procedures.

23 THE COURT: Okay. Yes.

24 MR. SAMUEL: I read -- if you got documents and
25 everything supposed to be going towards your innocence, I

1 read the judge can allow it to go to trial or cannot go to
2 trial. And I read, basically, all the procedures for trial
3 and self-representation.

4 THE COURT: Okay. Have you ever been in court before?

5 MR. SAMUEL: No, ma'am.

6 THE COURT: Okay. This is the first time that you've
7 been charged with any crime?

8 MR. SAMUEL: Yes, ma'am.

9 THE COURT: Okay. Now, we just talked about the fact
10 that you know you are charged with murder. Are you charged
11 with anything else?

12 MR. SAMUEL: No, ma'am.

13 THE COURT: Okay. And you know that the elements of
14 murder are the unlawful killing of another with malice
15 aforethought?

16 MR. SAMUEL: Yes, ma'am.

17 THE COURT: That means, malice means a depraved heart
18 that existed just prior to and at the time of the commission
19 of the act?

20 MR. SAMUEL: Yes, ma'am.

21 THE COURT: Okay. Just talked about the range of
22 sentence.

23 Now, do you know that if you choose to try this case on
24 your own, represent yourself, that I cannot tell you how you
25 should try your case or even advise you as to the any of the

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1 rules of evidence or otherwise.

2 MR. SAMUEL: Yes, ma'am.

3 THE COURT: In other words, I can't help you try your
4 case.

5 MR. SAMUEL: You're right.

6 THE COURT: Our rules don't allow that; you know that?

7 MR. SAMUEL: Yes, ma'am.

8 THE COURT: Are you familiar with the South Carolina
9 Rules of Evidence?

10 MR. SAMUEL: Yes, ma'am.

11 THE COURT: By reading the book that you just told me
12 about?

13 MR. SAMUEL: Uh-huh. (Affirmative response.)

14 THE COURT: Any other way?

15 MR. SAMUEL: I mean, basically what Mr. Grant, he tried
16 to coach me on it a little bit.

17 THE COURT: Okay. And do you understand that the rules
18 of evidence govern what evidence may or may not be
19 introduced at trial?

20 MR. SAMUEL: Admissible.

21 THE COURT: Exactly. The rules dictate what is
22 admissible at trial and what is not; do you understand that?

23 MR. SAMUEL: Yes, ma'am.

24 THE COURT: And do you understand that in representing
25 yourself you must follow these rules?

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1 MR. SAMUEL: Yes, ma'am.

2 THE COURT: And do you understand that one of the rules
3 of evidence is the rule against hearsay?

4 MR. SAMUEL: Yes, ma'am.

5 THE COURT: All right. And hearsay are statements that
6 are made outside of the court proceeding?

7 MR. SAMUEL: Being the exception to the rule.

8 THE COURT: There are many exceptions to the hearsay
9 rule, and what the basic rule is is that hearsay are
10 statements that are made outside the trial which are being
11 admitted for the truth asserted.

12 MR. SAMUEL: Yes, ma'am.

13 THE COURT: You're exactly right there are many
14 exceptions to the hearsay rule.

15 And do you also understand that under our rules that
16 there are certain motions that can be made before, during,
17 and after the trial.

18 MR. SAMUEL: Yes, ma'am.

19 THE COURT: Can you name one of those motions?

20 MR. SAMUEL: Can you say that -- say that question one
21 more time?

22 THE COURT: Can you name one of those motions for me
23 that can be made?

24 MR. SAMUEL: They can be made like while the trial is
25 going on?

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1 THE COURT: Yes.

2 MR. SAMUEL: I mean, you can put in a motion for a pre-
3 trial. You can put in for a motion for the trial -- it can
4 be a mistrial with a sickness or somebody doing that,
5 they'll reschedule it. And that's -- I think that's all.

6 THE COURT: All right. Let me ask you this question.
7 Do you know there are motions such as a motion to suppress
8 evidence?

9 MR. SAMUEL: Motion in limine.

10 THE COURT: Motion in limine.

11 MR. SAMUEL: Yes. Getting your statement suppressed so
12 if you incriminate yourself it can't be used against you.

13 THE COURT: Yes. Yes. And there's another motion
14 called a directed verdict motion.

15 MR. SAMUEL: Uh-huh. (Affirmative response.)

16 THE COURT: Did you know that?

17 MR. SAMUEL: No, ma'am.

18 THE COURT: All right. There's one called a directed
19 verdict motion that's made at the end of the state's case.
20 It says the state didn't have sufficient evidence.

21 MR. SAMUEL: Yes, ma'am.

22 THE COURT: Okay. All right.

23 Do you understand that you have the right to testify
24 and the right not to testify in your case?

25 MR. SAMUEL: Yes, ma'am.

1 THE COURT: And do you know the basis of that?

2 MR. SAMUEL: Yes, ma'am.

3 THE COURT: That is the Fifth Amendment?

4 MR. SAMUEL: Yes, ma'am. The Fifth Amendment is to
5 keep silent.

6 THE COURT: Do you understand that if you choose to
7 testify that you can be asked about any convictions that you
8 might have had which involved dishonesty or false statement.

9 MR. SAMUEL: Yes, ma'am.

10 THE COURT: Do you have any convictions?

11 MR. SAMUEL: No, ma'am.

12 THE COURT: Okay.

13 MR. SAMUEL: But I do understand in certain cases if you
14 don't testify the jury can't -- use that against you.

15 THE COURT: Well, let's you and I be clear. The fact
16 that a defendant chooses not to testify is not evidence. Do
17 you understand that?

18 MR. SAMUEL: Yes, ma'am.

19 THE COURT: Okay. Do you understand that if you were to
20 go to trial --

21 MR. SAMUEL: Yes, ma'am.

22 THE COURT: -- and you were those choose not to testify
23 --

24 MR. SAMUEL: Uh-huh. (Affirmative response.)

25 THE COURT: That there is a charge that goes to the

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1 jury, meaning an instruction of law that goes to the jury
2 that tells the jury that the fact that you chose not to
3 testify is not evidence in the trial, and that the burden is
4 and remains on the state to prove guilt beyond a reasonable
5 doubt?

6 MR. SAMUEL: Yes, ma'am.

7 THE COURT: And there's an instruction when a defendant
8 chooses not to testify, if you were to choose not to testify
9 there is a specific instruction that goes to the jury that
10 says they cannot -- they being the jury -- cannot even
11 discuss that you chose not to testify. They can't even
12 bring it up and discuss in the jury room. The reason for
13 that is because the burden is and remains on the state,
14 okay. There are some affirmative defenses that are a little
15 bit different, but the burden to prove guilt is and remains
16 on the state; do you understand that?

17 MR. SAMUEL: Yes, ma'am.

18 THE COURT: Okay. So that there's no instance where
19 your decision not to testify can be used against you; do you
20 understand that.

21 MR. SAMUEL: Yes, ma'am.

22 THE COURT: That's a violation of both the United States
23 and the state constitution; do you understand that?

24 MR. SAMUEL: Yes ma'am.

25 THE COURT: Okay. Now, you -- do you -- I'm going to

1 ask it open-ended, but I want you to know I've been
2 listening to you so I think I know the answer, but I'm going
3 to ask this question open-ended.

4 Are you aware of any possible defenses as to the charge
5 against you?

6 MR. SAMUEL: Um -- No, ma'am.

7 THE COURT: Let me ask you that again because you've
8 told me one. Are you aware of any possible defenses to the
9 murder against you; do you have a defense?

10 MR. SAMUEL: Well, my defense would be these -- what he
11 wrote me.

12 THE COURT: Okay. You believe you have a defense,
13 right?

14 MR. SAMUEL: Yes, ma'am.

15 THE COURT: Okay. Do you understand that an attorney
16 could help you with many of the things we've been discussing
17 including the rules of evidence, the rules of criminal
18 procedure and presenting defenses?

19 MR. SAMUEL: Yes, ma'am.

20 THE COURT: Okay. I must advise you that in my opinion
21 you would be far better defended by a trained lawyer than
22 you can be by yourself; do you understand that?

23 MR. SAMUEL: Yes, ma'am.

24 THE COURT: Okay. Do you understand that I think it is
25 unwise of you to try to represent yourself?

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1 MR. SAMUEL: Yes, ma'am. I'll take your advice.

2 THE COURT: Have I made that abundantly clear?

3 MR. SAMUEL: I said, I'll take your advice.

4 THE COURT: Okay. In other words you want to be
5 represented?

6 MR. SAMUEL: No. I would like to represent myself.

7 THE COURT: Okay. In other words, what you're telling
8 me is you understand that I don't want you to represent
9 yourself, that I think it's unwise and you understand that I
10 feel that way?

11 MR. SAMUEL: Yes, ma'am.

12 THE COURT: And you respect that I feel that way?

13 MR. SAMUEL: I respect you feel that way.

14 THE COURT: Okay. Now, you are not -- do you know that
15 I am concerned that you are not sufficiently familiar with
16 the law to represent yourself.

17 THE COURT: Yes, ma'am.

18 THE COURT: Do you understand that I am concerned that
19 you are not sufficiently familiar with court procedure?

20 MR. SAMUEL: Yes, ma'am.

21 THE COURT: Do you understand that I am concerned that
22 you are not sufficiently familiar with the rules of
23 evidence?

24 MR. SAMUEL: Yes, ma'am.

25 THE COURT: Do you understand that I strongly urge you

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1 not to try to represent yourself?

2 MR. SAMUEL: Yes, ma'am.

3 THE COURT: Okay. Do you understand that I genuinely
4 worry about you if you represent yourself?

5 MR. SAMUEL: Yes, ma'am.

6 THE COURT: Okay. Now, in light of the penalty that you
7 might suffer if you are found guilty --

8 MR. SAMUEL: Uh-huh. (Affirmative response.)

9 THE COURT: -- and in light of all the difficulties of
10 representing yourself --

11 MR. SAMUEL: Uh-huh. (Affirmative response.)

12 THE COURT: -- is it still your desire to represent
13 yourself?

14 MR. SAMUEL: Yes, ma'am.

15 THE COURT: Is it still your desire to give up your
16 right to be represented by a lawyer?

17 MR. SAMUEL: Yes, ma'am.

18 THE COURT: Now, is your decision entirely voluntary on
19 your part?

20 MR. SAMUEL: Yes, ma'am.

21 THE COURT: Do you know anything or anyone that I can
22 have you speak with that might urge you to have a lawyer
23 represent you?

24 MR. SAMUEL: No, ma'am. I mean, I think -- I mean, my
25 mama, basically paid Mr. Grant a good bit amount of money.

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1 The reason why he couldn't represent me is because my family
2 -- I guess his paralegal is related, you know, in some
3 manner. So he had decided to just go over the steps with me
4 day by day. I go through the trial, I got back to him. I
5 talk to him, he'll tell me things or he won't -- he's not
6 going to be in the courtroom, present.

7 THE COURT: Okay. And you know he's not representing
8 you?

9 MR. SAMUEL: I know he's not representing me, but he is
10 coaching me on --

11 THE COURT: I got you, but he's not representing you?

12 MR. SAMUEL: Oh, no, ma'am.

13 THE COURT: Okay. Now, okay -- Okay. You know that I'm
14 going to appoint stand-by counsel?

15 MR. SAMUEL: Yes, ma'am.

16 THE COURT: And you know you can change your mind?

17 MR. SAMUEL: Yes, ma'am.

18 THE COURT: Okay. All right. Now, here's one of the
19 things we have to talk about. You have will have a right to
20 make an opening statement, but you cannot testify during the
21 opening statement. You can talk about simply what you
22 believe the evidence will or will not show, okay?

23 MR. SAMUEL: Yes, ma'am.

24 THE COURT: Because if you -- if you were to go into
25 testimony then you would have to be sworn, okay. But you

1 have the right to make an opening statement, if you wish.

2 You don't have to, it's up to you. If you wish to, you can,
3 but you can't testify. And you know you have the right to
4 cross-examine witnesses?

5 MR. SAMUEL: Yes, ma'am.

6 THE COURT: You have the right to present evidence.

7 MR. SAMUEL: Yes, ma'am.

8 THE COURT: Okay. Very well. Now, of course, and the
9 right to object?

10 MR. SAMUEL: Yes, ma'am.

11 THE COURT: I want to talk about some of the more
12 practical things. Obviously, I don't want you in shackles,
13 and I don't want you in an orange outfit at trial whether
14 you represent yourself or not. Okay.

15 MR. SAMUEL: Yes, ma'am.

16 THE COURT: Okay. In the event that you choose to
17 represent yourself, you've got to be able to move around the
18 courtroom.

19 MR. SAMUEL: Yes, ma'am.

20 THE COURT: Okay. In the event that you move around the
21 courtroom, I'm going to have to change the restraint system

22 --

23 MR. SAMUEL: Yes, ma'am.

24 THE COURT: -- which is normally leg restraints.

25 MR. SAMUEL: Uh-huh. (Affirmative response.)

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1 THE COURT: Okay. And what is -- do you have a belt --
2 Orangeburg --

3 COURTROOM SECURITY: Yes, ma'am.

4 THE COURT: Do you know about that?

5 MR. SAMUEL: I mean, the little belt that they give me
6 from here on up on my waist?

7 THE COURT: Yes.

8 MR. SAMUEL: It comes from right here to your waist,
9 right? Yes, ma'am.

10 THE COURT: It goes to your waist and it's electronic?

11 MR. SAMUEL: Yes, ma'am.

12 THE COURT: And there's somebody in the courtroom that
13 is an expert in that and they don't do anything but just sit
14 there.

15 MR. SAMUEL: Yes, ma'am.

16 The reason for that is if you're going to wear a belt
17 that could potentially hurt you, I don't want that person
18 distracted by anything.

19 MR. SAMUEL: You're right.

20 THE COURT: I don't want them worried about a thing.

21 MR. SAMUEL: Yes, ma'am.

22 THE COURT: All right. And the reason that we use that
23 is there must be some form of restraint during the course of
24 a trial for a defendant no matter who the defendant is. But
25 you've got to be able to move around and you can't have the

1 leg restraints because I can't have you walking around like,
2 you know --

3 MR. SAMUEL: I understand.

4 THE COURT: -- like a stick soldier because the jury
5 will wonder what's wrong with him; why is he walking that
6 way. You've got to be able to move naturally; do you
7 understand?

8 MR. SAMUEL: Yes, ma'am.

9 THE COURT: Okay. You understand that?

10 MR. SAMUEL: Yes, ma'am.

11 THE COURT: Okay. Let me ask you this question; have
12 you been over the evidence that the state has available at
13 trial to prove your guilt?

14 MR. SAMUEL: Yes, ma'am. It's not -- it's not enough
15 evidence --

16 THE COURT: But you've looked at it?

17 MR. SAMUEL: Yes, ma'am.

18 THE COURT: All right.

19 MR. SAMUEL: That's why I tried to get to talk to Mr.
20 Sorenson before we even make it this far.

21 THE COURT: I'm with you. I understand.

22 Now, let me ask you this question; do you understand
23 the theory of the hand of one is the hand of all?

24 MR. SAMUEL: Yes, ma'am.

25 THE COURT: Tell me what that means?

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1 MR. SAMUEL: Hand of one, hand of all means two people
2 can commit the crime -- two people can be alleged in the
3 crime, either person who actually committed the crime or the
4 one who is watching out. That still makes hand of one,
5 hands of all. I talked to Ms. Hinds and Mr. Mellard and
6 they can't come up with that either. They can't prove that
7 either. My biggest thing is Ms. Goodstein, it's not my
8 approvement of what's going on. If I got something stating
9 he's not placing me at the crime scene, he's not going to
10 place me at the crime scene. He's talked to two of the
11 people that wrote statements on me. That's witness
12 tampering right here. If he already saying he admit that he
13 can't put me at the -- and he's saying I don't want you to
14 go down for it. If you go for it, I'm going to accept my
15 charge. Mr. Fields pleading guilty today. I still don't
16 understand why they even want to go into the trial
17 procedure.

18 THE COURT: You're talking about the state?

19 MR. SAMUEL: Yes, ma'am. I still don't understand it.

20 THE COURT: Yeah.

21 MR. SAMUELS: I mean --

22 THE COURT: But you understand they do?

23 MR. SAMUEL: Yes, ma'am, I understand it.

24 THE COURT: Okay. And you know they're not in control
25 of that?

1 MR. SAMUEL: Yeah, I would understand.

2 THE COURT: They would like to be in control of it; they
3 would love to be in control of that.

4 MR. SAMUEL: Yes, ma'am.

5 THE COURT: All right. Very well.

6 All right, now, I can't -- here's my problem. You're
7 bright enough, the constitution says you're entitled to
8 represent yourself. I don't want you to represent yourself,
9 but I can't violate the law.

10 MR. SAMUEL: Right. I mean, Ms. Goodstein, as I sit
11 and watch you, I mean, I know you're looking at me just like
12 your own son, but when the whole thing was going on, the
13 whole 14 months, I mean, even though it was a long time
14 being in the jail. I've been fighting for my life,
15 constantly. At the jailhouse even with his aunt being
16 present I'm still trying to fight to help them. Everything
17 I'm trying to do, I'm help the state I helped the state.
18 They won't accept no deals from Mr. Sorenson, because it
19 wasn't a deal that was in my favor. Although, he didn't
20 never initiate a deal. I asked could he do it before I make
21 it this far -- why it was being stated.

22 I mean, Ms. Goodstein, you know a criminal when you see
23 one. Not saying you judge someone when you first saw them,
24 but you know somebody who actually committed a crime actions
25 are not sincere. As I told Doug and Peggy Hinds, a lot of

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1 people can say a lot of things about they life. They went
2 to jail and they changed their life through God. Yeah, man
3 can fool women just as well as women can fool man, but God
4 base everything off of the heart. He don't go off of words,
5 which brings me to this, every time I tell them that I have
6 changed my life but the struggle between me and Alan Fields
7 was he didn't have anybody. I tried to place him in my
8 house, basically going over my mama to make sure he have a
9 place to stay. I tried to change Alan a numerous amount of
10 times. Sometimes I passed and sometimes I failed but when I
11 know Alan is going to take the situation going in his own
12 hands that's when I back off. This is one of the times I
13 couldn't back off so I got up. Nine times out of 10 just
14 like I stated to them, if I would have stayed there I would
15 have been killed, which means I would rather be living
16 today, to being my whole family -- to bring my whole family
17 to a closure than I would have died that night. Do you feel
18 where I'm coming from. Where would I be at today, where
19 would the state be today if I didn't gave them the truth on
20 how to get Alan Fields. Where would the state be? It
21 wouldn't be no where if it wasn't for me, but for them to go
22 against me and still try to take me into trial --

23 THE COURT: I'm with you. I'm got it, but here's what I
24 want you to understand is that as much as they would love to
25 control it, they can't.

1 Oh, I want to tell you one more thing I haven't told
2 you that's important.

3 One of the things that I've had an opportunity to watch
4 when people have gotten very frustrated with their counsel
5 --

6 MR. SAMUEL: Yes, ma'am.

7 THE COURT: -- which is part of where you are -- not
8 all, but part of where you are -- is that while they get
9 frustrated because so much of it is because A, at the time.
10 We talked about that. B, because they have to give you the
11 rotten news, and they have to be sure that you understand
12 the down side.

13 MR. SAMUEL: Yes, ma'am.

14 THE COURT: When trial starts, I'm always amazed by how
15 much folks that have been so concerned about their lawyers
16 when it starts how much they understand that their lawyers
17 really are there to fight for them, and how they really are
18 shocked when the trial begins by how the lawyers just fight
19 for them and all of a sudden all of the emotion that they
20 wanted to sense during the preparation they get to watch it
21 during the course of the trial, because it happens. It's
22 just is that because of the duties that they to give you the
23 down side, too, which they don't do in the courtroom.

24 MR. SAMUEL: Yes, ma'am.

25 THE COURT: They fight for you here.

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1 MR. SAMUEL: Uh-huh. (Affirmative response.)

2 THE COURT: I just want you to know that I have observed
3 that, and all of a sudden, defendants are like, where has
4 that been? Well, the reality is they have to tell you the
5 down side, too.

6 MR. SAMUEL: Uh-huh. (Affirmative response.)

7 THE COURT: It is my sincere hope that something that I
8 might say would convince you not to represent yourself. Is
9 there anything that I have said or could say that would keep
10 you from representing yourself?

11 MR. SAMUEL: No, ma'am.

12 THE COURT: Okay. Well, here's what I'm going to do.
13 You're bright enough, educated enough. You're not -- you
14 don't have a drug problem, you don't have an alcohol
15 problem. You don't have a mental health problem. You don't
16 have a problem that I'm aware of that I can use, in all
17 candor, to keep you from representing yourself.

18 MR. SAMUEL: Ms. Goodstein --

19 THE COURT: You're bright enough.

20 MR. SAMUEL: I'd like to say something.

21 THE COURT: You understand your charges?

22 MR. SAMUEL: Yes, ma'am. I can say something to you?

23 THE COURT: Yeah.

24 MR. SAMUEL: I know, basically, you -- what you're
25 saying is that you're putting your neck on the line by you

1 wouldn't want me to disappoint you. That's what's bringing
2 me to this. My mama paying Carl Grant to come in and
3 educate me, at the same time, just because he a lawyer, I
4 mean, I went to school, I'm smart. I can catch onto the
5 common sense -- I won't put you down when we're going to
6 trial. I won't disappoint you, period, even though the
7 decision the jurors make, a decision that you make, I accept
8 all of that, but I know I went down fighting for my
9 innocence, you know, but at that same time I respect you. I
10 respect all the advice you give me. I respect everything you
11 took time to go over with me. I respect the time you took
12 to sit with me today. I respect all of that, but at the
13 same time I won't let you down.

14 THE COURT: Well, okay. You know what, it's about you
15 --

16 MR. SAMUEL: Yes, ma'am.

17 THE COURT: -- and it's not about me. It's all -- I
18 want you to have every protection that our law will give
19 you.

20 MR. SAMUEL: Yes, ma'am.

21 THE COURT: Here's what I'm going to do. I'm going to
22 ask Mr. Grant to come over here.

23 MR. SAMUEL: Yes, ma'am.

24 THE COURT: Just because I want to -- I just want to
25 have a little bit of a dialogue with him with you, also.

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1 MR. SAMUEL: Yes, ma'am.

2 THE COURT: Okay. And I want to understand a little bit
3 about that relationship, okay.

4 MR. SAMUEL: Yes, ma'am.

5 THE COURT: So I'm going to go see if I can find him and
6 have him come on over here and let's have a little bit of a
7 dialogue, okay.

8 MR. SAMUEL: All right. Yes, ma'am.

9 THE COURT: Very well. So we're going to do that now.

10 MR. SAMUEL: All right.

11 THE COURT: All right.

12 What I'm going to tell the state when they come in is
13 that I'm inclined to allow you to represent yourself
14 although there have been some communications between you and
15 Carl Grant, and I have to understand what they are a little
16 more fully, okay?

17 MR. SAMUEL: Yes, ma'am.

18 THE COURT: Okay. Very well.

19 And that means that I can't do anything else on your
20 case until I've done that. So as soon as I can get Carl
21 Grant over that, then I'll make a final determination.

22 MR. SAMUEL: Yes, ma'am.

23 THE COURT: Please feel free to continue to talk to Ms.
24 Hinds and Mr. Mellard if you wish.

25 MR. SAMUEL: Yes, ma'am.

1 THE COURT: Okay. All right.

2 MR. SAMUEL: Yes, ma'am.

3 THE COURT: Take your paper. I don't want anybody to
4 see your stuff, because, I'm going to have them come back
5 in.

6 MR. SAMUEL: Yes, ma'am.

7 THE COURT: They'll come help you. They're going to
8 help you do that. Let them help you with those things.
9 They'll hand them right to you.

10 All right. Y'all come have a seat and let's bring
11 everybody back in and let them know where we are.

12 MR. RICHARDSON: Yes, ma'am.

13 (END EXPARTE IN CAMERA HEARING WITH MR. SAMUEL, MS. HINDS,
14 MR. MELLARD, COURT STAFF AND THE COURT.)

15 (END EXCERPT OF TESTIMONY ORDERED SEALED BY THE COURT.)

16 (COURT IN SESSION AFTER EXPARTE IN CAMERA HEARING.)

17 THE COURT: All right.

18 Y'all can come back in and have a seat.

19 Let's bring everybody back and let them know where we
20 are.

21 I've had an opportunity to have an exparte in camera on
22 the record hearing. There is one more person that I must
23 hear from and that's Carl Grant, because there have been
24 some communications, and I've got to be very clear about
25 what those have been before I can make a final

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1 determination.

2 As you know the constitution allows Mr. Samuel to
3 represent himself and -- but I cannot make a determination
4 until I have heard from Mr. Grant, and I have to do that at
5 this point.

6 At this point, it appears that he meets the standard.
7 They -- my law clerk is summoning him, as we speak.

8 MR. SORENSON: I've got his cell phone if you need it.

9 THE COURT: I don't think she does. I think she's just
10 calling the one in the book. So he needs to come on over,
11 because I must -- and that will complete what my inquiry
12 must be. Having said that, I know that there are other
13 matters that must be attended to, but I can't do that until
14 I do this.

15 MR. SORENSON: Yes, ma'am.

16 THE COURT: So I'm thinking unless you have other -- and
17 I know you've got the report being emailed on the other
18 gentleman, but I don't know if it makes more sense for y'all
19 to go grab a bite to eat now.

20 MR. SORENSON: At 2:00 o'clock we've got another matter.

21 THE COURT: Yes.

22 MR. SORENSON: Mr. Williams, and we're just doubling
23 checking. He was actually trying to find out if his client
24 was here from the jail, yet.

25 THE COURT: He's in Irmo. I don't know what he's doing

1 -- is he in court?

2 Okay. Is it -- ask him is it a family emergency; is he
3 dealing with a family emergency?

4 (Judge Goodstein's law clerk in telephone conference with
5 Mr. Grant.)

6 (Pause.)

7 THE COURT: Okay. Good. Okay. It is not -- while it
8 is an emergency, it is an emergency. And I think what I'm
9 going to ask you to do and see how quickly he can arrange to
10 be here, okay.

11 MR. SORENSON: Of course, I don't know what to tell him.

12 THE COURT: That I need him as soon as he can get here.

13 MR. SORENSON: Okay.

14 THE COURT: In other words, I'm going to ask Mr.
15 Sorenson to do it. Mr. Sorenson, you can do it right here
16 in the courtroom because you've got a cell phone and we can
17 make a record of what you're telling him. Just tell him it
18 involves Mr. Samuel and I need him to come on here --

19 MR. SORENSON: You've got him on his cell phone?

20 THE COURT: Yeah.

21 (Mr. Sorenson on cell phone call to Mr. Grant.)

22 MR. SORENSON: Hey, Carl, how are you. I'm in the
23 courtroom right now, so I'm kind of on the record, I guess.

24 THE COURT: You are.

25 MR. SORENSON: Judge Goodstein, just basically needs to

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1 know how soon you can be here, and this is dealing something
2 with Lamont Samuel. They just had an exparte hearing with
3 regards to his representation. All I know is that somehow
4 you were brought up in that and the judge needs you as soon
5 as possible. We're getting ready to start Mr. Samuel's
6 murder trial this afternoon.

7 His mother's name is Betty Hickson, is my
8 understanding.

9 Yes. Let me, if I could just tell the judge what you
10 just told me.

11 He said that he does not represent him, no, no, no. He
12 has talked to his mother, but he has not been paid and does
13 not represent him.

14 THE COURT: Tell him I said thank you for the share, and
15 I need him.

16 MR. SORENSON: Still need him?

17 THE COURT: Tell him thank you for the share, and I need
18 him.

19 MR. SORENSON: Okay. There must be more to it than
20 that, Carl, because Judge Goodstein says she needs you here
21 as soon as possible.

22 Okay. Well, all I know is she's looking at me -- all I
23 know is I'm kind of feeling like I'm in the middle of this.

24 THE COURT: You are in the middle.

25 Just tell him thank you for the share; what time?

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1 MR. SORENSON: He said he's be here -- it's going to be
2 close to 4:00 before he can be here.

3 THE COURT: We'll see him as close to 4:00 as he can get
4 here. Thank you so very much.

5 MR. SORENSON: She needs you as soon as you can get
6 here, Carl. All right. Okay. All right. Bye.

7 (End cell phone conversation between Mr. Sorenson and Mr.
8 Grant.)

9 THE COURT: All right. Very well. That ought to work
10 out pretty well, given the 2:00 o'clock matter.

11 And we can't do anything else in this particular matter
12 until I have been able to resolve it, and that is the last
13 piece and then I'll be able to resolve the matter.

14 Okay. There is the matter in the event that he is
15 self-represented -- clothing.

16 MS. HINDS: We've already got that.

17 THE COURT: Thank you. All right. Very well. Thank
18 you. See you around 4:00.

19 (Mr. Samuel exits the courtroom.)

20 THE COURT: We'll reconvene at 2:00. Thank you.

21 MR. SORENSON: As far as this matter, we're off the
22 record until after the matter at 2:00?

23 THE COURT: Yes, for planning purposes. Yeah.

24 (Court in recess for lunch at 12:48 p.m.)

25 (Court in session after lunch at 1:50 p.m.)

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1 (A plea was taken in an unrelated matter.)

2 (Court back on the record in the matter of State v. Samuel
3 at 2:56 p.m.)

4 THE COURT: Okay. What we got next?

5 MR. SORENSON: Um --

6 THE COURT: I think -- Mr. Grant. I'd like to go ahead
7 and get him finished and get him out of here.

8 MR. SORENSON: Okay.

9 THE COURT: All right. Very well.

10 All right. I need to continue with the Samuel matter.
11 I don't know that we will be particularly long in that
12 regard, and I hate to do this to folks who have been so
13 cooperative. I'm so appreciative, but I have to continue
14 that in the same vein as I did earlier, because I have to
15 preserve what maybe Mr. Samuel's attorney/client privilege
16 communications and those can certainly come out. So, again,
17 I have to ask the courtroom, but for my clerk, my court
18 reporter, my security, you all give us the courtroom.
19 Again, I hate to do that, but I must do that.

20 Obviously, Mr. Grant, I need you to remain.

21 MR. GRANT: May my assistants remain, Judge. They may
22 have information that you may need. My paralegal and
23 assistant.

24 THE COURT: In other words, you're concerned that they
25 maybe some sort of witness in this regard?

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1 MR. GRANT: That's true.

2 THE COURT: Sure. That's fine. Thank you.

3 MR. GRANT. Thank you.

4 (Courtroom is cleared.)

5 THE COURT: Let me tell you what I think I need to do,
6 though, I think I need to ask them to come in as they are
7 needed.

8 MR. GRANT: Oh, okay.

9 THE COURT: And they're --

10 MR. GRANT: They're sequestered.

11 THE COURT: Well --

12 (Continuation of the Exparte In Camera Hearing, in the
13 matter of State v. Lamont Samuel.)

14 THE COURT: The same individuals are present as were
15 present before with the exception of Mr. Grant, who has now
16 been kind enough to join us. The same admonition, of
17 course, exists. You under the court's order not to discuss
18 the matters which very well maybe be discussed in this
19 hearing, and the purpose, of course, is to protect the
20 attorney/client privilege of Mr. Samuel.

21 Now, Mr. Grant, I need to explain to you why I've asked
22 you to come here, because it may be a bit of a mystery for
23 you.

24 MR. GRANT: It is, Your Honor.

25 THE COURT: And Mr. Samuel, you're going to have to

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1 correct me if I am in error, because I'm going from memory
2 from this morning.

3 MR. SAMUEL: Yes, ma'am.

4 THE COURT: Mr. Samuel has moved to represent himself.
5 Just so you know the context, and I am in the process of
6 making that determination. He's obviously very bright. He
7 understands, I believe, the dangers of self-representation
8 and we've been through it --

9 MR. SAMUEL: Yes, ma'am.

10 THE COURT: -- with great detail.

11 He mentions to me that his mother had contacted you
12 some point. He does not say that you represent him, so let
13 me be clear about that. He says that -- and I gather that
14 it may even have been that you made a suggestion to his
15 mother about what is the name of the book that has the rules
16 of evidence, perhaps. He doesn't say that you provided him
17 with any information, but you may have shared with his
18 mother the name of our rule book. Nothing more than that.
19 And he shares with me that he obtained that rule book. Not
20 through you, Mr. Grant, but through his mother's efforts and
21 that he's been looking at it and he's been familiarizing
22 himself with various rules.

23 Here is my concern. While he does not say that you
24 represent him nor does he say that you have, certainly,
25 volunteered to be any sort of stand-by counsel, he does say

1 that you have shared with him some information about the
2 trial process, and that you may be someone who would be
3 available to give him, not representation, but some sort of
4 guidance with regard to trial procedure. And the reason
5 that I needed you to be here is I needed to know the extent
6 of that and I needed him to know what the extent of that
7 might be during the course of a trial for this reason, Mr.
8 Grant, is that I need him to know if he self-represents
9 himself I told him if I grant his motion, Mr. Mellard and
10 Ms. Hinds are going to be present as stand-by counsel. The
11 only -- the only piece of information that I think is so
12 important for him to know is what, if any, assistance would
13 be available from you. I think you have been very kind to
14 his mother. Maybe she consulted with you about
15 representation. Obviously, you were very kind to her, as
16 you are to everybody, really, and for this young man's
17 purposes and my purposes, I want him -- I think it's
18 important for him to know what that extent has been.

19 Is that a pretty fair representation, Mr. Samuel? Do I
20 need to change what I understood?

21 MR. SAMUEL: No, ma'am.

22 THE COURT: It was pretty -- in other words, I think
23 your mother contacted Mr. Grant and he's been pretty kind
24 and he's given through your mother some information, maybe
25 given you some information, but you haven't represented to

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1 me that he represents you or anything in that regard.

2 MR. SAMUEL: Right.

3 THE COURT: I think he has great admiration for you,
4 too, Mr. Grant. I must tell you that.

5 So I really think that I need for our record to reflect
6 that the relationship, the extent of it, and going forward
7 for trial, what, if any, contact at all Mr. Samuel can
8 anticipate because I think he needs to know that -- if
9 you'll share that with us.

10 MR. GRANT: Okay. Thank you, Judge.

11 THE COURT: And raise your right hand.

12 MR. GRANT: Yes, ma'am.

13 (WHEREUPON, Carl Grant was sworn to
14 tell the truth.)

15 THE COURT: And your name is?

16 MR. GRANT: Carl B. Grant.

17 THE COURT: Thank you, Carl B. Grant.

18 Yes, sir.

19 MR. GRANT: All right. Thank you, Your Honor.

20 For the record, number one, I have no recollection of
21 ever sharing with Ms. Betty Hickson, his mother, anything
22 pertaining to any rules of evidence or rules in criminal
23 procedure or anything like that. The only discussion that I
24 remember having with Ms. Hickson, and I've had this
25 discussion with her as well as my staff on numerous

1 occasions. The only discussion has been about the legal fee
2 to represent this young man.

3 THE COURT: Okay.

4 MR. GRANT: Ms. Hickson has not paid me, not even a
5 dime, as of today's date.

6 THE COURT: Yes.

7 MR. GRANT: Of course, we have a saying in my office
8 that the big dog does not fight until he's fed.

9 THE COURT: Yes.

10 MR. GRANT: Also, I've not been retained. Also, Ms.
11 Hickson, actually came in my office one day, said she had
12 the legal fee with her on her hip. We were in there, said
13 okay. She said she's going outside to car to get the money,
14 she'd be right back. She never came back in, and that's
15 been several months ago. I've not offered any assistance to
16 anyone, Judge. I've not even given this young man any kind
17 of copy of the rules of evidence or rules of criminal
18 procedure or offered my assistance in any way. Either
19 you're going to retain me to represent you or you're not.
20 And let me also say for the record, that it is my
21 professional and my strong personal opinion that he has two
22 of the finest public defenders in South Carolina already
23 representing him. Lawyers who are experienced, lawyers who
24 are very competent, lawyers whose ethical standards are to
25 the highest, and those who I know would do a great job. In

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1 fact, I spoke with Ms. Hinds outside the courthouse a few
2 weeks ago, and I was telling her that the family was saying
3 they were going to retain me and she indicated that she was
4 representing him. I said, well, with a lawyer like you they
5 certainly don't need me, and I feel that way, because she
6 and, of course, Mr. Mellard are great attorneys.

7 So I would strongly recommend to this young man, since
8 you have not ruled yet, 28 years of trial experience in
9 talking to you, that you really wouldn't think twice about
10 getting rid of these experienced public defenders, whom I
11 know are going to fight for him and do a great job. They
12 know the rules of evidence, they know the rules of criminal
13 procedure. They're great trial attorneys, and they are gong
14 to be zealous in their representation of him. They're going
15 to be loyal in their defense of him. As the old saying
16 goes, he who is his own lawyer has a fool for a client, and
17 not even lawyers represent themselves.

18 I'll just say to you, young man, I have even hired
19 lawyers to represent me in matter that were too close to me.
20 So I would strongly recommend that you truly not consider --
21 I would ask that you reconsider your idea of getting rid of
22 the lawyers and let them stick in there with you and they'll
23 do a good job.

24 But as far as my offering any assistance to him, Judge,
25 number one, if he's representing himself I would not be

1 available to provide any assistance to him in any capacity.
2 I would only be available to have represented him if they
3 would have retained me at the time they said they were going
4 to retain me. Now, is too late. Even if they had the legal
5 fee on the table here, today. I would say I'm not
6 interested. Number one, the Court is ready to try this
7 case, and if you're ready to try this case, I certainly have
8 no intention or desire to derail that process so that you
9 all can go forward.

10 THE COURT: Mr. Samuel, do you have any questions of
11 Mr. Grant that you want to ask him?

12 MR. SAMUEL: No, ma'am. But I will tell Mr. Grant --

13 THE COURT: Sure.

14 MR. SAMUEL: -- thank you for your information you
15 provided me. I thank you for your advice and everything and
16 I appreciate you addressing that to Ms. Goodstein.

17 THE COURT: Thank you.

18 MR. GRANT: Yes, sir.

19 THE COURT: And do you know what -- tell me what advice
20 and information you are speaking of specifically?

21 MR. SAMUEL: Everything he said.

22 THE COURT: You're talking about today?

23 MR. SAMUEL: I'm just saying in general. Everything he
24 said makes a whole lot of sense.

25 THE COURT: Okay. Okay. Thank you very much.

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1 Do you understand though that his -- do you understand
2 what the extent of his relationship has been?

3 MR. SAMUEL: Yes, ma'am.

4 THE COURT: Okay. And that going forward that you
5 cannot count on him being there?

6 MR. SAMUEL: Yes, ma'am.

7 THE COURT: Very well. Thank you.

8 MR. SAMUEL: You're welcome.

9 THE COURT: Thank you so much.

10 MR. GRANT: Anything else, Judge?

11 THE COURT: No. Thank you.

12 MR. GRANT: May I be dismissed, Your Honor.

13 THE COURT: Indeed, sir.

14 MR. GRANT: Thank you, Judge.

15 THE COURT: Thank you, kindly.

16 MR. GRANT: All right. See y'all.

17 THE COURT: All right.

18 MR. SAMUEL: Ms. Goodstein?

19 THE COURT: Yes? Yes, sir?

20 MR. SAMUEL: All right. What I was trying to say before
21 Mr. Grant came --

22 THE COURT: You're fine.

23 MR. SAMUEL: -- before Mr. Grant came, when he was
24 talking to me and talking to my mother, the reason why he
25 indicated he said what he said was because one of his

1 paralegals is kin to me or something. That's why he could
2 never take the case. But I'm sorry for having to go through
3 that, but he already told my mother ahead of time that he
4 had been through that in the previous past. So his reasons
5 for not coming out and indicating the same is because his
6 reputation was on the line. But I don't -- I gave him the
7 direct advice and everything he had to say to me, but it was
8 stated and he already told me if you put my name in it and I
9 was going to do it, and I respect that. That's why I was
10 telling you when it came down to what kind of -- how did you
11 feel Mr. Grant did, that's when I said I respect him. I
12 mean, I already knew that's why I didn't look sad or look --
13 any way my facial expression didn't change because he
14 already had told me and stated if it came down to him coming
15 in front of a judge in front of the attorneys he was going
16 to state that. I know if it was somebody I was trying to do
17 -- handling some business for and be nice to them I would
18 understand then because if my family member was kin to
19 somebody else, I would do the same.

20 THE COURT: Okay. All right. Anything else, Mr.
21 Samuel?

22 MR. SAMUEL: But as far as me representing myself, I
23 know I'm -- I know what kind of mistake I could make. I
24 still would like to -- if you can, I still would like to go
25 with that right, please.

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1 THE COURT: Okay. Very well. Thank you so much.

2 MR. SAMUEL: Yes, ma'am.

3 THE COURT: I'm going to take just a few minutes to --
4 I'm going to take -- I just want to review a case so I'm
5 going to take just a few minutes. So if you'll go with
6 these gentlemen, I'll be with you very, very shortly. I'm
7 going to make a determination just as soon as I have a
8 minute.

9 (Off the record, a short break was taken.)

10 (On the record, after short break.)

11 (Continuation of Exparte In Camera Hearing in the matter of
12 State v. Lamont Samuel.)

13 THE COURT: All right.

14 DEPUTY KISSAM: We have a new deputy that just came in.

15 THE COURT: Hi. I just need you to state your name for
16 the record.

17 DEPUTY LAWSON: Deputy Lawson, ma'am.

18 THE COURT: Hi, Deputy Lawson. You're going to assist
19 in security?

20 DEPUTY LAWSON: Yes, ma'am.

21 THE COURT: Thank you so kindly. Deputy Lawson, you
22 were in here this morning when I first issued an order.
23 This is, obviously, an exparte matter and in order to
24 preserve Mr. Samuel's attorney/client privilege I must give
25 an order that you must not discuss what is discussed in here

1 today, all right?

2 DEPUTY LAWSON: Yes, ma'am.

3 THE COURT: Thank you so much. Thank you for being
4 here.

5 All right. Yes, Mr. Samuel, anything else you want to
6 tell me on this particular issue?

7 MR. SAMUEL: I'm doing what I'm doing.

8 THE COURT: Okay.

9 MR. SAMUEL: I mean, I'll accept what comes from it.

10 THE COURT: All right. Got it. Well, thank you so
11 much.

12 I am ready to rule and I want to put on the record why
13 I'm making the determination that I'm making in this case.

14 Now, first of all, here's what occurred this morning.
15 What occurred this morning, listen very carefully. You went
16 through colloquy. You told me your educational background,
17 which I think is very strong. I think you're very bright, I
18 think you're very articulate, extremely articulate. Then we
19 began to talk about the rules and your knowledge of the
20 rules, and I think it was at that point that you informed me
21 that your mother had provided you with the rule book and
22 that the title had been given to her by Carl Grant. And
23 that you had been studying --

24 MR. SAMUEL: Yes, ma'am.

25 THE COURT: -- the rules and then you went on to tell me

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1 that Carl Grant had been coaching you, had been coaching you
2 with regards to the processes and that -- that you believe
3 that he would, likewise, be coaching you with regards to the
4 process of a trial, throughout the trial.

5 MR. SAMUEL: Yes, ma'am.

6 THE COURT: I then, out of concern that whether Carl
7 Grant had undertaken representation of you and whether or
8 not he would be acting as stand-by counsel in some form or
9 fashion if you were to be self-representing yourself. That
10 is why I had him come here.

11 MR. SAMUEL: Yes, ma'am.

12 THE COURT: He has testified. What he has said is he
13 did not provide the title and that he has not coached you,
14 that he has not had any conversations with you with regards
15 to the processes and that he has not led you to believe that
16 he would, likewise be doing so throughout the trial.

17 Now, --

18 MR. SAMUEL: Ms. Goodstein, can I say something?

19 THE COURT: No, sir. I'm ruling. It's my turn to
20 speak.

21 MR. SAMUEL: Okay.

22 THE COURT: Now, I have listened to you, I have listened
23 to Carl Grant. I want you to understand I do not believe
24 what you tell me about your relationship with Mr. Grant in
25 terms of his having coached you and his willingness to coach

1 you during the course of the trial. I simply do not believe
2 that. I have to make a determination and I do not believe
3 what you are telling me is accurate.

4 That brings me to one of our rules, which is Rule 3.3,
5 which is candor towards the tribunal. It also brings me to
6 one of our cases, which is a case called Gardner verses the
7 State at 351 S.C. 407, 570 S.E.2d 184, and this particular
8 case talks about the ability of an individual to self-
9 represent themselves. One of the elements that the Court
10 has to consider is whether or not the defendant is
11 attempting to delay or manipulate the proceedings. I do not
12 believe that you are trying to delay the proceedings. I am
13 concerned that the proceedings are being manipulated.
14 Further, there is case law around the country, not in South
15 Carolina, that I can find, but around the country, that says
16 that someone that wishes to self-represent themselves is not
17 allowed to disrupt the proceedings.

18 I cannot operate, I cannot operate without candor.
19 Rule 3.3 places upon attorneys the ethical duty to have
20 candor toward the tribunal. I cannot try a case without
21 candor towards the tribunal. That was an issue that I did
22 not anticipate being presented to me today. I really wanted
23 and sought the information regarding Mr. Grant because I
24 wanted to be -- I wanted to be assured that there wasn't
25 representation there, however, I am very concerned now with

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1 regards to your candor. I cannot try a case if the people
2 trying the case are not candid with me.

3 So when I put together 3.3, which is -- which requires
4 lawyers to be candid with the court, when I put that
5 together with the case that I mentioned that says you're not
6 allowed to attempt to manipulate the court in your attempts
7 in representation and when I look around the country at the
8 case law regarding the disruption it's not allowed by those
9 wishing to self-represent. When I put those together, I
10 believe that there is authority for me to disallow your
11 self-representation. The reason that I am disallowing your
12 self-representation is because it is impossible for me to
13 trial a case if I do not have candor from those who are
14 making representations to the court. I cannot do that.

15 Unfortunately, it has been demonstrated to be between
16 this morning and this afternoon that you lack candor with
17 the court. On that basis and the basis of the case law that
18 I have already mentioned I cannot allow you to self-
19 represent. I must have counsel to represent you.

20 MR. SAMUEL: Ms. Goodstein?

21 THE COURT: Yes.

22 MR. SAMUEL: I ain't never said I want them to leave. I
23 mean, they can be aside and stay by my side. I respect
24 that, but when Carl Grant came in here and told you before
25 this situation occurred that about his name being mentioned

1 by his paralegals, he don't want his reputation ruined.
2 That's why Mr. Grant came and did --

3 THE COURT: I understand that. I don't believe you,
4 because that's not what lawyers do. He simply would have a
5 conflict and not be able to represent you. I don't believe
6 you that he would be representing you and saying if it gets
7 out it will ruin my reputation. I find that very difficult
8 to believe.

9 MR. SAMUEL: Due to the fact that Denise Hamilton is one
10 of his paralegals --

11 THE COURT: I hear what you're saying.

12 MR. SAMUEL: -- she's kin to me.

13 THE COURT: I hear what you're saying and I have ruled.
14 There's another rule that says you don't argue with the
15 court once the court has ruled.

16 I -- let me say this, I note your exception for the
17 record. Your appellate rights are now preserved on this
18 issue. You have an appellate issue. All right. I'm noting
19 your exception thereto.

20 All right. You got it. You're on. You're
21 representing him.

22 MR. MELLARD: Yes, ma'am.

23 THE COURT: Let me have the other folks.

24 Please be seated.

25 (End Exparte In Camera hearing in reference to Mr. Samuel

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1 anticipate. And then we're going to get right into this
2 trial.

3 Have a very pleasant lunch. Remember do not discuss
4 this matter or allow anyone to discuss it with you.

5 (Jury out for lunch at 1:20 p.m.)

6 THE COURT: All right let's start back at 2:00 o'clock.

7 (Court in recess for lunch at 1:20 p.m.)

8 (Court in session after lunch at 2:10 p.m.)

9 THE COURT: Okay.

10 MR. MELLARD: Your Honor --

11 THE COURT: Yes.

12 MR. MELLARD: I know he wants to do the Jackson Denno.

13 THE COURT: Yes.

14 MR. MELLARD: I would, however, like to raise one motion.

15 THE COURT: Sure.

16 MR. MELLARD: Your Honor, yesterday you made a ruling
17 regarding the defendant's -- he made a motion to represent
18 himself.

19 THE COURT: Yes.

20 MR. MELLARD: The Court took a very detailed look at Mr.
21 Samuel, looked at his background, and Court made a ruling
22 yesterday denying his constitutional right to represent
23 himself on the basis, I believe it's 3.3 candor towards the
24 tribunal. I believe the Court informed the defendant there
25 was an issue about him speaking with other people and the

1 Court did not believe him and I believe the ruling was that
2 he could not represent himself because part of representing
3 and appearing before the Court is candor towards the
4 tribunal. We understand that, but we would ask the court to
5 consider recusing itself, simply because that is a ruling
6 made towards the truthfulness of this defendant. In a minute
7 the Court is going to hear testimony from police officers
8 that he made statements freely and voluntarily. The
9 defendant may or may not take the stand. Again, that would
10 be a determination based on the truthfulness of this
11 defendant. So our position is that the Court denied his
12 constitutional right based on truthfulness, we have concerns
13 that regarding the Court ruling on evidentiary issues based
14 on the truthfulness or not truthfulness, and Your Honor, he
15 would like to inform the Court that that is my motion, not
16 necessarily -- He does not agree to it.

17 THE COURT: I understand. Now, let me ask you this
18 question. And for purposes of the case law and your motion
19 there were several cases that I would point out and just ask
20 you about. One is Mallet verses Mallet at 323 S.C. 141 471
21 S.E.d 804. There's Murphy verses Murphy at 319 S.C. 324 461
22 S.E.d 39 1995. There's Roper verses D-y-n-a-m-i-q-u-e
23 Concepts, Inc. 316 S.C. 131 447 S.E.d 218 Court of Appeals
24 '94, and then there are other cases, but what these cases
25 stand for is the proposition that the alleged bias or

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1 prejudice must stem from extrajudicial source and result in a
2 decision based on information other than what the judge
3 learned from his or her participation in the case as a judge.
4 If there is no evidence of judicial bias or prejudice the
5 judge's failure to disqualify himself or herself will not be
6 reversed on appeal. That's State verses Jackson, 353 S.C.
7 625 578 S.E.d 744 Court of Appeals 2003. And that's repeated
8 in all these cases that I've just cited. So the question, I
9 guess, is what is the extrajudicial source of the bias or
10 prejudice?

11 MR. MELLARD: Well, I don't necessarily know that I can
12 state that, Your Honor.

13 THE COURT: I got ya.

14 MR. MELLARD: I would just make that motion, and I will
15 let the Court decide whether the Court wants --

16 THE COURT: Very well. Well, I would respectfully -- I
17 would respectfully -- well, I guess I should let the state
18 speak.

19 Yes?

20 MR. SORENSON: Well, Your Honor, it's our position that
21 Your Honor should deny that motion. Obviously, in your role
22 as a judge there are going to be times just like in this
23 Denno hearing that's coming up where you're going to have to
24 make determinations on the credibility of witnesses or
25 matters of law, and I don't think what you've done in this

1 case is any different than that.

2 THE COURT: Very well. I would respectfully deny your
3 motion and noting your exception thereto.

4 MR. MELLARD: Yes, ma'am.

5 THE COURT: All right. All right, now, are you ready for
6 the Jackson v. Denno?

7 MR. SORENSON: Yes.

8 THE COURT: Okay. Very well.

9 MR. SORENSON: Is that all right, Doug? Anything else we
10 need to take up?

11 MR. MELLARD: Not at this moment. Thanks a lot.

12 MR. SORENSON: Please the Court, Your Honor.

13 THE COURT: Yeah.

14 MR. SORENSON: There are several statements we have to
15 deal with. I'm going to try to basically go through them
16 chronologically.

17 THE COURT: Okay.

18 MR. SORENSON: First witness State would call Agent Billy
19 Ethridge.

20 (WHEREUPON, Billy Ethridge was sworn
21 to tell the truth.)

22 CLERK OF COURT: Thank you.

23 BILLY ETHRIDGE - DIRECT EXAMINATION

24 BY MR. SORENSON:

25 Q. Agent Ethridge, would you tell the Court where you're

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF ORANGEBURG) Court of General Sessions
Case No. 2012-GS-38-0912

3
4 STATE OF SOUTH CAROLINA)
5 VS.) Transcript of Record
6 LAMONT ANTONIO SAMUEL,)
7 Defendant.)
DATE: June 10, 2013

8
9 B E F O R E:

10 The Honorable Diane Schafer Goodstein

11 A P P E A R A N C E:

12 For the State
13 Donald N. Sorenson and Sara Ford

14 For the Defendant
15 Robert Douglas Mellard and Margaret (Peggy) Hinds

16 Karen V. Andersen, RMR, CRR, CSR

17 Circuit Court Reporter
18
19
20
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25

1 we are.

2 MR. MELLARD: Before we begin, I believe Ms. Hinds
3 has a motion.

4 THE COURT: Yes.

5 MS. HINDS: We would have a motion at this point to
6 be relieved as counsel, for a number of reasons.

7 THE COURT: Okay. Okay. All right. Hold on. Very
8 well, I will hear that now. I can't go any further in the
9 case with that pending. So I will hear that motion now and
10 then we will start back and I can report to you what
11 occurred. But y'all can go ahead and go to lunch and we
12 would start back at 2:15, okay, because I'm going to need the
13 courtroom. All right.

14 And with that in mind, I need only my clerk and my
15 court reporter, my security, and obviously counsel for
16 Mr. Samuel. Everybody else leave the courtroom please.

17 (The next portion of the transcript was ordered
18 sealed by the Court and is reported in a separate transcript
19 under seal Pages 16 through 23.)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF ORANGEBURG) Court of General Sessions
Case No. 2012-GS-38-0912

3
4 STATE OF SOUTH CAROLINA)
5 VS.) SEALED TRANSCRIPT OF RECORD
6 LAMONT ANTONIO SAMUEL,)
7 Defendant.)
DATE: June 10, 2013

8
9 B E F O R E:

10 The Honorable Diane Goodstein

11 A P P E A R A N C E:

12 For the Defendant
13 Douglas Mellard and Peggy Hinds

14
15 Karen V. Andersen, RMR, CRR
16 Circuit Court Reporter
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1 THE COURT: All right. And at this point I'm just
2 going to ask for you to state your name so it's clear who is
3 in the courtroom and what your role is, and then there will
4 be an order to follow. We will start with you,
5 Mr. Richardson.

6 MR. RICHARDSON: Raymond Richardson, chief bailiff.

7 MS. GLENN: Venetia Glenn, court clerk.

8 MR. BROWN: Officer Fred Brown, security.

9 MR. ASBERRY: Deputy Asberry, Sheriff's Office.

10 MR. MELLARD: Doug Mellard, public defender.

11 MS. HINDS: Margaret Hinds, also known as Peggy
12 Hinds, public defender.

13 THE COURT: All right. And, of course,
14 Ms. Andersen, you know who you are, so if you could type that
15 you are present.

16 Now, I'm issuing an order at this time that none of
17 the communications which will be in this hearing are to be
18 communicated to anyone without -- well, to anyone. The
19 record, this part of the hearing, or this hearing, I should
20 say, on motion to be relieved will be sealed and cannot be
21 unsealed without a prior court order. And just again, no one
22 is to discuss these matters in this hearing unless there
23 should be some reason in the future, and there should be a
24 court order and stated on the record at that point.

25 All right. Yes, ma'am. I'm listening to you,

1 Ms. Hinds.

2 MS. HINDS: Your Honor, again, I do this only in
3 abundance of caution, just to get the record up-to-date as
4 far as stuff that has happened in the past. The Court is
5 aware that Mr. Samuel at one point motioned to be allowed to
6 proceed pro se. That, of course, was denied. And I believe
7 you admonished him to work with us in anticipation of this
8 trial.

9 As late as last Thursday, when Mr. Mellard and I
10 attempted to meet with him to go over testimony and to go
11 over some very important matters concerning this week's
12 trial, he not only refused to talk to us, he was mocking. He
13 was very disrespectful.

14 Be that as it may, that's not the part that is
15 worrisome. He will not talk to us about -- when we ask about
16 his testimony, he says, well, you will hear it when it comes
17 out of my mouth, so to speak.

18 He has some idea or some words to the effect that
19 Mr. Mellard and I are going to get it from you once he
20 testifies. And that's all he will say. We have no idea what
21 he is likely to say once he gets on the stand. It makes it
22 very, very difficult for us to try to help prepare a defense.
23 He just is not forthcoming. He is argumentative. He is just
24 not helping us to try to help him.

25 And, again, we tried to go over his pretrial

1 testimony. Mr. Mellard explained to him what was going to
2 happen. And all he would tell us was, well, you will hear it
3 when I say it. And for those reasons, we don't think we can
4 effectively defend him. There has to be some give and take.
5 And he's not allowing us to properly defend him. For those
6 reasons, we would ask to be relieved.

7 THE COURT: Very well.

8 Yes, sir, Mr. Samuel.

9 MR. SAMUEL: First and foremost, I gave Ms. Hinds
10 the truth, everything that she come back and kept. She
11 always asking me the same thing, we need to know what you are
12 going to say. So I already told you what I told you I was
13 going to testify to. That paper --

14 THE COURT: Talk to me about it.

15 MR. SAMUEL: All right. I gave her my story about
16 what happened. And she said, I know it's true. But it seems
17 to me every time she puts me out, she wants me to go over it
18 again. And I'm telling her, you already have it; why do I
19 have to go over it again? She went with me over the same
20 thing again.

21 So the part where she said I refused to talk to her
22 about it, I didn't refuse to talk to her about it. She got
23 it. All I'm saying, when I get on the stand, I will say what
24 I'm going to say, what I need to say when the time permits.

25 What I'm saying is, I gave her some kites that she

1 Told me she was going to do one thing, but she did another.

2 THE COURT: You gave her what now?

3 MR. SAMUEL: Kites.

4 THE COURT: What?

5 MR. SAMUEL: Kites, they call kites from jail. I
6 guess they are letters or notations.

7 MS. FORD: Your Honor, if I may. Those were the
8 letters we attempted to have authenticated, and ultimately
9 were authenticated by his co-defendant, Allen Fields.

10 THE COURT: Okay.

11 MR. SAMUEL: But she didn't tell me she was going to
12 use them for impeachment. She was supposed to state
13 information that Mr. Fields wrote to me on it. But she's
14 saying the jury is not going to hear that, for whatever
15 reason. That made me feel uncomfortable with her again,
16 because what you say is not what you stated to me. You are
17 supposed to prove my innocence and help the State convict
18 Mr. Fields. You say you are going to use it only for
19 impeachment.

20 Everything I gave her to prove my innocence is like
21 she ain't doing what she need to be doing. So I said, well,
22 whatever I got to say, I say it when I get on the stand.
23 Whatever I got to testify to, I will say it when I get on the
24 stand.

25 My point is, I gave you the truth. I gave you my

1 story time and time and time, and you still coming back
2 asking me the same thing.

3 You got my motion. Why would you keep asking me
4 questions about my motion if you are supposed to be my
5 attorney? Why did you ask me so much questions about it? If
6 you are supposed to be my attorney, you are supposed to
7 have -- we already went over it. Why are you coming to me
8 about certain things.

9 Then I give you things, you don't want to hear. So
10 we don't have an agreement on -- we don't have an agreement
11 on nothing; nothing.

12 THE COURT: Okay.

13 MR. SAMUEL: But as far as asking to be relieved,
14 she told me that she was coming in front of you for that
15 reason. My reason is, I gave Ms. Hinds everything I give her
16 to prove my innocence. Everything I gave her, I'm not
17 getting nowhere with it. I gave her nine; she turned in
18 three. You left out six. Every time I think I'm taking a
19 step forward, I get pushed back.

20 So I just say, whatever I got to say, I let 12
21 people judge me instead of her. Because every time I go in
22 there, she say they going to find me guilty, this and that.
23 Before I keep hearing negativity, I will just be quiet.
24 That's what I chose to do.

25 THE COURT: All right. Anything further?

1 MS. HINDS: I don't believe so.

2 THE COURT: You know, there's nothing else that I
3 can -- to say, Mr. Samuel. You've talked extensively when I
4 heard the motion earlier about public defenders'
5 responsibility to prepare and to give the bad news along with
6 what might be more positive news.

7 And, you know, it's his case at the end of the day.
8 Y'all have a very substantial and serious responsibility
9 under the law and you are charged with the responsibility of
10 making your tactical decisions based on the information that
11 you have.

12 And at the end of the day, though, it's Mr. Samuel's
13 case. And if he chooses not to give you the information in a
14 format and in a way that you believe is appropriate, that is
15 unfortunate. But your tactical decisions in representing him
16 have to be based upon what information he's willing to share
17 with you, and that's just where you all are.

18 I think you can go forward and represent him.
19 Obviously, it's very -- it's not easy, which is why I'm very
20 grateful that he has, quite frankly, the two of you. He's
21 got some serious lawyers on his side. And I understand your
22 concern completely, but you will have to make your tactics
23 based on the information that he has provided to you. And I
24 am confident that you will.

25 I will respectfully deny your motion.

1 MR. MELLARD: Yes, ma'am.

2 LAMONT ANTONIO SAMUEL,

3 having been duly sworn, testifies as follows:

4 IN-CAMERA EXAMINATION

5 BY MR. MELLARD:

6 Q. Please state your full name.

7 A. Lamont Antonio Samuel.

8 Q. Mr. Samuel, you understand why we are here today?

9 A. Yes, sir.

10 Q. Okay. You understand that the State is claiming you
11 made some statements to the police and that these statements
12 were made freely and voluntarily?

13 A. Yes, sir.

14 Q. You understand that? All right. And you understand
15 that's all we are going to talk about at this hearing, those
16 statements?

17 A. Yes, sir.

18 Q. Okay. So what we are going to do is we are going to
19 go over these things one by one, and I will just ask you
20 questions about each one of them. Okay? The first thing I
21 want to ask you about is marked as State's Exhibit Number 1.
22 I'll let you look at that. Do you recognize that?

23 A. Yes, sir.

24 Q. Okay. Now, do you remember going over that form
25 with Officer Ethridge?

1 A. Yes, sir.

2 Q. Okay. And do you remember if anybody else was in
3 the room when Officer Ethridge went over that form with you?

4 A. Yes, sir, Investigator Dukes.

5 Q. Dukes was in the room?

6 A. Uh-huh.

7 Q. Anybody else?

8 THE COURT: That's a yes?

9 First, we had a yes, was anyone else in the room,
10 yes; and then you said who.

11 BY MR. MELLARD:

12 Q. Who else was in the room?

13 A. Investigator Dukes.

14 Q. Okay. Anybody else besides Investigator Dukes and
15 Officer Ethridge?

16 A. No, sir.

17 Q. Okay. Now, if you look at this form, you see that
18 there's a section that says: Before we ask you any
19 questions, you must understand your rights?

20 A. Yes, sir.

21 Q. All right. Now, the State is claiming that the
22 officer went over these lines with you one by one?

23 A. Yes, sir.

24 Q. And that you put your initials right here.

25 A. Yes, sir.

1 Q. Is that true or false?

2 A. True.

3 Q. That's true. So each of these, number one, you have
4 the right to remain silent, anything you say can be used
5 against you, there are initials, LS, those are your initials?

6 A. Yes, sir.

7 Q. All right. And then down here it says, I understand
8 my rights, and there's a signature; is that your signature?

9 A. Yes, sir.

10 Q. All right. Now, at the very bottom of this form
11 it's called waiver of rights, I want to just ask you about
12 that. Did you understand what your rights are? Did they go
13 over your rights with you?

14 A. Yes, sir.

15 Q. And it says here, I'm willing to make a statement
16 and answer questions; did you indeed want to make a statement
17 and answer questions?

18 A. No. Actually, I went -- after the bond hearing, he
19 spoke to me, told me he need to talk to us. And I asked him
20 what he need to talk to me about, and he said we need to talk
21 to you about the charges.

22 Q. And who is "he"?

23 A. Ethridge.

24 Q. Ethridge talked to you about that? At any time when
25 he was talking to you, did you tell him you did not want to

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- 1 make a statement?
- 2 A. No, sir.
- 3 Q. Did you sign right here Lamont Samuel?
- 4 A. Yes, sir.
- 5 Q. All right. Let me go to the statement that they
- 6 claim that you actually made. And this is State's Exhibit
- 7 Number 2. And I want to take a look at this. Do you
- 8 recognize that statement?
- 9 A. Yes, sir.
- 10 Q. All right. That's the written statement that the
- 11 State is claiming that you gave to Officer Ethridge. Now,
- 12 the State is claiming that this statement was given to him
- 13 and that that is your handwriting down on this -- let me just
- 14 kind of clarify it. It says: I understand my rights and
- 15 have initialed each. I've been advised of the rights by
- 16 Officer Ethridge and wish to make the following statement.
- 17 Below that they are saying that is your handwriting.
- 18 A. Yes, sir.
- 19 Q. Is that indeed your handwriting?
- 20 A. Yes, sir.
- 21 Q. Is that your handwriting on Page 2?
- 22 A. Yes, sir.
- 23 Q. Is that your handwriting on Page 3?
- 24 A. Yes, sir.
- 25 Q. All right. Now, did you make this statement

1 voluntarily?

2 A. No, sir.

3 Q. Tell us why you did not make it voluntarily.

4 A. Because first, from what I told Lieutenant Shumpert
5 when he was in the room with me, I told him I didn't want to
6 give a statement. And he said, you better give a statement.
7 So Shemika was in the other room. I was in one room. He was
8 going over talking to me, explaining to me --

9 Q. Hold on one second. Officer Ethridge was in the
10 room, and you are saying Lieutenant Shumpert was in the room
11 also?

12 A. Yes.

13 Q. When you said he was going over this, who was going
14 over this?

15 A. This was Officer Ethridge going over the statement.
16 Shumpert was in the room too.

17 Q. Now, did you understand what they wanted? Did you
18 understand that they were wanting you to make a statement?

19 A. Yes, I understand.

20 Q. All right. Did they make you any promises?

21 A. Shumpert told me he promised I ain't letting you go
22 home until you give a name.

23 THE COURT: I didn't understand.

24 THE WITNESS: Lieutenant Shumpert told me if I want
25 to go home, I give him a statement.

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- 1 BY MR. MELLARD:
- 2 Q. All right. Now, did they -- was that the only
- 3 promise that they made?
- 4 A. Yes, sir.
- 5 Q. All right. Now, did they make any threats?
- 6 A. No, sir.
- 7 Q. All right. Did they apply any pressure or coercion
- 8 when they made it?
- 9 A. He kept pressing me to give him a name.
- 10 Q. Tell me what pressure they applied.
- 11 A. He was saying I wasn't going home unless I gave him
- 12 a name because he knew I knew something about it.
- 13 Q. And did the pressure cause you to make this
- 14 statement?
- 15 A. Yes, sir.
- 16 Q. How; how did it cause you to make this statement?
- 17 A. Because I wanted to go home.
- 18 Q. All right. Now, did you ever ask to speak to a
- 19 lawyer when you were giving this statement?
- 20 A. No, sir.
- 21 Q. All right. Did you give this statement freely and
- 22 voluntarily?
- 23 A. No, sir.
- 24 Q. Tell us why.
- 25 A. Because he pressured to give a name.

1 Q. So the name, the pressure is what you are saying was
2 not freely and voluntarily?

3 A. Yes, sir.

4 Q. All right. One second. Now I want to talk to you
5 about a State's Exhibit Number 3. I want you to look at
6 that. And just so we are clear, this is dated March 21st,
7 2012, at 16:43. Do you recognize this statement?

8 A. Yes, sir.

9 Q. Okay. Who went over this statement with you?

10 A. I can't understand the name.

11 Q. Did Officer Ethridge go over this statement with
12 you; do you know if he --

13 A. I can't remember.

14 Q. Okay. Do you remember going over this statement
15 with an officer?

16 A. Yes, sir.

17 Q. Okay.

18 THE COURT: I didn't hear.

19 BY MR. MELLARD:

20 Q. Go ahead.

21 A. Yes, sir.

22 Q. Do you remember who was in the room?

23 A. No, sir.

24 Q. All right. Do you remember initialing this, each
25 line of this statement? The first line is: You have the

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1 right to remain silent. Anything you can say can be used
2 against you in court. Do you remember initialing those?

3 A. Yes, sir.

4 Q. All right. Did you sign your name: I understand my
5 rights?

6 A. Yes, sir.

7 Q. All right. Again, below this is a waiver of rights;
8 did you sign your name right there?

9 A. Yes, sir.

10 Q. All right. Now, it's my understanding that after
11 you signed this, that you gave an oral statement to Officer
12 Ethridge.

13 A. No, sir.

14 Q. You don't remember giving an oral statement?

15 A. I never gave an oral statement to anyone.

16 Q. Never gave an oral statement?

17 A. No, sir.

18 Q. All right. So on March the 21st of 2012, you never
19 gave an oral statement?

20 A. No, sir.

21 Q. All right. I want to go over State's Exhibit Number
22 4; do you recognize that?

23 A. Yes, sir.

24 Q. All right. And the State is claiming that you gave
25 this to Officer Gilliard.

1 A. Uh-huh.

2 THE COURT: Is that a yes?

3 THE WITNESS: Yes, yes, ma'am.

4 THE COURT: And, Mr. Samuel, let me just tell you
5 that y'all are having a bit of conversational style. And so
6 it is normal for people to go uh-huh, hum-um. And I know
7 Mr. Mellard knows what you are saying, but that means our
8 court reporter has to interpret what you mean. So if you can
9 help me by answering yes or no with your voice rather than
10 with an uh-huh or hum-um, because while we know what you
11 mean, I want the record to be clear. Okay?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Thank you.

14 BY MR. MELLARD:

15 Q. Do you remember going over this with Officer
16 Gilliard?

17 A. Yes, sir.

18 Q. And again, it's the same form that we've been
19 talking about before. There are lines one through five, and
20 are those your initials?

21 A. Yes, sir.

22 Q. All right. Did anybody force you to put your
23 initials of them?

24 A. No, sir.

25 Q. Did they read these to you, each line: You have the

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1 right to remain silent?

2 A. I mean, I can clearly see that. Ain't nothing
3 signed, there's no witness signing it.

4 Q. Okay. There's no witness signed it. Is that your
5 signature above -- or below the waiver of rights?

6 A. Yes, sir.

7 Q. All right. Now they are claiming that after you
8 gave this form, this waiver of rights form, that you gave a
9 written statement. And this written statement is dated March
10 the 22nd of 2012. Now, one thing I want you to notice on
11 this, and we are going back to State's Exhibit Number 4, I
12 believe that the testimony was that Officer Gilliard wrote
13 the place, the time and the date. And she wrote the place
14 was 1032 Chestnut Street. The date was 3/22/12, and the time
15 was 7:48 p.m. Do you remember writing that?

16 A. I mean, yes, sir.

17 Q. All right. Now, I want to draw your attention to
18 State's Exhibit Number 5. This is the written statement that
19 they are saying you gave after they read you your rights.
20 All right? The testimony was that the date, the time and the
21 place, you wrote that?

22 A. Yes.

23 Q. Is that indeed the case; is that your handwriting?

24 A. Yes, sir.

25 Q. All right. Now, the time here is 7:19; did you

1 write 7:19?

2 A. No, sir.

3 Q. You did not write that?

4 A. That's not my handwriting with my name either.

5 Q. That's not your handwriting?

6 A. No, sir.

7 Q. So the date, the time, the place, and your witness,
8 you did not write this?

9 A. No, sir.

10 Q. All right. Now, what about below all of this: I,
11 Lamont Samuel, pulled up in my cousin Tweety Bird's house;
12 did you write all that?

13 A. I wrote that.

14 Q. Did you write the rest of the stuff on the first
15 page?

16 A. Yeah, I wrote.

17 Q. All right. On the second page?

18 A. Uh-huh, yes, sir.

19 Q. Yes? On the third page?

20 A. Yes.

21 Q. On the fourth page?

22 A. Yes.

23 Q. All right. And did you sign this document?

24 A. Yeah.

25 Q. Let me ask you about this. When you gave this

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1 statement, did anybody put any pressure on you?

2 A. No, sir.

3 Q. All right. Did you give this statement in the
4 presence of any other officer besides Officer Gilliard?

5 A. Lieutenant Shumpert.

6 Q. Learned Shumpert? All right. Did they make any
7 promises to you?

8 A. Shumpert kept telling me, tell the truth and you
9 will go home. That's all I've been hearing ever since I was
10 in there giving a statement.

11 Q. Did they make any threats?

12 A. No, he made no threats.

13 Q. Did they apply any pressure or coercion?

14 A. I promise you won't get out of jail unless you tell
15 me the truth.

16 Q. And that's the same promise that resulted in the
17 first statement?

18 A. Yes, sir.

19 Q. Did that promise lead you to give to this
20 statement?

21 A. Yes, sir.

22 Q. All right.. Did you ask for a lawyer while you were
23 giving this statement?

24 A. No, sir.

25 Q. All right. Did you give this statement freely and

1 voluntarily?

2 A. No, sir.

3 Q. Tell us why.

4 A. He kept telling me it's the only way you are going
5 to go home. So he kept telling me only way I'm going to go
6 home is give a statement. That lead me to giving a
7 statement.

8 Q. Now, did he tell you what to write, or did you write
9 what you thought he wanted to know, or tell us about that.

10 A. I write what I thought he wanted to know.

11 Q. Okay. All right. Nobody forced you to do this?

12 A. Yeah, he forced me. If he telling me, you ain't
13 going home until you write a statement, what is that?

14 Q. You consider that a force, a pressure?

15 A. Exactly.

16 Q. Okay. One second. All right. Next thing I want to
17 talk to you about is State's Exhibit Number 6. It's the same
18 form that we've been going over with: Before you answer any
19 questions, you must understand your rights. Again, it's
20 Number 1 through 5; did you initial?

21 A. Yes, sir.

22 Q. All right. And did you sign your name under, I
23 understand my rights?

24 A. Yes, sir.

25 Q. Again, there's a waiver of rights form that they are

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1 saying you signed. Did you, in fact, sign that waiver of
2 rights?

3 A. Yes, sir. Yes, sir.

4 Q. Okay. Now, this is dated the State's Exhibit Number
5 6 is dated 3/23 at 10:05 a.m., correct?

6 A. Yes, sir.

7 Q. All right. Now, they are saying that after this was
8 given, that you made an oral statement to Lieutenant
9 Shumpert.

10 A. Never made an oral statement to Lieutenant Shumpert.

11 Q. On March 23rd, 2012, you never made any statement
12 to --

13 A. Can I ask what evidence that's supporting that I
14 gave him oral statement?

15 Q. You never gave him an oral statement?

16 A. Never gave him an oral statement.

17 Q. Okay. I want to move on to State's Exhibit Number
18 7. Again, it's the same form: Before we answer any
19 questions, you must understand your rights. Did you initial
20 one through five?

21 A. Yes, sir.

22 Q. All right. Did you sign your name: I understand my
23 rights?

24 A. Yes, sir.

25 Q. All right. And it says waiver of rights, did you

1 sign your name there?

2 A. Yes, sir.

3 Q. All right. They are saying that this is -- all
4 right. This is dated the 28th of March. And they are saying
5 that you gave this, I believe, to Officer Gilliard. Do you
6 remember giving this one to Officer Gilliard?

7 A. Yes, sir.

8 Q. Now, after this was given, they are saying you gave
9 a couple of statements. They are State's Exhibit Number 8,
10 which I will show you; do you remember giving State's Exhibit
11 Number 8?

12 A. Yes, sir.

13 Q. Is this your handwriting? Down here it says: I
14 understand the rights above, and initial each. Then it says,
15 I wish to make the following statement. Below that, is that
16 your handwriting?

17 A. Yes, sir.

18 Q. How about on Page 2?

19 A. Yes, sir.

20 Q. All right. And I notice some of the handwriting is
21 in blue ink and some is in black ink. Did you write all of
22 that?

23 A. No, sir.

24 Q. Which did you write?

25 A. The one that was in blue.

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1 Q. The one that's in blue. So there's a -- do you
2 remember who wrote the ones in black?

3 A. Should have been Ms. Gilliard.

4 Q. Now, that's the written statement. It also said
5 there was an oral statement made. Do you remember giving an
6 oral statement?

7 A. Never gave an oral statement.

8 Q. Okay. So it is your testimony that on March the
9 28th of 2012, you did not give an oral statement?

10 A. No, sir.

11 Q. Okay. State's Exhibit Number 9, I want to see if
12 you recognize that.

13 A. Yes, sir.

14 Q. That is a Calhoun County Sheriff's Office Miranda
15 rights form; do you remember going over that?

16 A. Yes, sir.

17 Q. And I believe the State is saying you went over it
18 with Officer Trentham; do you remember that?

19 A. Yes, sir.

20 Q. Was anybody else in the room when you went over it
21 with Officer Trentham?

22 A. Is this the one from after 26th?

23 Q. This is the one that you gave --

24 A. I don't know the officer by name; that's why I ask
25 you.

1 Q. This is a Calhoun County officer.

2 A. Mr. Dukes, Investigator Dukes.

3 Q. So Investigator Dukes?

4 A. And I had -- when I said Investigator Dukes on the
5 previous one, that was a mistake. I hadn't known by name,
6 but only person I know was Investigator Dukes on that one.

7 Q. Investigator Dukes on this. And is that your
8 signature?

9 A. Yes, sir.

10 Q. I have read and initialed each of the rights above,
11 I understand what my rights are; that's your signature below
12 that?

13 A. Yes, sir.

14 Q. Again, there's a waiver of rights. There's a
15 signature line; is that your signature there?

16 A. Yes, sir.

17 Q. Now, the State is claiming that after they went over
18 that with you, that you gave a written statement to Officer
19 Trentham. And that is State's Exhibit Number 10; do you
20 remember that statement?

21 A. Yes, sir.

22 Q. Let me ask you about that. When you went over that
23 statement, did they make any promises to you?

24 A. No, no, sir.

25 Q. Did they make any threats?

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1 A. That I better give a statement or I ain't going
2 home.

3 Q. All right. Did that cause you to give this
4 statement?

5 A. Before you said I see out here where you have, "Call
6 Grant and Byron Gibson, when they asked who my attorney was,
7 that let you know that I speak to an attorney.

8 Q. At some point they asked who your attorney was and
9 you told him --

10 A. I told them before when I was charged with the two
11 attempts, I asked to speak with an attorney. He still put me
12 in the back room. So I just gave him what he got.

13 Q. So tell me when you asked to speak to the attorney?

14 A. I told him -- I told him I had an attorney. Once
15 they charged me with two attempted murders, I told them I
16 didn't want to talk.

17 Q. Now, did he talk to you after you asked for an
18 attorney?

19 A. He told me he going to sit me in the room and I
20 could be there all day. So my best bet is do what he thinks
21 is right, which is talk to them.

22 Q. So he did not call your attorney, to your knowledge?

23 A. No, he didn't call none of those.

24 Q. He kept trying to talk to you after you asked for
25 your attorney?

1 A. Yes, he kept trying. That was right there.

2 Q. State's Exhibit No. 11, it's dated Calhoun County
3 3/31/2012, it's State's Exhibit No. 11; do you recognize
4 that?

5 A. Yes, sir.

6 Q. All right. I believe they said that Riley Godwin
7 went over that with you. Do you remember Riley Godwin going
8 over that with you?

9 A. Yes, sir.

10 Q. Did you initial?

11 A. Yes, sir.

12 Q. Did you sign your name, I understand my rights?

13 A. Yes, sir.

14 Q. There's a waiver of rights form; did you sign your
15 name to the waiver of rights?

16 A. Yes, sir.

17 Q. Did you understand your rights?

18 A. Yes, sir.

19 Q. All right. After State's Exhibit 11, they said you
20 gave a written statement. And the written statement is dated
21 March 31st, 2012, at 2:35 in Calhoun County; do you remember
22 that?

23 A. Yes, sir.

24 Q. I want you to look at this statement. It's kind of
25 a lengthy statement. I believe it is 11 pages long. There's

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1 a statement: I understand my rights above and initial each.
2 I wish to make the following statements.
3 I want you to look and see if on page one that's
4 your handwriting?
5 A. Yes, sir.
6 Q. All right. What about Page 2?
7 A. Yes, sir.
8 Q. Page 3?
9 A. Yes, sir.
10 Q. Page 4?
11 A. Yes, sir.
12 Q. Page 5?
13 A. Yes, sir.
14 Q. Page 6.
15 A. Yes, sir. Yes, sir.
16 Q. Page 7, yes?
17 A. Yes.
18 Q. Page 8?
19 A. Yes, sir.
20 Q. Page 9?
21 A. Yes, sir.
22 Q. Page 10?
23 A. Yes, sir.
24 Q. Did you sign your name on Page 11?
25 A. Yes, sir.

1 Q. Did anybody promise you anything to giving this
2 statement?

3 A. No, told me -- he didn't promise me nothing, just
4 told me it's the last chance you got if you want to go home.

5 Q. Did anybody put any pressure on you?

6 A. I mean, if you want to use that as pressure, you can
7 say that.

8 Q. All right. Did you ask for your lawyer when you
9 gave this statement?

10 A. I ain't know why Riley Godwin came down there.
11 Riley Godwin brought me Hardee's to eat and he told me when
12 Investigator Dukes and other investigator was in there, he
13 asked did I want to speak to him. Why I ask to speak to him
14 if he weren't my investigator?

15 Q. When you met with Riley Godwin, did you say, I want
16 my lawyer present?

17 A. I told Riley Godwin I didn't want to talk to him. I
18 didn't know what he was down there for.

19 Q. When you said, I don't want to talk to you, what did
20 he do?

21 A. He just told me I get you something to eat, man. He
22 went and got me something to eat from Hardee's. And came
23 back and said best advice to me is to talk because I'm trying
24 to help.

25 Q. Did you give this statement freely and

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1 voluntarily?

2 A. No, sir.

3 Q. Tell us why.

4 A. Because I ain't gave free -- first of all, that's
5 not my investigator. I didn't ask to speak to him. He said
6 I asked to speak to him, but I want to know when I ever had
7 his number to speak to him; never asked to speak to him.

8 Q. All right. Any other reason you didn't give this
9 freely and voluntarily?

10 A. No, ain't no other reason besides what I gave you
11 already.

12 Q. Any other pressure that was put on you?

13 A. He kept saying you want to go home.

14 Q. Any other threats or promises?

15 A. No, sir.

16 MR. MELLARD: No, more questions, Your Honor.

17 IN-CAMERA CROSS-EXAMINATION

18 BY MR. SORENSON:

19 Q. The gist of what I'm hearing, Mr. Samuel, is that
20 the only pressure that was ever put on you to give any of
21 these statements is the investigators telling you if you
22 wanted to go home, you need to give us a statement, right?

23 A. Right.

24 Q. That's the gist of it. That's about what your
25 answer was to every one of them, why it wasn't free and

1 volunteered, correct?

2 A. Right.

3 Q. I want to make sure I understand what you are saying
4 on each of these. The first one that Mr. Mellard asked you
5 about is the statement that you gave the night that this all
6 happened to Investigator Ethridge. Do you remember that?

7 A. Yes, sir.

8 Q. And I believe you said you misspoke and Investigator
9 Dukes wasn't there, right?

10 A. Correct.

11 Q. That wasn't after a bond hearing? You weren't in
12 custody at that point, right?

13 A. Correct.

14 Q. But it's your statement to this Court that that
15 night that Investigator Shumpert came in and told you that
16 you better give a statement if you wanted to go home; is that
17 correct?

18 A. Correct.

19 Q. They are pressuring you to give a name; is that
20 correct?

21 A. Correct.

22 Q. All right. But you went over this advice of rights
23 form with him, right? You understood those, right?

24 A. Correct.

25 Q. You graduated from high school, right?

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1 A. Correct.

2 Q. So you can read and write. And ultimately you gave
3 State's Exhibit Number 2, this statement. That is entirely
4 in your handwriting; is that correct?

5 A. Correct.

6 Q. All right. And it's your testimony that they didn't
7 threaten you; is that correct?

8 A. It is my testimony what?

9 Q. There were no threats made to you; is that correct?

10 A. No. You want to use, "You better give a name unless
11 you want to go home," you want to use that as a threat, you
12 can.

13 Q. That was enough to overcome your will where you just
14 had to give them a statement; is that correct?

15 A. Exactly.

16 Q. After you gave the statement that night, you went
17 home; is that correct? You weren't in custody at that point
18 in time, right? They didn't arrest you?

19 A. That's correct.

20 Q. All right. But at no point in time did you tell
21 them you wanted to speak to an attorney?

22 A. No, not then.

23 Q. No point in time that night did you tell them you
24 didn't want to talk to them that night?

25 A. No, sir.

1 Q. The fact of the matter is, you met up with them the
2 following day to show them where you claim you threw the gun
3 in the pond over in Calhoun County, correct?

4 A. Correct.

5 Q. And they weren't threatening you at that point in
6 time, were they?

7 A. No, sir.

8 Q. And ultimately, after taking and meeting them over
9 in Calhoun County, you came back over to the Sheriff's Office
10 that afternoon, and that's when State's Exhibit Number 3 was
11 done with you, the advice of rights form. That's going to be
12 the day after the incident, the afternoon of March 21st.

13 A. Correct.

14 Q. Is that correct?

15 A. Uh-huh.

16 Q. And that was Investigator Ethridge who you had
17 talked to the night before?

18 A. Yes.

19 Q. And Officer Godwin?

20 A. Yes, sir.

21 Q. And if you recall Investigator Ethridge's testimony,
22 basically the only thing they went over with you that
23 afternoon was just verifying that you're still saying you
24 threw the gun in the pond and that you didn't want to change
25 anything from the statement you had given the night before;

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1 is that correct?

2 A. Correct.

3 Q. And that's right, that's what they went over with
4 you that afternoon?

5 A. Godwin didn't gone over that with me; it was only
6 Ethridge.

7 Q. Investigator Godwin witnessed you signing that
8 advice of rights form?

9 A. He wasn't -- he didn't. How would Riley Godwin go
10 over that with me when they was dealing with Orangeburg
11 homicide? They don't two of them -- on one of the ones that
12 you gave me, they were showing me, I gave a statement, but
13 ain't nobody witness to signing.

14 Q. That's not the one I'm talking about though.

15 A. The one you are talking about is the one I don't
16 recall writing down with Ethridge; is that what you're
17 talking about.

18 Q. You don't deny what Investigator Ethridge said you
19 told him?

20 A. There's no need for me to deny it.

21 Q. Well, that's my question, Mr. Samuel. You don't
22 deny that. You told Mr. Mellard earlier that you didn't give
23 any oral statements; is that correct?

24 A. That's not an oral statement. That's a written
25 statement.

1 Q. The oral statement is the fact that you threw the
2 gun in the pond.

3 A. That wasn't an oral statement. That was what was on
4 my statement. That's not an oral statement. If you go
5 through those statements, you will see where he asked me
6 questions and I told him that.

7 Q. Show me on this statement that you gave -- and this
8 is the only -- on March 21st at 4:43 in the afternoon, at
9 that point in time you had only given one written statement.

10 A. Exactly. I never gave an oral statement.

11 Q. Point to me where you told them you threw the gun in
12 the pond in that written statement. Take your time and look
13 it over.

14 A. See, first of all, right here, let me tell you where
15 you went wrong here.

16 Q. Answer my question first.

17 A. This is Gilliard, this isn't --

18 Q. I asked you a question. You answer my question
19 please and then you can explain it if you need to.

20 A. All right. You asked me a question.

21 Q. Show us where in there you told --

22 A. I can't show you that. But see, what I want you to
23 realize is, you are saying Ethridge and Godwin, but the
24 signature is saying Gilliard. I don't understand that.

25 Q. Because that is the night of the incident. That

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1 goes with this form. This is later on the next day.

2 A. Help me understand where you see me give an oral
3 statement at. Riley Godwin and Ethridge is not Ms. Gilliard.
4 Ms. Gilliard's name is on this statement.

5 Q. I understand that. I understand that. I think you
6 are the one not understanding here. All right. The night of
7 the incident, they went over this advice of rights form with
8 you; is that correct? The night of March the 20th, that's
9 the night that Mr. Hamilton was killed, right before
10 midnight.

11 A. Correct.

12 Q. You signed that advice of rights form?

13 A. Who is the witness there?

14 Q. Investigator Ethridge.

15 A. There you go.

16 Q. Okay. You signed that and then gave him this
17 statement right after midnight on the 21st.

18 A. You said I gave Ethridge a statement, but it got
19 Gilliard's name on there.

20 Q. Investigator Ethridge, Investigator Gilliard, gave
21 them that statement --

22 A. All right.

23 Q. -- that night?

24 A. So wait. Where is --

25 Q. Where in there did you tell them you threw the gun

1 in the pond?

2 A. I didn't tell them that.

3 Q. Because that was an oral statement that you gave to
4 them after the fact?

5 A. That's what I'm trying to tell you. I never gave an
6 oral statement.

7 Q. Then later on that day then, on March the 21st of
8 2012, at 4:43 in the afternoon, you met at the Sheriff's
9 Office after taking them out to the pond where you told them
10 you threw the gun in the pond -- why else would they be out
11 there with you if you hadn't told them that?

12 A. You ask why I be out there with them? Because if
13 you go -- if you let me see one of those statements, I
14 guarantee --

15 Q. Those are afterwards.. Those are after that the
16 fact. I'm talking about that afternoon. This is the only
17 statement you had given at that point in time.

18 A. Exactly, but you are saying I gave an oral
19 statement, but I'm trying to tell you, I did not give an oral
20 statement. That's what I'm telling you.

21 Q. All right. Okay. So they just made up the fact
22 that you said you threw the gun in the pond?

23 A. Yes, sir. We can go all day.

24 Q. Let me ask you this. What is an oral -- tell me
25 what --

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1 A. Oral statement when somebody confess that you did
2 something, that's an oral statement, a confession out of your
3 mouth.

4 Q. An oral statement is when you don't write it, you
5 just tell them?

6 A. Exactly.

7 Q. And you are saying you never did that?

8 A. Never did.

9 Q. We are going to get to that in a second, Mr. Samuel.
10 But that afternoon on March 21st, the following day, when you
11 took them out to the pond and then went back to the Sheriff's
12 office, again, nobody threatened you that day?

13 A. Nobody threatened me.

14 Q. You said you didn't even give a statement, so
15 obviously they didn't promise you or anything like that; is
16 that correct?

17 A. Correct.

18 Q. Okay. So it is your testimony they just did this
19 advice of rights form with you and then you didn't talk at
20 all that day?

21 A. Exactly.

22 Q. Next one we have then is the following day, now
23 March the 22nd, that night; do you remember going over this
24 with your lawyer?

25 A. Yes, sir. And that's the one I'm trying to tell

1 you. How do I remember going over when there's no witnesses
2 signed right there.

3 Q. It's your signature.

4 A. It's my signature, but don't somebody got to sign
5 that? If they witness my rights, don't somebody have to sign
6 the bottom?

7 Q. You heard Investigator Gilliard testify that she
8 went over this advice of rights form with you?

9 A. You heard Ms. --

10 Q. Answer my question please.

11 A. I'm answering your question.

12 THE COURT: Mr. Sorenson, you need to direct that to
13 him.

14 MR. SORENSON: Answer my question, then he can
15 explain it, Your Honor.

16 THE COURT: Mr. Samuel, in this -- when you are
17 giving testimony, answer Mr. Sorenson's question if you can
18 answer it. If you cannot answer, just say I don't know.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: What you cannot do is get argumentative
21 with him and ask him questions. If you need to -- if you can
22 answer his question, if it is a yes or no question, you can
23 answer it yes or no. Yet, if you need to explain your
24 answer, you can explain your answer.

25 THE WITNESS: I appreciate it. Yes, ma'am.

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2 BY MR. SORENSON:

3 Q. You heard Investigator Gilliard testify a couple
4 weeks ago that she went over these rights with you the
5 evening of March the 22nd of 2012; is that correct?

6 A. Yes, sir.

7 Q. And those are your initials next to each of those
8 rights?

9 A. Yes, sir.

10 Q. Your signature understanding those rights?

11 A. Yes, sir.

12 Q. Your signature after the waiver of rights?

13 A. Yes, sir.

14 Q. It's not your handwriting at the top where it's the
15 place, the date and the time; is that correct?

16 A. No, sir.

17 Q. Do you have any reason to doubt that is Investigator
18 Gilliard's handwriting that she testified it was?

19 A. I have a lot of reasons to doubt it because she
20 didn't sign it at the bottom.

21 Q. Okay. So whose handwriting is that at the top?

22 A. I cannot tell you when no witness sign at the
23 bottom.

24 Q. You are telling me it is not her handwriting?

25 A. I can tell you because no witnesses signed at the

1 bottom.

2 Q. So it's nobody's handwriting --

3 A. I can't say it is nobody's handwriting because that
4 wouldn't be correct. It's got to be somebody's handwriting
5 at the top of it. But if you are going on my Miranda rights,
6 you are supposed to sign. There's no signature. Both of
7 them is blanks. No signature there.

8 Q. But on that date when you did that, nobody
9 threatened you anything?

10 A. Nobody threatened me. You could keep going, but the
11 whole point is this: Who signed it?

12 THE COURT: Mr. Samuel, stop. He asked the question
13 and you answer the question if you can.

14 BY MR. SORENSON:

15 Q. Nobody threatened you on the day that you signed
16 this form in two spots and initialed those five rights?

17 A. No, sir.

18 Q. Nobody pressured you to get you to talk that day?

19 A. No, sir.

20 Q. Nobody coerced you in any way?

21 A. No, sir.

22 Q. Never asked for a lawyer?

23 A. No, sir.

24 Q. Never told them you didn't want to talk?

25 A. No, sir.

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1 Q. And then ultimately that same night, March the 22nd
2 of 2012, you gave State's Exhibit Number 5?

3 A. Yes, sir.

4 Q. And as Mr. Mellard went over with you, three pages
5 that are your handwriting?

6 A. Yes, sir.

7 Q. One page that's a question and answer with your
8 handwriting --

9 A. Yes, sir.

10 Q. -- for the answers, and Investigator Gilliard for
11 the questions?

12 A. Yes, sir. Could I see that statement? You are
13 correct.

14 Q. Correct?

15 A. Uh-huh.

16 Q. But it's your testimony that at the top of that
17 statement, the top of page one, that that is not your
18 handwriting at the top where it's got your name and date and
19 time and all of that filled in?

20 A. That's not how I write my name. That name, I didn't
21 write my name right there.

22 Q. But you wrote your name in the first line, whenever,
23 when you started the statement, is that correct, first line
24 or two?

25 A. That's correct.

1 Q. But yet again, when you gave that statement in your
2 handwriting, I mean, nobody was threatening you to get you to
3 give a statement?

4 A. Just kept saying if I want to go home.

5 Q. But no other threats or pressure besides that? I
6 mean, that's basically your answer for every statement, is
7 they just told you, if you want to go home, you give a
8 statement?

9 A. Pressure me to give a name.

10 Q. Pressure you to give a name?

11 A. Which I gave Steve Johnson.

12 Q. And may I see that back for a second?

13 A. I need to ask you a question off of that.

14 Q. You are not allowed to do that. But ultimately,
15 they asked you a series of questions and answers here on this
16 last page; is that correct?

17 A. That's correct.

18 Q. And those are your answers to the questions; is that
19 correct?

20 A. May I see? Yeah, that's correct. But I also see on
21 there where they asked me where the gun was in the pond. You
22 stated that nobody ever asked me, it wasn't on the statement,
23 but I'm looking at it.

24 Q. Why did you tell us you threw the gun in the pond,
25 right?

1 A. Uh-huh.

2 Q. Okay. Tell the Court, when did you tell them you
3 threw the gun in the pond prior to this?

4 A. You are saying on the statement.

5 Q. Prior to this.

6 A. There was no other prior to, it was only on my
7 statement.

8 Q. So your testimony is the first time you told them
9 that was the night of March the 22nd?

10 A. Yeah, that was -- which is the night when they
11 arrested me. They arrest me -- when they arrest me, that was
12 the night of the 22nd.

13 Q. But you had been out to the pond already with them
14 to show them where. Prior to this, you had already been out
15 to the pond?

16 A. Mr. Sorenson, I been out to the pond, but you just
17 told me going over the statement that I never said any
18 statement. I went and pointed out to you. The oral
19 statement was false, is what I was trying to tell you.

20 Q. So your statement that you had never told them
21 prior. And my question to you, if you had never told them
22 prior to this that you had gone out to the pond, how did they
23 know to meet you out at the pond to get the gun if you never
24 told them that; that was my question to you.

25 A. The question is --

1 Q. I understand that. I understand that. I wasn't
2 asking that question. You said that half a dozen times. All
3 right.

4 The following morning, if you recall, you heard
5 Investigator Gilliard and Lieutenant Shumpert both testify
6 about -- ultimately, after the statement you gave the night
7 of the 22nd, you were arrested, right? That night you were
8 taken into custody charged initially with obstructing
9 justice?

10 A. Yes, sir.

11 Q. The following morning you were called in bringing
12 you back over and going over State's Exhibit Number 6 with
13 you?

14 A. Yes, sir.

15 THE COURT: This is the 23rd?

16 MR. SORENSON: This is the 23rd, yes, Your Honor.
17 Morning of the 23rd, 10:05. And that was with Investigator
18 Gilliard and Lieutenant Shumpert, correct?

19 THE WITNESS: Correct.

20 BY MR. SORENSON:

21 Q. And it is your testimony that you made no oral
22 statements that morning; is that correct?

23 A. Correct.

24 Q. So Investigator Shumpert, I believe, had testified
25 that he was the one that spoke to you that morning. If you

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1 bear with me one second. And that you had admitted that
2 morning to shooting up your own vehicle. So you deny telling
3 him that?

4 A. No, sir.

5 Q. You did not tell them that; that's your statement
6 now?

7 A. No, sir.

8 Q. He said that you had told him that you had seen
9 Steven and the victim fighting and Steve shoot the victim.

10 A. Did not tell him that.

11 Q. Did not tell him that? And that the reason that you
12 were scared because you wanted to get in the navy, so that's
13 why you told the police that they shot at you, is because you
14 were scared; didn't tell them any of that?

15 A. No, I didn't tell them any of that. I was going
16 into the marines. It funny how navy on there. I was never
17 going into the navy. Darn.

18 Q. Of course, you had been over to the navy recruiting
19 station that day?

20 A. You said I been out to the navy recruiting station
21 that day? That was never enlisting. I went over to the navy
22 to get paperwork straight because they had so many charges on
23 my record.

24 Q. That doesn't really matter for this right here.

25 But, all right, your testimony is you did not say any of that

1 stuff to Lieutenant Shumpert on March the 23rd?

2 A. No, sir.

3 Q. All right. Then the next fast-forward to the next
4 statement we have then is, I guess, five days later on March
5 the 28th, that afternoon. Remember State's Exhibit 7?

6 A. Yes, sir.

7 Q. Gilliard went over that with you?

8 A. Yes.

9 Q. That's again your signature?

10 A. Yes, sir.

11 Q. Your initials?

12 A. Yes, sir.

13 Q. Your signature on both the understanding my rights
14 and the waiver of rights?

15 A. Yes, sir.

16 Q. Yet again, you had no problem talking to them that
17 day; is that correct?

18 A. No, sir.

19 Q. They didn't threaten you?

20 A. If you want to use, "You better give a statement if
21 you want to go home," if you want to use that, you can use
22 that.

23 Q. It is your testimony they told you that on this day?

24 A. Yes, sir. They told me that every day I talked to
25 them, they told me that. It's funny how I could see

1 Ms. Gilliard's signature at the bottom.

2 Q. That's not my question though. My question is, they
3 told you on March the 28th when this was given that they told
4 you you better give a statement if you want to go home.

5 A. Yes, sir.

6 Q. Now you've seen there's actually a DVD of this whole
7 incident; is there not?

8 A. Are you going to bring it in?

9 Q. Yeah, because nowhere on there do they tell you you
10 better give a statement unless you want to go home.

11 A. Okay, I will let you bring it in.

12 Q. It is your testimony that's on there, that they are
13 threatening you, if you want to go home you better give a
14 statement?

15 A. You know they didn't come out and say we threaten
16 you unless want to give a statement. You know how the police
17 talk. They always ask you, if you want to help yourself,
18 your best bet is give us a statement. They don't come out
19 and say what they say.

20 Q. The fact of the matter is they weren't threatening
21 you that you were not going to go home unless you give a
22 statement. They told you -- you basically hold the key to
23 help yourself out, right, they told you that?

24 A. Uh-huh.

25 Q. That's a little different than what you told the

1 court initially, right?

2 A. I mean, not different. You know how they talk. If
3 you want to help yourself, the best thing you can do is give
4 us a statement, tell us what happened.

5 Q. And in fact, you remember they brought you over that
6 day because of the fact that you had given, at that point in
7 time, conflicting stories about what happened?

8 A. Yes, sir.

9 Q. Okay? And Mr. Mellard asked you about -- you
10 ultimately ended up giving a statement after that, right,
11 after this advice of rights here, on the 28th?

12 A. Yes, sir.

13 Q. You ultimately after that gave State's Exhibit
14 Number 8?

15 A. Uh-huh.

16 Q. And he had asked you about an oral statement also.
17 And you yet again said you didn't give an oral statement?

18 A. Didn't give an oral statement.

19 Q. Well, they sat and talked to you prior to you giving
20 that statement; is that correct? That's all on the DVD where
21 Investigator Gilliard was talking to you prior to you giving
22 that written statement?

23 A. If that was on a DVD, tell me -- show the Court when
24 I gave an oral statement.

25 Q. She testified about it. So you are denying that.

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1 there's any conversation between you and her on there besides
2 you giving that statement?

3 A. It don't got nothing to do with an oral statement.

4 Q. That's what oral statement is, Mr. Samuel.

5 A. I'm telling you, I'm talking to you about it, but it
6 was never mentioned in the oral statement what you are
7 reading off to me. I never told them that.

8 Q. All right. So you deny ever telling -- bear with me
9 one second. You deny her sitting and going over with you
10 that they brought you over and told you basically that there
11 was some inconsistencies between your statements and they
12 wanted to kind of clarify them?

13 A. No, I'm not denying that.

14 Q. She told you that, right?

15 A. Yeah, she told me that.

16 Q. She asked you whether you had shot up your own car?

17 A. Uh-huh.

18 Q. Do you remember what your response was to that?

19 A. She asked if I shot up my own car, I told her no.

20 Q. You didn't? Okay. Do you remember telling her that
21 you lied about that before because you were scared?

22 A. Yes, I remember telling her that.

23 Q. Okay. Tell the Court, prior to her talking to you
24 and asking you those questions, when did you in one of your
25 written statements tell anybody that you had shot up your own

1 car?

2 A. I told Investigator Shumpert in one of my
3 statements.

4 Q. Which one?

5 A. I have to see it.

6 Q. At this point we've now gone over that statement.

7 We've now gone over -- those are the only two written
8 statements you gave. And you told the Court you didn't give
9 any oral statements.

10 A. No, I didn't give an oral statement. Why are you
11 reading 28th? That has nothing to do with March 28th right
12 here.

13 Q. You hadn't given this statement yet. So I'm asking
14 you when you told them prior to that.

15 A. I never told them that prior to it. I'm telling you
16 exactly when I told him that.

17 Q. All right. And ultimately, you gave -- jump forward
18 a second here, State's Exhibit No. 8, you gave this statement
19 right?

20 A. Yeah.

21 Q. On Page 2, the question: In another interview, you
22 advised you shot up your own vehicle; is that true.

23 Answer is false, right?

24 A. Uh-huh.

25 Q. Why did you lie about shooting up your own vehicle.

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1 Because I didn't want nothing to get in the way of
2 me getting into the military.

3 A. Just what I told you, that has nothing to do with
4 these two. Same on March 28th, that statement says March
5 28th.

6 Q. I guess what I'm having trouble understanding is
7 when, when did you tell them that you had prior, that you had
8 shot up your own vehicle then, because you just told the
9 Court you didn't tell Lieutenant Shumpert that. Who did you
10 tell and when did you tell them that?

11 A. You said who -- I told you who I told that.

12 Q. Who?

13 A. I told you I told Investigator Shumpert that.

14 Q. You just told the Court five minutes ago that you
15 denied -- when I asked you specifically that question, you
16 denied saying that. I specifically asked you, did you admit
17 to shooting up your own vehicle back on March the 23rd to
18 Lieutenant Shumpert. And you said, no, I didn't tell him
19 that.

20 A. Exactly. I'm still telling you the same thing, I
21 didn't tell him that. I'm still telling you the same thing.

22 Q. My question, Mr. Samuel, in this statement when it
23 says in another interview you advised you shot up your own
24 vehicle, why did you lie about that, well, who did you tell
25 that; who did you tell that lie to then is my question?

1 A. I'm telling you Investigator Shumpert.

2 Q. When?

3 A. You keep saying when. I have to see the statement
4 to let you know when I said that.

5 Q. You have the statements. Those are the only two
6 statements at this point that you had given.

7 A. These are the only statements. Ain't got nothing --
8 this is the 22nd, this is the 21st. Of course, I didn't tell
9 him that.

10 Q. There's the 28th. But, I mean, you didn't say it
11 prior to that in there.

12 A. I'm trying to tell you, Mr. Sorenson, you can keep
13 going back and forth. The whole thing is, I never told
14 Investigator Shumpert that. I told Investigator Shumpert I
15 shot my own truck. He asked me when. I keep telling you the
16 same thing.

17 Q. So you did or didn't tell him that?

18 A. I didn't tell him that.

19 Q. So your testimony now is that you never told anybody
20 that?

21 A. Mr. Sorenson, you read the statements, right? You
22 seen what --

23 Q. I've read them all, yes, sir.

24 A. Okay. So you've seen where I said I shot my own
25 truck, right? And you seen where I said I didn't. You seen

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1 it, right? So you keep asking the same question, I keep
2 giving you the same answer. You can keep going over to that.

3 As a matter of fact, since you want to keep going
4 over to it, where is the evidence stating that I gave
5 Mr. Shumpert -- told Mr. Shumpert that.

6 MR. SORENSON: Your Honor --

7 THE COURT: He's going over --

8 MR. SORENSON: He's asking me questions.

9 THE COURT: You don't get to ask Mr. Sorenson
10 questions.

11 BY MR. SORENSON:

12 Q. The fact of the matter, you remember Investigator
13 Gilliard testifying about you giving this statement and then
14 she testified about kind of some other kind of questions and
15 answers afterwards?

16 A. Yes, sir.

17 Q. The fact of the matter is they at some point in time
18 were on paper, is that correct, and you ripped them up?

19 A. And Lieutenant Shumpert slammed me to the floor.

20 Q. That's because you snatched this off the table, had
21 into your hand and started ripping it apart?

22 A. Well, that's because I reached for it and he came
23 and he slammed me.

24 THE COURT: And that's exhibit?

25 MR. SORENSON: This would be Exhibit Number 8, Your

1 Honor.

2 BY MR. SORENSON:

3 Q. And prior to Lieutenant Shumpert putting a hand on
4 you, you were already ripping that up at that point in time?

5 A. No, I just reached for it. You can see that on the
6 tape, you seen where I just reached --

7 Q. You had it in your hand the entire time?

8 A. I had in my hand. There's a difference between
9 having in my hand and tearing something up.

10 Q. You were tearing. But you ultimately then, as they
11 were escorting you out of the room, you were continuing to
12 rip up the other two pages; is that correct?

13 A. I mean, I just want to see the video.

14 Q. When you were going out of the room, you were
15 continuing to rip up the other two pages; is that correct?

16 A. Correct.

17 Q. Okay. Prior to you -- when you were actually giving
18 this written statement here, I mean, nobody was -- in fact,
19 you were in the room by yourself when you wrote this initial
20 Page 1 and the top of Page 2, right? There was nobody else
21 even in the room with you; is that correct?

22 A. Not correct. Ms. Gilliard was in the room the whole
23 time.

24 Q. You are sure about that?

25 A. You said I'm sure about that? She was in the room.

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1 She was in the room, gone, then when she came back in the
2 questioning, you heard when Lieutenant Shumpert stood up and
3 said I seen him stood up, I seen Ms. Gilliard.

4 Q. So you are positive that she was in the room with
5 you the whole time? That's how much you remember of all of
6 this, you are positive she was in the room the whole time?

7 A. No, she wasn't in the room with me the whole time.

8 Q. All right. That matters when you were writing Page
9 1 and onto the second page of that statement, she wasn't in
10 the room with you?

11 A. Correct.

12 Q. Nobody was in the room with you?

13 A. Correct.

14 Q. So that's not what you've just said a couple seconds
15 ago. And your attorneys have a copy of that video, right?
16 Have they gone over it with you?

17 A. They ain't gone over with me. Every time I asked to
18 see anything, they never showed me anything. They never
19 showed me the video where Shumpert slammed me to the floor.

20 Q. The next advice of rights form we have is State's
21 Exhibit No. 9; yet again, your initials?

22 A. Yes, sir.

23 Q. Your signature?

24 A. Yes, sir.

25 Q. Saying that you understand those rights?

1 A. Yes, sir.

2 Q. And this is now probably the 6th time they've been
3 gone over with you?

4 A. Yes, sir.

5 Q. Correct? And you signed the waiver of rights saying
6 that you still wanted to talk to them; is that correct?

7 A. That's correct.

8 Q. It is your testimony now that you actually told them
9 you didn't want to talk?

10 A. I mean, you could see where I said, "Call Grant,
11 Byron Gibson" down to the bottom. So that should have led
12 you, if that's already on there, that should have led you I
13 gave them some insight that I did not want to talk.

14 Q. The fact of the matter is, you never told them you
15 wanted your lawyer there; is that correct?

16 A. Incorrect. Why would I tell them I didn't want my
17 lawyer there if I put it on the paper that I had a lawyer.

18 Q. The fact of the matter is, you never told them you
19 didn't want your lawyer there; is that true or false?

20 A. False.

21 Q. So you did tell them you wanted your lawyer there?

22 A. Correct.

23 Q. You wanted Mr. Gibson or Mr. Grant?

24 A. Correct.

25 Q. Of course, the fact of the matter is, it's neither

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1 here nor there, but neither one of them were your lawyer?

2 Weren't your lawyer then; aren't your lawyer now, right?

3 A. All right. But, see, the fact of the matter is, if
4 I put it on paper, that should let you know that I did
5 mention it.

6 Q. So you deny telling Lieutenant Trentham the day
7 before -- because you got arrested and charged over in
8 Calhoun the day before and went to bond court; is that
9 correct?

10 A. The day before what?

11 Q. The day before this.

12 A. No, I was already incarcerated.

13 THE COURT: What is the "this"?

14 MR. SORENSON: I'm sorry. It's State's Exhibit
15 Number 9, that's the advice of rights that Calhoun County
16 went over with him.

17 BY MR. SORENSON:

18 Q. You were in custody for the Orangeburg charge?

19 A. Correct.

20 Q. But they served and took you to bond court the day
21 before this on the Calhoun charge; is that correct?

22 A. Correct.

23 Q. Okay. And so do you deny telling them that you
24 wanted to talk to them at bond court?

25 A. Yeah, I deny it.

1 Q. You didn't tell them that?

2 A. No, I didn't tell them that.

3 Q. Of course, you didn't have a lawyer in bond court;
4 is that correct?

5 A. I didn't have no lawyer.

6 Q. But you didn't tell them you wanted to come over and
7 talk to them?

8 A. No, I didn't tell them that. They charged me with
9 attempted murder and told me to come in the back.

10 Q. But ultimately, that next day after signing this
11 waiver of rights section, you did give them a statement; is
12 that correct?

13 A. Correct.

14 THE COURT: And next day after this --

15 MR. SORENSON: I'm sorry, Your Honor.

16 THE COURT: I want the record to make sense.

17 BY MR. SORENSON:

18 Q. After State's Exhibit No. 9, you signed that waiver
19 of rights section; is that correct?

20 A. Correct.

21 Q. And, in fact, you did give them a statement after
22 that?

23 A. Correct.

24 Q. And some of that dealt with the incident over in
25 Calhoun County; is that correct?

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1 A. Correct.

2 Q. But Page 3 deals with some of the stuff here in
3 Orangeburg; is that correct?

4 A. Correct.

5 Q. And that, yet again, is a question and answer part
6 where the question part is not your handwriting, right?

7 A. Correct.

8 Q. But the answers are your handwriting?

9 A. Correct.

10 Q. And nobody was threatening you to get you to write
11 those answers?

12 A. No.

13 Q. Nobody was pressuring you to get you to write those
14 answers?

15 A. Investigator Dukes was.

16 Q. What was he saying to you that was pressuring you so
17 much to give this fifth statement?

18 A. We want to help you help yourself.

19 Q. Okay. And that overcomes your will to the point
20 where you felt like you had to give a statement and it wasn't
21 voluntary; is that correct?

22 A. Correct.

23 Q. And then after that, after they were done with you
24 in Calhoun County is when Investigator Godwin came over and
25 talked to you; is that correct?

1 A. That's correct.

2 Q. He sat down with you and advised you, went over your
3 rights with you again?

4 A. Correct.

5 Q. And State's Exhibit No. 11?

6 A. Correct.

7 Q. Yet again, your signature, your initials after those
8 five rights, your signature, his signature; is that correct?

9 A. Correct.

10 Q. And it is your testimony now that you told him you
11 didn't want to talk to him?

12 A. Correct.

13 Q. I believe you testified that you didn't even know
14 why he was over there?

15 A. Correct.

16 Q. Is that correct?

17 A. Correct.

18 Q. And that it couldn't have been freely and
19 voluntarily given because he wasn't even your investigator,
20 right?

21 A. Correct.

22 Q. So makes it not freely and voluntarily?

23 A. Correct.

24 Q. But ultimately, despite all of that, you still sat
25 down and gave another statement, State's Exhibit No. 12,

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1 correct?

2 A. Correct.

3 Q. You never told Investigator Godwin that you wanted a
4 lawyer?

5 A. I kept telling Mr. Godwin I didn't want to talk to
6 him. I didn't know why he was there.

7 Q. You never told him that you had a lawyer, that you
8 wanted your lawyer there?

9 A. No.

10 Q. It is your testimony only that you told him you
11 didn't know why he was there and you didn't want to talk to
12 him; is that correct?

13 A. Correct.

14 Q. But you ultimately, though, ended up, for somebody
15 who didn't want to talk, ended up writing an eight-page
16 statement in your own handwriting; is that correct?

17 A. Correct.

18 Q. One, two, three, four, five, six, seven, eight pages
19 all your handwriting, correct?

20 A. Correct.

21 Q. Then he goes over a question and answer portion with
22 you. And for somebody who doesn't want to talk to him, you
23 are answering his questions, correct?

24 A. Correct.

25 Q. So he asks you the question: When did Gator ask you

1 about robbing Tweety?

2 I mean, that's your answer: As soon as he found out
3 I was over there; correct?

4 A. Correct.

5 Q. Had you given this statement of your own free will;
6 your answer is yes, correct?

7 A. I seen it.

8 Q. Let me go over it for the Court.

9 QUESTION: "Did you ask Investigator Dukes to call
10 me to get me to come to Calhoun County Sheriff's Office to
11 talk to you?"

12 What's your answer?

13 A. My answer yes, but he told me, he said, man, just
14 everything I ask, you agree with. Why he have to bring me
15 food for me to talk?

16 Q. "Have you been treated fairly and written your own
17 words;" your answer is yes?

18 A. Basically, I agreed with him, yes. I agreed with
19 him because of what he was saying.

20 Q. "Has anyone pressured you today?"

21 "No, not at all."

22 Yet again, your answer, right?

23 A. That's correct.

24 Q. Your handwriting, right?

25 A. Exactly.

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1 Q. "So you had Investigator Dukes call me here today.
2 You wanted me to come talk with you?"

3 ANSWER: "Yes. Officer never contacted me. I
4 called and asked for you."

5 A. Incorrect.

6 Q. That's your handwriting, correct?

7 A. That's in my handwriting, but I'm still telling you
8 it is still incorrect.

9 Q. So that is incorrect. It is your handwriting, you
10 wrote it, but it is incorrect?

11 "Is there anything else you want to say?"

12 Your answer: "Like I said, I was scared for my
13 life. Gator threatened me like eight times on both murder
14 and attempted murder. And also said that if my name is on
15 his paperwork, he's going to get Fabo to handle me and Steve.
16 I'm glad the Officer Godwin came down to talk with me to give
17 me another chance to prove my innocence. Another is I was
18 scared because still on the streets along with my family."

19 That's your handwriting, right?

20 A. Yes.

21 Q. Back on the first page here, I mean, you start off,
22 I mean: "I, Lamont Samuel, woke up and decided that I was
23 tired of this mess. After being in jail sitting behind these
24 walls" --

25 (Whereupon, the reporter asks the attorney to slow

1 down.)

2 Q. -- "you know I'm going to tell the truth and nothing
3 but the truth so help me God."

4 Your handwriting?

5 A. I can see it all. Like I told you, I just agreed
6 with him because I thought I was helping myself go home.

7 Q. What it basically boils down to, Mr. Samuel, is
8 that's the only thing you've got, is as far as this not being
9 freely and voluntarily given, is the fact that they just kept
10 telling you, you know, you need to try to help yourself out,
11 tell us what happened, right?

12 A. Shumpert told me if I don't give him -- he wanted me
13 to give him a name that fit the description of the person
14 they had dreads. As a matter of fact, see, I can't do it,
15 but Shemika was there that night while I was giving my
16 statement. She knows what was going on. My mom took her to
17 meet her people that day, that same night.

18 MR. SORENSON: That's all the I have, Your Honor.

19 THE COURT: All right. Redirect?

20 MR. MELLARD: Nothing from us, Your Honor.

21 THE COURT: All right. Come on down. All right.

22 Any additional witnesses?

23 MR. MELLARD: No, ma'am.

24 THE COURT: Very well. All right. Motions?

25 MR. MELLARD: Yes, ma'am. It's our position that

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1 MR. SORENSON: No.

2 THE COURT: From the defense?

3 MS. HINDS: Your Honor, I don't have a motion, but I
4 think for the purposes of continuity, I do want to put
5 something on the record from when we started this trial in
6 May.

7 On May 13th, we had a hearing in which Mr. Samuel
8 had motioned the court to let him proceed pro se. That
9 hearing ultimately ended in a ruling that denied him the
10 right to do that basically based on Rule 3.3 about candor
11 against the tribunal and basically saying he had not been
12 candid with the Court and, therefore, that would be an
13 interference with him proceeding to represent himself.

14 On May 14th, we made a motion to recuse, Judge
15 Goodstein, based on the fact that our argument was that if he
16 was not credible enough to exercise constitutional right to
17 represent himself, we were then going into Jackson v. Denno
18 hearings in which the Court was going to assess the
19 credibility of evidence that was going to ultimately come in
20 or not come in. And we felt that we needed to raise the
21 motion to recuse.

22 At that point, the Court denied the motion. But
23 because it started in May and we proceeded today to finish, I
24 do think it needed to be on the record. I believe -- I don't
25 believe that this is a new motion. I believe that that

1 motion was heard and decided. But in order to make the
2 transcript complete for this trial, I thought that we needed
3 to put that on the record.

4 THE COURT: Let me comment further and tell you how
5 I take the matter to be. We had the first part of the
6 Jackson v. Denno hearing. Prior to the first part of the
7 Jackson v. Denno hearing, there was the motion to recuse. It
8 was May. It was ruled on. The Jackson v. Denno hearing went
9 forward, and we only heard half of it. And then we lost our
10 jurors and we then started anew.

11 But the Jackson v. Denno hearing was just concluded.
12 It wasn't started again. We just concluded it, just as
13 Mr. Sorenson said yesterday. So I certainly would not
14 believe that it would have been necessary to raise the motion
15 to recuse again. Because in effect, it would be making the
16 motion in the middle of the Jackson V. Denno hearing. Motion
17 was made prior to the Jackson v. Denno hearing, ruled on,
18 then we stopped the Jackson v. Denno hearing intentionally
19 knowing -- if you will recall -- knowing that we were going
20 to pick it up when I returned in June.

21 MR. MELLARD: That's correct, Your Honor.

22 THE COURT: Because, actually, Mr. Samuel was
23 getting ready to testify and we said, hold on, let's see
24 where we are with these jurors, then went into the jurors'
25 situation. And the reason that we held on to Mr. Samuel was

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1 that there wasn't a need for Mr. Samuel to testify, and then
2 if we needed to finish, to come testify again.

3 And so to preserve that from occurring, we stopped
4 Mr. -- I stopped Mr. Samuel from testifying at that moment
5 so that we can deal with the jury issue, realized we lost our
6 jury. And then we completed, if you will, the Jackson V.
7 Denno hearing yesterday.

8 I cannot imagine that there would be be a need to
9 have renewed your motion to recuse yesterday because it was
10 in the middle of Jackson v. Denno hearing. I sure understood
11 it to be that way, Mr. Sorenson did and y'all did, but I
12 think for the purpose of the record, I certainly was aware of
13 the Jackson v. Denno hearing, had ruled on it. And as far as
14 I was concerned, there would not have been any reason to
15 renew that motion yesterday, surely not.

16 MS. HINDS: Yes, ma'am.

17 THE COURT: If you wish to renew it now before
18 trial --

19 MS. HINDS: Yes, ma'am.

20 THE COURT: Very well, absolutely. And I gather
21 it's for the same -- on the same basis?

22 MS. HINDS: Same basis.

23 THE COURT: I understand. Absolutely. And I'm
24 going to respectfully deny your motion really on the same
25 basis. I think as I articulated my reasoning back in May,

1 A. Yes, sir.

2 Q. Why did you do that?

3 A. Because I didn't want him to know my whereabouts.

4 Q. Why not?

5 A. Because I feel it wasn't none of his concern.

6 Q. All right. Now, at some point Shemika asked for
7 food money; is that right?

8 A. Yes, sir.

9 Q. Who did she ask for money from?

10 A. Taneris Hamilton.

11 Q. Did he give it to her?

12 A. Yes, sir.

13 Q. At some point did she tell you that Lauren was
14 outside?

15 A. Yes, sir.

16 Q. All right. And so we are clear, who is Lauren?

17 A. That's my girlfriend.

18 Q. And did you go outside?

19 A. Yes, sir.

20 Q. Who was outside?

21 A. My mom.

22 Q. Lauren was not outside?

23 A. No. She just got the calls mixed up. Both of them
24 had Maximas.

25 Q. The cars you are talking about?

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- 1 A. Uh-huh.
- 2 Q. What did your mom want?
- 3 A. My mother wanted my brother's DS-I game.
- 4 Q. Did you give her the game?
- 5 A. Yes, sir.
- 6 Q. Where was the game at?
- 7 A. The game was in my truck.
- 8 Q. And where was your truck at?
- 9 A. Back at the other side of Taneris's house.
- 10 Q. Okay. What did you do after your mom left?
- 11 A. Went back into the house.
- 12 Q. What did you do when you got in the house?
- 13 A. I started back playing the game.
- 14 Q. Did Shemika eventually leave to get food?
- 15 A. Yes, sir.
- 16 Q. When Shemika left, who was -- who remained in the
- 17 house?
- 18 A. Me, Taneris, and Steve.
- 19 Q. Now, while you were at Mr. Hamilton's house, were
- 20 you offered drugs?
- 21 A. Yes, sir.
- 22 Q. Who offered you the drugs?
- 23 A. Tweety Bird.
- 24 Q. And what were you offered?
- 25 A. Little, a blunt.

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1 Q. And explain what a blunt is.

2 A. It's basically marijuana rolled up in a -- y'all
3 familiar with cigars, right? Marijuana rolled up in a cigar.

4 Q. Did you smoke the blunt?

5 A. Yes, sir.

6 Q. When Shemika left, Steve was there?

7 A. Yes, sir.

8 Q. Now, during this time, was Alan Fields texting
9 you?

10 A. Yes, sir.

11 Q. All right. Was he texting you a lot?

12 A. Yes, sir.

13 Q. What kind of things was he texting you?

14 A. He basically wanted to know my whereabouts. Texting
15 me -- I mean, you probably could say he just wanted to be
16 nosey. Put it like that.

17 Q. All right. Now, at some point did you realize that
18 Mr. Fields was going to come to Taneris Hamilton's house?

19 A. Yes, sir.

20 Q. Now, how did that make you feel?

21 A. It made me feel uncomfortable, but at the same time,
22 me being the person I am, I didn't thought nothing of it.

23 Q. What was Alan trying to get you to do, if anything?

24 A. He was trying to basically get me to set up my
25 cousin.

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1 Q. All right. Did you want to do what Alan wanted you
2 to do?

3 A. No, sir.

4 Q. Now, why did you continue to text Alan Fields?

5 A. To stall him, to make him feel -- once I felt the
6 vibe what he was trying to get me to do was wrong, once I
7 felt the vibe, I continued to text him to make him feel
8 that -- to stop him from coming in there and doing something
9 to me also.

10 Q. At some point did Alan Fields ever threaten you?

11 A. Yes, sir.

12 Q. Did he do this by a phone call or a text?

13 A. Phone call.

14 Q. All right. And what did he say?

15 A. He said, either you going to let me in or you are
16 going to get it too.

17 Q. Did you ever tell Taneris Hamilton that Alan Fields
18 was coming to the house?

19 A. No, sir.

20 Q. Why not?

21 A. Because me know what type of person Tweety Bird is,
22 I know if I told him, he probably would have shot him.

23 Q. Now, what, if anything, did you tell Taneris
24 Hamilton?

25 A. I was telling him, man, let's go so I can meet my

1 girlfriend so she can give me some food.

2 Q. All right. Did you try to get him to leave the
3 house?

4 A. Taneris's house?

5 Q. Yes.

6 A. Yes, sir.

7 Q. How did you try to get him to leave the house?

8 A. By going with me to pick my food up from my
9 girlfriend.

10 Q. Did you do this just once, twice? Did you do it
11 more than once?

12 A. I did it more than once.

13 Q. Did he ever leave with you?

14 A. No, sir.

15 Q. Now, at some point did you see Steve leave the
16 house?

17 A. Yeah. He exited the door, but I didn't know whether
18 or not he left, because I wasn't watching him like that.

19 Q. You didn't see him drive away?

20 A. No, sir.

21 Q. After Steve left the house, did Taneris Hamilton
22 still have his gun?

23 A. Yes, sir.

24 Q. All right. Where was it at?

25 A. It was in his lap.

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1 Q. When you were getting these texts from Alan Fields,
2 at some point did you believe he was mad at you?

3 A. Yes, sir.

4 Q. Why?

5 A. Because he felt I didn't want to do what he wanted
6 me to do.

7 Q. Now, at some point, did he stop texting you; he
8 being Alan Fields?

9 A. Like if you really read between the texts, you can
10 see where he put blanks, you see where the blanks was in, so,
11 yeah, he stopped. He began to stop texting me.

12 Q. And what did you think that meant?

13 A. That's when I felt threatened. That's when I felt
14 basically he wanted me to do something that I didn't felt
15 like I should be doing.

16 Q. When the text stopped, did you tell Alan Fields
17 anything?

18 A. No, sir.

19 Q. Did you tell him to come to the house?

20 A. No, sir.

21 Q. Did you tell him to come to the front door?

22 A. No, sir.

23 Q. Did you tell him to come to the back door?

24 A. Yes, sir.

25 Q. All right. Why did you tell him to come to the back

1 door?

2 A. Because I know that he couldn't get in.

3 Q. All right. Now, when you told him this, were you
4 talking to him or were you texting?

5 A. Talking to him.

6 Q. Now, at some point, did you leave the house and go
7 back out to your truck?

8 A. Yes, sir.

9 Q. When you went to your truck, was Taneris Hamilton in
10 the house?

11 A. Yes, sir.

12 Q. When you went to your truck, was Taneris Hamilton
13 alive?

14 A. Yes, sir.

15 Q. What happened next?

16 A. I came -- I left.

17 Q. All right. Let me back you up for a second. Now,
18 did you have a gun when you were at Taneris Hamilton's
19 house?

20 A. Yes, sir.

21 Q. What kind of gun did you have?

22 A. .40 caliber.

23 Q. Was it your gun?

24 A. Yes, sir.

25 Q. Why did you bring it to Taneris Hamilton's house?

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1 A. Because Taneris, I mean, the type of house, the type
2 person he is, need it for protection.

3 Q. Now, you gave some statements to the police.

4 A. Yes, sir.

5 Q. And in some of those statements you said that Steven
6 Johnson shot Taneris Hamilton.

7 A. Yes, sir.

8 Q. All right. Is that true?

9 A. No, sir.

10 Q. Okay. And why did you tell police that Steven
11 Johnson shot Taneris Hamilton?

12 A. Because I was pressured and I was scared. And this
13 is new to me. I ain't never been in any trouble before. And
14 at the same time, I mean, after you learn talking to the
15 police officers, the type of things you go through, they can
16 manipulate you into saying something that you don't want to
17 say. At the same time, they can get you to agree to certain
18 things that they tell you even though the law indicates that
19 you have the right to remain silent. But in my case, if you
20 got a police officer saying only way you are going to go home
21 is by giving me a statement, that is my reason for saying
22 that, but I want to apologize to them, I ain't never --

23 Q. Let me ask you one question. Okay? Did you shoot
24 up your own vehicle?

25 A. No, sir.

1 Q. But you told police you shot up your own vehicle at
2 some point?

3 A. Yes, sir.

4 Q. Did you kill Taneris Hamilton?

5 A. No, sir.

6 Q. Did you see Alan Fields kill Taneris Hamilton?

7 A. No, sir.

8 Q. Did you see anyone kill Taneris Hamilton?

9 A. No, sir.

10 Q. Did you want to kill Taneris Hamilton?

11 A. No, sir.

12 Q. Did you intend to rob Taneris Hamilton?

13 A. No, sir.

14 Q. Did you rob Taneris Hamilton?

15 A. No, sir.

16 Q. One second.. Let me show you what's marked as

17 State's Exhibit Number 97. All right. I want you to look at

18 this. That is what the State is saying was being texted

19 between you and Mr. Fields. All right? Could you explain to

20 the jury why you were doing those texts.

21 A. I basically was texting him to keep him from not

22 coming in there. I basically texting him to keep him from

23 coming into the house for me as well. But if you know the

24 type of person he was, the type of person he portrayed to be,

25 I mean, a lot of people can say why you didn't do such things

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1 and why you didn't call the police, but at the same time, if
2 you go through certain things in life, you don't never know
3 what your actions may cause you to do. Some people's action
4 may tell them let's go. Some people's action may tell them
5 let's stay. Some people's action may tell them differently.
6 But you was never in the situation, you can't understand why
7 your actions make you do something else.

8 Sometimes when you are dealing with the type of
9 people that your mama tell you not to deal with, you get
10 yourself in a situation like this. I never asked to be in
11 this situation. And I'm embarrassed for these charges. I'm
12 not proud of the charges at all. And I basically sorry for
13 my family going through this. As you can see, there are
14 basically two different sides.

15 MR. SORENSON: Your Honor, this is no longer
16 responsive at all to the question.

17 THE COURT: Sustained. Ask him a question please.

18 BY MR. MELLARD:

19 Q. You did those text messages?

20 A. I was scared. Yes, sir.

21 Q. Okay. And you said you were stalling. Tell us
22 which -- tell us how those text messages are stalling?

23 A. They are basically stalling from doing --

24 Q. Just tell us.

25 A. Basically when the text message is stalling, you

1 actually see a blank. You will see where either I don't text
2 back or you will see where he won't text back. When I was
3 stalling, I mean, you can see where I was saying a whole
4 bunch of stuff to him. He wasn't texting back.

5 Right here you can see where I was stalling and he
6 was trying to get me to open the door. And you can see where
7 I was asking him to let Steve leave. And then you can see
8 where he indicated, you were faking, we all don't got time
9 for it. And you can see where I text back in these two
10 columns, and he didn't text back right here.

11 Then you can see where he was saying -- where I was
12 saying, is you at the door, is you here now? You can see
13 where he saw that I was trying to see where he was. So,
14 basically, what I'm trying to say is, you basically can see
15 how I stalled with the blanks.

16 Q. One last question. Did you kill Taneris Hamilton?

17 A. No, sir.

18 MR. MELLARD: Thank you. That's all the questions
19 I've got.

20 THE COURT: Very well. Cross-examination.

21 CROSS-EXAMINATION

22 BY MR. SORENSON:

23 Q. Thank you. May it please the Court, Your Honor.

24 Since you ended talking about the text messages, I
25 think that's where I'm going to start, Mr. Samuel. So it is

1 your testimony -- pull up the first one, 971-0218 is your
2 cell phone?

3 A. Yes, sir.

4 Q. Cell phone you were using on the night of March the
5 20th?

6 A. Yes, sir.

7 Q. [REDACTED], Alan Fields's cell phone, the cell phone
8 he was using on the night of March the 20th?

9 A. Yes, sir.

10 Q. Is that correct?

11 A. Yes, sir.

12 Q. The text messages depicted in State's Exhibit Number
13 97 are the text messages that you sent to Mr. Fields in the
14 middle column?

15 A. Yes, sir.

16 Q. Received from Mr. Fields in the far right column?

17 A. Yes, sir.

18 Q. No doubt about that, right?

19 A. No, sir.

20 Q. Starting at 5:42 in the afternoon?

21 A. Yes, sir.

22 Q. And ending four hours later at 9:46?

23 A. Yes, sir.

24 Q. And it is your testimony for this jury that during
25 the course of that four hours, that you were texting Alan

1 Fields to keep him -- to try to keep him from coming in and
2 harming your cousin Taneris Hamilton?

3 A. Yes, sir.

4 Q. Okay. So it is your testimony that when you texted
5 him, let's do that lick with Tweety Bird, that those texts
6 were to keep Alan Fields from coming in and doing anything to
7 your cousin?

8 A. At that particular time, no.

9 Q. Okay. Tell the jury what a lick is.

10 A. A lick is basically a come-up. It's not a crime.
11 It's just a lick is being a come-up.

12 Q. So you are texting that you are now asking him to
13 come over and buy drugs from Tweety Bird?

14 A. No, sir.

15 Q. So when you texted him, let's do that lick with
16 Tweety Bird, what were you trying to get Alan Fields to do?

17 A. Basically what I just said, it's a come-up.

18 Q. I don't know what that is. Tell the jury what a
19 come-up is.

20 A. A come-up is something where you try to get somebody
21 to do something for the benefit, in a way. A lick is not as
22 bad how Mr. Sorenson trying to make it seem.

23 Q. It is not? So you weren't trying to get him to come
24 over and rob him?

25 A. No, sir.

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1 Q. Okay. So when he texts back to you, you with buddy,
2 he's asking you if you are with Tweety Bird, right? Because
3 you just said: Let's do that lick with Tweety Bird, right?

4 A. Yes, sir.

5 Q. Your answer to that is, duh; right?

6 "I see everything, money, drugs, guns." You expect
7 this jury not to believe that you are not referring to trying
8 to rob Tweety Bird of his money, drugs and guns?

9 A. If they can see from the time period from 5:46 to
10 9:00 something, you can see where I stalled.

11 Q. We are going to go through all of that. There's
12 plenty of time to do that. He asks you then how many people
13 are in the crib. And your response is two, right?

14 A. Yes, sir. Mr. Sorenson, can I have that?

15 Q. Yes, sir. So he asks you, how many people are in
16 the crib? He's asking you how many people are at the house,
17 right?

18 A. Yes, sir.

19 Q. Your response is two?

20 A. Yes, sir.

21 Q. Taneris Hamilton, Shemika Wolfe?

22 A. Yes, sir.

23 Q. Right? I'm going to take him out, how is that
24 stalling? How is telling him I'm going to take him out, how
25 is that stalling?

1 A. I'm going to take him out, first and foremost, that
2 means getting him to leave the house with me.

3 Q. And Alan says: I'm on my way right now. You tell
4 him: Hold up real quick, my nigga; right?

5 A. Yes, sir.

6 Q. Okay. Come on, man, what the F' you doing? Your
7 response to Alan Fields. These are text messages back to
8 Alan Fields, right: I'm in here --

9 A. Yes, sir.

10 Q. -- talking to this dude, man. I got everything
11 planned out. Come by yourself.

12 A. Yes, sir.

13 Q. You want this jury to believe that you were trying
14 to not get Alan Fields to come over, trying to keep him out
15 of the house, but you are texting him at 6:37 that I got
16 everything planned out, come by yourself.

17 A. As I stated before, at that particular time, no.
18 But during the course of the text messages, you can see where
19 I stalled.

20 Q. Okay. So you are not stalling here, but you are not
21 planning to rob him or anything like that?

22 A. No, sir.

23 Q. And your text right at 6:37 also: Bring a real
24 nigga, word, and we going to do it with that three pound.

25 Tell the jury what a three pound is.

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1 A. A 3 pound, that's a gun.

2 Q. So we are going to do -- what were you going to do
3 with the gun? What were you telling Alan Fields to come on,
4 to either bring a real nigga and we are going to do it with a
5 gun. What are you going to do?

6 A. First and foremost, bring a real nigga, that
7 indicated I didn't want to do what I felt he was trying to
8 get me to do. That's why I told him to bring somebody else.
9 I didn't want to take any parts in the crime.

10 Q. 6:38, what was he planning on doing?

11 A. At 6:38? The vibe that I got from him, you can't
12 say what was he planning on doing because you wasn't there.

13 Q. I'm asking you. You were there. What was he
14 planning on doing?

15 A. What was he planning on doing? He was coming in --
16 he was trying to come in basically to get me to do something
17 I didn't want to do. That's what he was basically trying to
18 do.

19 Q. My question is what, what was he trying to get you
20 to do at 6:38 where you are saying that he had to bring
21 somebody else and we going to do it with that gun?

22 A. Set my cousin up.

23 Q. So you knew that at 6:37?

24 A. I don't necessarily say I knew that, but I would say
25 from the way he talked and how he implicate things, I knew

1 then.

2 Q. So you knew it or didn't know it?

3 A. I knew it.

4 Q. All right. And, of course, that is a mere 13

5 minutes after you had told him -- let's go a little more, I

6 guess, 14 minutes after you told him, let's do that lick with

7 Tweety Bird, I see everything, money, drugs and guns. So 14

8 minutes later, you know that he's coming over there to do

9 something to Tweety Bird that you are telling this jury you

10 didn't want to have anything to do with?

11 A. Yes, sir.

12 Q. And his response back to you is: Where the other MF

13 at.

14 And your response is -- of course, he's asking where

15 the other person, because he doesn't know who else is there,

16 right, at this point in time? You just told him there were

17 two people.

18 A. Yes, sir.

19 Q. And your response is: She's right here, on set. I

20 got you, word, no BS; right.

21 So you are just telling him that the other person,

22 who's she, is Shemika, right?

23 A. Yes, sir.

24 Q. His response: I'm coming. No talking. Straight

25 out. Take nigga onset.

1 A. Take out --

2 Q. What does on set mean?

3 A. On set? That means your word.

4 Q. All right. And 6:42: Hold, bra, let me move the
5 whip.

6 And what's the whip?

7 A. That's a truck.

8 Q. And you went out and moved your truck?

9 A. I didn't go out and move my truck.

10 Q. Where was your truck beforehand?

11 A. My truck was always backed in.

12 Q. Okay. So it was there the whole time? Why did you
13 tell him you had to move it?

14 A. Stall.

15 Q. How does that stall to tell him: Hold on, I've got
16 to move so they won't know who it is. When I say come, then
17 you come. He's got the pistol on his lap and you are going
18 to come to the door with it. Wait until I tell you.

19 But yet, it's your testimony that that is stalling?

20 A. If my truck never move, Shemika know my truck never
21 move, if it never moved, that would be telling you that I
22 lead him on to think something else.

23 Q. You are telling him where the pistol is in the
24 house. Telling him to wait until you open the door for him;
25 right?

1 A. Yes, sir.

2 Q. Okay. But that's not you planning with him; that's
3 you stalling?

4 A. Yes, sir.

5 Q. That's you trying to keep him from coming in the
6 house?

7 A. Yes, sir.

8 Q. All right. And, of course, he's not there yet,
9 right?

10 A. I didn't know where he was. I never knew where all
11 his whereabouts. I just know he was in the area.

12 Q. Okay. You knew he wasn't at the house yet, because
13 if you go forward a couple of texts on here at 7:19, you tell
14 him to look around: Do you see anybody outside? Because my
15 other cousin stayed next-door. Tell Ronda to go ahead and
16 let you out.

17 Right? That's your text to him?

18 A. Yes, sir.

19 Q. Okay. So that's when you know that he's in the
20 vicinity and he's in a vehicle and you know Fabo's girlfriend
21 LaRonda that testified?

22 A. Yes, sir.

23 Q. Okay. Stay right here. Tell her to pass the house,
24 the house right by this house, look to see if a car is in the
25 yard. If you are not planning to do something with Alan

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1 Fields, why on earth are you telling him to look around and
2 make sure there's not anybody next-door?

3 A. Like I told you before, at the beginning, yes, but
4 then once reality set in, no.

5 Q. Okay. Let me ask my question again because I don't
6 really think that answered my question. Why on earth are you
7 telling him to look around to make sure there's nobody
8 next-door if you were not planning on doing something to
9 Tweety Bird?

10 A. I'm going to answer your question again.

11 Q. Thank you.

12 A. Like I said in the beginning, yes. Once I find out
13 what he was trying to get me to do, no. Once reality set in
14 on me, no. But at the beginning, yes.

15 Q. Okay. So it is your testimony, Mr. Samuel, that at
16 7:20 in the evening, you were still in on the plan then?

17 A. It was never -- I was never in on the plan.

18 Q. That's what you just told the jury, that at the
19 beginning you were and then you weren't. So my question was,
20 why would you have told him to look around to make sure
21 nobody is next-door? Obviously, I mean, you told him that
22 because at that time you were in on the plan still?

23 A. What I told them is at the beginning, once I was
24 texting him, after I finished texting him, after I find out
25 he was trying to get me to do something I didn't want to do,

1 I was not in on the plan.

2 Q. Tell the jury what time that was that you were no
3 longer in on the plan.

4 A. I was never in on the plan.

5 Q. So you weren't in on the plan from the very
6 beginning of it?

7 A. No, sir.

8 Q. Yet again my question then, if you were not in on
9 the plan at 7:20 p.m., why would you have told Alan Fields to
10 stay right there, tell her to pass the house, the house right
11 by this house, look to see if a car is in the yard? Why
12 would you have told them to check to see if a car is
13 next-door if you are not in on the plan from the get-go?
14 Why? That was my question. I've asked my question three
15 times now. Why would you have told Alan Fields that at 7:20
16 in the evening?

17 A. I'm going to answer it again. Once we start off,
18 yes, I was going along with Alan Fields. Once we stop
19 texting, once I find out that the buy was different with him,
20 because I know the type of person he is, no. So at 7:20, why
21 did I tell him that? It would go back to that's why I was
22 stalling.

23 Q. Okay. So this is more a stall? So you are not in
24 on the plan, you are stalling him by telling him to look
25 around?

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1 A. Yes, sir.

2 Q. Okay. That's the answer I guess I was hoping to
3 have gotten there. All right. And he says at 7:20 then, I'm
4 out. He's out of the car now at this point in time. And he
5 asks you about your cousin. And that's, I guess, the guy
6 that lived next-door he's asking about; right?

7 A. Yes, sir.

8 Q. And then at 7:23, you said: Hold up, hold up. He
9 right here in my face. And that's Tweety Bird you are
10 talking about, right?

11 A. Yes, sir.

12 Q. He's right next to you, because you don't want him
13 to see -- happen to accidentally see who you are texting with
14 or what you are texting; right?

15 A. That wasn't what the case was, but if you want to
16 put it in your words and say that, you can say that.

17 Q. Okay. And then 7:41, we got a little bit of a break
18 here, 7:41: How we going to do it? Pistol on his lap.
19 Bidy round here with me.

20 And Bidy would be Shemika you are talking about,
21 right?

22 A. Correct.

23 Q. So you are now conversing with Mr. Fields: How are
24 we going to do it? How are we going to do what?

25 A. I mean, basically when I say how we going to do it,

1 basically give him instructions on what he wanted me to do.

2 Q. You are asking him the question: How we going to do
3 it? The pistol is on his lap, which means Taneris has got a
4 pistol on him. And biddy, Shemika, is around here with me.
5 So how are we going to do it? Now, "it" is coming into rob
6 him, right?

7 A. No, sir.

8 Q. Tell the jury what do you mean by how are we going
9 to do it? When you ask him that question, how are we going
10 to do it, what were you talking about?

11 A. Basically what I did, when I text him, how we going
12 to do it, basically I was trying to find out what he wanted
13 me to do and see whether or not I was going to follow up with
14 whatever he asked me to do.

15 Q. So it is your testimony at 7:41 that you don't know
16 what he wants to do at that point in time?

17 A. Correct.

18 Q. I thought you told the jury a few minutes ago you
19 knew that all the way back when he's talking about telling
20 him to bring a 3 pound and a real nigga back at 6:37? I
21 thought you knew it then, that you told the jury you didn't
22 want to be involved in it, and that's why you told him to
23 bring somebody else?

24 A. Hold on. Say that again.

25 Q. Your testimony a moment ago, you just said that at

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1 7:41, you said, how we going to do it, you were trying to
2 figure out what Alan Fields wanted to do, right?

3 A. Correct.

4 Q. So you didn't know before then what he was up to?

5 A. I never really knew what he was up to. I just know
6 what he was up to wasn't good.

7 Q. Okay. What would he possibly be up to that he would
8 need to bring a real nigga and a 3 pound, which in your
9 testimony is a gun with him?

10 A. Nothing good. All I wanted to know was, where was
11 my position going to be in. Where was I going to be at when
12 they do what they was planning on trying to do.

13 Q. And he tells you that, right? He tells you that in
14 the next text at 7:42: Nigga, you take his ass out. Biddy
15 don't got no strap.

16 A. Okay. Then you also see at 7:42 I didn't text back.

17 Q. That's because he sends you another one right after
18 that: Nigga, act like you playing with the strap. Bust his
19 ass and I'm coming in.

20 A. Okay.

21 Q. That's him telling you to get Taneris Hamilton's gun
22 because you don't got to worry about the biddy, Shemika
23 Wolfe, because she doesn't have a gun. So you get Taneris's
24 gun and I'm coming in. That's the plan, that's how we going
25 to do it, the answer to your question you sent him at 7:41;

1 is that correct?

2 A. That would be incorrect. Because first and
3 foremost, Shemika know that I always have my gun. So why
4 would I have to reach over to get Alan Fields -- why would I
5 have to reach over to get Taneris Hamilton's gun when I
6 always came there with my gun.

7 Q. Because I'm pretty sure there's a pretty good chance
8 none of y'all wanted to get shot, right.

9 A. None of y'all --

10 Q. When it is your testimony that you were so worried
11 in your direct examination that you told the jury the whole
12 reason you didn't even tell Taneris Hamilton about what was
13 going on about Alan Fields because you were afraid he was
14 going to shoot you?

15 A. Correct.

16 Q. So y'all wanted to make sure that he didn't have
17 that gun on him when they came charging in the door?

18 A. I know -- I didn't want to make sure anything,
19 because like Shemika know, like I know, Taneris Hamilton, you
20 can't tell him to place his gun down. He always take it
21 wherever he go. Even if Shemika say, okay, Tweety Bird,
22 leave your gun, he will tell her, no, I will not leave my
23 gun.

24 Q. And that's why Alan Fields, Gator, told you to act
25 like you were playing with it so that he can come on in at

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1 7:42, correct?

2 A. And what I will say to you --

3 Q. Correct? Answer my question. That's why he told
4 you that at 7:42?

5 A. That's correct.

6 Q. All right. And 7:48 you respond to him: Hold up.
7 Don't text real quick. He trying to go through the phone. I
8 swear we about to do it. On set. I swear we about to do it.

9 Yet again my question, what were you about to do if
10 you are telling him, hold on, we about to do it? What are
11 you about to do?

12 A. I would say again, I was trying to find out what --
13 exactly what Alan Fields wanted me to do. Once I would have
14 found that out, then I would have made my decision as to the
15 decision I made, which is to leave the house before something
16 negative happened. As you could see, he didn't text back on
17 none of the texts I sent him.

18 Q. That's because you told him to hold up. All right.
19 Eight o'clock you said: About to call, you just listen. So
20 I suspect that's part of the reason why you weren't texting,
21 he wasn't texting, is because you called him also, right?
22 And just left the phone so he could hear what was going on
23 inside the house?

24 A. If I called him, he could hear what was going on
25 inside the house, right? He still had every right to text me

1 back.

2 Q. But you did do that, you called him so he could hear
3 what was going on inside the house, right?

4 A. Yes.

5 Q. But you weren't up to no good?

6 A. I was not up to no good.

7 Q. 8:10: When you call me, when you call me with
8 buddy, I'm going to walk out. They both in the living room.
9 Biddy right front the door. He's sitting beside me. So at
10 8:10 you are telling him basically the layout of the land
11 inside the room, where everybody is located at, right?

12 A. Yes.

13 Q. 8:13: This is how y'all gonna do it. You hit the
14 chirp. I'm going to answer. You listen. When I say I'm
15 about to go to the truck to get something, I'm going to leave
16 the door wide open. Y'all go in and do that. I'm going to
17 show none of them got one of the guns in the room.

18 So it is your testimony that when you are sending
19 him that text at 8:13 that you are trying to keep him from
20 coming in by sending him that text?

21 A. Correct.

22 Q. You are trying to stall him by sending him that
23 text?

24 A. Correct.

25 Q. And this is how y'all going to do it, your testimony

1 is you still don't know what exactly he's going to do, but
2 this is just how they are going to do it though?

3 A. As I will say, again, Mr. Sorenson, the type of
4 communication that we have, you don't have it. So you could
5 sit up here and tell the jurors everything and inflict them
6 this way, but as I will tell you, if you don't know how we
7 talk, you cannot base off what you see here.

8 Q. I'm trying to figure it out. Tell me what all that
9 is supposed to mean.

10 A. What I'm trying to tell you is, again, I was
11 stalling.

12 Q. Okay. That's the answer to basically the three
13 hours of this is you stalling, right?

14 A. Correct.

15 Q. You are not involved; you are just stalling?

16 A. Correct.

17 Q. Okay. 8:13: He don't got a pistol.

18 8:21: About to call you. Where buddy at.

19 Who are you asking about?

20 A. That's when I asked him where was the other person
21 he wanted to get to do what he was trying to get me to do.

22 Q. Let me ask you this. Who is that other person?

23 A. Hillard Pinckney, known as HD.

24 Q. Did you see Mr. Pinckney that night?

25 A. No, sir.

1 Q. He's a friend of Mr. Fields, is that correct?

2 A. Yes, sir.

3 Q. It wasn't your brother?

4 A. No, sir.

5 Q. And his response is, they on the way, they by the
6 hot spot, right?

7 A. Correct.

8 Q. Why are you asking him where this other guy is at?

9 A. Because I told you, when it comes down to him trying
10 to get me to do something that I didn't want to do, I told
11 him to call another person to do it.

12 Q. Okay. But you didn't have any problem with
13 basically letting him know kind of where everybody else is in
14 the house, where the guns are in the house, what they are
15 doing? You didn't have any problem with giving him all of
16 that information though, right?

17 A. No, because that's how I know he couldn't get in.

18 Q. All right. And so his response is: On the way,
19 they by the hot spot. It (sic). Good timing. When I call
20 you, pick up but don't say nothing. Listen what he saying.

21 All right. That's you telling him, I guess, good
22 timing that the guy is almost there?

23 A. No. Basically what I was telling him, I was
24 basically trying to see where and who he called. But during
25 the time that the incident occurred, I couldn't see or didn't

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1 know who the second person he called.

2 Q. Okay. But you still told him it was good timing
3 that the person was almost there, by the hot spot and almost
4 there?

5 A. As I will indicate to you again, the way we
6 conversate (sic), you wouldn't understand it because you
7 don't conversate like how we talk.

8 Q. So, "ite, good timing", what does that mean then if
9 it doesn't mean good timing; what does it mean?

10 A. Good timing means exactly what it says. But good
11 timing would be, okay, whoever you calling, I want to know
12 how long will it take. I want to know who you calling. But
13 he didn't never tell me who he was calling. Good timing
14 would be just what it says, good timing.

15 Q. You just told me that I didn't know what it meant.
16 That's what I thought it went.

17 A. I said the way we conversate (sic), you wouldn't
18 understand.

19 Q. 8:48 you tell him: Biddy about to swerve. We got
20 him after that. Biddy -- yet again, that's Shemika because
21 you knew she was getting ready to get food?

22 A. Yes.

23 Q. She's about to swerve, that means she's about to
24 leave?

25 A. Correct.

1 Q. We got him after that?

2 A. Correct.

3 Q. We got Tweety Bird after that?

4 A. Correct. I mean, you can see at 8:48, but he was
5 not pronounced dead then.

6 Q. What do you got him for then? Biddy about to
7 swerve, we got him after that? What do you got him for then?

8 A. Basically I don't got him for nothing. Basically I
9 was again trying to see what he wanted me to do. When I
10 didn't want to carry out any of his actions, I basically
11 wanted to see what was he planning on doing.

12 Q. Okay. And then you do that by telling him that we
13 got him after that, once she leaves, because Steve wasn't
14 there yet; right? Steve hadn't shown up yet at that point in
15 time?

16 A. Steve was there, it's 8:48.

17 Q. He wasn't there yet at that point. That's an hour
18 before Taneris gets killed.

19 A. Steve was there.

20 Q. Okay. And then you ask him again: Where are your
21 man at, and he says in the woods, right?

22 A. Correct.

23 Q. Your responses to him at that point in time is:
24 Keep them dogs quiet, right?

25 A. Correct.

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1 Q. Why is it a big deal that they keep the dogs quiet?

2 A. Because at that point in time I wanted to know
3 exactly where they were, where they were either where they
4 was in the woods or where there whereabouts was.

5 Q. Don't you think -- if the dogs were in the backyard,
6 right?

7 A. Yes.

8 Q. Okay. If the dogs were barking, that would kind of
9 let you know they were in the backyard, correct?

10 A. Incorrect. Taneris Hamilton's dogs bark if cars
11 come, if anything comes, the dogs will bark.

12 Q. Why on earth would it matter then to keep them quiet
13 then if they are going to bark for any reason anyway?

14 A. Because I knew they couldn't keep them quiet. It
15 was just a rhetorical text.

16 Q. All right. Let's go down to 8:43: Ite (sic). They
17 can't see you. Get all the way in the back.

18 8:55: Get in the way back of the truck and lay
19 down.

20 There's only one truck there, right?

21 A. There was two trucks there.

22 Q. Who else had a truck that was there?

23 A. Shemika's truck.

24 Q. So you were telling them to get in Shemika's truck
25 or your truck?

1 A. Basically that was a rhetorical text too because my
2 doors was locked. I just wanted to see where he was so I
3 could initiate my way on out of there.

4 Q. So that was your tricky way to figure out where they
5 are by getting them to set off the alarm on your truck when
6 they tried to get in? I don't understand how that would tell
7 you where they were by telling them to get in way back of
8 your truck and lay down.

9 A. It wasn't a tricky way. All it was was when you
10 approach my truck and you approach it from a side, from the
11 right side, you can hear when he trying to get in. So I know
12 my doors was locked. I know he couldn't get in.

13 Q. Okay. And his response to that is: Duh. Right?
14 And I assume that's because you had told him to get in the
15 back and then told him to get in the way back and lay down.
16 His response is, duh, you are not going to sit up in the
17 truck, right, if you are trying to hide?

18 A. Correct, correct.

19 Q. So it is your testimony then they didn't hide in
20 your truck?

21 A. Correct.

22 Q. Okay. All right. And then 8:59 he responds,
23 Mr. Fields: When the bitch leaving?

24 Your response to that is: She about to swerve. So
25 she's about to leave.

1 Now just listen, that's why I got you on the phone.

2 Word. I got y'all. I'm not going to get y'all caught up.

3 That's why I'm waiting. Okay?

4 A. Uh-huh.

5 Q. So you are waiting for her to leave, right?

6 A. Correct.

7 Q. And then a few minutes we are going to see where

8 y'all were waiting for Steve to leave, right?

9 A. You are going to see that.

10 Q. When he leave, come out and do that.

11 Come out and do what, 9:04?

12 A. A rhetorical text that you see where one, two,

13 three, four, you see five blanks there, meaning you see where

14 he knows where we talk, it would consist of flogging,

15 flogging mean that we saying that you're lying, you see you

16 ain't a man of your word, we see that you backing out. So

17 flogging would fit that character line.

18 Q. Okay. Yet again though: When he leave, come out

19 and do that.

20 What? Come out and do what?

21 A. It is not come out and do not. As I will say again,

22 if you know how we talk, you would understand.

23 Q. I want you to tell the jury what you meant when you

24 sent him the text: When he leave, come out and do that.

25 Tell them what you meant when you said that.

1 A. I didn't mean anything by it. It was a rhetorical
2 text, like if one of y'all was my mother and I would say, can
3 you go feed the dog for me? You would probably look at me
4 like I'm your mother, why won't you go feed the dog. So it
5 is a rhetorical question, meaning if you already know the
6 answer to the question, you will say it. But Mr. Sorenson,
7 again, do not conversate or converse like I converse, so he
8 wouldn't understand.

9 Again I will say when he's not texting back, he knew
10 that I was flogging. Flogging is the term that we use that's
11 called lying.

12 Q. So he knew, Alan Fields knew you were lying this
13 whole time? So when you sent in that text, when you leave,
14 come out and do that, that's rhetorical? And rhetorical
15 question means, I mean it is usually because you know the
16 answer already and you are asking it for the sake of asking
17 it. That's not really a question. You are telling him to do
18 something.

19 A. No, he didn't text back, so it is rhetorical.

20 Q. All right. 9:07: Man, get ready. Buddy about to
21 swerve. Now you are talking about Steve, right, at 9:07?

22 A. Correct.

23 Q. Get ready, they both don't got guns. Letting them
24 know that nobody is holding a gun in the house now, right?

25 A. Correct.

1 Q. She about to go, stay down. Where are they at this
2 point in time if you are telling them to stay down?

3 A. I don't know where they are at.

4 Q. They are not in the back of your truck where you
5 told them to lay low a few minutes before?

6 A. No, sir.

7 Q. All right. Biddy leaving right now. Y'all ready?

8 His response: You gonna open the door? Open the door. Open
9 the door. Right?

10 A. Correct.

11 Q. Y'all in front? Buddy about to leave, man, it's
12 just going to be him. Just going to be Taneris, correct?

13 A. Correct.

14 Q. Man, we at the front door. That's when you are
15 saying he's coming to get some dust, so he's coming to get
16 some cocaine, right? That's what he testified about. When
17 he open the door, let him leave.

18 A. Meaning let Steve leave.

19 Q. Steve leave, right? And his response back to you,
20 Alan's: You with that faking nig'? We don't got time for
21 that.

22 A. All right. That right there is when he said you
23 with that faking nig', we don't got time for it, meaning he
24 know, okay, you ain't doing what you say you are going to do.
25 That's when he began to find out that I was stalling. That's

1 when he began to find out that I was backing down. That's
2 when he began to find out that I was going along with what he
3 had tried to get me to go along to.

4 Q. So you are stalling during this point in time? Man,
5 buddy is on his way out the door, man. He's getting dust up
6 on my set. I'm not flogging. So I'm not lying. Leave now.
7 As a matter of fact, since you think I'm faking, fuck buddy
8 about to leave. Bust him and come in.

9 What are you telling him to do right here? What are
10 you telling Alan Fields to do right here at 9:35 p.m.?

11 A. 9 -- what time?

12 Q. :35?

13 A. Basically, I was giving him another rhetorical text,
14 getting him to believe that, okay, I was going to be there
15 and do what he is, when actually I was looking for a way
16 out.

17 Q. Okay. So your way out of this mess is to tell him
18 that, I'm not lying to you, I'm not faking, in fact, go ahead
19 and just shoot Steven Johnson when he comes out the door?
20 That's what you meant by bust him when he comes out. When he
21 leaves, when he's about to leave, bust him and come in;
22 that's what you were talking about, right?

23 A. Okay. 9:35, when I say: Nigga you know I ain't
24 fake neither scared, do what you do, right then you can see
25 that Steve had already gone.

1 Q. I'm backing up to 9:35 where you tell him to bust
2 him and come on in.

3 A. As I will say again, it's a rhetorical text. He
4 knew that Steve had already gone. If you can see at 9:36,
5 you know I ain't fake neither scared, do what you do, he knew
6 if Steve had come out, he knew what Steve whereabouts would
7 have been.

8 Q. Coming out the door at 9:35 when you are telling him
9 to bust him?

10 A. Again, Steven Johnson already had left. If he
11 didn't leave, Gator would have knew or he would have shot
12 Steve. But when you see at 9:35 to 9:36 where I say: Nigga
13 you know I ain't faking neither scared, do what you want to
14 do, he knew that I was lying. Because if he didn't knew,
15 then he would have spot Steve once he was coming out. He
16 didn't spot him, so evidently that saying he was gone.

17 Q. Of course, if he's hiding in the back of your truck
18 waiting for you to give him the sign to come in, he wouldn't
19 know when someone came or went, right?

20 A. Incorrect. He was not hiding in the back of my
21 truck. And another incorrect, if he was hiding in the back
22 of my truck, he still could've hear when the door open. He
23 still could have hear when Steve's car crank up. I mean,
24 that's incorrect.

25 Q. Of course, his car doesn't crank up until 9:44 when

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1 you say to him: I'm about to open the door as soon as he
2 pulls off, right? That's Steve you are talking about, right?

3 A. That's incorrect. That's Steve I'm talking about
4 but --

5 Q. Right.

6 A. As I told you again, Steve had already left. When
7 Gator don't text back, you can see where the intensity level
8 is getting up there. You can see where, man, he ain't about
9 to do it, I know he ain't about to do it, so, man, what do
10 you think about it? You can see where Gator started getting
11 impatient.

12 Q. It is your testimony then I guess at -- last text at
13 9:46, what did you do after that?

14 A. Got in my truck.

15 Q. So you walk out? Where are they when you walk out?

16 A. I didn't know where they were.

17 Q. Okay. So nobody, you don't see anybody outside when
18 you walk out?

19 A. No, sir.

20 Q. All right. Where is your truck parked?

21 A. My truck backed in on the side it was by Shemika's
22 truck.

23 Q. And you get in, crank your truck up?

24 A. Yes, sir.

25 Q. Drive off?

1 A. Drive off while getting shot at.

2 Q. Getting shot at by who?

3 A. It was dark, but once I got in jail, Alan Fields had
4 indicated that --

5 Q. I'm going to object to that. That's not my
6 question. Well, actually, no, go ahead. I withdraw that.
7 Go ahead. Who did you get shot by?

8 A. In jail Alan Fields told me that Hillard Pinckney
9 had shot at me. But then while being in jail, it was dark.
10 So I didn't know whether or not Gator was just telling me
11 that for me not to tell on him, or whether or not he was just
12 saying they shot at me so I couldn't put it on neither one of
13 them. So my question -- my answer to y'all would be it was
14 dark, I did not know. But I know the second person had
15 dreads.

16 Q. Let me ask you this. Let me kind of make sure I
17 understand this. So you are -- it is your testimony for this
18 jury that you did not shoot up your own vehicle?

19 A. Correct.

20 Q. So just so we are square on that. Now, you are
21 parked, State's Exhibit Number 8, on this side of the house;
22 is that correct?

23 A. Incorrect. I was parked right there by the gate.

24 Q. Right, on this side of the house right where I was
25 pointing?

1 A. Right.

2 Q. Backed in over on this side of the house?

3 A. Correct.

4 Q. It is your testimony that you come out, get in your
5 vehicle?

6 A. Correct.

7 Q. You wait around?

8 A. No, sir.

9 Q. So you don't lay your seat back and close your eyes
10 like you told the police in all of your statements?

11 A. As I was saying, when I told them in all my
12 statements I was scared.

13 Q. So the answer would be no, you did not do that?

14 A. The answer would be, I laid back in my seat and that
15 ain't got nothing to do with sitting back buying time. All
16 it is, you get in the truck -- y'all can hear me? You put
17 your seat back and crank the truck back at the same time.
18 How my truck is, I still could see how I was driving. So I
19 still could see where I was driving. So it wasn't like I was
20 buying time.

21 Q. So you just lay your seat back because that's how
22 you drive?

23 A. No, I laid my seat back because I didn't know where
24 they were.

25 Q. You are backed in on the side of the house. So you

1 are now pulling -- you are facing St. Matthews Road?

2 A. I was already facing.

3 Q. That's what I'm saying, so you are facing St.

4 Matthews Road?

5 A. Correct.

6 Q. Crank your truck up, start to pull off?

7 A. Correct.

8 Q. Get shot at?

9 A. Correct.

10 Q. Where are the shots? I mean, where is this person?

11 Where are they coming from?

12 A. The shots was coming from towards the house.

13 Q. Okay. So they are coming from -- let me make sure

14 I'm getting this straight. So you are parked beside the

15 house, right?

16 A. Correct.

17 Q. So your driver's side of your vehicle is facing, I

18 guess, the side of Taneris's house initially?

19 A. Correct.

20 Q. You crank the car up, and you start to pull out?

21 A. Uh-huh.

22 Q. And the shots are coming then from your driver's

23 side, right?

24 A. Correct.

25 Q. And you go pull straight out on to 601?

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1 A. Correct.

2 Q. Left or right?

3 A. Left.

4 Q. Towards Orangeburg?

5 A. Correct.

6 Q. Okay. Now, you told the jury -- or I'm sorry, you
7 told law enforcement in your statements that you shot back at
8 them. Did you do that?

9 A. Correct.

10 Q. And that was with the .40 caliber?

11 A. Correct.

12 Q. And how many shots did you fire out of the .40
13 caliber?

14 A. I want to say about four.

15 Q. Four shots? And where were you shooting at, back
16 towards Taneris Hamilton's house then?

17 A. No, sir.

18 Q. Where were you shooting?

19 A. When I shot, I was driving on the road. I wasn't
20 shooting back at Taneris Hamilton's house. I was just
21 shooting to scare them. It wasn't shooting towards his house
22 or shooting at them. I was just shooting because I was
23 scared.

24 Q. Up in the ground, up in the air?

25 A. Can I demonstrate while I'm driving? When I reach

1 my hand back, my other hand is still on the steering wheel.
2 So when I'm shooting, I'm not really paying attention where
3 I'm shooting. I'm just shooting to let them know that I was
4 scared.

5 Q. Are you left-handed or right-handed?

6 A. Right-handed.

7 Q. You are shooting with your left hand?

8 A. Correct.

9 Q. And then you said you just fired maybe four shots
10 just to let them know that you had a gun too, I guess?

11 A. Correct.

12 Q. And it is your testimony that when you crank up the
13 car and getting ready to pull off, I mean, of course, at that
14 point in time, Tweety Bird was in his house by himself,
15 right?

16 A. I don't know what happened after I got in my truck
17 and pulled off.

18 Q. Well, did you wait at all after you got in your
19 truck and pulled off?

20 A. No, sir.

21 Q. So when you came out the door -- I see there's like
22 a handicap ramp in front of the house, right?

23 A. Right.

24 Q. Come out the door, turn to the right?

25 A. Correct.

1 Q. Go down to the handicap ramp?

2 A. Correct.

3 Q. Basically to where your car was parked? SUV was
4 parked on the side of the house, right?

5 A. Correct.

6 Q. Get in. Don't see anybody at that point in time?

7 A. No, sir.

8 Q. Nobody rushing the door?

9 A. No, sir.

10 Q. Crank the car up?

11 A. Correct.

12 Q. Start to pull off?

13 A. Correct.

14 Q. You are getting shot at from behind you from over by
15 Tweety Bird's house?

16 A. Correct.

17 Q. And that's the shots that hit your vehicle?

18 A. Correct.

19 Q. You go turn on the left and take off?

20 A. Correct.

21 Q. Okay. And where do you go?

22 A. I didn't went nowhere. Actually, while I was
23 getting shot at, I went where you see where -- there's a
24 church up there by that way and there's a road by there. I
25 went up by the church, made a U-turn on that road.

1 Q. Okay. Made a U-turn and did what?

2 A. Made a U-turn and came back towards Taneris house,
3 because I was taking a back way to go home.

4 Q. Okay. So you just been shot at leaving his house
5 and now you are going to go drive back by it?

6 A. It is not really the point of driving back by it.
7 The point was if the windows was out of my truck, why would I
8 go into town like that? So I took the back way home because
9 how damaged my truck was.

10 Q. Did you think about maybe stopping and calling 911?

11 A. Well, I mean, I'm sorry, ladies and gentlemen, when
12 you are in a predicament, everybody can ask a lot of
13 questions to why you really didn't do a lot of things. But
14 if you was never in that predicament, you would never know
15 what you are capable of doing. So your actions lead you one
16 way. You can't base that upon everybody's actions. Nobody's
17 action is consistent with, okay, just because I do something,
18 she has to do something. Everybody's action is basically
19 different.

20 Q. Let me ask you this. What -- your testimony for
21 this jury is that you hadn't done anything wrong, right?

22 A. Correct. Now, I won't say I haven't done anything
23 wrong. When it came about later on in the beginning as far
24 as texting Gator, I was wrong. I admit that, and I
25 apologize. But I was wrong for texting Gator. Shemika,

1 along with the jurors, I was wrong. And I own up to that,
2 and I apologized, and I didn't mean any harm by it. But at
3 the same time, I was wrong.

4 Q. Okay. But you just talked about the reason why --
5 so you didn't call the police, right?

6 A. No, sir. I basically --

7 Q. Okay. Yes or no?

8 A. No, sir.

9 Q. And the reason you told this jury a couple minutes
10 ago is because of the predicament you were in; is that
11 correct?

12 A. Correct.

13 Q. I mean, you are being shot at. I mean, if you did
14 nothing wrong, what predicament are you in that you can't
15 call the police?

16 A. Messed up predicament meaning a predicament would
17 lead me to getting charged with murder. Another predicament
18 where it would lead me when I'm trying to go into the
19 service, you can't have no contact with the police officer.
20 As I indicated to Lieutenant Shumpert and Investigator
21 Gilliard prior to them charging me with obstruction of
22 justice, that was towards why I gave those statements. I was
23 already charged for that, but it simply Mr. Sorenson trying
24 to make it seem like, Mr. Samuel, you charged with murder,
25 you've given all these statements, but I was charged for that

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1 with obstruction of justice. Obstruction of justice means
2 giving false information to a government -- they know what
3 the charge is. But obstruction of justice is lying to the
4 police officer, giving them false information.

5 MR. SORENSON: Your Honor, I'm going to -- I mean, I
6 let him ramble for a little while, but --

7 THE COURT: I understand. Mr. Samuel, if you are
8 asked a yes or no question, I want you to answer yes or no,
9 if you can. And I want you to give a limited explanation if
10 you need to.

11 THE WITNESS: Yes, ma'am, all right.

12 THE COURT: Be responsive please to the question.

13 Thank you, Mr. Sorenson. You may proceed.

14 BY MR. SORENSON:

15 Q. Mr. Samuel, it is your testimony that you went down
16 the road, turned around, went back by the house; is that
17 correct?

18 A. I didn't went back by the house. I went up and
19 turned around, I drove past the house.

20 Q. Okay. So you drove past the house? Instead of back
21 by, you drove past the house?

22 A. Well, you are saying back by. I never did went back
23 by the house.

24 Q. You left the house and then you came back past the
25 house?

1 A. Correct.

2 Q. Bad words on my choice, I guess. So the house is
3 now on your left side as you are driving back by it or past
4 it; is that correct?

5 A. No, the house is on my right side.

6 Q. Okay. All right. Your right side. Right side?

7 A. Correct.

8 Q. So you are going now towards St. Matthews?

9 A. Correct.

10 Q. Okay. What's going on when you drive past the
11 house?

12 A. There's nothing going on.

13 Q. Nobody out there?

14 A. No, sir.

15 Q. Don't see anybody?

16 A. No, sir.

17 Q. Don't hear anything?

18 A. No, sir.

19 Q. Okay. And where did you go at that point in time?

20 A. At that point in time, I was going taking the back
21 way home. But as I was driving, I glance to my left, and I
22 seen someone running through the trailer park area.

23 Q. And did you stop?

24 A. Yes, sir. I pulled into the bread company.

25 Q. And why? I mean, why?

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1 A. If I seen someone and if you in a predicament that
2 looked messed up, sometimes you can't help exactly how your
3 actions or what may lead your actions to do something. For
4 some reason, my actions lead me to see where he was going at.
5 I can't say why.

6 Q. So it is your testimony that you have just -- you
7 know, you know that something bad was going to happen.
8 That's why you were stalling, putting off Gator.

9 A. Correct.

10 Q. You finally end up leaving after everybody else
11 leaves?

12 A. Correct.

13 Q. You get shot at while you are leaving and get your
14 mom's SUV all shot up leaving the scene; is that correct?

15 A. Correct.

16 Q. You decide to go drive back past the house. You see
17 somebody running. You haven't called the police because you
18 are scared; is that correct?

19 A. Correct.

20 Q. But you decide that you are going to pull in to see
21 who this person is that's running, even though it could have
22 been the person that just shot at you, according to your
23 testimony, correct?

24 A. Correct.

25 Q. All right. So you pull into the bread company

1 parking lot. What did you do?

2 A. I pull in the bread company parking lot and then try
3 to look to see where they were, drove back out and then drove
4 into the trailer park. After I couldn't see where nobody
5 was, I got out of my truck. As I got out of my truck, I
6 looked to see whether or not I had seen them. And once I
7 didn't see them, that's when I left.

8 Q. So you didn't fire any shots in that bread company
9 trailer park?

10 A. No, sir.

11 Q. And I know you've been asked this, but obviously you
12 are saying that you didn't shoot up your vehicle?

13 A. No, sir.

14 Q. And the only gun, your testimony, that you had on
15 you or shot that night was a .40 caliber?

16 A. Yes, sir.

17 Q. And that's the .40 caliber that was in the
18 photographs at your house?

19 A. Yes, sir.

20 Q. Okay. Along with a 9-millimeter; is that correct?

21 A. Yes, sir, but that camera have nothing to do with
22 me.

23 Q. It is in your house, right?

24 A. It was in my house, but my brother told you when he
25 was with his lawyer --

1 MR. SORENSON: Objection, Your Honor. The brother
2 hasn't testified.

3 THE COURT: Yes. Sustained.

4 MR. SORENSON: Thank you. Let's look at these while
5 I'm thinking about them real quick.

6 BY MR. SORENSON:

7 Q. While I'm looking for this, you knew that
8 Mr. Hamilton had two guns in his house, right?

9 A. Correct.

10 Q. You had seen them, right?

11 A. Correct.

12 Q. He usually had at least one of them on him, right?

13 A. He always have both of them. Shemika had one.

14 Q. That would be the State's Exhibit No. 33, the Ruger
15 9-millimeter?

16 A. Correct. I mean, he wouldn't have -- I mean, I
17 can't just sit here and tell you he would have this
18 particular gun on that day because he wouldn't have a
19 particular gun the same day, because Shemika be carrying one
20 and he would be carrying one.

21 Q. I understand, but this State's 33, that's one of the
22 guns that they had, that one of them would have had, is that
23 correct, that Ruger?

24 A. Correct.

25 Q. State's 89, the Springfield Armory 9-millimeter, you

1 had seen that in the house before, right?

2 A. Correct.

3 Q. And one of them would have that on them?

4 A. Correct.

5 Q. You saw both of those guns that afternoon in the
6 house?

7 A. Correct.

8 Q. Where -- let me ask you this. When you left, where
9 were those two guns?

10 A. One of them was on Tweety Bird and one of them
11 Shemika gave to him before she left.

12 Q. So basically when you left, your testimony is that
13 they were both in Tweety Bird's possession then; is that
14 correct?

15 A. Correct.

16 Q. This camera was found in your brother's bedroom, is
17 that correct, in your house?

18 A. Correct.

19 Q. And, of course, it had a picture of Mr. Hamilton's
20 Ruger 9-millimeter on it, right?

21 A. Correct.

22 Q. And it's got two pictures of, I guess, your .40
23 caliber --

24 A. Correct.

25 Q. -- that you were carting around?

1 A. Correct.

2 Q. And also a Smith & Wesson 9-millimeter?

3 A. Yes.

4 Q. Whose gun was the Smith & Wesson 9-millimeter?

5 A. I can't say who's gun that was on. Just like the
6 camera, like I told you, that camera, you did not get that
7 camera out of my possession. My brother indicated that
8 camera was his. That had nothing to do with me. You found
9 it in his room. I don't understand why that's being on me.

10 Q. But it is your testimony that when you left, those
11 two guns were in Taneris's house; is that correct?

12 A. Correct.

13 Q. So you obviously never -- so your testimony would be
14 that you never fired either one of those guns; is that
15 correct?

16 A. Correct.

17 Q. Didn't have possession of either one of those
18 guns?

19 A. Correct.

20 Q. So I guess it's -- kind of the next step is
21 obviously you deny then ever giving either one of those guns
22 to your brother?

23 A. Correct. He told you that he got those guns from
24 Alan Fields.

25 MR. SORENSON: May I approach?

1 THE COURT: Ladies and gentlemen, I'm going to ask
2 you -- we are going to take our morning break at this time.
3 Please step to your jury room. Do not discuss this matter or
4 allow anyone to discuss it with you. Leave your notebooks in
5 your seats. There's a matter that I must handle and then we
6 are going to take a little short break. So we will probably
7 be 20 to 25 minutes. Thank you.

8 (Whereupon the jury leaves open court at 11:39 a.m.)

9 THE COURT: Yes, sir, Mr. Sorenson. I think I know
10 what your concern is.

11 MR. SORENSON: My issue right now is he multiple
12 times brought up what his brother has told me in my meetings
13 with his brother and his lawyer. And actually what he said
14 so far has been accurate, that part. But there's a lot more
15 that his brother told me also that implicates him. And I
16 think for him to be able to keep saying basically what's
17 hearsay and inadmissible and for me not to be able to follow
18 up with, you know, basically, other stuff that, quite
19 frankly, implicates him in all of this. His brother
20 implicated Alan Fields, Hillard Pinckney, and Lamont Samuel
21 as being the three people involved in this.

22 THE COURT: All right. Mr. Samuel, when you say my
23 brother told you whatever, what you are doing is you are
24 admitting inadmissible hearsay. And there's a theory of the
25 law that's called opening the door. And what that means is,

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1 is that if a witness says something that in fairness the
2 other party ought to be able to ask certain things, then you
3 have opened the door. That's what Mr. Sorenson is saying,
4 that if you continue to inject the statements that your
5 brother made to Mr. Sorenson, you are opening the door. I
6 don't think that's anything that you want to do.

7 However, however, if you respond -- let me give you
8 an example. In your testimony about the camera, instead of
9 saying to Mr. Sorenson, Mr. Sorenson, that's my brother's
10 camera, what you said was, Mr. Sorenson, my brother told you
11 that was his camera. The information that is delivered to
12 the jury is that it's your brother's camera, but it is the
13 way that you were doing that. Because I gather you know
14 that's your brother's camera?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: And you know that?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: The difference is that when you say, my
19 brother told you that's his camera, what you've done is
20 you've injected what is inadmissible hearsay. And you have
21 opened a very dangerous door, as I understand it.

22 THE WITNESS: Yes, ma'am.

23 THE COURT: So when you are answering the questions,
24 the first thing to do is to listen and make sure you
25 understand the question and then answer that question. And

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1 if he says it was on the camera and you want to say, yes, it
2 was on the camera, but I want to explain that that's my
3 brother's camera, that's how you do that.

4 THE WITNESS: Thank you.

5 THE COURT: Just say it is my brother's camera. You
6 don't need to open that door with that hearsay. That's
7 inadmissible hearsay. The first time Mr. Sorenson objected
8 when you did that. The second time he objected, but then he
9 withdrew the objection because he liked what you were saying.
10 Okay? That was also inadmissible hearsay. But he has a
11 right not to object, okay, if he thinks it's helping him.

12 When you reach a point where you are opening the
13 door, what he's doing is he's signifying to me and he's told
14 me he takes the position that you are opening that door.

15 THE WITNESS: Yes, ma'am.

16 THE COURT: He wants to go running through that
17 door. It's inadmissible hearsay. I'm telling you don't do
18 that.

19 THE WITNESS: Yes, Ma'am.

20 THE COURT: If you continue to do that, you will
21 have opened the door and he's going to come running through
22 it. Do you understand?

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Okay. Very well. Now we are going to
25 take our morning break and let you take one as well. You

1 come on down. You might want to just take a little break.

2 I take the position and it is a -- of course, it
3 is a -- there is a constitutional issue. And the issue is
4 whether or not when a defendant is on the stand, whether or
5 not he can receive benefit of counsel. I take the position
6 that a criminal defendant who is on the stand can have
7 benefit of counsel, for what that's worth.

8 Okay. We will take our break.

9 (A recess transpired.)

10 THE COURT: All right.

11 MR. MELLARD: Your Honor, there was an issue earlier
12 about, I think, opening the door on this. Would the Court
13 allow me to at least state the defense's position on that
14 particular issue.

15 THE COURT: Okay.

16 MR. MELLARD: It's our position that when the State
17 asks a question to a witness that if it is not a question
18 that they want to ask, they want the answer to, they should
19 object and move to strike that.

20 It's our position if they allow the statement to
21 continue, that they should not benefit by allowing it to
22 continue when -- they shouldn't be able to say, I opened the
23 door but I'm not objecting to it, is my position on that,
24 Your Honor.

25 THE COURT: Well, I understand your position. I got

1 it. Okay. Thank you. We don't have a problem.

2 (Whereupon, the jury returns to open court at 12:16
3 p.m.)

4 THE COURT: All right. Ladies and gentlemen, we
5 will continue with the defense and the cross-examination.

6 MR. SORENSON: May it please the Court.

7 THE COURT: Yes.

8 BY MR. SORENSON:

9 Q. It is your testimony, Mr. Samuel, this is your
10 vehicle, right, State's Exhibit Number 64?

11 A. Correct.

12 Q. That's your vehicle, State's Exhibit Number 69?

13 A. Correct.

14 Q. Your vehicle? It is your testimony that you did not
15 have the victim's Springfield 9-millimeter gun in your
16 possession; is that correct?

17 A. Correct.

18 Q. Didn't fire that gun in or around your vehicle?

19 A. No, sir.

20 Q. I assume you didn't have any of the shell casings
21 from that gun in your pocket that you just had left laying
22 around inside the truck, right?

23 A. No, sir.

24 Q. I guess somebody put them in your truck?

25 A. I wasn't at the crime scene. Once I drove back to

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1 the scene, I left, so I can't say how. But I know they
2 didn't got in there by me putting them in there or me firing
3 any of those guns.

4 Q. Of course, you are aware that that gun, that
5 Springfield Armory 9-millimeter was found in your brother's
6 possession two weeks later, correct?

7 A. That's incorrect.

8 Q. Backseat of his car?

9 A. That's not two weeks later.

10 Q. March 20th to April 3rd, I mean, that's 14 days, is
11 it not?

12 A. It was not find April 3rd. That was when Alan
13 Fields was arrested, but that gun that got in my brother's
14 possession wasn't recovered until the -- my brother was
15 incarcerated I want to say June 20th.

16 Q. Testimony the jury will hear is it was -- needless
17 to say, it was found in your brother's vehicle, right?

18 A. That's not my brother's vehicle. That's his daddy's
19 vehicle.

20 Q. Your brother was operating that vehicle, though,
21 right? It was in that vehicle?

22 A. Yeah, it was in that vehicle.

23 Q. It is your testimony that you never had possession
24 of that gun?

25 A. I never had possession of it.

1 Q. And, of course, the Ruger 9-millimeter, obviously I
2 guess it is your testimony that you did not have possession
3 of that gun either?

4 A. I never had possession of that gun either.

5 Q. Didn't fire that gun?

6 A. I didn't fire that gun either.

7 Q. So you weren't the one -- when Alan Fields told you
8 to act like you are playing with his strap and bust his ass,
9 you didn't ultimately do that, did you, snatch up his gun and
10 shoot him one time in the left eye with that Ruger?

11 A. No, I didn't do that.

12 Q. I believe it is your testimony that when you went
13 back past Mr. Hamilton's house, that you turned into the
14 bread company parking lot?

15 A. Correct.

16 Q. Got out of your vehicle?

17 A. Incorrect.

18 Q. Okay. That's what I'm asking. So you did not get
19 out of your vehicle?

20 A. No, sir.

21 Q. Never got out?

22 A. No, sir.

23 Q. Did you yell at all?

24 A. No, sir.

25 Q. Was there anybody yelling out there?

1 A. I can't tell because when I was in my truck, like I
2 say, the guy that ran through the trailer park, I don't know
3 what they had done, what they did or what was they
4 communicating to by the time I got there, but I never got my
5 truck in none of that.

6 Q. My question was, when you pulled into the bread
7 company parking lot, was there any yelling in the bread
8 company parking lot?

9 A. No, sir.

10 Q. And according to your testimony, there was nobody
11 but you in the SUV in the bread company parking lot?

12 A. Correct.

13 Q. So there was never anybody else with you in the
14 bread company parking lot?

15 A. No, sir.

16 Q. Around your vehicle in the bread company parking
17 lot?

18 A. No, sir.

19 Q. Nobody on the ground looking for stuff in the bread
20 company parking lot?

21 A. No, sir.

22 Q. Nobody shooting any guns in the bread company
23 parking lot while you were in the bread company parking lot?

24 A. Not while in there. If anything, it had to be
25 before.

1 Q. And, of course, you are aware in that bread company
2 parking lot -- showing you State's 21, it's a little ways
3 down the road from Mr. Hamilton's house, correct?

4 A. Correct.

5 Q. That's the trailer park that you are talking about
6 that you saw the person running into when you drove past?

7 A. Correct..

8 Q. And the Springfield Armory 9-millimeter, which you
9 also said -- your testimony now is that you did not have
10 possession of --

11 A. My testimony has always been I never had possession
12 of that gun.

13 Q. We will get to that in a second. Your testimony now
14 is that you didn't have it, right?

15 A. Correct.

16 Q. But you are also aware that gun was also found in
17 your brother's possession in June of last year, so about
18 three months after it was taken from Mr. Hamilton's house; is
19 that correct?

20 A. Correct.

21 Q. Of course, you were locked up by that point in time;
22 is that correct?

23 A. I was locked up since March 20th.

24 Q. That's not correct.

25 A. I mean, March 21st, whenever they charged me with

1 obstruction of justice.

2 Q. That would be the night of March 22nd; is that
3 correct?

4 A. That's correct.

5 Q. The fact of the matter is, when you gave those first
6 statements to law enforcement, you were not locked up, right?

7 A. Correct.

8 Q. By my count, Mr. Samuel, it looks like over the span
9 of the evening of March the 20th until March the 31st, it
10 looks like you were advised of your rights seven different
11 times; is that correct?

12 A. That's correct.

13 Q. All right. And you signed all seven of those advice
14 of rights forms?

15 A. That's correct.

16 Q. Initialed all the advice of rights all seven times?

17 A. That's correct.

18 Q. Signed the bottom portion of those seven of those
19 indicating you wanted to talk to the police, correct?

20 A. That's correct.

21 Q. And we are dealing with Sergeant Ethridge,
22 Investigator Gilliard, Lieutenant Shumpert, Lieutenant
23 Trentham over in Calhoun County, and Investigator Godwin, so
24 five different investigators that talked to you over the span
25 of those seven different times that you were advised of your

1 rights; is that correct?

2 A. That's correct.

3 Q. And the fact of the matter, Mr. Samuel, is according
4 to your testimony here today, you lied to them every time you
5 talked to them; is that correct?

6 A. I mean, if you actually sit down and take the time
7 to read the statement, you will see where it is not all lies
8 in it. You'll see where I probably added more to it. But at
9 the same time you will also see where I tried to cooperate,
10 but at the same time didn't know the truth when the truth was
11 revealed to me in jail. So at the time, I mean, yes, I did
12 wrote seven statements. But at the same time, I was
13 pressured, I was scared. And I never been in jail before, so
14 it was all new to me.

15 So I'm sorry for lying, but I did get a charge for
16 that, which is obstruction of justice.

17 Q. Your version of cooperating with the police is on
18 the night that this happened, March the 20th, and they
19 were -- I mean, they were treating you as a victim at that
20 point in time. They ended up charging a man with shooting at
21 you. You understand that?

22 A. I understand.

23 Q. And that was done because you lied to the police
24 about who did it?

25 A. Yes. And I also apologized. And I'm sorry for --

1 Q. You apologize, what, 16 months later when you are
2 sitting up there in the witness stand?

3 A. No, I didn't apologize 16 months later. Actually, I
4 got locked to where we can't talk to the family. But if I
5 could again apologize to them, I again did so. And I did
6 apologize when I was in my arraignment because I said I'm
7 sorry, even though I didn't do it. That was in the
8 newspaper.

9 Q. Mr. Samuel, needless to say, the night of March the
10 20th into the morning of March the 21st, you didn't tell the
11 police the truth; is that correct?

12 A. Correct.

13 Q. You lied and you implicated Steven Johnson as being
14 the person that shot at you; is that correct?

15 A. That's correct.

16 Q. Okay. You also lied to them and told them that you
17 threw the gun in the pond; is that correct?

18 A. That's correct.

19 Q. Okay. Had three different law enforcement agencies
20 over the next two days out there looking at a pond that you
21 took them to; is that correct?

22 A. I don't know about three. I know one called me and
23 we met one, me and my sister and my brother.

24 Q. So you met with --

25 A. One.

1 Q. Officers from the Orangeburg County Sheriff's
2 Office; is that correct?

3 A. I met with one officer.

4 Q. And you heard testimony from Lieutenant Trentham
5 that they got contacted, so that's Calhoun County; is that
6 correct?

7 A. That's correct.

8 Q. And then they got the Lexington County dive team to
9 come out there. You heard that testimony, right?

10 A. Yeah, I heard it.

11 Q. And that was all yet again because of your lies; is
12 that correct?

13 A. Correct.

14 Q. Then on March the 22nd, Investigator Gilliard, yet
15 again, you give her a written statement?

16 A. Correct.

17 Q. Telling her -- not telling her the truth, right,
18 lying to her too?

19 A. Correct.

20 Q. Going back now, because at one point in time in
21 there you said the guy just looked like Steven Johnson, now
22 you are back to saying it was Steven Johnson, correct?

23 A. That's correct. That came by when Lieutenant
24 Shumpert pressured me and told me while Shemika was there
25 that if I didn't give him a name to fit that description,

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1 that I wouldn't be able to go home. When I said it was dark
2 and the guy had dreads, Lieutenant Shumpert said in front of
3 Shemika that you won't go home unless you gave me a name to
4 fit that description.

5 Q. So that's the whole reason, because Lieutenant
6 Shumpert told you that, is the whole reason why you said
7 Steven Johnson shot --

8 A. You can manipulate somebody. That would be the
9 correct reason.

10 Q. All right. And you never at any point in time tell
11 them that Alan Fields is involved at that point in time,
12 right?

13 A. No, sir.

14 Q. Okay. Or the name Hillard Pinckney, you never bring
15 that name up at all, do you?

16 A. No, sir.

17 Q. And then you ultimately talk on March the 23rd to
18 Lieutenant Shumpert.

19 A. That's correct.

20 Q. Tell him that you shot up your own vehicle.

21 A. That's correct.

22 Q. Is that right? Told him that you actually saw
23 Steven Johnson shoot Taneris Hamilton?

24 A. That's incorrect.

25 Q. Didn't tell him that?

1 A. I didn't tell him that.

2 Q. Never told anybody that?

3 A. I wouldn't necessarily say I never told anybody
4 that. It probably was written in my statement, but I never
5 told him that out of my mouth that I seen nobody do anything
6 to Taneris Hamilton.

7 Q. Fast-forward, March the 28th, you give this written
8 statement here.

9 QUESTION: You stated to investigators that you were
10 in the house and Steven and Taneris were fighting and you saw
11 Steve shot Taneris. Did you tell investigators this.

12 Your answer was yes.

13 A. As I said again, you asked me did I give them an
14 oral statement out of my mouth, but I said it was in my
15 statement.

16 Q. Well, it is not in one of these prior written
17 statements. When they are referencing this, it's because you
18 had told him that five days earlier.

19 A. Mr. Sorenson, if I'm locked up ever since March
20 22nd, how could I keep up with all the documents saying word
21 for word when you are not giving me anything up here.

22 Q. What do you want to look at? Just ask me.

23 A. Basically I don't really need to look at anything
24 but it's like you are trying to get me to say something and
25 then you go on the table and find it. If I'm locked up there

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1 since March 22nd without me having anything in my area, how
2 could I state what's going on?

3 Q. So you never looked at all these statements you
4 gave?

5 A. I looked at all the statements, but what I'm saying
6 is, I seen you gave multiple police officers -- I mean, you
7 want to take a look at that and refresh your memory. I seen
8 you did it. Why you can't do it with me?

9 Q. That's what I just asked you. Tell me what you want
10 to look at. I will give you all of them if that's going to
11 help you refresh your memory.

12 A. No. What I have to refresh my memory, when you
13 state what you are talking about, then you go to the
14 statement, bring it to me.

15 Q. Okay. My question was: The only time that you had
16 told somebody that you saw Steven Johnson shoot Taneris
17 Hamilton is when you spoke to Lieutenant Shumpert on March
18 the 23rd of 2012?

19 A. That's incorrect.

20 Q. Okay. And your response was, I believe, that you
21 had put it in one of your written statements?

22 A. That's correct.

23 Q. Okay. These are laid out in alpha -- or
24 chronological order here.

25 A. The statement that you just took, of course it is

1 not going to be in any one of those. I'm saying the time
2 before.

3 Q. But that question says: You stated to investigators
4 that you were in the house and Steve and Taneris were
5 fighting, and you saw Steve shoot Taneris. Did you tell
6 investigators this?

7 Your response is what?

8 A. My response is yes. At the same time, I told you, I
9 never told that through him out of his (sic) mouth. As I
10 will say again, yes, jurors, it is in my statement. It's
11 there, but I never told him that I seen that from my mouth.

12 Q. Okay. But the fact of the matter is, that is not in
13 this statement that you gave on March the 20th or the
14 statement, the two written statements on March 20th or March
15 22nd? If you need to review them, I will let you review
16 them.

17 A. As I will say again to you, that would not be out of
18 word of mouth but in that statement, in the question, when
19 they question me, it would be correct. But out of his mouth
20 as far as telling him that, that's incorrect.

21 Q. You hadn't told anybody that prior to them asking
22 you if you had told somebody that and you said yes; is that
23 correct?

24 A. That's correct.

25 Q. Now, the statement on March the 28th, do you

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1 remember, they brought you over that day basically to try to
2 figure out what on earth you were saying the truth was
3 because at that point in time, you had given multiple
4 different conflicting stories?

5 A. Because I was scared, true.

6 Q. Is that right? All of which are not the truth? You
7 basically gave multiple conflicting lies; is that correct?

8 A. I guess I was being pressured awfully a lot.

9 Q. Didn't they tell you, I mean, they wanted you to
10 tell them the truth about what happened?

11 A. Correct.

12 Q. Okay. And your response to that was to tell them,
13 as I said, multiple conflicting lies?

14 A. What would be my truth and being honest, they never
15 did really give me any time to try to prove my innocence. I
16 didn't find out what exactly happened after being locked up
17 for over a period of 15 months. It is writing.

18 Q. They gave you the time to write in your own
19 handwriting a three-page statement about what happened early
20 morning hours of March the 21st, less than three hours after
21 it happened, correct?

22 A. That's correct.

23 Q. You could have written as long as you wanted to; is
24 that correct?

25 A. I also was under the influence of marijuana too.

1 Q. Gave you an opportunity when they talked to you the
2 following day, after you took them out to the pond, to change
3 anything you had said the night before, and there was nothing
4 you wanted to change; is that correct?

5 A. Correct.

6 Q. Gave you an opportunity again the night of March the
7 22nd, yet again? I mean, they are not putting these words in
8 your mouth, right? These are your words, your handwriting.

9 A. It is my handwriting and they are my words, but at
10 the same time, when you pressured, like I said, you don't
11 know why you do certain things. Sometimes it would be the
12 police officer tell you so much different stuff and fill your
13 head up with so much different things to what they believe,
14 and what they say to you, you start to believe. But like I
15 will say again, through all my statements I gave to them, but
16 all my statements, there's nothing saying I committed a
17 murder.

18 Q. Then on March the 28th, they brought you back over
19 to try to sort out all of this stuff you've been telling
20 them, correct?

21 A. That's correct.

22 Q. Gave you an opportunity to yet again write another
23 statement?

24 A. That's correct.

25 Q. Asked you a bunch of questions after that? That's

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1 Investigator Gilliard sitting down with you for most part of
2 that, right?

3 A. That's correct.

4 Q. And yet again, you are basically now going back to
5 saying you didn't shoot, because you had told them you had
6 shot up your own vehicle, now you are saying you didn't shoot
7 it up; is that correct?

8 A. That's correct.

9 Q. All right. And your way of cooperating is
10 ultimately to get ahold of this statement and start tearing
11 it up? That's your way of cooperating, correct?

12 A. No, sir. Why I tore the statement up, Lieutenant
13 Shumpert slammed me to the floor. Now you said you were
14 going to have a video so these jurors could see but I don't
15 see it.

16 Q. He slammed you to the floor because you were tearing
17 up the statement?

18 A. But then yesterday, Shumpert just got up here and
19 say he pushed me in the corner. If you are going to testify,
20 it should be the truth. You put your hand on the Bible. He
21 slammed me to the floor. He never did push me in the corner.

22 Q. To get the statement that you were tearing up away
23 from you?

24 A. He did it to get the statement, but at the same
25 time, why would you tell a jury you pushed me in the corner

1 when you pick me up and slammed me on the floor? That's the
2 video that you said he was going to show.

3 Q. Yet again, you tore up that statement; is that
4 correct?

5 A. That's correct.

6 Q. Okay. And you are still tearing up the other two
7 pages as you were walking out of the room; is that correct?

8 A. Actually, that's incorrect. When Shumpert slammed
9 me to the floor, the statement was still in my hand. I was
10 detained. I was in handcuffs. So I didn't necessarily kept
11 tearing the statements up. When I was pinned to the floor by
12 Shumpert once he slammed me, I ain't had a chance to keep
13 tearing statements up. They were just in my hand balled up.
14 Shumpert just took me out of the investigation room and
15 didn't worry about it.

16 Q. So your testimony is, while you were being walked
17 out of that investigative room, you were not still tearing up
18 the two pages that you had in your hand?

19 A. It would be my testimony to when Shumpert slammed me
20 to the floor.

21 Q. That wasn't my question. Listen to my question. If
22 you need to explain, that's fine, but please answer it first.
23 It is your testimony that when you were being led out of that
24 interview room, after you had started tearing up that
25 statement, and got pushed, slammed through to the floor,

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1 whatever, to get it away from you, that when you got back up
2 and they were leading you out of that interview room, you
3 were still tearing up the other two pages; you were?

4 A. That's correct.

5 Q. Then the last statement on March the 31st, over in
6 Calhoun County, they talked to you briefly in Calhoun about
7 an unrelated matter; is that correct?

8 A. That's correct.

9 Q. All right. And then Investigator Godwin came
10 over?

11 A. Correct.

12 Q. At your request?

13 A. Correct.

14 Q. And you hadn't even said that either, have you?

15 A. Say that again.

16 Q. At your request.

17 A. I mean, it was at my request after he got me --
18 after he tried to bribe me into taking food from him.

19 Q. What?

20 A. He brought me Hardee's to get me to sit down and
21 talk to him.

22 Q. Okay. So he brought you Hardee's and that was
23 enough to bribe you into giving another 11-page statement,
24 was a meal from Hardee's?

25 A. What would be my --

1 Q. That's your testimony?

2 A. What would be my testimony today? If you dealing
3 with a homicide, why would you have to bring somebody food
4 that they can't get at the jailhouse? If you wanted me to
5 talk to you, why would you have to bring me Hardee's when you
6 are talking to me? I didn't actually request him. He told
7 me to sit down, if I would try to help myself, to write a
8 statement. And he just told me if I want to, you can eat
9 this food that I brought for you. So if I were to perform,
10 it would be, yes, because I was already down there with the
11 other two officers. But getting me to talk, it would be he
12 told me if I want to help -- if I wanted to, he would bring
13 me this food and I will sit and eat the food with him, and
14 that was his way of getting me to give a statement.

15 Q. Okay. And that overcame your will? I mean, just
16 maybe it is not freely and voluntarily because he gave you
17 something to eat?

18 A. I mean, basically, Mr. Sorenson, if somebody give
19 you money, that's just like telling you won't take it if they
20 basically give it to you. If I won't get it at the
21 jailhouse, I will take the Hardee's.

22 Q. That caused you to write an 11-page statement that
23 yet again isn't the truth; is that correct?

24 A. Correct.

25 Q. In fact, in that statement, though, he did ask you

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1 multiple times if you, in fact, requested to have him come
2 talk to you and you wrote yes, right?

3 A. Correct.

4 Q. Because you did ask him for them to come talk to
5 you?

6 A. I said something, correct.

7 Q. Because you wanted to still talk to the
8 investigator, correct?

9 A. Correct.

10 Q. And then you gave State's Exhibit Number 12 yet
11 again, the first eight pages in your handwriting?

12 A. That's correct.

13 Q. And just like all these others, this is a lie too
14 according to your testimony now; is that correct?

15 A. That's correct.

16 Q. Because you are cooperating and trying to help out?

17 A. That's correct.

18 Q. And ultimately in this statement, Page 7, you tell
19 them: I'm about to go. Once I left, Gator and Steve
20 approached the house.

21 So even now, I mean eleven days later after you know
22 Steven Johnson has been arrested and charged with murder,
23 right, you are still implicating him 11 days later, right?

24 A. Steven Johnson was still incarcerated 11 days later.

25 Q. Right. You're still telling the lie that's keeping

1 him there, is that correct?

2 A. No, I'm not still telling the lie that's keeping him
3 there. What happened was I think he probably ran into
4 something, ran into a situation where his lawyers took the
5 time to get him out after they investigated, so it wasn't my
6 lie that kept him there.

7 Q. Ran into a situation? That would be you lying to
8 the police and telling them that he shot at you. That would
9 be the situation he ran into.

10 A. And I would then say I apologize and I'm sorry.

11 Q. But your testimony, your statement back on March the
12 31st: When I was about to go I left. Gator and Steven
13 approached the house. I left them and went towards
14 Orangeburg. Once I seen that they left, I pulled back in the
15 yard and found the Springfield 9 which is the gun thrown by
16 Steve before I pulled off. So there it was laying on the
17 ground. I grabbed, pulled off, went to the bread place and
18 shot up my truck. I did it because I didn't want to take any
19 part in the murder.

20 I mean, that's what you told the police. It is your
21 handwriting, Mr. Samuel; is that correct?

22 A. That's correct. I told the police that and I still
23 was charged with obstruction of justice. I mean, I already
24 was charged for the statement, so I don't understand why you
25 still got all those statements there when I got charged for

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1 obstruction of justice. If I already got charged with lying
2 to the police officer, they still coming back and
3 investigating. I already was charged. I got obstruction of
4 justice and a murder charge.

5 Q. They were investigating your role in the murder of
6 Mr. Hamilton, is what they were doing, Mr. Samuel. And, of
7 course, that Springfield 9 that you are referring to, is this
8 gun right here, right, State's Exhibit 89?

9 A. Correct.

10 Q. Correct?

11 A. Correct.

12 Q. That shot up your vehicle in that bread company
13 parking lot?

14 A. Incorrect.

15 Q. Of course, you reference in that last statement also
16 about Mr. Fields threatening you over and over again in those
17 text messages; is that correct?

18 A. He threatened me so much times.

19 Q. Okay. I assume we can see that in all these text
20 messages, right, the threats in these text messages?

21 A. I'm not sure.

22 Q. Any on the first page?

23 A. "Come on, man, what the F' you doing?" That's on
24 the first page.

25 Q. Okay. That's because you just told him to hold up,

1 right?

2 A. You asking me is he threatening me, so --

3 Q. You took that as a threat, right there: Come on
4 man, what the F' you doing?

5 A. I took that as, if he saying come on, man, what the
6 F' you doing, basically he cursing. Basically he's saying,
7 come on, what the F' you doing, why you ain't pursuing, why
8 you ain't going on?

9 Q. Going on doing what?

10 A. Like I told you again, Mr. Sorenson, when you keep
11 saying going on doing what, it was never my idea -- it was
12 never nothing that Gator had going on. I had no part to do
13 with the murder, no parts to do with setting him up.
14 Anything Gator initiated, I had nothing to do with that.

15 Q. Okay. Go ahead. Let me see the second page where
16 these threats are. I believe you said it was eight plus
17 times in those statements?

18 A. No, eight plus times meaning being incarcerated as
19 well. Eight plus times that don't necessarily mean on the
20 text messages. You are saying being threatened eight times,
21 meaning through the letters he wrote me during jail.

22 Q. March 31st he hadn't been arrested yet?

23 A. He wasn't arrested, but he still send messages there
24 that would get to me.

25 Q. That's because he didn't want you to turn on him,

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1 right?

2 A. I mean, I don't know what his reason for saying it,
3 but I won't say the reason that you are using.

4 Q. You wouldn't think that was the reason, he didn't
5 want you to keep quiet?

6 A. I mean, I don't know what his reason for sending the
7 message.

8 Q. All right. Any other threats in the text messages?

9 A. When he say open the door, when he say: You with
10 that faking nigga, we don't got time for that; that's
11 basically it.

12 Q. So you took that as a threat also, the fact that you
13 were still basically getting him -- at that point in time you
14 were trying to get him to wait for Steve to leave, right,
15 before he came in?

16 A. Actually, you could still see where I say: You with
17 that faking nigga we don't got time for; meaning he knew that
18 I began not to try to get -- he knew that I wasn't going
19 along with what he was trying to get me to go along with.

20 Q. That's why he was still telling you to open the
21 door, right?

22 A. No, I didn't open the door.

23 Q. He was still telling you to open the door, right?
24 And you were telling him when you were going to open the
25 door; is that correct?

1 A. Exactly, but it wasn't the front door.

2 Q. Your testimony is it was the back door?

3 A. It ain't my testimony what door he was at. I can't
4 give you the correct door he was at. But it is my testimony
5 that while he was trying to get in the back door, I knew he
6 couldn't get through there because Taneris had rims by the
7 back door. He couldn't get in the back.

8 Q. But is it your testimony that that's where he was
9 trying to get in was the back door?

10 A. My testimony is I don't know where Gator whereabouts
11 was outside, so I can't tell you that.

12 Q. And your testimony is that he was not out in your
13 truck; is that correct?

14 A. That's correct.

15 Q. Wasn't out in your truck when you went out and got
16 the game out to give to your mom?

17 A. That's correct. If so, Shemika would have seen me.

18 Q. He wasn't hiding down, laying down in the back like
19 you told him in your text message, was he?

20 A. The way my truck is, Shemika would have seen him.
21 My truck was side-by-side. They was real close. You
22 couldn't even walk between it. She would have seen him when
23 she went to her car to get in the car when I brought my mom
24 the game. So she would have seen him. No, he was not in my
25 truck.

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1 Q. The fact that you knew she was about to leave, that
2 wouldn't have been the reason why you told him to get way in
3 the back and lay down so they can't see you, that wouldn't be
4 the reason, right?

5 A. Like I said, it would be a rhetorical question.
6 Again, my doors was locked. It would be a reason for me to
7 try to see where he was.

8 Q. Let me just ask you this. Again, you may have
9 answered this. When you sent him that text at 8:55: Get in
10 the way back of the truck and lay down, what was the reason
11 for sending him that text?

12 A. I will say again, the way we communicate, it would
13 be a rhetorical question. I already knew that my doors were
14 locked. He already knew that. So if he knew my doors were
15 locked, that's the reason why he don't be texting back and
16 replying back to anything I have to say.

17 Q. His texting back was: Duh. I mean, he did text
18 back to you. Like, yeah, no, duh I need to stay down.

19 A. You can see where he said, you with that faking
20 nigga, we don't have time for, meaning everything you
21 basically told me today was a lie.

22 Q. It is your testimony, Mr. Samuel, that while all
23 that stuff you told the police over 11 days back in March,
24 none of that is the truth, and the jury should believe what
25 you told them here today; is that correct?

1 A. As I will say again, the part with Steve, I
2 apologize for it, but I gave y'all the two words, who
3 actually did commit this murder of Taneris Hamilton, and it
4 is Alan Fields and Hillard Pinckney. I find out Hillard
5 Pinckney while I was in jail and wrote me letters --

6 MR. SORENSON: Objection, Your Honor.

7 THE COURT: Sustained.

8 BY MR. SORENSON:

9 Q. You do realize from the testimony of the pathologist
10 and the firearms expert, that Mr. Hamilton was shot with
11 three guns; you do realize that, correct?

12 A. No, actually what it says, it could have been three,
13 no less than two shooters. Actually, what he testified to,
14 they wasn't able to understand. Inconclusive, that means not
15 it.

16 Q. We will go through it right now then.

17 A. Can I get your chart right now?

18 Q. You may. Do you remember Agent DeFreese testified
19 that State's 35 and 36 -- you see where I'm pointing my
20 finger at right there, 35 and 36?

21 A. Yes, sir.

22 Q. All right. Two bullets recovered from the left
23 shoulder and the anterior chest, fired by the same firearm
24 but not fired by the Springfield or the Ruger; do you
25 remember that?

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1 A. That's correct.

2 Q. Okay. Then you've got one, two -- two, maybe three
3 if you count the bullet from the bag, State's 37, 38 and 39,
4 that were fired by a .32, is that correct? So that's
5 obviously a second gun?

6 A. That's correct.

7 Q. And then you have State's 34, bullet from the
8 forehead. Do you remember his testimony is couldn't tell if
9 it was fired by one of these guns, but it was fired by a
10 different gun than fired those other ones, State's 35 and 36?

11 A. Okay, but I want --

12 Q. Count that up. How many guns is that?

13 A. I want to explain. The .32 and the 9-millimeter he
14 was hit with. But he said, if y'all had taken your notes, he
15 was saying it could have been a third gun that was used, but
16 he was unable to determine what caliber that hit him. So if
17 he was unable to determine the caliber that hit him, it was
18 only possibly two shooters that he knew that probably fired a
19 shot on Taneris Hamilton. But the third shooter he is not
20 sure on due to the bullet was damaged bad.

21 Q. I'm sure they are able to rely on their notes.

22 A. Correct.

23 MR. SORENSON: That's all I have.

24 THE COURT: Redirect?

25 MR. MELLARD: No questions, Your Honor.

1 THE COURT: Very well. Come down. You can leave
2 that exhibit down and come back to the table. All right.
3 Call your next witness.

4 MR. MELLARD: Your Honor, at this time, the defense
5 rests.

6 THE COURT: Very well. Any rebuttal?

7 MR. SORENSON: No, ma'am.

8 THE COURT: Very well. Ladies and gentlemen, we
9 have now received all of the testimony and you have received
10 all of the exhibits that you will in this case. What remains
11 for us are the arguments of counsel and my charge, or
12 instruction of law. The way that we are going to be
13 proceeding, ladies and gentlemen, is that your lunch should
14 be here. If it isn't already here, should be here
15 momentarily. And we are going to have lunch.

16 There's matters that we must attend to, so we will
17 do that during lunch. And then after lunch, you will hear
18 the arguments of counsel and then my charge or instruction on
19 the law.

20 Ladies and gentlemen, you have not heard the
21 arguments of counsel or my instruction on the law. You are
22 not prepared to deliberate. Therefore, please keep in mind
23 that you must not discuss this matter or allow anyone to
24 discuss it with you. You must not read anything, listen to
25 anything about this matter, radio, the television,

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1 VERDICT

2 (Whereupon, the jury returns to open court at 05:22
3 p.m.)

4 THE COURT: All right. It is my understanding that
5 the jury has reached this verdict. If you will please pass
6 it to Ms. Jamison.

7 All right. I find that the verdict is in due form.

8 Ms. Glen, if you will publish it please.

9 THE CLERK: I call the Court's attention to
10 Indictment No. 2012-GS-38-912, the State of South Carolina
11 vs. Lamont Antonio Samuel. As to the verdict alleging
12 murder, we, the jury, unanimously find the defendant guilty.
13 This is signed today, June the 14th, 2013, by our madam
14 forelady.

15 THE COURT: Ladies and gentlemen, if this was your
16 verdict in your jury room and continues to be your verdict
17 here in the courtroom, please indicate by raising your right
18 hand.

19 Let me observe for the record that each of the
20 jurors have their right hands raised. Thank you.

21 Anything further from the State?

22 MR. SORENSON: Not at this time, Your Honor, no,
23 ma'am.

24 THE COURT: Anything further before we dismiss the
25 jury from the Defense?

1 SENTENCE

2 THE COURT: Okay. Mr. Samuel, I'm going to commit
3 you to the State Department of Corrections for a period of 50
4 years, and you are to be given credit for the time that you
5 have served.

6 MR. SORENSON: Thank you, your Honor.

7 THE COURT: Thank you all. All right.

8 (End of Transcript of Record.)

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WITNESSES

Lakeshia Gillard

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M200367

Arrested: March 27, 2012

ACTION OF GRAND JURY



Date NOV 07 2012

Foreperson of Grand Jury

Date: November 7, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS38-0912

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

November 5, 2012 TERM

THE STATE
vs.

Lamont Antonio Samuel

Indictment for

MURDER

SC Code: 16-3-10

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE COPY


CLERK OF COURT
ORANGEBURG COUNTY, SCFILED FOR
RECORD
NOV 7 2012
CLERK OF COURT
ORANGEBURG COUNTY
SOUTH CAROLINA

2012 NOV -7 AM 11:54

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

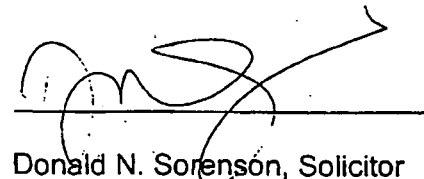
INDICTMENT
2012GS38-0912

At a Court of General Sessions, convened on November 5, 2012 the Grand Jurors of Orangeburg County present upon their oath:

MURDER

That in Orangeburg County on or about March 20, 2012, with malice aforethought, the defendant, Lamont Antonio Samuel did kill one Taneris Hamilton by means of shooting the victim with a handgun. The victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Donald N. Sorenson, Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 15, 2014

A handwritten signature in black ink, appearing to read "Robert M. Pachak", is written over a horizontal line.

Robert M. Pachak
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

APPELLANT

APPELLATE CASE NO. 2013-001342

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred and violated Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975), by not allowing appellant to voluntarily and intelligently represent himself?

STATEMENT OF THE CASE

Appellant was convicted of murder after a jury trial held before the Honorable Diane S. Goodstein, on June 10, 2013, in Orangeburg County. A sentence of fifty (50) years was imposed. Margaret Hinds, Esquire, and Doug Mellard, Esquire, represented appellant. Don Sorenson, Esquire, was the solicitor.

This appeal follows.

ARGUMENT

The trial court erred and violated *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525 (1975), by not allowing appellant to voluntarily and intelligently represent himself.

Trial in this case initially started on May 13, 2013. It was continued to June 10, 2013. The May 13 transcript was made a part of the record and it is that transcript that deals with the Faretta issue. Unless otherwise noted, the transcript page numbers will be from the May transcript.

Defense counsel informed the trial court that appellant wished to represent himself. The courtroom was cleared. (R. p. 4, lines 11 – 23). Appellant explained that he had been in jail for fourteen months, he was innocent, and he did not think his attorneys were working for his best interests. He told the court he graduated high school with a 4.0 in honors. (R. p. 9, line 4 – p. 11, line 18; R. p. 13, line 4 – p. 15, line 10; R. p. 16, lines 23 – 25).

Appellant said he was aware of the charges against him and the possible penalties. He was twenty-one years old and graduated high school in 2010. (R. p. 31, lines 9 – 25). He had never been treated for alcohol, drug, or substance abuse. He did not have any mental health challenges or emotional health challenges. He had no drugs, alcohol, or medicine in the last 72 hours. He had been studying law with a book called Criminal Law Handbook. Carl Grant, Esquire, told appellant's mother about the book and she got it for him. Appellant had been reading up on trial procedures and self-representation. He knew the elements of murder. He knew if he represented himself, he would have to try his own case and the judge could not advise him on any of the rules of evidence. He was familiar with the South Carolina Rules of Evidence. He was familiar with the rule against hearsay and various motions that could be made before and during trial. He knew he had the right to testify or not to testify. (R. p. 33, line 18 – p. 40, line 5). He was aware that the

State had the burden to prove him guilty beyond a reasonable doubt. If he were to choose not to testify, he was aware the jury could not discuss that and could not hold it against him. (R. p. 40, line 25 – p. 41, line 24).

The trial judge then told appellant that an attorney could help him with the rules of evidence, the rules of criminal procedure and presenting defenses. She said he would be better defended by a trained lawyer than he could be by himself. She said she thought it was unwise for him to represent himself. Appellant said he still wanted to represent himself. She then told him that she was concerned that he was not sufficiently familiar with the law, the court procedure, and the rules of evidence to represent himself. She strongly urged him not to represent himself. She said she would genuinely worry about him if he represented himself. (R. p. 42, line 15 – p. 44, line 4).

Appellant said it was still his desire to represent himself and waive his right to counsel. This decision was entirely voluntary on his part. (R. p. 44, lines 6 – 20). Later, appellant was asked if he understood the theory of the hand of one is the hand of all. Appellant explained the theory. (R. p. 48, line 22 – p. 49, line 5). The trial court told appellant that he was bright enough and that the constitution says he's entitled to represent himself. But then said, "I don't want you to represent yourself, but I can't violate the law." (R. p. 50, lines 6 – 9). She admitted, "You don't have a problem that I'm aware of that I can use, in all candor, to keep you from representing yourself." (R. p. 53, lines 15 – 17).

Appellant had mentioned Carl Grant, Esquire, earlier in that he told appellant's mother about a criminal law book to get. He also mentioned that his mother had paid Mr. Grant to come in and educate him. The trial judge said she was going to get Carl Grant over to the courthouse to question him. (R. p. 54, line 21 - p. 55, line 21). When Carl Grant was contacted by phone, he said

he did not represent appellant. He talked to the mother, but he had not been paid and did not represent appellant. (R. p. 59, lines 9 – 13).

When Mr. Grant got to the courthouse, he was put under oath. He again said he did not represent appellant. He said he talked to appellant's mother about representing appellant, but never got a retainer. (R. p. 65, line 20 – p. 68, line 9).

After Mr. Grant was excused, appellant said concerning self-representation, "I know I'm – I know what kind of mistake I could make. I still would like to – if you can, I still would like to go with that right." (R. p. 70, lines 22 – 25).

The trial judge took a break to do some research. She came back and started to rule. She characterized appellant's testimony and Mr. Grant's testimony. Appellant asked to say something and she would not let him. (R. p. 71, line 3 – p. 73, line 20). She cited Gardner v. State, 351 S.C. 407, 570 S.E.2d 184 (2002) and said appellant was trying to "manipulate" the proceedings and that he was not allowed to "disrupt" the proceedings. She said appellant was not showing candor toward the tribunal. Then, she said she wanted and sought the information regarding Mr. Grant because she wanted to be assured that there was not a representation there.¹ She went on to rule that the "reason that I am disallowing your self-representation is because it is impossible for me to try a case if I do not have candor from those who are making representations to the court." (R. p. 71, line 3 – p. 75, line 14).

¹ The trial judge already knew that Mr. Grant said over the phone that he was not representing appellant. (R. p. 59, lines 9 – 13). She also acknowledged that appellant did not say Mr. Grant represented him when she spoke to Mr. Grant in the courtroom. (R. p. 63, lines 11 – 13).

The trial judge erred in denying appellant his Sixth Amendment right to self-representation. But, she was right when she said he had an appellate issue. (R. p. 76, line 18). The trial judge used the wrong standard under Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975) to determine if appellant was validly waiving counsel so that he could represent himself. To allow a valid waiver of counsel, a trial judge has to determine if the waiver is done knowingly and intelligently and that the defendant was warned of the dangers and disadvantages of self-representation. Faretta v. California, 422 U.S. at 835, 95 S.Ct. at 2541. The “ultimate test is not the trial judge’s advice, but rather the defendant’s understanding.” Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (1990) citing Fitzpatrick v. Wainwright, 800 F.2d 1057 (11th Cir. 1986). The court in Wroten went on to say the following:

If the record demonstrates the defendant’s decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied. (citations omitted)

Also, the fact that a defendant requests standby counsel does not render the waiver of counsel invalid. State v. Brewer, 328 S.C. 117, 492 S.E.2d 97 (1997). The Supreme Court of the United States noted the following in Faretta:

The language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant – not an organ of the State interposed between an unwilling defendant and his right to defend himself personally. To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment. In such a case, counsel is not an assistant, but a master, and the right to make a defense is stripped of the personal character upon which the Amendment insists.

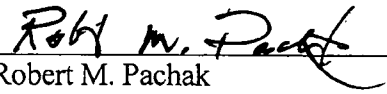
422 U.S. at 820, 95 S.Ct. at 2533 – 2534.

The trial judge in this case did everything she could think of to force counsel on appellant and deprive him of his right of self-representation. Appellant was not being manipulative or disruptive.

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of September, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 18, 2014

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

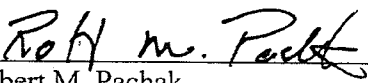
V.

LAMONT ANTONIO SAMUEL,

APPELLANT

CERTIFICATE OF SERVICE

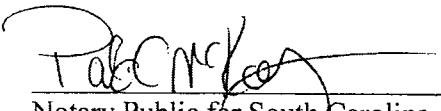
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William Edgar Salter, III, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of September, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of September, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.



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September 18, 2014

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Re: The State v. Lamont Antonio Samuel

Dear Ed:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Robert M. Pachak
Appellate Defender

RMP/pcm

Enclosure

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Diane Schafer Goodstein, Circuit Court Judge
Appellate Case No. 2013-001342

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

APPELLANT

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred and violated Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975), by not allowing appellant to voluntarily and intelligently represent himself?

COUNTER STATEMENT OF ISSUE ON APPEAL

I. Whether the trial judge properly denied Appellant's motion to appear *pro se* at trial because the record supports her finding that he dishonestly responded to her questions about how he had acquired knowledge of trial court procedures, and his responses demonstrated an inability or unwillingness on his part to comply with an indispensable requirement for our judicial system to function? Also, whether his untruthfulness likewise undermined confidence in the credibility of the answers that he gave to the other questions asked of him, created a concern that he would be dishonest with the trial judge and opposing counsel at trial and indicated that, for undisclosed reasons, he wished to improperly wrest control of the conduct of his trial from the trial judge and manipulate the proceedings?

STATEMENT OF THE CASE

Appellant, Lamont Antonio Samuel, is currently incarcerated in the Perry Correctional Institution, of the South Carolina Department of Corrections, as the result of his Orangeburg County conviction and sentence for murder. The Orangeburg County Grand Jury indicted Appellant in November 2012 for murder (2012-GS-38-0912). **R. pp. 239-240.** The charge stemmed from the March 20, 2012 shooting death of three year old J.J. (the victim). Assistant First Circuit Public Defenders Margaret "Peggy" Hinds and Douglas Mellard represented Carter in the trial court, while Assistant First Circuit Solicitors Donald N. Sorenson and Sara Ford prosecuted the case.

Appellant's case was originally called for a jury trial before the Honorable Diane Schafer Goodstein on May 13, 2013. Following an *in camera* hearing, at which the prosecution was not allowed to be present, Judge Goodstein denied Appellant's request to appear *pro se*. **R. pp. 1-76.** Following jury selection on May 14, 2013, Judge Goodstein denied Appellant's motion to recuse her, which was based upon her finding that appellant was not credible in the motion to appear *pro se*. **R. pp. 77-80.** The trial judge began a *Jackson v. Denno* hearing.¹ However, because of issues with several different jurors, the jury was dismissed before it was sworn.

Following the continuation of the *Denno* hearing and denial of Appellant's motion to suppress on June 10, 2013, Appellant received a jury trial before Judge Goodstein on June 11-14, 2013. The jury convicted him of murder, and each juror confirmed the verdict when polled. **R. p.**

¹ See *Jackson v. Denno*, 378 U.S. 368 (1964).

237, lines 2-20.² Judge Goodstein sentenced Appellant to fifty years imprisonment. R. p. 238, lines 2-5.

Appellant timely served and filed a notice of appeal.

ARGUMENT

I. The trial judge properly denied Appellant's motion to appear *pro se* at trial because the record supports her finding that he dishonestly responded to her questions about how he had acquired knowledge of trial court procedures, and his responses demonstrated an inability or unwillingness on his part to comply with an indispensable requirement for our judicial system to function. His untruthfulness likewise undermined confidence in the credibility of the answers that he gave to the other questions asked of him, it created a concern that he would be dishonest with the trial judge and opposing counsel at trial and it indicated that, for undisclosed reasons, he wished to improperly wrest control of the conduct of his trial from the trial judge and manipulate the proceedings.

Notwithstanding Appellant's arguments to the contrary, Respondent submits that the trial judge properly denied Appellant's motion to appear *pro se* at trial because the record supports her finding that he dishonestly responded to her questions about how he had acquired knowledge of trial court procedures, and his responses demonstrated an inability or unwillingness on his part to comply with an indispensable requirement for our judicial system to function. His untruthfulness likewise undermined confidence in the credibility of the answers that he gave to the other questions asked of him, it created a concern that he would be dishonest with the trial judge and opposing counsel at trial and it indicated that, for undisclosed reasons, he wished to improperly wrest control of the conduct of his trial from the trial judge and manipulate the proceedings.

A. Events in the trial court.

1. The May 13, 2013 hearing on Appellant's motion to appear *pro se*.

² Because the trial was in June, Respondent has referred to the record of those proceedings as "Tr. " and the May 2013 proceedings are referred to as "May Tr."

When the case was initially called for trial, Appellant's counsel informed the trial judge that Appellant wanted to proceed *pro se* at trial. The trial judge immediately cleared the courtroom of everyone except for Appellant, his trial counsel, the court reporter, the judge, her law clerk and courtroom security. The trial judge further ordered that the proceedings were being conducted under seal. **R. p. 4, line 11 – p. 9, line 3.**³

The trial judge questioned Appellant at the ensuing *ex parte in camera* hearing. When asked about the basis for his concern, Appellant explained that he had been in jail for fourteen months even though he was innocent, and that he did not think his attorneys were working for his best interests. He based this upon counsel's refusal to let him provide the Assistant Solicitor with letters that his co-defendant, Alan Fields, had written him, which he contended proved his innocence and their request to review anything before he gave it to the prosecution. He claimed that "[j]ust as well as [counsel has been] interviewing me, I [have] been interviewing them." He also complained because it appeared that counsel had met with the Assistant Solicitor immediately before meeting with him, on those occasions when he met with them. **R. p. 9, line 4 - p. 11, line 3; p. 14, line 20 – p. 15, line 10.**

He further contended that Ms. Hinds did not give him "the correct answer I was looking for," when he asked her what her interest in the case was because counsel had apparently said something about trying to convince jurors that he was only guilty of a lesser charge. He also claimed that he was the reason that Fields was supposed to plead guilty in this case. **R. p. 11, lines 3-18; p. 13, line 10 – p. 14, line 15.**

³ Therefore, this case presents a somewhat unusual situation because Appellant is complaining of alleged error by the trial judge, where her ruling prevented the State from having any opportunity to correct the purported error. As will be shown, however, the trial judge did not abuse her discretion.

Then, in response to the trial judge's questions, he stated that he was twenty-one years old and that he graduated high school "with a 4.0 in Honors classes." Although the trial judge stated that he "c[a]me across as exceptionally bright," she stated that she had been a judge for almost sixteen years; that she did not have any "dog in the fight;" and that her only concern was to ensure that justice was done. Also, she was going to discuss some matters that might be frustrating to him. **R. p. 16, line 20 – p. 19, line 4.**

She began by acknowledging that the fourteen month delay between arrest and trial was too long, and that this delay causes frustration, which then erodes the relationship between a defendant and his attorneys. However, she explained that counsel were not the source of the delay. She further explained that it is "incredibly difficult" to be a public defender because the lawyer wants "to protect [Appellant]" but the law also requires them to make sure that Appellant understands the "worst possible scenario," even if the lawyers do not believe that this worst case scenario is true. Included in their responsibility to properly represent Appellant was their communications with the prosecutor before talking to him. Appellant indicated that he understood this explanation. **R. p. 19, line 6 – p. 22, line 8.**

The trial judge also explained that counsel did not want him to speak with Assistant Solicitor Sorenson. In her estimation, "[t]hat is the absolute wors[t] thing you could do is to talk to Mr. Sorenson. It doesn't matter what you have" because Mr. Sorenson was "committed to prosecuting" Appellant and he was would then be able to "spend his whole time explaining why that doesn't mean a thing." If counsel thinks that the material is beneficial to Appellant's defense and it does not have to be disclosed in discovery, counsel could use this information at trial. **R. p. 22, line 9 – p. 23, line 12.**

The trial judge stated that she had known lead counsel, Ms. Hinds, since becoming a judge and that the trial judge had "never known [Ms. Hinds] not to care deeply about her clients. I have always known her to have to give them everything they need to know, which is the absolute worst scenario, because otherwise she's not doing what she's supposed to do." The trial judge described Ms. Hinds as a "terrific lawyer." Again, Appellant indicated that he understood. **R. p. 23, line 15- p. 24, line 4.**

At that point, the trial judge told Appellant that it was appropriate to be concerned about the case, but she asked him to "give some thought" to what she had told him. She further told him that he had a constitutional right to represent himself. While it "scares me to death for you" to do so, she would respect his exercise of the right if he chose to do so. Appellant again indicated that he understood. **R. p. 24, line 13 – p. 25, line 8.**

The trial judge further explained that he lacked the same expertise and training to be a lawyer that his attorneys had and that she did not want him to represent himself. However, she stated that "I respect you, and I respect, most of all, our constitution that says you have that right." Appellant indicated that he wanted to represent himself and that he was firm in his decision. So, the trial judge stated that if she found that he was capable of representing himself, after explaining the colloquy that was about to happen, then she would allow him to do so. Again, Appellant indicated that he understood what she had told him. **R. p. 25, line 9 – p. 29, line 14.**

Once Appellant was finally sworn, the trial judge began her colloquy with him. In response to her questioning, Appellant swore that everything he had previously told her up to that point "[had] been the truth, the whole truth and nothing but the truth" and that he did not

"want to change or alter anything" he had told her. The trial judge explained the definition of *pro se*. Reading from a form, she told him that the United States Supreme Court has held that the Sixth Amendment, which gives defendants the right to counsel, merely required that a defendant "be advised of the nature of the charges[,] ...[of the] right to be counseled regarding that representation and the range of the allowable punishment." R. p. 29, line 21 – p. 31, line 7.

In response to further questioning, Appellant swore that he was charged with murder; that he understood that murder carried a minimum sentence of thirty years imprisonment and "up to life in prison without the possibility of parole;" that he was twenty-one years old; that he had graduated high school, in 2010, "with a 4.0 ... [i]n all Honors class;" and, that he had been preparing to go into the military when arrested. He claimed that "before basic training they [were] trying to see if I wanted to go to school first. I was telling them I wanted to go straight into the military, and they [were] telling me you doing pretty good with interviews. We think that you should go to school and try to be a recruit counselor." At one point, he swore that he was helping to recruit people "without pay through the military." Yet, he stated at another point that he was being paid.⁴ R. p. 31, line 9 – p. 33, line 17.

Appellant further swore that he had never been treated in alcohol, drug or other substance abuse problems; that he had never "received any counseling or any treatment at all for any mental health challenges or emotional challenges;" and that he had not taken any medicine, drugs or alcohol in the seventy-two hours before the plea. Likewise, he swore that he was unaware of "any physical or emotional or nervous problems or issues or challenges" that might keep him from understanding what he was doing; and that he had never "been examined by any

⁴ Compare R. p. 32, lines 11-17 with R. p. 32, line 25 – p. 33, line 12.

doctor or other health care professional to determine [his] mental competency to stand trial." R.

p. 33, line 18 – p. 34, line 19.

The trial judge and Appellant then had the following exchange, which is important to the issue before this Court:

THE COURT: Okay. Have you ever studied law?

MR. SAMUEL: Yes, ma'am.

THE COURT: All right. Tell me about that?

MR. SAMUEL: I studied a little bit of law during the -- a law book I used during the course of -- to look at the procedure to stand trial, self-representation. And I look at all the rules and regulations [that are] supposed to be appropriate while I'm standing trial. I know --

THE COURT: And tell me where you got those books?

MR. SAMUEL: I got that book through the mail at the jailhouse.

THE COURT: What ... is the name of the book?

MR. SAMUEL: It's called Criminal Law Handbook.

THE COURT: All right. Where did it come from?

MR. SAMUEL: I can't -- All I know I got it through the mail.

THE COURT: Okay. And did somebody help you find that or did you order it or how did you find it?

MR. SAMUEL: Yes. **Mr. Carl Grant told my mama.**

THE COURT: Carl Grant. Okay, and your mother helped you get it?

MR. SAMUEL: Yes, ma'am.

THE COURT: Got it. All right. And you looked at that book?

MR. SAMUEL: Yes, ma'am.

THE COURT: And how much of that book have you read?

MR. SAMUEL: I read, basically, the trial procedures.

THE COURT: Okay. Yes.

MR. SAMUEL: I read -- if you got documents and everything supposed to be going towards your innocence, I read the judge can allow it to go to trial or cannot go to trial. And I read, basically, all the procedures for trial and self-representation.

THE COURT: Okay. Have you ever been in court before?

MR. SAMUEL: No, ma'am.

THE COURT: Okay. This is the first time that you've been charged with any crime?

MR. SAMUEL: Yes, ma'am.

R. p. 34, line 20 – p. 36, line 8. (Emphasis added).

Further, Appellant swore that he understood that “the elements of murder are the unlawful killing of another with malice aforethought” and that “malice means a depraved heart that existed just prior to and at the time of the commission of the act.” He further answered affirmatively when asked if he understood that, if he chose to represent himself, the trial judge could not tell him how he should try the case or advise him. **R. p. 36, line 13 – p. 37, line 7.⁵**

When asked if he understood the South Carolina Rules of Evidence, he indicated that he did from reading the book he mentioned earlier. When asked if he had any other source for

⁵ Unfortunately, many of the trial judge's questions permitted him to give *pro forma* answers because the trial judge would explain a matter to him and he merely responded “yes, ma'am.” See *State v. Cash*, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992) (listing “whether the exchange between the accused and the court consisted merely of *pro forma* answers to *pro forma* questions,” as one of the factors courts consider in determining whether the accused had a sufficient background to understand the disadvantages of self-representation); *Ex parte Jackson*, 381 S.C. 253, 270, 672 S.E.2d 585, 588 (Ct.App. 2009) (same); cf. *State v. Arthur*, 296 S.C. 495, 498, 374 S.E.2d 291, 293 (1988) (“None of the three questions propounded to Arthur was of the nonleading character essential to a meaningful response. Moreover, they failed to inform Arthur of ‘the essential ingredients of a jury trial which are necessary to understand the significance of the right he was waiving’ ”).

understanding the rules of evidence, he stated that "basically ...Mr. Grant, he tried to coach me on it a little bit." **R. p. 37, lines 8-16.** He also stated that he understood that the rules of evidence determine what is admissible at trial; that in representing himself, he was required to follow those rules; "one of the rules of evidence is the rule against hearsay;" that hearsay evidence was statements that were "made outside the trial which are being admitted for the truth asserted;" that there were "many exceptions" to the rule against hearsay; and that "under our rules ... there are certain motions that can be made before, during, and after the trial." **R. p. 37, line 8 – 38, line 19.**

When asked to name a motion, Appellant stated, "You can put in for a motion for the trial -- it can be a mistrial with a sickness or somebody doing that, they'll reschedule it. And that's -- I think that's all." He then correctly stated "[m]otion in limine" when asked whether he understood that there were motions to suppress evidence. However, he did not know what a directed verdict motion was until the trial judge explained it to him. **R. p. 38, line 19 - p. 39, line 21.**

Appellant indicated that he understood that he had the right to testify and the right not to testify in his case; that this was guaranteed by the Fifth Amendment; and that his understanding was that "[t]he Fifth Amendment is to keep silent." He understood that he could be impeached with prior convictions if he testified, but he did not have any prior convictions. Further, he understood that, if he did not testify, the trial judge would instruct jurors that his decision not to testify could not be discussed because that would violate both the United States and South Carolina Constitutions. **R. p. 39, line 23 – p. 42, line 3.**

Appellant was initially unable to list any possible defenses he had to the murder charge, until the trial judge reminded him that he had said that he had one. He then claimed the letters by

his co-defendant exonerated him. He stated that he understood that the trial judge's opinion that he 'would be far better defended by a trained lawyer' than he could defend himself; that she thought that it was "unwise" for him to represent himself; that she was concerned that he was "not sufficiently familiar with the law" to represent himself; and that she "strongly urge[d]" him not to represent himself. However, he still wanted to waive his right to be represented by counsel and represent himself, and he stated that his decision was "entirely voluntary." **R. p. 42, line 4 -- p. 44, line 20.**

At this point, Appellant made a second mention of being aided in his *pro se* representation by private counsel:

THE COURT: Do you know anything or anyone that I can have you speak with that might urge you to have a lawyer represent you?

MR. SAMUEL: No, ma'am. I mean, I think -- I mean, my mama, basically paid Mr. Grant a good bit amount of money. The reason why he couldn't represent me is because my family -- I guess his paralegal is related [to me], you know, in some manner. So he had decided to just go over the steps with me day by day. I go through the trial, I got back to him. I talk to him, he'll tell me things or he won't -- he's not going to be in the courtroom, present.

THE COURT: Okay. And you know he's not representing you?

MR. SAMUEL: I know he's not representing me, but he is coaching me on --

THE COURT: I got you, but he's not representing you?

MR. SAMUEL: Oh, no, ma'am.

R. p. 44, line 21 -- p. 45, line 12. (Emphasis added).

Appellant then stated that he understood that the trial judge was going to appoint stand-by counsel, and that he could change his mind about representing himself at trial. Further, he understood her explanation that he had the right to make an opening statement if he wished to

make one, but that he could not testify in that statement. Rather, he could merely “talk about ... what you believe the evidence will or will not show.” He also understood that he would have the right to both offer evidence and to object at trial. **R. p. 45, line 13 – p. 46, line 10.**

Appellant stated that he had reviewed the State’s evidence against him but thought that “it’s not enough evidence.” He added, “That’s why I tried to get to talk to Mr. Sorenson before we even make it this far.” Also, he gave a proper understanding of the theory that “the hand of one is the hand of all.” While he stated that he did not understand why counsel reviewed trial procedures with him because the Assistant Solicitor could not place him at the scene and his co-defendant was pleading guilty that day, he claimed to understand that this was not within counsel’s control. **R. p. 48, line 11 – p. 50, line 4.**

The trial judge stated, “[H]ere’s my problem. You’re bright enough, the constitution says you’re entitled to represent yourself. I don’t want you to represent yourself, but I can’t violate the law.” Appellant’s response to her statement was a somewhat rambling complaint about the length of his pretrial incarceration and a protestation of innocence. The trial judge replied by stating that the complaints that he raised were not the fault of his attorneys and that her experience was that defendants who had been frustrated with counsel’s performance prior to trial often had no complaint about his or her attorney’s performance at trial. **R. p. 50, line 6 – p. 53, line 6.**

The trial judge again hoped that she could persuade him not to appear *pro se*, but she found that he was “bright enough, educated enough” to represent himself, and that he did not have any substance abuse or mental health issue that would interfere with his ability to do so. Likewise, he assured her that he understood the charge that he was facing. **R. p. 53, lines 7-22.**

Appellant then made the following statement:

I know, basically, you what you're saying is that you're putting your neck on the line by you wouldn't want me to disappoint you. That's what's bringing me to this. **My mama paying Carl Grant to come in and educate me**, at the same time, just because he a lawyer, I mean, I went to school, I'm smart. I can catch onto the common sense I won't put you down when we're going to trial. I won't disappoint you, period, even though the decision the jurors make, a decision that you make, I accept all of that, but I know I went down fighting for my innocence, you know, but at that same time I respect you. I respect all the advice you give me. I respect everything you took time to go over with me. I respect the time you took to sit with me today. I respect all of that, but at the same time I won't let you down.

R. p. 53, line 24 – p. 54, line 13. (Emphasis added).

The trial judge stated that she was going to tell the State that she was inclined to grant Appellant's motion. However, she wanted to speak with Mr. Grant, so that she could more fully understand Mr. Grant's relationship to the case and what discussions he had with Appellant about the case. **R. p. 54, line 14 – p. 55, line 22.**

After Mr. Grant arrived at court, the trial judge resumed an *in camera ex parte* hearing.

R. p. 61, line 2 – p. 62, line 13.⁶ First, she informed Mr. Grant of Appellant's representations of Mr. Grant's involvement in the case to Appellant's satisfaction. **R. p. 63, line 4 – p. 65, line 9.**

Then, Mr. Grant testified that:

For the record, number one, I have no recollection of ever sharing with Ms. Betty Hickson, his mother, anything pertaining to any rules of evidence or rules in criminal procedure or anything like that. The only discussion that I remember having with Ms. Hickson, and I've had this discussion with her as well as my staff on numerous occasions. The only discussion has been about the legal fee to represent this young man. ... Ms. Hickson has not paid me, not even a dime, as of today's date. ... [W]e have a saying in my office that the big dog does not fight until he's fed.

Also, I've not been retained. ... Ms. Hickson[] actually came in my office one day, said she had the legal fee with her on her hip. We were in there, said okay. She said she's going outside to car to get the money, she'd be right back. She

⁶ Other personnel from Mr. Grant's office were present at the courthouse but they were sequestered. **R. p. 61, line 21 – p. 62, line 10.**

never came back in, and that's been several months ago. I've not offered any assistance to anyone, Judge. I've not even given this young man any kind of copy of the rules of evidence or rules of criminal procedure or offered my assistance in any way. Either you're going to retain me to represent you or you're not. And let me also say for the record, that it is my professional and my strong personal opinion that he has two of the finest public defenders in South Carolina already representing him. Lawyers who are experienced, lawyers who are very competent, lawyers whose ethical standards are to the highest, and those who I know would do a great job. In fact, I spoke with Ms. Hinds outside the courthouse a few weeks ago, and I was telling her that the family was saying they were going to retain me and she indicated that she was representing him. I said, well, with a lawyer like you they certainly don't need me, and I feel that way, because she and, of course, Mr. Mellard are great attorneys.

R. p. 65, line 20 – p. 67, line 6.

Based upon his twenty-eight years of experience as a trial attorney, Mr. Grant testified that he would “strongly recommend” that Appellant allow his experienced and knowledgeable attorneys to continue with their representation. Mr. Grant also explained that he had hired an attorney to represent him in a past matter. Further, Mr. Grant testified that he would be unavailable “to provide any assistance to him in any capacity.” He could only have represented Appellant if Appellant’s family had retained him when they originally approached him. He would not represent Appellant now because the trial judge case was ready to try the case and “I certainly have no intention or desire to derail that process so that you all can go forward.” **R. p. 67, line 7 – p. 68, line 9.**

Following Mr. Grant’s testimony Appellant thanked him, “thank you for your information you provided me. I thank you for your advice and everything and I appreciate you addressing that to Ms. Goodstein.” When the trial judge directed Appellant to tell her “what advice and information you are speaking of specifically,” he cryptically replied, “Everything he

said." When she asked whether he meant "today," Appellant evasively said, "I'm just saying in general. Everything he said makes a whole lot of sense." **R. p. 68, lines 12-24.**

Appellant stated that he understood the extent of Mr. Grant's prior relationship with him, and the trial judge's explanation that he could not depend on Mr. Grant to be present at trial. **R. p. 69, lines 1-6.** Appellant thereafter stated that he and his mother had spoken to Mr. Grant and that the reason Mr. Grant had testified differently was because a paralegal in Mr. Grant's office was related to Appellant. Also, "his reasons for not coming out and indicating the same is because his reputation was on the line. [H]e already had told me and stated if it came down to him coming in front of a judge in front of the attorneys he was going to state that." **R. p. 69, line 20 – p. 70, line 19.** Finally, Appellant stated that he understood the type of mistakes he could make by representing himself, but he still wanted to do so. **R. p. 70, lines 22-25.**

The trial judge denied Appellant's motion after a brief recess. Based upon her earlier colloquy with Appellant, she found that his "educational background ... is very strong," and that he was "very bright ... [and] extremely articulate." When she had discussed Appellant's knowledge of "the rules," he informed her that his mother had provided him with "the rule book and that the title had been given to her by Carl Grant." The trial judge further found that Appellant had told her that that Mr. Grant had been coaching him "with regards to the [legal] processes" and that Appellant believed that Mr. Grant would also coach him "with regards to the process of a trial, throughout the trial." **R. p. 72, line 12 – p. 73, line 4.**

The trial judge explained that she had Mr. Grant attend the hearing and testify "out of concern that whether Carl Grant had undertaken representation of you and whether or not he would be acting as stand-by counsel in some form or fashion if you were to be self-representing

yourself." She found, however, that Mr. Grant had testified that he did not provide Appellant with a book, that he had not coached Appellant; that he had not had any conversations with Appellant about "the processes and that he ha[d] not led [Appellant] to believe that he would, likewise be doing so throughout the trial." R. p. 73, lines 6-17.⁷

The trial judge concluded her ruling as follows:

THE COURT: Now, I have listened to you, I have listened to Carl Grant. I want you to understand I do not believe what you tell me about your relationship with Mr. Grant in terms of his having coached you and his willingness to coach you during the course of the trial. I simply do not believe that. I have to make a determination and I do not believe what you are telling me is accurate.

That brings me to one of our rules, which is Rule 3.3, which is candor towards the tribunal. It also brings me to one of our cases, which is a case called Gardner verses the State at 351 S.C. 407, 570 S.E.2d 184, and this particular case talks about the ability of an individual to self-represent themselves. One of the elements that the Court has to consider is whether or not the defendant is attempting to delay or manipulate the proceedings. I do not believe that you are trying to delay the proceedings. I am concerned that the proceedings are being manipulated. Further, there is case law around the country, not in South Carolina, that I can find, but around the country, that says that someone that wishes to self-represent themselves is not allowed to disrupt the proceedings.

... I cannot operate without candor. Rule 3.3 places upon attorneys the ethical duty to have candor toward the tribunal. I cannot try a case without candor towards the tribunal. That was an issue that I did not anticipate being presented to me today. I really wanted and sought the information regarding Mr. Grant because I wanted to be -- I wanted to be assured that there wasn't representation there, however, I am very concerned now with regards to your candor. I cannot try a case if the people trying the case are not candid with me.

So when I put together 3.3, ... which requires lawyers to be candid with the court, when I put that together with the case that I mentioned that says you're not allowed to attempt to manipulate the court in your attempts in representation and when I look around the country at the case law regarding the disruption it's not allowed by those wishing to self-represent. When I put those together, I believe that there is authority for me to disallow your self-representation. The reason that I am disallowing your self-representation is because it is impossible for me to

⁷ Appellant tried to interrupt the trial judge at this point in her ruling but she did not allow him to do so. R. p. 73, lines 18-21.

[try] a case if I do not have candor from those who are making representations to the court. I cannot do that.

Unfortunately, it has been demonstrated to [me] between this morning and this afternoon that you lack candor with the court. On that basis and the basis of the case law that I have already mentioned I cannot allow you to self-represent. I must have counsel to represent you.

R. p. 73, line 20 – p. 75, line 19.

Appellant persisted in arguing with the trial judge's ruling, stating that he had never asked that counsel leave and that counsel "can be aside and stay by my side." Also, Appellant, once again, contended that Mr. Grant had been untruthful about assisting Appellant because "he don't want his reputation ruined." (Sic). **R. p. 75, line 22 – p. 76, line 2.** The trial judge, however, stated that she did not believe Appellant "because that's not what lawyers do. He simply would have a conflict and not be able to represent you. I don't believe you that he would be representing you and saying if it gets out it will ruin my reputation." **R. p. 76, lines 3-8.** When he attempted to further argue the motion, the trial judge stated that she had ruled, she noted his exception to her ruling and she instructed counsel to represent him. **R. p. 141, lines 9-19.**

2. Appellant's motion to recuse.

The following day, Appellant (through counsel) moved for the trial judge to recuse herself, based upon her finding that Appellant had not been truthful to her in connection with his motion to represent himself. She denied his motion because Appellant could not point to any alleged bias or prejudice that "stem[med] from extrajudicial source and result[ed] in a decision based on information other than what the judge learned from his or her participation in the case as a judge." **R. p. 77, line 14 – p. 80, line 3.** Counsel renewed this motion at the June trial but the

trial judge denied it for the reasons stated in the original denial of the motion. R. p. 147, line 3 – p. 149, line 25.

3. Counsel's motion to be relieved.

When motions hearings resumed on June 10th, Appellant's trial counsel moved to be relieved. The trial judge heard this motion *ex parte* and ordered the transcript of the proceedings sealed. Counsel based their motion upon Appellant's refusal to tell them to what he planned to testify. Instead, he told them that "you will hear it when it comes out of my mouth." He also suggested that the trial judge would be upset with counsel "once he testifies. And that's all he will say." R. p. 85, lines 9-20.

Counsel added that "[w]e have no idea what he is likely to say once he gets on the stand," which made it "very, very difficult for us to try to help prepare a defense." In addition to Appellant's refusal to be forthcoming, counsel stated that "[h]e [was] argumentative." Based upon his refusal to cooperate, counsel did not think that they could "effectively defend him" and they moved to be relieved." R. p. 85, line 20 – p. 86, line 6.

After listening to Appellant's response, R. p. 86, line 9 – p. 88, line 24, the trial judge denied counsel's motion:

[A]t the end of the day, though, it's Mr. Samuel's case. And if he chooses not to give you the information in a format and in a way that you believe is appropriate, that is unfortunate. But your tactical decisions in representing him have to be based upon what information he's willing to share with you, and that's just where you all are.

I think you can go forward and represent him. Obviously, it's very -- it's not easy, which is why I'm very grateful that he has, quite frankly, the two of you. He's got some serious lawyers on his side. And I understand your concern completely, but you will have to make your tactics based on the information that he has provided to you. And I am confident that you will.

I will respectfully deny your motion.

R. p. 89, lines 12-25. The motion to recuse was thereafter addressed again but denied. R. p. 148, line 1 – p. 149, line 4.

B. Discussion.

While the Sixth Amendment expressly guarantees a criminal defendant only “the Assistance of Counsel for his defence,” U.S. Const. amend. VI, in *Faretta v. California*, 422 U.S. 806, 819, 95 S.Ct. 2525 (1975), the United States Supreme Court held that the Sixth Amendment also protects an implied inverse right of self-representation. Generally this right must be honored even if the trial court believes that the accused would be better served by the advice of counsel. *Id.* at 834, 95 S.Ct. 2525. “The right of self-representation exists ‘to affirm the dignity and autonomy of the accused and to allow the presentation of what may, at least occasionally, be the accused’s best possible defense.’ ” *United States v. Frazier-El*, 204 F.3d 553, 558-561 (4th Cir. 2000) (quoting *McKaskle v. Wiggins*, 465 U.S. 168, 176-77, 104 S.Ct. 944 (1984)). *See also State v. Barnes*, 407 S.C. 27, 35-36, 753 S.E.2d 545, 550 (2014) (“Recognizing that it may be to the defendant’s detriment to be allowed to proceed *pro se*, his knowing, intelligent and voluntary decision “must be honored out of that respect for the individual which is the lifeblood of the law”) (quoting *Faretta*, 422 U.S. at 834, 95 S.Ct. 2525)).⁸ *Faretta* thus

⁸ As the Court explained in *United States v. Singleton*, 107 F.3d 1091, 1096 (4th Cir. 1997), the rights to counsel and to self-representation are merely two sides of the same coin:

[N]o Supreme Court case has discussed in any detail the requirements for a waiver of the right to self-representation. This can, perhaps, be explained by recognizing that courts have assumed that the right to self-representation and the right to representation by counsel, while independent, are essentially inverse aspects of the Sixth Amendment and thus that assertion of one constitutes a *de facto* waiver of the other. *See, e.g., Faretta*, 422 U.S. at 835, 95 S.Ct. at 2541 (“When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel”); *Tuitt v. Fair*, 822 F.2d 166 (1st Cir.1987) (holding that the right to counsel and the right to self-representation are mutually exclusive and thus that granting the right to proceed *pro se* may be conditioned on unequivocal waiver of the right to counsel).

permits an accused to make a (1) timely waiver of his right to counsel if (2) he is advised of his right to counsel, and (3) he is adequately warned of the dangers of self-representation. *See State v. Winkler*, 388 S.C. 574, 586, 698 S.E.2d 596, 602 (2010); *Gardner v. State*, 351 S.C. 407, 411, 570 S.E.2d 184, 186-87 (2002); *Prince v. State*, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990). *See also Frazier-El*, 204 F.3d at 558.

This right to self-representation, however, is not absolute. To the contrary, the Court in *Faretta* made clear that “[t]he right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law defendants may not use the courtroom to engage in “deliberate disruption ... [or] serious and obstructionist misconduct,” *Faretta*, 422 U.S. at 834 n. 46, 95 S.Ct. 2525. Additionally, the Court has held that *pro se* defendants must be “able and willing abide by the rules of procedure and courtroom protocol,” *Wiggins*, 465 U.S. at 173, 104 S.Ct. 944, because “the government’s interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant’s interest in acting as his own lawyer.” *Martinez v. Court of Appeal of California, Fourth Appellate Dist.*, 528 U.S. 152, 162, 120 S.Ct. 684, 145 L.Ed.2d 597 (2000), *see also Sell v. United States*, 539 U.S. 166, 180, 123 S.Ct. 2174, 156 L.Ed.2d 197 (2003) (“the Government has a concomitant, constitutionally essential interest in assuring that the defendant’s trial is a fair one”).

Of the two rights, however, the right to counsel is preeminent and hence, the default position. [*Fields v. Murray*, 49 F.3d 1024, 1028 (4th Cir.1995) (en banc)]; *United States v. Gillis*, 773 F.2d 549, 559 (4th Cir.1985); *Tuitt*, 822 F.2d at 174 (“Where the two rights are in collision, the nature of the two rights makes it reasonable to favor the right to counsel which, if denied, leaves the average defendant helpless”).

The Fourth Circuit Court of Appeals summarized the limitations on the constitutional right to *pro se* representation in *Frazier-El* as follows:

The right of self-representation exists “to affirm the dignity and autonomy of the accused and to allow the presentation of what may, at least occasionally, be the accused's best possible defense.” *Wiggins*, 465 U.S. at 176–77, 104 S.Ct. 944; *cf. Martinez*, 120 S.Ct. at 689 (noting that with the increased availability of competent counsel, the historical reasons for recognizing the right “do not have the same force”). **The right does not exist, however, to be used as a tactic for delay, see [United States v. Lawrence, 605 F.2d 1321, 1324-25 (4th Cir.1979)]; for disruption, see Faretta, 422 U.S. at 834 n. 46, 95 S.Ct. 2525; for distortion of the system, see Singleton, 107 F.3d at 1102; or for manipulation of the trial process, see Lawrence, 605 F.2d at 1325.** A trial court must be permitted to distinguish between a manipulative effort to present particular arguments and a sincere desire to dispense with the benefits of counsel. The circumstances surrounding Frazier-El's purported waiver of his right to counsel and the assertion of his right to proceed without counsel in this case suggest more a manipulation of the system than an unequivocal desire to invoke his right of self-representation.

Frazier-El, 204 F.3d at 560. (Emphasis added). See also *United States v. Joos*, 638 F.3d 581, 587 (8th Cir. 2011) (“the right to self-representation ‘does not exist ... to be used as a tactic for delay, for disruption, for distortion of the system, or for manipulation of the trial process’”) (internal citation omitted). Both this Court and the South Carolina Supreme Court have recognized that “whether the accused was attempting to delay or manipulate the proceedings” is one of the relevant factors to consider in determining whether the accused had a sufficient background to understand the disadvantages of self-representation. See *Gardner*, 351 S.C. at 412-13, 570 S.E.2d at 186-87; *Cash*, 309 S.C. at 43, 419 S.E.2d at 813; *Ex parte Jackson*, 381 S.C. at 270, 672 S.E.2d at 588.

Here, Respondent submits that the trial judge did not err in denying Appellant's request for self-representation, which was based upon her finding that he was dishonest in his representing that he had obtained a book on criminal procedures that attorney Carl Grant had

suggested; that Mr. Grant had been coaching him on the trial process; that his mother had paid Mr. Grant to do so; and that Mr. Grant would continue to provide this type of assistance at trial. On the one hand, Appellant claimed that Mr. Gant had provided this assistance. On the other hand, Mr. Grant's sworn testimony was that (1) he had not provided Appellant with "any kind of copy of the rules of evidence or rules of criminal procedure or offered my assistance in any way;" (2) that he would have only gotten involved in the case if Appellant had retained him; (3) that he had not been retained in this case; and (4) that he would be available to provide assistance to Appellant, as stand-by counsel, if Appellant did appear *pro se*. Obviously, Appellant's representations and Mr. Grant's sworn testimony squarely conflicted with one another and both could not be true, and the trial judge was required to resolve the question of credibility.

She chose to accept the sworn testimony of Mr. Grant, an officer of the court and a member in good standing of the South Carolina Bar. In giving his testimony, Mr. Grant was subject to the prosecution for the felony of perjury under S.C. Code Ann. § 16-9-10 (2003) for testifying falsely and he was bound by Rule 3.4(c), Rule 407, SCACR, as well as the attorney's oath of office.⁹ His testimony clearly supports the trial judge's credibility determination and this

⁹ The attorney's oath of office provides, in pertinent part, that:

I will maintain the respect and courtesy due to courts of justice, judicial officers, and those who assist them;

I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will never seek to mislead an opposing party, the judge or jury by a false statement of fact or law;

I will maintain the dignity of the legal system and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged.

Court should defer to her credibility assessment because it did not have the opportunity to assess his credibility. *Accord State v. Edwards*, 384 S.C. 504, 509, 682 S.E.2d 820, 822–23 (2009) (in determining whether a *Batson* violation has occurred, appellate courts give the trial court's findings great deference on appeal; the trial court's determination concerning whether purposeful discrimination has occurred rests largely on the court's evaluation of demeanor and credibility; the demeanor of the challenged attorney will often be the best and only evidence of discrimination, and an evaluation of the attorney's mind lies peculiarly within a trial court's province); *State v. Miller*, 375 S.C. 370, 387–88, 652 S.E.2d 444, 453 (Ct.App. 2007) (upholding the trial court's determination of voluntariness because the trial court had the opportunity to listen to the testimony, assess the demeanor and credibility of witnesses, and weigh evidence accordingly when defendant's attorney testified defendant was coerced into making a statement by a promise of a lenient sentence but four witnesses for the State denied any promise of leniency).¹⁰

In light of the finding that Appellant had been untruthful in responding to the trial judge's questioning of him, it cannot be said that the trial judge erred by denying his request to appear *pro se* because his dishonest unquestionably supports her finding that he was manipulating the proceedings for some, as of then, undisclosed purpose. Granted, his behavior was not obstreperous – he did not curse or engage in otherwise disruptive behavior, unlike the defendant

¹⁰ See also *S.C. Dep't of Soc. Servs. v. Forrester*, 282 S.C. 512, 516, 320 S.E.2d 39, 42 (Ct.App.1984) (“The credibility of testimony is a matter for the finder of fact to judge. Because the appellate court lacks the opportunity for direct observation of the witnesses, it should accord great deference to trial court findings where matters of credibility are involved”) (citations omitted); *Jones v. Leagan*, 384 S.C. 1, 12, 681 S.E.2d 6, 12 (Ct.App. 2009) (finding the trial court, as trier of fact, “has the task of assessing the credibility, persuasiveness, and weight of the evidence presented,” and that an appellate court must affirm the factual findings of the trial court “unless no evidence reasonably supports those findings”); *Gavin v. State*, 473 So.2d 952, 955 (1985) (“even if we wanted to be fact finders, our capacity for such is limited in that we have only a cold, printed record to review. The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire”) (cited with approval, *Clemmons v. Mississippi*, 494 U.S. 738, 766, 110 S.Ct. 1441 (1990) (Blackmun, J., dissenting)).

in *United States v. Stewart*, 20 F.3d 911 (8th Cir. 1994), where the court was unable to conduct a complete *Faretta* colloquy because the obstreperous defendant interrupted every such attempt. Nor did he engage in overtly dilatory conduct. *Contra Frazier-El*, 204 F.3d at 559-60; *Joos*, 638 F.3d at 587. Yet, what he did was much worse: he lied to the trial judge when questioned by her!

Despite her concerns that Appellant would not be able to defend himself well against the murder charge, the trial judge did not deny his motion because she he did not adequately understand trial court procedures, as Appellant now suggests. *Accord Faretta*, 422 U.S. at 836, 95 S.Ct. 2525 (defendant's technical legal knowledge "not relevant to an assessment of his knowing exercise of the right to defend himself"); *Barnes*, 407 S.C. at 35-36, 753 S.E.2d at 549-50 (trial court was required to apply the *Faretta* standard for waiver of the right to counsel, rather than a higher competency standard under *Indiana v. Edwards*, 554 U.S. 164, 128 S.Ct. 2379 (2008) (a state may hold a defendant who seeks to represent himself at trial to a higher competency standard than that required to stand trial)).¹¹ Appellant's contention that she denied the motion for concerns over the adequacy with which he could represent himself ignores her statement prior to Mr. Grant's testimony that her initial inclination was to grant the motion. She merely wanted to more fully understand Mr. Grant's relationship to the case and what discussions he had with Appellant about the case. **R. p. 54, line 14 – p. 55, line 22.**

Nor did the trial judge apply the wrong standard in denying his motion. Rather, she denied the motion because he lied about how he had obtained whatever knowledge that he did

¹¹ The record of the subsequent *Jackson v. Denno* hearing demonstrates that he was repeatedly contentious with his attorneys and both contentious and argumentative with the Assistant Solicitor. *See R. pp. 90-146.* This continued at trial and the trial judge had to admonish him several times to be either responsive to a question asked of him or not to be argumentative. *See R. pp. 150-236.* However, concerns of this type of behavior were not the basis for the trial judge's ruling.

have. His willingness to lie in response to this portion of the trial judge's inquiry demonstrated an inability or unwillingness on his part to comply with an indispensable requirement for our judicial system to function.

An attorney appearing at trial is subject to the ethical requirements of Rule 3.3, Rule 407, SCACR.¹² Further, the duty of an attorney to be honest and candid with the court transcends this ethical requirement and is an indispensable requirement in a judicial system, where the ultimate goal is to see that justice is done. In *United States v. Shaffer Equipment Co.*, 11 F.3d 450, 457-58 (4th Cir. 1993), the Fourth Circuit Court of Appeals stated that:

It appears that the district court, in finding that the government's attorneys violated a duty of candor to the court, applied the general duty of candor imposed on all attorneys as officers of the court, as well as the duty of candor defined by Rule 3.3. Although the court referred to Rule 3.3, it also described the duty of candor more broadly as that duty attendant to the attorney's role as an officer of the court with a "continuing duty to inform the Court of any development which may conceivably affect the outcome of litigation." [*United States v. Shaffer Equipment Co.*, 796 F.Supp. 938, 950 (S.D.W.Va. 1992), *aff'd in part and rev'd in part*, 11 F.3d 450 (4th Cir. 1993)]. It concluded, "Thus, attorneys are expected to bring directly before the Court all those conditions and circumstances which are relevant in a given case." *Id.* In its brief, the government did not address the existence, nature, and scope of any general duty of candor and whether its

¹² Rule 3.3 (a)(1) provides that "[a] lawyer shall not knowingly ... make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." The Comments 1 and 2 to Rule 3.3 provide that:

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(n) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

attorneys violated that duty. Nevertheless, we are confident that a general duty of candor to the court exists in connection with an attorney's role as an officer of the court.

Our adversary system for the resolution of disputes rests on the unshakable foundation that truth is the object of the system's process which is designed for the purpose of dispensing justice. However, because no one has an exclusive insight into truth, the process depends on the adversarial presentation of evidence, precedent and custom, and argument to reasoned conclusions—all directed with unwavering effort to what, in good faith, is believed to be true on matters material to the disposition. Even the slightest accommodation of deceit or a lack of candor in any material respect quickly erodes the validity of the process. As soon as the process falters in that respect, the people are then justified in abandoning support for the system in favor of one where honesty is preeminent.

While no one would want to disagree with these generalities about the obvious, it is important to reaffirm, on a general basis, the principle that **lawyers, who serve as officers of the court, have the first line task of assuring the integrity of the process.** Each lawyer undoubtedly has an important duty of confidentiality to his client and must surely advocate his client's position vigorously, but only if it is truth which the client seeks to advance. **The system can provide no harbor for clever devices to divert the search, mislead opposing counsel or the court, or cover up that which is necessary for justice in the end. It is without note, therefore, that we recognize that the lawyer's duties to maintain the confidences of a client and advocate vigorously are trumped ultimately by a duty to guard against the corruption that justice will be dispensed on an act of deceit.** See 1 Geoffrey C. Hazard, Jr. and W. William Hodes, *The Law of Lawyering* 575–76 (1990) (“[W]here there is danger that the tribunal will be misled, a litigating lawyer must forsake his client's immediate and narrow interests in favor of the interests of the administration of justice itself.”).

While Rule 3.3 articulates the duty of candor to the tribunal as a necessary protection of the decision-making process, see *Hazard* at 575, and Rule 3.4 articulates an analogous duty to opposing lawyers, neither of these rules nor the entire Code of Professional Responsibility displaces the broader general duty of candor and good faith required to protect the integrity of the entire judicial process. The Supreme Court addressed this issue most recently in *Chambers v. NASCO, Inc.*, 501 U.S. 32, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991). There, an attorney had taken steps to place certain property at issue beyond the jurisdiction of the district court and had filed numerous motions in bad faith, simply to delay the judicial process. The district court, the court of appeals, and the Supreme Court all agreed that neither Federal Rule of Civil Procedure 11 (subjecting to sanction anyone who signs a pleading in violation of the standards imposed by the rule) nor 28 U.S.C. § 1927 (subjecting to sanction anyone who “multiplies the

proceedings ... unreasonably and vexatiously") could reach the conduct. However, the Supreme Court accepted the district court's reliance on the inherent power to impose sanctions, rejecting arguments that Rule 11 and § 1927 reflect a legislative intent to displace a court's power to vacate a judgment upon proof that a fraud has been perpetrated upon the court:

We discern no basis for holding that the sanctioning scheme of the statute [28 U.S.C. § 1927] and the rules displaces the inherent power to impose sanctions for the bad faith conduct described above. These other mechanisms, taken alone or together, are not substitutes for the inherent power, for that power is both broader and narrower than other means of imposing sanctions. First, whereas each of the other mechanisms reaches only certain individuals or conduct, the inherent power extends to a full range of litigation abuses. At the very least, the inherent power must continue to exist to fill in the interstices.

501 U.S. at —, 111 S.Ct. at 2134 (emphasis added).

The general duty of candor and truth thus takes its shape from the larger object of preserving the integrity of the judicial system. For example, in *Tiverton Board of License Commissioners v. Pastore*, 469 U.S. 238, 105 S.Ct. 685, 83 L.Ed.2d 618 (1985), counsel failed to apprise the Supreme Court that during the appeal process, one of the respondents, a liquor store challenging the admission of evidence at a Rhode Island liquor license revocation proceeding, had gone out of business, rendering the case moot. Rebuking counsel for failing to comply with a duty of candor broader than Rule 3.3, the Supreme Court stated, "It is appropriate to remind counsel that they have a ' *continuing duty to inform the Court* of any development *which may conceivably affect the outcome* ' of the litigation." *Id.* at 240, 105 S.Ct. at 686 (quoting *Fusari v. Steinberg*, 419 U.S. 379, 391, 95 S.Ct. 533, 540, 42 L.Ed.2d 521 (1975) (Burger, C.J. concurring)) (emphasis added).

(Emphasis added). See also *Brode v. Brode*, 278 S.C. 457, 460, 298 S.E.2d 443, 445 (1982)

(Failure of attorney, who represented guardian *ad litem* of child, to inform court, when seeking supersedeas and stay of family court judgment, that the guardian *ad litem* had joined the position of the parents in opposition to the position being taken by the appeal, was a lack of candor not to be condoned); CJS *Attncli* § 53 ("Lawyers have an obligation of candor to each other and to the judicial system. The requirement of attorney candor towards the tribunal goes beyond simply telling a portion of the truth; it requires every attorney to be fully honest and forthright").

Appellant was bound to comply with the requirement of being honest and candid with the trial judge in order to appear *pro se*. See *Faretta*, 422 U.S. at 834 n. 46, 95 S.Ct. 2525. Cf. *United States v. West, et al.*, 877 F.2d 281, 287 (4th Cir. 1989) ("By asserting his right of self-representation, Mills assumed the responsibility of acting in a manner befitting an officer of the court. By flouting the responsibility, he forfeited the right. The district court thus acted properly in protecting both the right of Mills' co-defendants to a fair trial and its own authority by removing Mills as *pro se* counsel"). However, he transgressed this requirement during the colloquy held to determine whether he should be allowed to represent himself. An attorney who is dishonest is not only subject to discipline for violating the ethical requirement of being honest to the court and opposing counsel, he or she may also be removed from the case.¹³ However, there is no similar sanction for a *pro se* defendant, such as Appellant, who is dishonest in the colloquy to determine whether he should be permitted to represent himself. The proper and only available course of action was to deny his motion.

Moreover, Appellant's willingness to lie about the manner by which he familiarized himself with legal procedures undermined confidence in the credibility of the answers that he gave to the other questions asked of him. It also indicated that, for undisclosed reasons, he wished to manipulate and improperly wrest control of the conduct of his trial from the trial judge. Based upon the foregoing authorities and the record of the proceedings below, Respondent submits that the trial judge's ruling must be affirmed. See also *Vanisi v. State*, 117 Nev. 330, 337-41, 22 P.3d 1164, 1169-71 (2001); *United States v. Bush*, 404 F.3d 263, 271-72 (4th Cir. 2005) (holding that district court did not err in denying appellant's motion to represent

¹³ The trial judge also could take appropriate measures to sanction Appellant for lying before the jury. For instance, the Court found that respect for the integrity of the judicial process justified the admission of unwarned statements as impeachment evidence in *Harris v. New York*, 401 U.S. 222, 91 S.Ct. 643 (1971).

himself where the district court's finding that he was manipulative was not clearly erroneous); *United States v. Tucker*, 537 Fed.Appx. 257, 264 (4th Cir. 2013) (upholding district court's refusal to allow *pro se* representation because court's finding that appellant's "true motivation for proceeding *pro se* was to manipulate the system and drag out an already long trial process while he remained free on bond" was not clearly erroneous); *Zamora v. Virga*, 2013 WL 3788423, 10 (E.D.Cal. 2013) ("when pretrial behavior strongly indicates that a defendant will be disruptive at trial, a trial court is justified in refusing to allow the defendant to act as his own attorney").

Therefore, Appellant's argument lacks merit.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully submits that and the trial judge's ruling, the judgment of conviction and Appellant's sentence must be affirmed.

Respectfully submitted,

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October 6, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Diane Schafer Goodstein., Circuit Court Judge
Appellate Case No. 2013-001342

THE STATE OF SOUTH CAROLINA,

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V.

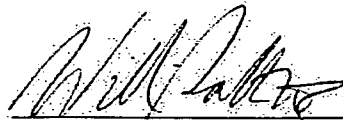
LAMONT ANTONIO SAMUEL,

APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 6th day of October, 2014.



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Senior Assistant Attorney General

ATTORNEY FOR RESPONDENT

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CERTIFICATE OF SERVICE

I, William Edgar Salter, III, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Robert M. Pachak, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 6th day of October, 2014.



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