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VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Steven H. John, Circuit Court Judge

ORIGINAL

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ARMANDO K. CHESTNUT,

APPELLANT

APPELLANT CASE NO. 2013-002123

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit
Post Office Box 1276
Conway, SC 29528-1276
(843) 915-5460

Attorneys for Respondent

INDEX

INDEX.....	i
TRIAL TRANSCRIPT (JULY 15-19, 2013).....	1
OPENING STATEMENT BY MR. RICHARDSON.....	2
OPENING STATEMENT BY MS. PRATT.....	10
TESTIMONY	
IRA "BIRD" PARNELL	
Direct examination by Mr. Richardson.....	16
Cross examination by Ms. Pratt	37
Redirect examination by Mr. Richardson	46
Recross examination by Ms. Pratt.....	47
ILA SIMMONS	
Direct examination by Mr. Richardson.....	49
Cross examination by Ms. Pratt	66
JOHN WAYNE FEASTER, JR.	
Direct examination by Mr. Richardson.....	70
Cross examination by Ms. Pratt	105
Redirect examination by Mr. Richardson	132
Recross examination by Ms. Pratt.....	135
COREY MYERS	
Direct examination by Mr. Richardson.....	137
Cross examination by Ms. Pratt	162
Redirect examination by Mr. Richardson	186
Recross examination by Ms. Pratt.....	192
EVEREST HENRY CARRISON, II	
Direct examination by Mr. Hyman.....	194
Cross examination by Ms. Pratt	205
Redirect examination by Mr. Hyman.....	210
Recross examination by Ms. Pratt.....	211

ANNALIESE TESTA

Direct examination by Mr. Hyman.....	212
Cross examination by Ms. Pratt	247
Redirect examination by Mr. Hyman.....	254
Recross examination by Ms. Pratt.....	255

MICHELLE MCSPADDEN

Direct examination by Mr. Richardson.....	257
Cross examination by Ms. Pratt	306
Redirect examination by Mr. Richardson	321
Recross examination by Ms. Pratt.....	323

TERESA MOORE

Direct examination by Mr. Richardson.....	326
Cross examination by Ms. Pratt	332

MARK EDWARD LANDI

Direct examination by Mr. Richardson.....	334
Cross examination by Ms. Pratt	339

RANDY SCOTT MILLER

Direct examination by Mr. Richardson.....	340
Cross examination by Ms. Pratt	356
Redirect examination by Mr. Richardson	357

JOE GRAHAM

Direct examination by Mr. Hyman.....	358
Cross examination by Ms. Pratt	366

WILLIAM STAIR

Direct examination by Mr. Richardson.....	368
Cross examination by Ms. Pratt	379

MALINDA SHADOAN

Direct examination by Mr. Richardson.....	382
Cross examination by Ms. Pratt	397

MICHELLE MCSPADDEN

Direct examination by Mr. Richardson.....	399
Cross examination by Ms. Pratt	402

DR. EDWARD LEROY PROCTOR	
Direct examination by Mr. Richardson.....	405
Cross examination by Ms. Pratt	418
Redirect examination by Mr. Richardson	424
WILLIAM JOHN KITELINGER	
Direct examination by Mr. Richardson.....	427
Cross examination by Ms. Pratt	461
MOTION FOR A DIRECTED VERDICT BY MS. PRATT	486
RULING BY THE COURT	494
ALLEN GRAHAM	
Direct examination by Ms. Pratt.....	495
Cross examination by Mr. Richardson (Proffered).....	513
Redirect examination by Ms. Pratt.....	535
SUSAN SAFFORD	
Direct examination by Ms. Pratt.....	545
Cross examination by Mr. Richardson.....	553
TAMEKA MASON	
Direct examination by Ms. Pratt.....	558
Cross examination by Mr. Richardson.....	565
Redirect examination by Ms. Pratt.....	572
Recross examination by Mr. Richardson	573
MICHAEL DEWARREN SPIVEY	
Direct examination by Ms. Pratt.....	575
Cross examination by Mr. Richardson.....	586
ARMANDO CHESTNUT	
Direct examination by Ms. Pratt.....	600
Cross examination by Mr. Richardson.....	650
MOTIONS	706
RULING BY THE COURT	711
CLOSING ARGUMENT BY MS. PRATT	713
CLOSING ARGUMENT BY MR. RICHARDSON	739
MOTION FOR A MISTRIAL BY MS. PRATT.....	765

RULING BY THE COURT	766
MOTION BY MR. RICHARDSON.....	767
RULING BY THE COURT	767
CHARGE ON THE LAW.....	769
VERDICT	808
RENEWAL OF ALL MOTIONS BY MS. PRATT	811
RULING BY THE COURT.....	812
SENTENCING	815
POST-TRIAL HEARING TRANSCRIPT (SEPTEMBER 4, 2013).....	822
INDICTMENTS	845
CERTIFICATE OF COUNSEL.....	853

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT #1 (CD OF VIDEO SURVEILLANCE);
STATE'S EXHIBIT #24 (PHOTOGRAPH);
STATE'S EXHIBIT #25 (PHOTOGRAPH);
STATE'S EXHIBIT #26 (PHOTOGRAPH);
STATE'S EXHIBIT #27 (PHOTOGRAPH);
STATE'S EXHIBIT #88 (PHOTOGRAPH);
STATE'S EXHIBIT #89 (PHOTOGRAPH);
STATE'S EXHIBIT #90 (PHOTOGRAPH);
STATE'S EXHIBIT #91 (PHOTOGRAPH);
STATE'S EXHIBIT #122 (CD – INTERVIEW OF CHESTNUT);
DEFENSE EXHIBIT #4 (CD – SURVEILLANCE VIDEO CLIPS);

State v. Chestnut
ALLEN GRAHAH - CB

583

- 1 A: I seen him swung at Thoro and hit Thoro up side the head
2 and they all mobbed Thoro. They all jumped on him like that.
3 Q: And how many were there that mobbed him?
4 A: Between four to five of them.
5 Q: Did you see Thoro do anything first?
6 A: No. No, not at all.
7 Q: Okay. And then after they jumped him, what happened next?
8 A: Okay. All the people started rushing out the bar. We all
9 started rushing out the bar. And Barney, I call him Barney,
10 happened to be standing beside me and we was running up there
11 towards it to stop the fight.
12 Q: Let me stop you for a minute.
13 A: Okay.
14 Q: Is Barney in the courtroom here today?
15 A: Yes, ma'am. (Indicating.)
16 Q: And who is he; is he the Defendant?
17 A: Yes, ma'am.
18 Q: Let the record reflect that the witness is pointing at
19 Armando Chestnut at the defense table. All right. I'm sorry.
20 So, let me back you up. So, they jumped him and what was --
21 what happened with Barney and where were you?
22 A: I was standing outside. We was all gathered up and a lot
23 of guys started running towards the fight. Barney was
24 standing on the side of me. We were running up there towards
25 the fight. We got right between two cars and heard a shot.

State v. Chestnut
ALLEN GRAHAH - CB

584

1 Q: Where did you hear the shot come from?

2 A: It came off that sidewalk from the crowd that was
3 fighting. The crowd that was fighting, the shot came off that,
4 came from there.

5 Q: You heard a shot?

6 A: I heard a shot and I ---

7 Q: Are you sure it didn't come from Barney?

8 A: No. No.

9 Q: All right. And how do you know that?

10 A: I was standing -- he was standing right beside me.

11 Q: Okay. And then what happened?

12 A: I went back and pulled back like this. Then some guy come
13 running towards us, some guys come running straight towards
14 us; then I heard a second shot.

15 Q: All right. And do you know now who the guy was that was
16 running straight towards you?

17 A: Yes.

18 Q: Who was that?

19 A: The guy that got killed.

20 Q: Okay. All right. I want you to describe for me what it
21 was like out there during this time.

22 A: It was -- people was just running all around, talking
23 loud, you know, and it wasn't too much fighting after the
24 shots went off. There wasn't doing much fighting. Everybody
25 was scattering. And like I said, the guy come running

State v. Chestnut
ALLEN GRAHAH - CB

585

1 between us, running between me and Barney. But we was between
2 the car. Some guy come running between the -- that's when we
3 heard another shot.

4 Q: Okay.

5 A: So we turned around. That's when Barney turned around and
6 just went out like this (indicating) but I didn't see nothing
7 fire.

8 Q: All right. And prior to the shots, when the things were
9 going on that you've been describing between Canty and Thoro,
10 give us a sense of what it was like to be out there, loud,
11 soft, busy, what?

12 A: It was loud and busy, you know, loud and busy.

13 Q: What did you hear?

14 A: I couldn't recall hearing exactly the words, but there was
15 a lot of emotion going on people yelling and screaming and
16 things like that and, you know, everybody was running,
17 scattering out. And like I say, I went back towards the bar.
18 I stopped at the door. Thoro, Thoro come walking back down to
19 the door.

20 Q: Was he allowed to come back to the bar?

21 A: Yeah, yeah.

22 Q: Okay. And then what happened?

23 A: The guy who hit him with the bottle happened to come to --
24 he happened come up to the door and said they -- he told
25 Thoro, so what's up again and they started again. They swung,

State v. Chestnut
ALLEN GRAHAH - CB

586

1 he swung at Thoro again. That's when they all charged into
2 the bar. They all charged into the bar and that's when all
3 the other people got into it and ---

4 Q: All right. So after you saw Thoro coming towards the bar
5 and you saw Canty, the big guy ---

6 A: Yeah.

7 Q: --- coming towards the bar, what did you see him do?

8 A: He went up to Thoro and asked Thoro, like, what's up, you
9 know, again and they started swinging at Thoro again. They
10 started fighting again.

11 Q: Did he swing at anyone else?

12 A: He came in the bar he started swinging all out wild. You
13 know so everybody started jumping up.

14 Q: All right. Mr. Graham, I'm going to show some defense,
15 what has been marked as Defense Exhibit Four; it's video clips
16 of what happened that night. And it'll just take a second to
17 set this up.

18 Mr. Graham, you may need to step down to be able to view
19 the video if you would

20 A: Yes, ma'am.

21 Q: And I need to have you close to a microphone so that the
22 Court Reporter can take down what you're saying.

23 THE COURT: All right, sir. You see the microphone at
24 the end of the table there? All right. Just stand right
25 there next to that microphone please.

State v. Chestnut
ALLEN GRAHAH - CB

587

1 A: Okay.

2 MS. PRATT: And for the record, I'm going to play what is
3 clip D from Camera 10 beginning at 1:12:45.

4 (REPORTER'S NOTE: Defendant's Exhibit Number Four, played for
5 witness.)

6 BY MS. PRATT:

7 Q: All right. Is this what you were describing at the
8 beginning?

9 A: Yes. Yes, ma'am.

10 Q: And who is this that's grabbing the pool stick?

11 A: That's the guy that got shot.

12 Q: And where are you in this video?

13 A: I was just coming through the door. You won't see me
14 until after the next ---

15 Q: And this is Camera 10. Where in the bar is that located?

16 A: On the left side of the bar by the door.

17 Q: By the door. Okay. And which is you?

18 A: That one right there coming in on the left side; that's me
19 with my hand getting ready to reach out.

20 Q: On the left-hand side with that ---

21 A: Yes.

22 Q: Okay. And what, what is going on at this point?

23 A: That's when they were scuffling and that's when we was, I
24 came back around and that's when we got them out -- Wayne said
25 just get them out the bar.

State v. Chestnut
ALLEN GRAHAH - CB

588

- 1 Q: All right. And is the person the pointer is on, is that
2 Wayne; can you tell?
- 3 A: No. Yeah, that's Wayne.
- 4 Q: And do you see Barney in that clip?
- 5 A: No, he was over there by the bar with his lady.
- 6 Q: And where are you at this point; can you see?
- 7 A: I'm coming out taking them outside. I'm outside.
- 8 Q: All right. And for the record, I'm watching now play Clip
9 B from the Defense Exhibit which is Camera 2 beginning at
10 1:13:18.
- 11 Who is that ---
- 12 A: That's Thoro.
- 13 Q: And where are you standing during this time?
- 14 A: Right by the door, right outside, right outside the door
15 looking at dead at them.
- 16 Q: Would you be close to where Camera 2 is?
- 17 A: That's over our heads, yep.
- 18 Q: Okay. The person that just entered down the sidewalk, who
19 is that?
- 20 A: That's the one, that's the one with the beer bottle.
- 21 Q: And do you know where he's from?
- 22 A: I'm not sure, ma'am. I don't know.
- 23 Q: Is he from Myrtle Beach?
- 24 A: I do not know.
- 25 Q: All right. Are you in the picture yet?

State v. Chestnut
ALLEN GRAHAH - CB

589

- 1 A: Huh-uh (negative response)
- 2 Q: Do you know who this person is?
- 3 A: No, I'm not sure. I can't see it.
- 4 Q: Okay. Who do you see?
- 5 A: That's Corey. Okay.
- 6 Q: Go ahead.
- 7 A: That's Corey.
- 8 Q: The person that I just asked you about?
- 9 A: Yeah, and I got another shot side of him there.
- 10 Q: All right. And what did you see Corey do?
- 11 A: We seen him, I seen him went to the car can came back out
- 12 and had a pistol in his hand.
- 13 Q: All right. Have you come into the picture yet?
- 14 A: No. See that's Wayne from -- there go me right there.
- 15 Q: This is you?
- 16 A: Right there, yeah.
- 17 Q: All right. Over here by the white car in the front left?
- 18 A: Uh-huh (affirmative response). That's Wayne.
- 19 Q: That's Wayne, who is about three cars down; is that right,
- 20 for the record?
- 21 A: Uh-huh (affirmative response).
- 22 THE COURT: You need to answer yes or no please?
- 23 A: Yes, sir.
- 24 THE COURT: All right.
- 25 Q: And then the person that the pointer is on with the multi-

State v. Chestnut
ALLEN GRAHAH - CB

590

1 colored jacket; do you know who that is?

2 A: No.

3 Q: Okay. All right. And who is that that's coming close to
4 beside you?

5 A: Barney.

6 Q: All right. So that would be this person running up and
7 coming beside you here on the right-hand side?

8 A: Yes.

9 Q: All right. All right. And I just clicked it backwards by
10 mistake and I apologize. I need to go forward a little bit.
11 Now these people that are coming up, about how many people, is
12 this the people -- let me change that question. What you see
13 here on this video, is that all of the people that were out
14 there that night?

15 A: There was a lot of them people -- them people that was --
16 the was going to help Thoro.

17 Q: Okay. And is there another area where people were?

18 A: On the right, right-hand side.

19 Q: And how many people were over there?

20 A: There was quite a few.

21 Q: All right. There you are walking around. All right. And
22 what happened -- that was Barney went past you; is that
23 correct?

24 A: Yes.

25 Q: Now what happened here?

State v. Chestnut
ALLEN GRAHAH - CB

591

1 A: See I started to back up -- I heard a shot and that's what
2 -- the first shot rang off and I was backing up.

3 Q: All right. And who else is backing up?

4 A: Barney.

5 Q: All right.

6 A: And that lady right there.

7 Q: All right. And then what did you see there that's
8 happening off camera; what's going on there?

9 A: This guy came running between us, running, running between
10 us -- the guy run across and was running between two cars, the
11 two vans on the right side, which was the DJ's van.

12 Q: All right. Would you please step back to the witness
13 stand for me?

14 A: Okay.

15 THE COURT: We done with that?

16 MS. PRATT: For the moment, yes, sir.

17 THE COURT: Well, I just wondered about the lights.

18 MS. PRATT: Yes, sir, we can put the lights back up.

19 THE COURT: Can we put the lights back up?

20 BY MS. PRATT:

21 Q: Is there an area that is not on this video that things are
22 happening in?

23 A: It was a area -- it's a parking lot on the right-hand side
24 and everybody was running and scattering, running to their
25 cars.

State v. Chestnut
ALLEN GRAHAH - CB

592

1 Q: All right. I'm going to show you what has been marked as
2 State's Exhibit Eighty-seven and ask if this diagram is a fair
3 depiction from what you can tell of the outside area that
4 we've been discussing?

5 A: Yes.

6 Q: All right. And the area that you're talking about that is
7 across, would that be approximately where Item Numbers 17, 18
8 and so on are?

9 A: Yes.

10 Q: Tell me what was going on there please?

11 A: A guy ran between two cars that was parked over there and
12 that's when the shot ranged out, another shot ranged out.

13 Q: All right. Now you said that you searched people as they
14 came into the bar?

15 A: Yes.

16 Q: There was just one, correct, just you working?

17 A: Yes.

18 Q: Do you think, do you believe that any weapons were in the
19 bar?

20 A: Not to my belief but it's a possibility, but not to my
21 belief.

22 Q: All right. And did you hear anyone in the bar talking
23 about getting guns?

24 A: No, I didn't.

25 Q: Did you hear any threats in the bar?

State v. Chestnut
ALLEN GRAHAH - CB

593

- 1 A: No.
- 2 Q: Because you were outside, weren't you?
- 3 A: Right.
- 4 Q: Okay.
- 5 MS. PRATT: The Court's indulgence?
- 6 THE COURT: Yes, ma'am.
- 7 BY MS. PRATT:
- 8 Q: Mr. Graham, you were interviewed by the police in this
- 9 case, were you not?
- 10 A: Yes, I was.
- 11 Q: Was that shortly after the incident?
- 12 A: Yes.
- 13 Q: And did you tell them this?
- 14 A: Yes.
- 15 Q: Everything that you've told us today pretty much?
- 16 A: As much as I could remember, yes.
- 17 Q: Importantly, did you and the police discuss the gunshots
- 18 and what you heard?
- 19 A: Yes.
- 20 Q: All right. Mr. Graham, did you see anyone other than
- 21 Corey and Armando that had a gun or appeared to have a gun?
- 22 A: Excuse me?
- 23 Q: I'm sorry, I was turned away wasn't I? Did you see anyone
- 24 other than Corey Myers or Barney that appeared to have a gun
- 25 that night?

State v. Chestnut
ALLEN GRAHAH - CB

594

1 A: Yes, there was a couple of fellows with some guns.

2 Q: And do you know whereabouts they were located? Just
3 approximately where they were standing is what I mean?

4 A: Yeah, on the side of the sidewalk, on the sidewalk on the
5 left-hand side where all the action was coming from.

6 Q: Okay. And you -- did you tell the police that also?

7 A: Yes.

8 Q: Thank you. Please answer any questions that the State may
9 have for you.

10 THE COURT: Cross examination.

11 MR. RICHARDSON: Your Honor, if we may approach?

12 THE COURT: Yes, sir.

13 (REPORTER'S NOTE: A bench conference was held off the record
14 in the presence of the jury but out of hearing of the jury.)

15 THE COURT: All right. Ladies and gentlemen of the jury,
16 I need for you to go to your jury room for a little bit. I'll
17 call you back out just as soon as I can. Thank you very much.

18 (REPORTER'S NOTE: The jury exits the courtroom. 10:10 A.M.
19 The following takes place outside the presence of the jury.)

20 THE COURT: Ms. Pratt, is that an exhibit; that's an
21 Exhibit?

22 MS. PRATT: It is.

23 THE COURT: All right. So we need to get that back in
24 the envelope and back to the Court Reporter.

25 MR. RICHARDSON: Your Honor, for the record, I believe

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

595

1 there's a statement that I'll be allowed to impeach Mr. Graham
2 on regarding these statements, I want to give him an
3 opportunity to look at that statement and I'll play it for the
4 Court.

5 THE COURT: All right. So this is his statement to
6 police that night or ---

7 MR. RICHARDSON: On March 13th, I believe.

8 THE COURT: On March 13th. All right. Very good.

9 MR. RICHARDSON: And, Your Honor, I'll have it marked for
10 Court as an exhibit.

11 THE COURT: All right. Very good.

12 MR. RICHARDSON: Your Honor, it's been marked as State's
13 One-Twenty-three.

14 THE COURT: All right.

15 PROFFER CROSS EXAMINATION OF ALLEN GRAHAM BY MR. RICHARDSON:

16 Q: Mr. Graham, did you give a statement to Myrtle Beach
17 Police Detectives?

18 A: Yes.

19 Q: Recorded statement?

20 A: Excuse me?

21 Q: A recorded statement?

22 A: Yes.

23 Q: You spoke with Detective Shannon Castle on March 13th,
24 2012?

25 A: Yes, that was the date.

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

596

1 Q: And then you spoke again with Detective Kitelinger and
2 that wasn't recorded but that was on or about March 22nd,
3 correct?

4 A: Yes.

5 MR. RICHARDSON: Court's indulgence?

6 THE COURT: Yes, sir.

7 MR. RICHARDSON: And, Your Honor, I may -- may not have
8 that interview on this disk and so I'll move on. I'll just
9 ask the questions.

10 THE COURT: All right. Would you need to look for
11 another one?

12 MR. RICHARDSON: Your Honor, I don't have it up here; I
13 don't see it. I can move on without that. I can just ask
14 him.

15 THE COURT: All right. So you're ready then for the jury
16 to come back in?

17 MR. RICHARDSON: Yes, sir. I can go ahead.

18 THE COURT: All right. Very good. All right. Ask the
19 jury to come back in please.

20 THE COURT: All right, then so do we need to have State's
21 One-Twenty-three then as part of the evidence?

22 MR. RICHARDSON: No, sir.

23 THE COURT: Ms. Pratt?

24 MS. PRATT: I actually wasn't aware of what One-Twenty-
25 three was.

State v. Chestnut

597

ALLEN GRAHAM - CROSS BY RICHARDSON

1 THE COURT: He thought it was, it included the statement
2 of this Defendant. Apparently it does not, so.

3 MS. PRATT: Your Honor, since it has not been played,
4 it's not in evidence, I would like it to stay as an ID?

5 MR. RICHARDSON: That's fine, Your Honor.

6 MS. PRATT: If that's what he did.

7 THE COURT: Okay. But we don't know what's on it.
8 All right. So that's, I mean that's fine, but you can have it
9 there for ID, but you know, it's not in the record, it's not
10 been played. We have no idea what's on it. It doesn't
11 pertain to anything that has happened in this matter but
12 that's fine.

13 MS. PRATT: If the Solicitor wishes to withdraw it, Your
14 Honor, I certainly not object to that.

15 THE COURT: You want to withdraw it then?

16 MR. RICHARDSON: Please, Your Honor.

17 THE COURT: Okay. Very good. It's withdrawn.

18 All right, Solicitor, you may proceed.

19 MR. RICHARDSON: Thank you, Your Honor.

20 (REPORTER'S NOTE: The jury returns to the courtroom. 10:15
21 A.M.)

22 CROSS EXAMINATION OF ALLEN GRAHAM BY MR. RICHARDSON:

23 Q: Mr. Feaster [sic], do you recall speaking with Detective
24 William Kitelinger on or about March 22nd, 2012?

25 A: Excuse me?

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

598

- 1 Q: Do you recall speaking with Detective Kitelinger?
- 2 A: Yes.
- 3 Q: That was about two weeks after the shooting, correct?
- 4 A: Yes.
- 5 Q: Do you recall telling Detective Kitelinger that you were
- 6 standing right beside the Defendant when he shot a gun?
- 7 A: Yes.
- 8 Q: Do you recall telling him -- did you speak with Detective
- 9 Castle?
- 10 A: If that's his name, yes.
- 11 Q: About a week after the shooting?
- 12 A: Yes.
- 13 Q: And do you recall telling him about you saw Buck and Barn?
- 14 A: Who's Buck and Barn?
- 15 Q: I'm asking you, do you recall telling him that you saw
- 16 Buck and Barn?
- 17 A: No.
- 18 Q: And you didn't tell these detectives about seeing any
- 19 other guns, did you?
- 20 A: No.
- 21 Q: You didn't tell these detectives about hearing other
- 22 gunshots, did you?
- 23 A: No, I told them I heard gunshots.
- 24 Q: No doubt about it, you said when the first shot went off,
- 25 that's when you started backing up?

State v. Chestnut

599

ALLEN GRAHAM - CROSS BY RICHARDSON

1 A: No, the first shot went off when Barney came out and that
2 hit the ground. I told him I felt like I hit the ground and
3 went like this (indicating), hands up in the air and went down
4 and open his legs up. And that was before we had ran up
5 towards the action where they was fighting at.

6 Q: Are you saying he held his arms up in the air?

7 A: Yes.

8 Q: Who's that?

9 A: Barney.

10 Q: Barney held his hands up and spread his legs?

11 A: Went down like this (indicating).

12 Q: Went down like this (indicating)?

13 A: Yeah.

14 Q: Before I play the video for you, I'm gonna ask you a few
15 more questions. Now you stated normally y'all have security
16 outside. Is that because you have a lot of people milling
17 about in the parking lot?

18 A: No, we have it on nights when we have events -- when we
19 have special events.

20 Q: Okay. And but you did say there were other people in the
21 parking lot, correct?

22 A: Yes.

23 Q: There's only five or six of these fellows you didn't
24 recognize, correct?

25 A: Right.

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

600

- 1 Q: That's what you said, five or six?
- 2 A: Five or six.
- 3 Q: So, there were more Myrtle Beach people there than these
- 4 people?
- 5 A: Yes.
- 6 Q: And the Myrtle Beach people kind of stick together, don't
- 7 they?
- 8 A: Yes.
- 9 Q: Now you said after the shooting, after the shots were
- 10 fired, Thoro walks back to the bar, correct?
- 11 A: Yes.
- 12 Q: So, he's fine; he's not injured enough to where he can't
- 13 walk?
- 14 A: He was bleeding from the head, but he wasn't injured
- 15 enough that he couldn't walk. I mean, he ---
- 16 Q: Gushing blood?
- 17 A: No, it was coming out the side of his face, you know.
- 18 Q: Like he'd been in a fight?
- 19 A: Yeah. Yeah.
- 20 Q: But he's standing up and he's walking fine?
- 21 A: Standing up walking fine.
- 22 Q: Okay. Now, you said you watched the video and you said
- 23 that all of them were about two feet behind Thoro as he walked
- 24 to his car, correct?
- 25 A: Yeah.

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

601

1 MR. RICHARDSON: Your Honor, the State is gonna be
2 playing States One CH-02-2012-03-06-00-49-28, Your Honor.

3 BY MR. RICHARDSON:

4 Q: Can you see from up there all right, Mr. Graham?

5 A: I can see.

6 Q: We'll just jump ahead. You've identified -- I've got it
7 paused. You've identified this person as being Thoro,
8 correct?

9 A: Yes.

10 Q: You see anybody behind him at this point?

11 A: No, they was standing right behind that -- behind that
12 car, right on the side of that white car and I could -- that's
13 why I was saying about two feet, they was standing right
14 behind that car right there.

15 Q: So, they weren't two feet behind him?

16 A: They wasn't. From my sight they was, actually they was
17 close because I was ---

18 Q: From your sight it looked like they were closer?

19 A: Yes.

20 Q: So if that -- from him to the back of that white car looks
21 like two feet from where you're standing?

22 A: No. It doesn't look ---

23 Q: What is it? It looks like it's two feet or it doesn't?

24 A: To me looking at it, it was two feet because like I said,
25 there was so much commotion out there, they were standing

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

602

1 right there by the back of the trunk of that car, that white
2 car.

3 Q: And that's at least two cars away?

4 A: Uh-huh (affirmative response).

5 Q: I'll play a little bit more. So they're still not
6 anywhere near him. Still, they're nowhere near him?

7 A: No.

8 Q: So they're not two feet behind him?

9 A: No.

10 Q: But you testified previously they're two feet right behind
11 him, correct?

12 A: I turned my back, by the time I turned my back they was
13 all up to him.

14 Q: So you had your back turned at this time?

15 A: Turned looking at the other -- yes.

16 Q: But earlier you said you watched Thoro go to his car?

17 A: Yeah.

18 Q: But now you're telling us you had your back turned?

19 A: No, when I turned my back to the side, when I turned back
20 around Thoro was just at his car and they was among -- they
21 was up more.

22 Q: Okay. So you're not watching everything at this point?

23 A: No. No, I'm watching, just observing everybody outside.

24 Q: You were watching the whole parking lot?

25 A: Yes.

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

603

- 1 Q: Did you see the Defendant walk over to his car?
- 2 A: No.
- 3 Q: You never saw the Defendant walking up to his car?
- 4 A: No.
- 5 Q: But you're right outside the door?
- 6 A: Yeah.
- 7 Q: But you don't see the Defendant exit the bar and walk to
- 8 his car?
- 9 A: I didn't pay it no mind. I didn't, I didn't pay it any
- 10 attention that he was running towards his car. I'm looking
- 11 directly in front of me then.
- 12 Q: But you're not looking; you said you had your back turned
- 13 at some point.
- 14 A: Yeah.
- 15 Q: Okay. But then I was looking, by the time you said he
- 16 actually, did I see him go to his car, I -- they was in front
- 17 of me then and that's when the guys up on Thoro.
- 18 Q: Let's play it a little bit further. Now earlier, did you
- 19 testify that you actually saw Thoro get in his car?
- 20 A: No.
- 21 Q: You didn't say that?
- 22 A: No, I didn't say that.
- 23 Q: How about now? Do you see Thoro getting into his car?
- 24 A: No.
- 25 Q: Did Thoro just disappear or did he get in his car?

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

604

- 1 A: I didn't see none of that.
- 2 Q: Well, let's back up.
- 3 A: Yes, I seen him walk over to his car.
- 4 Q: Okay. And he just disappeared into his car, correct?
- 5 A: That's what it seems on the film, yes.
- 6 Q: Okay. And these films are accurate, correct?
- 7 A: Right. Oh yeah.
- 8 Q: And they're still not two feet away, correct?
- 9 A: No, they're not.
- 10 Q: And we see one, two guys here, correct?
- 11 A: There's two -- the other guy is right behind them.
- 12 Q: Now earlier, did you identify eventually that that's Corey
- 13 Myers right there?
- 14 A: Yeah.
- 15 Q: And so that's Corey?
- 16 A: Uh-huh (affirmative response). Them two guys on the side
- 17 there and that guy right there, that's a Kingstree boy and
- 18 them two over there. Like I say, it's about four or five of
- 19 them.
- 20 Q: Well, you said -- when Ms. Pratt asked you, you said you
- 21 didn't know some of these people; you don't know where they're
- 22 from?
- 23 A: No, I didn't.
- 24 Q: So you're assuming they're Kingstree boys?
- 25 A: Well, after I found out where they from, they family live

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

605

1 from all Kingstree.

2 Q: But Corey, you know Corey?

3 A: I don't know any of them. I don't even know -- I just
4 know them from their names from hearing their names.

5 Q: Corey Myers is a Myrtle Beach fellow, correct?

6 A: Yes, but I don't know them where's I can tell you exactly
7 what they name. I just know them from coming to the club.

8 Q: Watch this a little bit further. Now you just saw Corey
9 walk in between or around those guys from Kingstree, didn't
10 you?

11 A: No, from, from looking at the film, yes, but from my, from
12 where I'm looking at standing out there, my eyes is not just
13 observing one person. It was like everybody just moving at a
14 time so I'm just looking here, looking there, looking
15 everywhere.

16 Q: But the films accurate, correct?

17 A: The films accurate, yes.

18 Q: And just now, you just saw Corey walking in between those
19 fellows or around them, correct?

20 A: Yes.

21 Q: He passes right in front of them?

22 A: Yes.

23 Q: Do they strike Corey?

24 A: They didn't -- far as I can see, they didn't know who
25 Corey was. They didn't know whose side Corey was on.

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

606

- 1 Q: So there were sides, people had sided up in this?
- 2 A: Well, like I say, that's Myrtle Beach, those are Myrtle
- 3 Beach boys and while they was walking up, I guess they didn't
- 4 know that was one of the guys from Myrtle Beach.
- 5 Q: But you stated earlier there were five or six guys from
- 6 out of town?
- 7 A: Uh-huh (affirmative response), about five or six of them.
- 8 Q: You learned they were from Kingstree?
- 9 A: Uh-huh (affirmative response). Not at the night, not at
- 10 the night of the event, I mean, you know.
- 11 Q: At some point, you learned they were from Kingstree?
- 12 A: Yeah.
- 13 Q: Hemingway or somewhere?
- 14 A: Yes.
- 15 Q: And you would agree with me that if there's a group of
- 16 five or six, you know everybody in your group?
- 17 A: Yes.
- 18 Q: So, they would've known Corey was not in their group?
- 19 A: Right.
- 20 Q: And they don't hit Corey, do they?
- 21 A: But they probably didn't think that he was had anything --
- 22 he was ---
- 23 Q: And I'm not asking probably. I understand your answer.
- 24 But you don't see them hit Corey, do you?
- 25 A: No.

State v. Chestnut

607

ALLEN GRAHAM - CROSS BY RICHARDSON

1 Q: Right there, do you see, you identified this person as
2 Thoro, do you see his arm extended at this point?

3 A: Yes.

4 Q: Do you see his arm extended?

5 A: No, his arm -- Thoro's arm was like this (indicating),
6 like he was zipping down a sweater.

7 Q: Tell me something, where are you right now?

8 A: Standing on the sidewalk right beside, right in front,
9 right in back of Wayne. Where Wayne is right there, Wayne
10 looking up that way too.

11 Q: But you testified earlier, you were looking all around?

12 A: Yeah, but at that point, I'm looking dead at the them; I
13 guess I was looking around.

14 Q: So, it's your testimony you're looking all around and
15 Thoro now is unzipping his jacket?

16 A: No, I said his hand was up here -- I seen his hands up
17 here. Before I knew anything, the guy struck at him with a
18 bottle.

19 Q: One more time. Here -- I'll try and make it a little
20 slower. Now do you see his arm extended there?

21 A: His arm is like this (indicating).

22 Q: So whose arm is like this? It's not out?

23 A: It was not, no.

24 Q: Do you see any actions that the big fellow is taking right
25 now?

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

608

- 1 A: Yeah, he's swung the bottle.
- 2 Q: So he's already swung with the bottle here?
- 3 A: No, he's about to swing with the bottle.
- 4 Q: Because Thoro punches at him?
- 5 A: No, did not throw a punch at him.
- 6 Q: But the video is accurate, correct?
- 7 A: The video is accurate.
- 8 Q: And Thoro, Thoro is at his car and he walks back towards
- 9 these guys, correct?
- 10 A: Uh-huh (affirmative response).
- 11 Q: And these are the ones he had an argument with previously?
- 12 A: Uh-huh (affirmative response), yes.
- 13 Q: So he walks back towards them?
- 14 A: Yes.
- 15 Q: Matter of fact, we see him actually stop for a second and
- 16 he looks over at Corey, correct?
- 17 A: Yes. Yes. Like I say that -- I'd say he's looking
- 18 towards Corey. I couldn't tell you from that distance who
- 19 he's looking at.
- 20 Q: You can't tell from that distance, you have all these
- 21 people in your field of view, and you ---
- 22 A: I can't tell if he's just looking at one particular
- 23 person. You're saying he looked at Corey by his car but I'm
- 24 just telling you from where I was, I'm looking towards that
- 25 and I can't say he's looking at Corey or the guys in front of

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

609

- 1 him.
- 2 Q: How tall are you?
- 3 A: About six feet.
- 4 Q: About six feet?
- 5 A: Yeah.
- 6 Q: And how high up are those cameras?
- 7 A: Over my head. They're about eleven-foot, twelve-foot up.
- 8 Q: So they have a better view down over the top of everything
- 9 than you have standing on the ground at eye level?
- 10 A: Yes, yes.
- 11 Q: So at this point, you see the video, but you don't
- 12 actually know what's going on because you're at eye level;
- 13 you're behind this crowd?
- 14 A: Uh-huh (affirmative response), yes.
- 15 Q: Okay. So you don't know what, if anything, Thoro did
- 16 prior to getting hit with the bottle?
- 17 A: From the, from the time I saw when Thoro came back and
- 18 walked towards them, he had his -- I seen him -- from the --
- 19 what I seen his hands was up like this and they said no, the
- 20 guy smacked him with a bottle.
- 21 Q: Okay. Now this is you right here, correct?
- 22 A: Yep.
- 23 Q: And you said you were standing underneath the cameras
- 24 right over here where Wayne was, correct?
- 25 A: No, I was standing right where I said I was, right, right

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

610

- 1 there in front, on the back by the door, right on the side.
- 2 Q: Right at the corner of this L, correct; on State's Number
- 3 Eighty-seven, where are you?
- 4 A: Right, that's the club. I'm standing right there.
- 5 Q: You're standing right there?
- 6 A: Yes, right there.
- 7 Q: So you're looking down in-between all the cars and
- 8 everything?
- 9 A: Like the cars here and I'm standing like right there. So
- 10 I'm looking on the slant side looking right there to the side.
- 11 Q: Closer to the corner of the L-shape than where the cameras
- 12 are?
- 13 A: Yeah, the cameras is on the right side of the L. So it
- 14 wasn't -- it's a camera through the window from the kitchen
- 15 and that's the one I was ---
- 16 Q: So, now you're coming out from that area now, and the
- 17 fight's already started?
- 18 A: Yes.
- 19 Q: And you're not running?
- 20 A: No.
- 21 Q: Because it's a normal fight?
- 22 A: Yes.
- 23 Q: A normal fight. You said you were standing ---
- 24 A: Right there.
- 25 Q: That's where you stopped and that's where you hear the

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

611

- 1 first gunshot?
- 2 A: Yep.
- 3 Q: And we see this fellow crumple down whenever that
- 4 gunshot's fired, right? Let's look -- I'll back it up. You
- 5 know who that is?
- 6 A: Barney.
- 7 Q: That's Barney. It's pointing back towards the rear
- 8 parking lot now, right?
- 9 A: Yes.
- 10 Q: People that are running away?
- 11 A: Yes.
- 12 Q: You see Thoro anywhere?
- 13 A: No.
- 14 Q: This is you going back into the club now, right?
- 15 A: Yes.
- 16 Q: You just ducked again, correct?
- 17 A: Yes, ducked a couple of times.
- 18 Q: All right. And that's Corey, correct?
- 19 A: Yes.
- 20 Q: And he just ducked?
- 21 A: Excuse me?
- 22 Q: Right there, that's the Defendant, correct?
- 23 A: Yes.
- 24 Q: Now in this entire video, have you seen anybody else in
- 25 that kind of sweater, black-and-white striped?

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

612

- 1 A: No.
- 2 Q: And earlier you said -- was the Defendant involved in the
3 scuffle inside the bar at the pool table?
- 4 A: No, not at the pool table, no.
- 5 Q: Was he anywhere near the pool table?
- 6 A: Well, the bar and the pool table, you know, reach out and
7 touch somebody from the bar.
- 8 Q: Now I need to show you State's, it's on CH10 -- I'll come
9 back and put that on the record, Your Honor.
- 10 You know who that is?
- 11 A: Yeah, that's Barney, but I haven't -- I didn't see none of
12 that, I mean actually.
- 13 Q: ,So we're gonna have to depend on our eyes ---
- 14 A: No, you're going by what the camera's showing. I mean, I
15 didn't see that. Like I say, I was standing outside.
- 16 MS. PRATT: And, Your Honor, at this point, I'll object
17 to the Solicitor playing the rest of the video that Mr. Graham
18 has said he did not see the content of.
- 19 MR. RICHARDSON: Your Honor, Ms. Pratt showed him some
20 stills from it earlier.
- 21 THE COURT: I'm gonna allow it. I believe it's proper
22 cross examination. You may proceed.
- 23 BY MR. RICHARDSON:
- 24 Q: But you're outside at this point, correct?
- 25 A: Yes.

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

613

1 Q: I don't need to ask you any more questions about the
2 video. When you come in, back in the bar, you come in during
3 the scuffle inside, correct?

4 A: I came in there twice. The first time I went in there and
5 I just seen the couple of guys, I seen the couple of guys by
6 the table which was them guys and I said no gambling. I went
7 back outside. Fifteen minutes later -- I was having to look
8 through the window -- when I looked through the window and I
9 seen my boss, Wayne, over there. So I went -- not paying any
10 other -- if he was there, I wasn't paying nobody else no mind.
11 I just went over to my boss and say what's the problem. He
12 said let's get them out of here and that's when I seen the
13 guy, they guy was about to try to grab a stick and I grabbed
14 the pool stick. I don't be recognizing anybody, but my view
15 wasn't on everybody. I was just doing what I had to do to get
16 them outside. I just went for the stick.

17 Q: So your main job was getting the people outside?

18 A: Yes.

19 Q: When the shots were fired, that's when people started to
20 scatter, correct?

21 A: Yes.

22 Q: And you go back inside the bar, correct?

23 A: Yes. After we called -- when I went back inside, when I
24 back inside the bar the second time, when I said what to Wayne
25 and we got them out or are you talking about after they

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

614

1 started, after the shooting?

2 Q: After the shooting?

3 A: All right. That's because the guy, this guy got shot on
4 the elbow, the big guy who shot -- who hit Barney, he ran
5 inside the bar. That's when Thoro was coming back to the, to
6 the bar and got to the door and the guy that was shot in the
7 elbow met him at the door.

8 Q: So where are you at that time this happens?

9 A: I was heading inside going to get the guy that was shot
10 trying to grab him and bring him back out the door.

11 Q: So you say somebody's shot and you're trying to bring him
12 out the door?

13 A: Yes. What I'm saying is the guy who got shot in the elbow
14 from out there fighting, he ran inside the bar. When they
15 shoot, everybody scattered and he ran back toward the bar, ran
16 in the bar. So I ran, I was going inside to get him out of
17 the bar. I didn't know he was shot at the time he was shot
18 but you know what I'm saying, I went to get him. Like I say,
19 he was the one fighting.

20 Q: And you saw Thoro fighting outside?

21 A: Yeah, I seen Thoro and him fighting. That's what I'm
22 saying, I didn't know he was shot.

23 Q: And you were gonna let Thoro back in the bar?

24 A: No, no, no, no. Thoro was coming back to the bar. What
25 I'm saying, we didn't want the guy who was just fighting, we

State v. Chestnut

615

ALLEN GRAHAM - CROSS BY RICHARDSON

1 didn't want him to come running -- he went running back in the
2 bar after we heard all the shots. He went running in the bar.
3 So I went to the bar to get him out the bar because he was the
4 one fighting.

5 Q: So, you weren't gonna let everybody run to safety in your
6 bar?

7 A: No, he was the one fighting. So he was running, he was
8 running back to the bar and just running in the bar. We was
9 gonna -- I'm grabbing him.

10 Q: Did you see a gun in his hand?

11 A: No. No. No.

12 Q: Okay. So you had shots fired outside, correct?

13 A: Right.

14 Q: And this fellow you don't know from Kingstree or wherever
15 ---

16 A: Yeah.

17 Q: He's trying to run to safety?

18 A: But he was the one fighting. He was the one who started
19 fighting. I didn't want him in front of the bar.

20 MR. RICHARDSON: Playing CH08-2012-03-06-01. Start at
21 about 14:50, 114:53, Your Honor.

22 BY MR. RICHARDSON:

23 Q: Now in this one, are you in this video?

24 A: I'm trying to look for it now.

25 Q: You need to come down and look?

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

616

- 1 A: No. If I was in this video, I'd be right by that door.
- 2 Q: Inside or outside?
- 3 A: Inside right now. If I was -- I don't see myself.
- 4 Q: You don't see yourself. Stop me if you see yourself?
- 5 A: Yeah, I see me now.
- 6 Q: Where are you?
- 7 A: I'm right there behind the guy with the hat -- right
- 8 behind Wayne.
- 9 Q: And Wayne's right here and you're right here?
- 10 A: That's me. Back up. Right there in the jacket, with the
- 11 jacket on.
- 12 Q: Right here?
- 13 A: Huh-uh (negative response). Right there.
- 14 Q: Right there. Now it looks like you're coming from over on
- 15 this side?
- 16 A: Uh-huh (affirmative response), yes.
- 17 Q: So you're not standing by the door?
- 18 A: No, I just noticed it; I was standing up there, I reached
- 19 out -- as a matter of fact, I just noticed me trying to reach
- 20 for the guy in the white, who was the one swinging. Go back.
- 21 I'm on the left -- I'm on the right -- that's me right up
- 22 there in the corner -- that's me ducking back and it's one,
- 23 two, right there. Up, up, up, right there.
- 24 Q: Right there?
- 25 A: Right there right in front of them. Right there.

State v. Chestnut

617

ALLEN GRAHAM - CROSS BY RICHARDSON

1 Q: So you were in a position to see Armando take a swing at
2 him?

3 A: There was so many guys swinging, I can't say; I just
4 noticed some guys swinging.

5 Q: You know Mike Spivey?

6 A: Yeah.

7 Q: You saw Mike Spivey right there?

8 A: Yeah, that's the one I recognized.

9 Q: Mike Spivey's a Myrtle Beach guy, right?

10 A: Yes.

11 Q: Mike knocks the fool out of him, right?

12 A: Yes.

13 Q: And Mike knocks him down?

14 A: Yes.

15 Q: Mike knocks him unconscious?

16 A: Yeah ---

17 Q: And Wayne's a lot closer to the action when he comes in,
18 isn't he?

19 A: Yes.

20 MR. RICHARDSON: Court's indulgence.

21 BY MR. RICHARDSON:

22 Q: How long have you known the Defendant?

23 A: I don't really know him. I just know him from when he's
24 come into the club.

25 Q: So he's a frequent flyer to the club?

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

618

- 1 A: Yes, a regular, you know.
- 2 Q: He's a Myrtle Beach guy?
- 3 A: Local, yes.
- 4 Q: And you're a Myrtle Beach guy?
- 5 A: I'm from New York.
- 6 Q: You're from New York. How long you been living in Myrtle
- 7 Beach?
- 8 A: Now twenty-two years.
- 9 Q: So pretty much by transplant, I think everybody that comes
- 10 here that's here over five years, a Myrtle Beach guy?
- 11 A: Right. Right.
- 12 Q: And these other guys weren't?
- 13 A: No, I ain't never seen them in the club.
- 14 Q: And there were more Myrtle Beach people there than these
- 15 strangers from Hemingway or Kingstree?
- 16 A: Yes.
- 17 Q: By a good bit?
- 18 A: Yes.
- 19 Q: And Thoro, you seen him at the club before?
- 20 A: I know Thoro, yes.
- 21 Q: Corey, you seen him at the club before?
- 22 A: I don't know him but I've seen him at the club before.
- 23 Q: Okay. And you're right over right close to the Defendant
- 24 when you hear the first shot?
- 25 A: When I heard the first shot, yes.

State v. Chestnut
ALLEN GRAHAM - CROSS BY RICHARDSON

619

- 1 Q: And you're looking back toward where the fights going on?
2 A: I heard the first shot and I'm looking back.
3 Q: Did you ever see the Defendant fire a gun?
4 A: I was ducking.
5 Q: Okay. So ---
6 A: From the first shot, I knew he had the gun for the -- when
7 I seen him first -- when he came out and went like that.
8 That's what you don't have on the file and I don't think -- I
9 didn't see it. I haven't seen it. I haven't seen that.
10 Q: So ---
11 A: He went like -- if he was trying load it or whatever when
12 he went like this and that's when a shot went off and hit the
13 ground.
14 Q: But it was kind of confusing right then, wasn't it?
15 A: Yes.
16 Q: I mean you were scared?
17 A: Yeah.
18 Q: And that eye in the sky, that's gonna get everything,
19 right?
20 A: Yeah.
21 Q: And that's gonna be accurate?
22 A: Yeah.
23 Q: All right. Thank you.
24 THE COURT: Redirect?
25 MS. PRATT: Thank you.

State v. Chestnut
ALLEN GRAHAM - REDIRECT BY PRATT

620

1 REDIRECT EXAMINATION OF ALLEN GRAHAM BY MS. PRATT:

2 Q: Mr. Graham, the Solicitor just said the eye in the sky is
3 gonna get everything. Does it actually get the line of
4 parking spaces and the fight that's over here by Number 17 on
5 State's Exhibit Number Eighty-seven; is there a camera there?

6 A: No, there's a camera -- like I say, I think one of the
7 cameras was off. That was the camera from the kitchen;
8 there's a kitchen right there and there's a camera angling
9 toward, towards the parking lot. I never seen no pictures
10 from that.

11 Q: Okay. All right. I'm just gonna ask you a few questions
12 about what the Solicitor asked you. At the beginning ---

13 THE COURT: Just wait one second.

14 MS. PRATT: I'm sorry, sir.

15 THE COURT: Go ahead.

16 BY MS. PRATT:

17 Q: I had asked you who fired the first shot and you had said
18 it wasn't Barney. When the Solicitor asked you who fired the
19 first shot, you said something about Barney with his hands up
20 and shooting down. Where did you hear the first shot and do
21 you know who shot it?

22 A: The first shot, like I'm saying, we was over there by the
23 parking lot on the side, the side of the building. Like when
24 he came up beside me and like I say, I heard something, a shot
25 went off like pow like that, that's when I heard the first

State v. Chestnut
ALLEN GRAHAM - REDIRECT BY PRATT

621

- 1 shot.
- 2 Q: Okay.
- 3 A: And that was way from the fight though. That was way
- 4 before the fight. That was up there -- that was I guess when
- 5 everybody was like grabbing their guns or something like that.
- 6 Q: So on this diagram, can you tell us what marker it's close
- 7 to approximately?
- 8 A: Twenty-six, right there.
- 9 Q: So the first shot is back here?
- 10 A: Yeah.
- 11 Q: As far as you can -- it's close to that anyway?
- 12 A: Yes.
- 13 Q: Okay. And that is for the record on State's Exhibit
- 14 Eighty-seven. And then where did you hear the next shot from?
- 15 A: That's when we ran up towards, towards the fight.
- 16 Q: And where did you hear that shot coming from?
- 17 A: Off the sidewalk between, between the two cars.
- 18 Q: Between the two cars?
- 19 A: Yes.
- 20 Q: Could that have been Barney?
- 21 A: Not that first shot from up there.
- 22 Q: Okay. And the Solicitor questioned you pretty thoroughly
- 23 about your statement about two feet away?
- 24 A: Yes.
- 25 Q: Was there a point during this time when the people, the

State v. Chestnut
ALLEN GRAHAM - REDIRECT BY PRATT

622

1 big guy, was within two feet of Thoro?

2 A: Yes, they was all -- when they first came out, they was
3 all up together talking. They was talking and then I seen
4 Thoro broke away and walked away. That's what he did.

5 Q: All right. And you told the Solicitor when he asked you
6 about Thoro's injuries that he was bleeding from the head but
7 walking; is that right?

8 A: Yes.

9 Q: In your job as a bouncer or security person at a club and
10 in your experience, have you ever seen someone who has been
11 hit by a bottle and be taken to the hospital to get help?

12 A: If it's really bad.

13 Q: Okay. And does that always happen right away?

14 A: No.

15 Q: All right. The Solicitor asked you a question about the
16 interactions, from want of a better word, between the two
17 groups?

18 A: Uh-huh (affirmative response).

19 Q: And you said they was commotion by the front door; do you
20 remember saying that?

21 A: Yes.

22 Q: I'm going to play you a clip from the Defense Exhibit
23 Four. And before I play this, I am going to show you what has
24 been introduced into evidence as Defense Exhibit Number Two,
25 which is a drawing of the bar with the cameras marked. Can

State v. Chestnut
ALLEN GRAHAM - REDIRECT BY PRATT

623

- 1 you read the numbers and see ---
- 2 A: Okay.
- 3 Q: So if you see the Number 10, where is that camera?
- 4 A: Okay. The kitchen, you see where 5 at; Number 5 is the
- 5 camera right in that window there and that's the one we
- 6 haven't seen. I haven't ---
- 7 Q: I see. And looking at the cameras that are marked on
- 8 there, we've got a Camera 9 and a Camera Number 10; do you see
- 9 those near the pool tables and the front door?
- 10 A: Yes.
- 11 Q: Okay. All right. I'm going to show you Camera 9, it is
- 12 clip number 8. Are you in this picture?
- 13 A: I can't see that from here.
- 14 Q: Would you like to step down from the stand?
- 15 A: Yes. That's me standing outside the door.
- 16 Q: Are you this guy?
- 17 A: Right there.
- 18 Q: Okay. And this is at 1:12 while people are leaving, is
- 19 that right? Is that the time you were talking about a
- 20 commotion outside the door?
- 21 A: Yeah.
- 22 Q: Okay. All right. So this is you right in front of the
- 23 door?
- 24 A: No, that wasn't the commotion outside, no, not then.
- 25 Q: All right. Well let me ask you, is that you?

State v. Chestnut
ALLEN GRAHAM - REDIRECT BY PRATT

624

- 1 A: That's me right there, yeah.
- 2 Q: And you come back inside?
- 3 A: Uh-huh (affirmative response).
- 4 Q: And you go over near that camera and what do you -- who is
- 5 this?
- 6 A: It looks like Thoro.
- 7 Q: Okay. And who is this with the white hat?
- 8 A: That's the guy who had swung at him.
- 9 Q: Is this the commotion you're talking about?
- 10 A: Yes. See, that's when Thoro walked off.
- 11 Q: And then what are these fellows doing?
- 12 A: Coming in the door.
- 13 Q: And this hat would still be the fellow that got shot in
- 14 the elbow?
- 15 A: I don't -- I couldn't tell -- I can't tell. Yeah, that's
- 16 when we was getting them all outside -- it's -- we getting
- 17 them outside.
- 18 Q: All right. If you would step back up.
- 19 The Solicitor asked you about seeing anyone else hit.
- 20 Did there come a time that you saw people hitting Corey or
- 21 anyone hitting Corey?
- 22 A: No.
- 23 Q: You didn't see that. Where were you when the scuffle was
- 24 going on between the cars?
- 25 A: I was standing, like I said, I was right by the -- almost

State v. Chestnut
ALLEN GRAHAM - REDIRECT BY PRATT

625

1 right in front of the door. I was right side of the door.

2 Q: And one of the last questions the Solicitor asked you was
3 whether or not there were more Myrtle Beach guys in the club
4 than Kingstree guys; is that right?

5 A: Yes, yes there was.

6 Q: But were there more Myrtle Beach guys involved in this
7 fight and this attack than Kingstree guys?

8 A: Yes.

9 Q: You think so from what you saw?

10 A: From what I saw they was coming to help Thoro. They was
11 running to help Thoro. Like, actually, like I say, when we,
12 when we gets to crowded at the door, my job was to get them
13 within the limit and I was following them. I'm not supposed
14 -- I'm not an armed guard and I don't follow them out to the
15 street. Once they get within a certain limit, that's where I
16 stopped at and once they go further on, I don't go beyond my
17 boundaries, you know, that's like I'm saying I just covering
18 what I was supposed to cover. Get them in front of -- get
19 them from in front of the club and if they walk on to further
20 out, I'm not to go out there, you know. I only decided to go
21 out there when I see my boss going up there and we see them
22 tousling. But that's what made us go out there to try to stop
23 the fight. That's when like I was saying everything broke
24 out, lot of shots. We ran up there. As quick as I was about
25 to get onto the crowd, when I was going up there, we heard a

State v. Chestnut

626

ALLEN GRAHAM - REDIRECT BY PRATT

1 shot, back up. And that's when I noticed Barney was beside
2 me. The second shot, I didn't hear it, like I said, went to
3 the side and heard the second shot. Next thing I knew, Barney
4 was coming between the car where I was and I said, whoa, like
5 that, Barney, like that. And this guy came running, running,
6 running down like this, running between us and that's when I
7 seen Barney turned around but I did not see him fire. He
8 pointed but I did not -- and I could tell he didn't shoot --
9 he didn't shoot -- that he didn't, he didn't shoot then.

10 Q: Thank you very much, Mr. Graham.

11 A: Yes, ma'am.

12 THE COURT: Anything on those questions, Solicitor?

13 MR. RICHARDSON: Your Honor ---

14 THE COURT: Just a second. Yes, sir. All right. Very
15 good.

16 MR. RICHARDSON: No recross, Your Honor.

17 THE COURT: All right. You may step down, sir.

18 Do you wish this witness to be excused, ma'am.

19 MS. PRATT: Yes, Your Honor.

20 THE COURT: Any objection?

21 MR. RICHARDSON: No, sir, Your Honor.

22 THE COURT: You're released from your subpoena, sir, you
23 may go back to your regular duties.

24 A: Thank you.

25 THE COURT: All right. Ms. Pratt and Solicitor, y'all

State v. Chestnut
SUSAN SAFFORD - DIRECT BY PRATT

627

1 come up and talk to me just one second?

2 MR. RICHARDSON: Yes, sir, Your Honor.

3 (REPORTER'S NOTE: A bench conference was held off the record
4 in the presence of the jury but out of hearing of the jury.)

5 THE COURT: You ready, Ms. Pratt?

6 MS. PRATT: May we approach, Your Honor, I just need some
7 information.

8 (REPORTER'S NOTE: A bench conference was held off the record
9 in the presence of the jury but out of hearing of the jury.)

10 THE COURT: All right. Very good. Call your next
11 witness.

12 MS. PRATT: I call Captain Susan Safford with the Horry
13 County Sheriff's Department.

14 THE COURT: Ma'am, if you'd please come up to meet the
15 Clerk at the corner up here please, ma'am.

16 CAPTAIN SUSAN SAFFORD, HAVING BEEN
17 SWORN TESTIFIES AS FOLLOWS:

18 CLERK: State your full name and spell your last?

19 MS. SAFFORD: Susan Safford, S-A-F-F-O-R-D.

20 THE COURT: You may proceed, ma'am.

21 MS. PRATT: Thank you, Your Honor.

22 DIRECT EXAMINATION OF SUSAN SAFFORD BY MS. PRATT:

23 Q: Captain Safford, what is your employment?

24 A: I work for Horry County Sheriff's Office at J. Reuben Long
25 Detention Center as a Captain.

State v. Chestnut
SUSAN SAFFORD - DIRECT BY PRATT

628

- 1 Q: And are part of -- tell me about your duties there?
- 2 A: I'm a Support Services Captain. I oversee booking, photo
- 3 ID, visitation and security desk.
- 4 Q: And as part of your duties are you a kind of custodian of
- 5 records in regards to people's incarceration, booking and so
- 6 forth?
- 7 A: Yes, I am.
- 8 Q: And were you served with a subpoena to come to Court today
- 9 and to bring certain records?
- 10 A: Yes, I was.
- 11 Q: And whose records were you subpoenaed to bring?
- 12 A: Hubert Dewayne Durant.
- 13 Q: All right. And what time period did we ask for the
- 14 records to be from?
- 15 A: Any records from March 6th of 2012 to present.
- 16 Q: All right. And those records, just to clarify for the
- 17 jury, would be records of Mr. Durant how, where, what?
- 18 A: A booking card of his incarceration, also warrant or
- 19 commitment, and those records show the date that he was
- 20 incarcerated in our facility and the date he was released.
- 21 Q: All right. And you brought those records with you?
- 22 A: Yes, I did.
- 23 Q: Can you hand them to me so that I can show them to the
- 24 Solicitor?
- 25 A: Yes.

State v. Chestnut
SUSAN SAFFORD - DIRECT BY PRATT

629

1 Q: Thank you.

2 MS. PRATT: With the Court's indulgence for a moment?

3 THE COURT: Yes, ma'am.

4 MS. PRATT: And I'll have these marked as Defense Eight
5 and Nine, I suppose.

6 THE COURT: Which is which?

7 MS. PRATT: And for the record, Number Eight has been --
8 the one that has been marked Number Eight is regarding an
9 arrest from November the 9th of 2012. And for the record, the
10 other that's been marked as Exhibit Nine is his arrest from
11 December the 12th or December the 17th of 2012.

12 DEFENDANT'S EXHIBIT NUMBER EIGHT AND NINE

13 MARKED FOR IDENTIFICATION

14 BY MS. PRATT:

15 Q: Captain Safford, let me show you what has been marked as
16 Defense Number Eight and ask if you recognize that document?

17 A: Yes, I do. It's a booking card.

18 Q: All right. And the packet that is completely marked as
19 Exhibit Eight. What else does it include?

20 A: It includes a booking report with photo that is computer
21 generated; and it also includes an arrest warrant; and a bench
22 warrant commitment.

23 Q: All right. And these are for Hubert Dewayne Durant; is
24 that right?

25 A: Correct.

State v. Chestnut
SUSAN SAFFORD - DIRECT BY PRATT

630

- 1 Q: What date was he arrested?
- 2 A: He was brought to our facility on November 9th, 2012.
- 3 Q: And can you tell from the document you have which agency
- 4 arrested him?
- 5 A: Myrtle Beach Police Department is who served the warrant
- 6 for driving under suspension and then the commitment is from a
- 7 Magistrate's office.
- 8 Q: All right. And the Magistrate in?
- 9 A: Judge Phipps.
- 10 Q: And his office is located where?
- 11 A: It is in Myrtle Beach. It's a Horry County Magistrate
- 12 though.
- 13 Q: All right. Would that be the office on 21st Avenue?
- 14 A: Yes.
- 15 Q: All right. And how long was Mr. Durant in your facility
- 16 on that incarceration?
- 17 A: On this one he was released November 10th of 2012.
- 18 Q: And does the booking card give an address for him?
- 19 A: It does.
- 20 Q: And does it give a phone number or contact person?
- 21 A: I do have phone number for Hubert Durant and I also have a
- 22 next of kin with a phone number listed as well.
- 23 Q: All right. If I may take a look. And looking at the
- 24 second page, which is a booking report, does that reflect an
- 25 address and phone number and other information?

State v. Chestnut
SUSAN SAFFORD - DIRECT BY PRATT

631

1 A: Yes, it does.

2 Q: Did Mr. Durant have a bondsman on this issue, this
3 particular incarceration?

4 A: That I do not know. He would've paid the money through
5 the Magistrate's office and we received a receipt that the
6 funds were paid. Whether he actually used a bondsman, I don't
7 know.

8 MS. PRATT: Your Honor, I would ask that Defense Number
9 Eight be introduced in evidence?

10 THE COURT: Any objection?

11 MR. RICHARDSON: No objection, Your Honor.

12 THE COURT: Into evidence without objection.

13 DEFENDANT'S EXHIBIT NUMBER EIGHT

14 ADMITTED INTO EVIDENCE

15 MS. PRATT: May I publish to the jury?

16 THE COURT: You may do so.

17 MS. PRATT: Thank you.

18 BY MS. PRATT:

19 Q: Captain Safford, I'm gonna show you Defense Number Nine,
20 which begins with a booking card with the date of arrest of
21 December 17th, 2012 and ask if you recognize that document?

22 A: Yes, I do. It's a booking card.

23 Q: And is that packet of four pages what you, part of what
24 you brought with you today under subpoena?

25 A: Yes.

State v. Chestnut
SUSAN SAFFORD - DIRECT BY PRATT

632

- 1 Q: And whose booking card is it?
- 2 A: It's J. Reuben Long Detention Center's booking card.
- 3 Q: All right. And what is the name of the person?
- 4 A: Hubert Dewayne Durant.
- 5 Q: And when was he arrested?
- 6 A: He was arrested December 17th of 2012.
- 7 Q: Can you tell from that information that you have which
- 8 agency arrested him?
- 9 A: Myrtle Beach Police Department.
- 10 Q: All right. And how long did Mr. Durant remain in your
- 11 facility?
- 12 A: Until January 20th of 2013.
- 13 Q: That's a little over a month; is that right?
- 14 A: That is correct.
- 15 Q: And he would have been at J. Reuben Long?
- 16 A: Yes.
- 17 Q: And does that booking card have an address?
- 18 A: Yes, it does.
- 19 Q: Does it have a phone number?
- 20 A: Yes.
- 21 Q: And does it have contact information?
- 22 A: Yes, it does.
- 23 Q: If I may. On the booking information, does it give any
- 24 employment information?
- 25 A: It states the type of work he does, which is landscaping.

State v. Chestnut
SUSAN SAFFORD - DIRECT BY PRATT

633

1 Q: And on the second page, does it give a name of an
2 employer?

3 A: Yes, it does.

4 Q: And any contact information for the employer?

5 A: It is not listed on here. It just says the name of the
6 employer, Terrell's Lawn Service.

7 Q: Thank you. And from the last page, which is the
8 commitment, how do you know that this was Myrtle Beach that
9 arrested him?

10 A: The commitment is from Judge Wilson, which is a Myrtle
11 Beach Municipal Court Judge.

12 Q: Thank you.

13 MS. PRATT: Your Honor, I would like to enter exhibit,
14 Defense Exhibit Number Nine into evidence?

15 THE COURT: Any objection?

16 MR. RICHARDSON: No, sir, Your Honor.

17 THE COURT: It's into evidence without objection.

18 DEFENDANT'S EXHIBIT NUMBER NINE

19 ADMITTED INTO EVIDENCE

20 THE COURT: You wish to publish?

21 MS. PRATT: Yes, Your Honor, if I may publish to the
22 jury?

23 THE COURT: You may do so.

24 BY MS. PRATT:

25 Q: Now, Captain Safford, that information that is computer

State v. Chestnut
SUSAN SAFFORD - DIRECT BY PRATT

634

- 1 generated, what happens to that information?
- 2 A: As far as where it's published?
- 3 Q: Yes, ma'am.
- 4 A: It's published on a website at HorryCounty.org.
- 5 Q: And how often is that website updated?
- 6 A: Three times a day.
- 7 Q: So from the time that Mr. Durant was incarcerated on
- 8 December the 17th, for example, would his name still show on
- 9 that website every day?
- 10 A: Yes, the information will show for one year and after a
- 11 year it is removed from the website unless the person is still
- 12 incarcerated in our facility.
- 13 Q: All right. And so at any time from December 17th, that
- 14 information can be accessed by any member of the public; is
- 15 that right?
- 16 A: Correct. You type in the person's last name and select
- 17 find and it will give you all the people that have been
- 18 arrested with that last name.
- 19 Q: So even if first name, if the person has three names, even
- 20 if the first name isn't known, if they put in the last name,
- 21 all of those people will show?
- 22 A: Correct.
- 23 Q: Thank you. Please answer any questions the Solicitor may
- 24 have.
- 25 THE COURT: Cross examination.

State v. Chestnut
SUSAN SAFFORD - CROSS BY RICHARDSON

635

1 CROSS EXAMINATION OF SUSAN SAFFORD BY MR. RICHARDSON:

2 Q: Good morning, Captain Safford; how you doing this week?

3 A: I'm fine thank you.

4 Q: Good. Regarding -- Ms. Pratt asked you some questions
5 about addresses and phone numbers. How do y'all get the
6 addresses and phone numbers when people get booked in?

7 A: We ask the inmate for that information.

8 Q: Okay. So you got to depend on the inmate being honest?

9 A: Correct.

10 Q: And the charges that Mr. Durant got booked on were what?

11 A: Driving under suspension and he had a bench warrant.

12 Q: So he got caught driving around?

13 A: Correct.

14 Q: All right. In law enforcement it's just kind of pure dumb
15 luck that somebody stumbled on?

16 MS. PRATT: Objection. Calls for speculation on the part
17 of the witness.

18 THE COURT: Sustained.

19 BY MR. RICHARDSON:

20 Q: How long have you been out at the jail?

21 A: September will be twenty-five years.

22 Q: A long time.

23 A: Yes.

24 Q: And y'all take in prisoners from Myrtle Beach, Conway,
25 everybody, right?

State v. Chestnut
SUSAN SAFFORD - CROSS BY RICHARDSON

636

1 A: Correct. North Myrtle Beach, Surfside.

2 Q: Okay. From March through November, did y'all receive any
3 other prisoners for Myrtle Beach charged with violent crimes?

4 A: Oh, I'm sure.

5 Q: Probably bunches?

6 A: Yes.

7 Q: The -- now would the records reflect at all whenever Mr.
8 Durant came in and he said, I've got information I need to
9 talk to Will Kitelinger?

10 MS. PRATT: Objection, calls for speculation on the part
11 of the witness.

12 THE COURT: Sustained.

13 BY MR. RICHARDSON:

14 Q: Do you keep records of when inmates request to speak with
15 law enforcement?

16 A: It would depend on how that request was made. We have a
17 computerized system now where an inmate can actually go to a
18 kiosk and make a request or they can actually speak to what we
19 have are Unit Managers. They can talk to a Unit Manager
20 that's actually in the housing unit if they would like to make
21 such a request.

22 Q: So if the Defendant or inmate wishes to make a request to
23 speak to a police officer, there are means available?

24 A: Correct.

25 Q: And you agree with me, from March to November is -- and I

State v. Chestnut

637

SUSAN SAFFORD - CROSS BY RICHARDSON

1 did the math a minute ago, it was March, April, May, June,
2 July, August, September, October, on into November -- it's
3 eight or nine months, correct?

4 A: Correct.

5 Q: A long time between March 6th and when Mr. Durant got put
6 in jail?

7 A: Correct.

8 Q: Do you -- do you have his nickname down or anything in
9 your booking record?

10 A: It would not be on that booking record. If we knew a
11 nickname, there is a place that it can be entered into the
12 computer.

13 Q: And ---

14 MR. RICHARDSON: Court's indulgence?

15 THE COURT: Yes, sir.

16 BY MR. RICHARDSON:

17 Q: No doubt about it, Mr. Durant was booked in some eight or
18 nine months after March 6th, 2012?

19 A: That's correct.

20 Q: And not anytime in between then?

21 A: Not according to my records.

22 Q: And you would have records if he had been put in jail?

23 A: Yes.

24 Q: Thank you. Thank you, Captain.

25 THE COURT: Any redirect?

State v. Chestnut
SUSAN SAFFORD - CROSS BY RICHARDSON

638

1 MS. PRATT: None, Your Honor.

2 THE COURT: All right. Do you wish the witness to be
3 excused?

4 MS. PRATT: Please, Your Honor.

5 THE COURT: Any objection? Solicitor, any objection to
6 the witness being excused?

7 MR. RICHARDSON: Oh, I'm sorry, Your Honor. No, sir,
8 Your Honor.

9 THE COURT: All right, ma'am, you're released from your
10 subpoena; you may go back to your regular duties. Thank you.

11 All right. Ladies and gentlemen, we're gonna take a
12 short break for about five or ten minutes. If you want to go
13 to your jury room, please leave the exhibits. Thank you.

14 (REPORTER'S NOTE: The jury exits the courtroom. 11:16 A.M.)

15 THE COURT: All right. Ms. Pratt, did y'all need to --
16 or have you worked out the issue regarding I'm assuming, the
17 next witness?

18 MS. PRATT: I believe the Solicitor has run the NCIC. I
19 have not seen it yet, Your Honor.

20 THE COURT: All right.

21 MS. PRATT: And if I could have the opportunity to show
22 this to her and see if they've got the right information.

23 THE COURT: We'll take a short break. Thank you very
24 much.

25 MS. PRATT: Thank you, Your Honor.

State v. Chestnut
SUSAN SAFFORD - CROSS BY RICHARDSON

639

1 (RECESS - 11:17 A.M.)

2 *****OFF THE RECORD*****

3 (On the Record - 11:30 A.M.)

4 THE COURT: All right. The State ready for the jury?

5 MR. RICHARDSON: We are, Your Honor.

6 THE COURT: Defense?

7 MS. PRATT: Yes, Your Honor.

8 THE COURT: All right. Please ask the jury to come in.

9 (REPORTER'S NOTE: The jury returns to the courtroom. 11:32
10 A.M.)

11 THE COURT: All right, Ms. Pratt, your next witness
12 please, ma'am?

13 MS. PRATT: Tameka Mason.

14 THE COURT: All right, Ms. Mason, if you'd come all the
15 way up front here and meet the Clerk at the corner, ma'am.

16 TAMEKA MASON, HAVING BEEN SWORN

17 TESTIFIES AS FOLLOWS:

18 CLERK: Please state your full name and spell your last.

19 MS. MASON: Tameka Mason, M-A-S-O-N.

20 THE COURT: Could you spell your first name also, please,
21 ma'am?

22 MS. MASON: T-A-M-E-K-A

23 THE COURT: Thank you, ma'am. Now you need to speak up
24 not only the Court Reporter has to hear you and all those
25 members of the jury have to hear you. So you got to speak up

State v. Chestnut
TAMEKA MASON - DIRECT BY PRATT

640

1 and directly into the microphone please.

2 Go ahead, Ms. Pratt.

3 MS. PRATT: Thank you.

4 DIRECT EXAMINATION OF TAMEKA MASON BY MS. PRATT:

5 Q: Ms. Mason, where do you reside?

6 A: Myrtle Beach.

7 Q: Can you pull the microphone a little closer to you?

8 A: Myrtle Beach.

9 Q: Okay. Great. And how long have you lived in Myrtle
10 Beach?

11 A: Seven years.

12 Q: And whereabouts do -- you're gonna have to speak up just a
13 little bit.

14 A: Okay.

15 Q: Whereabouts in Myrtle Beach do you live just generally?

16 A: [REDACTED].

17 Q: All right. How close is that to the 3rd Avenue bar?

18 A: I'd say two blocks, two or three blocks.

19 Q: Okay. And do you go to the 3rd Avenue Bar fairly
20 frequently?

21 A: Every once in a while, yeah.

22 Q: Okay. And, Ms. Mason, are you employed anywhere?

23 A: Yes, I am.

24 Q: And what do you do?

25 A: I'm a housekeeper.

State v. Chestnut
TAMEKA MASON - DIRECT BY PRATT

641

- 1 Q: Okay. And which, where do you, where do you ---
2 A: Hotel Blue.
3 Q: Hotel Blue?
4 A: Uh-huh (affirmative response).
5 Q: All right. And how long have you worked there?
6 A: Six months.
7 Q: All right. Ms. Mason, I'm gonna get a little preliminary
8 stuff out of the way. You do have a criminal record, do you
9 not?
10 A: Yes, ma'am.
11 Q: Do you have a record for giving false information to the
12 police?
13 A: Yes, ma'am.
14 Q: And are you currently on probation for a forgery?
15 A: Yes, ma'am.
16 Q: You understand that you took an oath to tell the truth?
17 A: Yes, ma'am.
18 Q: And is it your intent to follow that oath?
19 A: Yes, ma'am.
20 Q: All right. Were you present at the 3rd Avenue Bar the
21 night of March the 6th, 2012?
22 A: Yes, ma'am, I was.
23 Q: And what, about what time did you get there?
24 A: 12:30.
25 Q: 12:30. When you entered the bar, did you, what did you

State v. Chestnut
TAMEKA MASON - DIRECT BY PRATT

642

- 1 see as far as the number of people that were there?
- 2 A: Just people having a good time drinking.
- 3 Q: Was it pretty busy?
- 4 A: Yeah ---
- 5 Q: Was something special going on that night?
- 6 A: No, ma'am, just a regular night.
- 7 Q: All right. And you said there were a great deal of --
- 8 lots of people there?
- 9 A: Yes, ma'am.
- 10 Q: Did you have an opportunity to see people that you knew
- 11 there?
- 12 A: Yes, ma'am.
- 13 Q: Who did you see that you knew?
- 14 A: Armando Chestnut and a couple more people.
- 15 Q: All right. People from Myrtle Beach?
- 16 A: Yes, ma'am.
- 17 Q: And did you see people that you didn't know?
- 18 A: Yes, ma'am.
- 19 Q: About how many?
- 20 A: Eight to ten.
- 21 Q: Okay. Now did there come a time during that night that
- 22 something unusual occurred?
- 23 A: Yes, ma'am.
- 24 Q: Would you please tell us what you saw that night?
- 25 A: Well, me and my friends was at the table, you know,

State v. Chestnut
TAMEKA MASON - DIRECT BY PRATT

643

- 1 talking and ---
- 2 Q: Which table were you at?
- 3 A: I was at the table as you come into Third on your right
- 4 hand side in the middle of, well, right by the dance floor.
- 5 Q: I'm gonna show you what has been marked as Defense Exhibit
- 6 Two and -- which is a drawing and ask if you could give me,
- 7 the jury and the Court a general idea of which tables you were
- 8 actually at?
- 9 A: These tables right here in front of the dance floor.
- 10 Q: And so on this exhibit there are tables that say tables
- 11 and dance floor?
- 12 A: Yes, ma'am.
- 13 Q: All right. And who were you sitting with?
- 14 A: Well, my sister and a couple of friends, coworkers.
- 15 Q: All right. And what did you see?
- 16 A: Well, we was sitting there and I seen a couple of guys at
- 17 the pool table, they was playing pool. And all of sudden an
- 18 argument broke out and I heard, you know, back and forth, but
- 19 the music was kinda loud so I couldn't make out what they were
- 20 saying. And so they was into it or whatever.
- 21 Q: What kind of tone of voice were they using?
- 22 A: I mean, like they was gonna fight, a argument, you know.
- 23 Q: Loud?
- 24 A: Loud.
- 25 Q: Real loud?

State v. Chestnut
TAMEKA MASON - DIRECT BY PRATT

644

- 1 A: Well, not loud, loud, but you know, loud enough.
- 2 Q: Loud?
- 3 A: Yes, ma'am.
- 4 Q: Okay. All right. And then what happened?
- 5 A: There was a commotion and a pool stick was thrown,
- 6 somebody got hit across the head whatever and it was a big
- 7 commotion. And by that time, I guess the guys was going out
- 8 and I heard a lot of people say they was going to get a gun or
- 9 whatever and so me and my girls got up and we was exiting out
- 10 the door right after they left.
- 11 Q: So, right after a group of people left, you were coming
- 12 out; is that right?
- 13 A: Yes, ma'am.
- 14 Q: Okay. And I'm gonna show you State's Exhibit Eighty-seven
- 15 and ask if you can tell me about where, you can see this is
- 16 the bar and these are the parking lots, correct?
- 17 A: (Indicates affirmatively.)
- 18 Q: About where would your car have been parked? If there's a
- 19 number or something labeled on it, would you tell us what that
- 20 is?
- 21 A: Coming out we was over by Victoria's, which is at the end
- 22 on the right hand side of the parking lot. We was somewhere
- 23 in here at the end of Victoria's Restaurant.
- 24 Q: All right. Close to where it's marked sign and light in
- 25 tree?

State v. Chestnut
TAMEKA MASON - DIRECT BY PRATT

645

- 1 A: Yes, ma'am.
- 2 Q: And which side of this berm area were you on, which part?
- 3 A: Like what side was we on, like right here.
- 4 Q: Okay. So you're parked in this line of cars or were you
- 5 back here?
- 6 A: In this line, up front.
- 7 Q: And that would be the front ones directly across?
- 8 A: Uh-huh (affirmative response).
- 9 Q: Marked on the diagram.
- 10 A: Yes, ma'am.
- 11 Q: All right. So you heard commotion and people leaving the
- 12 bar. What happened next?
- 13 A: Well, as we was going to the car, I could see Thoro -- the
- 14 guy being jumped on -- he got hit across the head with a
- 15 bottle.
- 16 Q: Did you see that yourself?
- 17 A: Yes, ma'am, that's when we was making our way to the car.
- 18 Q: All right.
- 19 A: And so as we was moving, it was a couple more guys around
- 20 him holding guns. So by that time, we was moving at a fast
- 21 pace trying to get to the car and it was dark so I really
- 22 couldn't see, but you could hear the bottle being cracked over
- 23 his head. And so we got in the car and I heard a one shot and
- 24 that's when we left.
- 25 Q: And try to give us an idea of, of what it was like outside

State v. Chestnut
TAMEKA MASON - DIRECT BY PRATT

646

1 and when I say that, I'm talking about noise?

2 A: There was a lot of commotion going on. You know, people
3 trying to scramble to their cars and get, you know, get away I
4 guess.

5 Q: Okay. And you heard one shot?

6 A: Yes, ma'am.

7 Q: Do you know anything about who shot that?

8 A: No, ma'am.

9 Q: And then you left?

10 A: Uh-huh (affirmative response), yes, ma'am.

11 THE COURT: Yes, ma'am. Go ahead.

12 Q: And you do know Armando?

13 A: Yeah.

14 Q: And how long have you known him?

15 A: Been knowing him for like five years.

16 Q: All right. Did you contact the police afterwards?

17 A: No, ma'am.

18 Q: Why didn't you call the police?

19 A: I was shook up nervous trying to, you know, get home and I
20 that -- it's a lot of peoples there so I'm pretty sure that
21 somebody else would have called because I left the scene. So
22 that's why I didn't call.

23 Q: And between the time of this, did you ever call the police
24 to give your statement?

25 A: No, ma'am.

State v. Chestnut
TAMEKA MASON - CROSS BY RICHARDSON

647

1 Q: And why did you choose not to do that?

2 A: I can't say.

3 Q: I'm sorry?

4 A: I said I can't say; I'm not sure why I didn't do it.

5 Q: Okay. That's fair. About how many people were close to
6 Thoro?

7 A: Well, it was actually three guys jumping on him, but it
8 was some more guys around the fight, standing around.

9 Q: Did you see anyone else that you knew coming up to help
10 Thoro?

11 A: Well, like I say, it was dark and I just seen the guys
12 jumping on him and I was trying to get out of there.

13 Q: All right. Thank you very much.

14 A: You're welcome.

15 Q: Please answer any questions the Solicitor has for you?

16 A: Okay.

17 THE COURT: All right. Cross examination?

18 MR. RICHARDSON: Thank you, Your Honor.

19 CROSS EXAMINATION OF TAMEKA MASON BY MR. RICHARDSON:

20 Q: And you said you had known the Defendant about five years?

21 A: Yes, sir.

22 Q: How close are y'all, Ms. Mason?

23 A: Well, I used to date Armando.

24 Q: So you dated Armando?

25 A: Yeah, I used to date Armando.

State v. Chestnut
TAMEKA MASON - CROSS BY RICHARDSON

648

1 Q: So y'all are pretty close?

2 A: Well we -- well, when we was dating we was close, but
3 remained friends, but not close, after we broke up. I just
4 used to see him around.

5 Q: Okay. Y'all remained close though?

6 A: Friends, but not close.

7 Q: Okay. Now Ms. Pratt asked you, you said that your car was
8 over by Victoria's?

9 A: Yes, sir.

10 Q: And that's that restaurant on the opposite side from where
11 ---

12 A: Yes, sir.

13 Q: --- all the shooting occurred, correct?

14 A: Yes, sir.

15 Q: Were you back towards the road, back towards this end of
16 Victoria's; which park ---

17 A: We was parked at the back like backed in, like our door at
18 Victoria's door, backed in the parking space.

19 Q: Was that closer to the road?

20 A: Yes, sir.

21 Q: To Third Avenue?

22 A: Yes, sir.

23 Q: Okay. So you're pretty much catty-corner from the door of
24 the sports bar?

25 A: Yes, sir.

State v. Chestnut
TAMEKA MASON - CROSS BY RICHARDSON

649

- 1 Q: So you're close to the road?
- 2 A: Yes, sir.
- 3 Q: So it's a pretty good distance from where the fight's
- 4 going on to where you are?
- 5 A: Uh-huh (affirmative response), yes, sir.
- 6 Q: And you're at your car before the fight occurs, correct?
- 7 A: Well, moving at a fast pace, yeah. As I'm going down to
- 8 get in the car, the fight had broke out.
- 9 Q: Why you moving at a fast pace?
- 10 A: I mean, I don't -- I see -- they said they had guns. I
- 11 didn't want to get shot, an innocent bystander get shot; I was
- 12 trying to get in the car and get out of there.
- 13 Q: Both sides said they had guns?
- 14 A: Uh-huh (affirmative response).
- 15 Q: That's correct? Both sides said they had guns? That's
- 16 Myrtle Beach and the other boys said they had guns?
- 17 A: Yes, sir.
- 18 Q: How much had you been drinking that night?
- 19 A: Well, I probably had one shot because I don't drink that
- 20 much.
- 21 Q: You just had one shot?
- 22 A: Yeah, probably one shot.
- 23 Q: How long were you there?
- 24 A: A good hour, probably an hour and a half, fifteen minutes.
- 25 Q: A good hour, an hour and fifteen minutes, somewhere in

State v. Chestnut
TAMEKA MASON - CROSS BY RICHARDSON

650

1 there.

2 A: Uh-huh (affirmative response).

3 Q: And other than alcohol, did you have any marijuana or
4 anything?

5 A: No, sir, no.

6 Q: Okay. Fair statement. Your other girlfriends, it was
7 your sister and a coworker?

8 A: My sister and a coworker, yeah.

9 Q: And you said you were inside when the fight took place
10 inside?

11 A: Yes, sir.

12 Q: And you saw somebody getting hit with a pool cue?

13 A: Yes, sir.

14 Q: You saw somebody get cracked across the head?

15 A: Yes, sir.

16 Q: No doubt that's what you saw?

17 A: Yes, sir.

18 Q: How loud was the music inside the place?

19 A: It's loud; it's very loud.

20 Q: So if they're talking loud and you got to talk loud in
21 there, right?

22 A: Yeah, you have to talk loud to, you know, have a
23 conversation because you can't hear over the music.

24 Q: Because if you and I talk like we're talking right now, it
25 can't be heard?

State v. Chestnut
TAMEKA MASON - CROSS BY RICHARDSON

651

- 1 A: No, sir.
- 2 Q: Okay. And you told Ms. Pratt you didn't call the police
3 that night?
- 4 A: No, sir.
- 5 Q: Did you see the Defendant run over there towards the
6 fight?
- 7 A: Like I said, there was a lot of people moving. I didn't
8 see no faces, I just seen a lot of people.
- 9 Q: You seen a lot of people; people you knew and people you
10 didn't know?
- 11 A: Yes, sir.
- 12 Q: Okay. They were all fighting?
- 13 A: Well, there was a lot of people coming out and like I say,
14 I was trying to get to the car.
- 15 Q: So you were more concerned with getting in the car than
16 anything else?
- 17 A: Yes, because I know they had guns and you know, if they
18 started shooting, you know, I wanted to be gone from there.
- 19 Q: And you're saying that you knew both sides had guns?
- 20 A: Yeah, because I heard them over, you know, I got guns,
21 we're going to get the guns.
- 22 Q: What types of guns did you see?
- 23 A: Huh?
- 24 Q: What type guns did you see?
- 25 A: I didn't see no guns; it was dark. That's what I'm

State v. Chestnut
TAMEKA MASON - CROSS BY RICHARDSON

652

- 1 saying, I heard them say they was going to get guns and by the
2 time I got to the car, I heard a shot.
- 3 Q: Okay. I thought you told Ms. Pratt that you saw a gun out
4 there?
- 5 A: Well, I seen the guys jumping on Thoro, cracked him across
6 the head with a bottle. I seen some more guys around that had
7 a gun, looked like they had a gun but it was dark.
- 8 Q: You can't, I mean you're a pretty good distance away,
9 right?
- 10 A: Yes, sir.
- 11 Q: I mean you're twenty or thirty yards away?
- 12 A: I wouldn't say that far, but I mean, where the fight took
13 place, if you see the place in person, it's not that far from
14 where the fights was placed.
- 15 Q: Okay.
- 16 A: From where the car was parked.
- 17 Q: On State's Eighty-seven, we got parking spaces here,
18 correct?
- 19 A: Yeah, correct.
- 20 Q: Got parking spaces linked in between, correct, and then
21 more parking spaces?
- 22 A: Yeah.
- 23 Q: Then more parking spaces on the other side of this,
24 correct?
- 25 A: No, that would be the building right there.

State v. Chestnut

653

TAMEKA MASON - CROSS BY RICHARDSON

- 1 Q: No, this isn't the building. This is I think Ms. Pratt
2 called it a berm. It's that line where you park up against?
3 A: Oh.
4 Q: Is that correct?
5 A: That's correct.
6 Q: Does that sound about like the layout?
7 A: Yes, sir.
8 Q: And then there's more parking spaces on this side, right?
9 A: Uh-huh (affirmative response).
10 Q: And then more space and then parking spaces up against
11 Victoria's, correct?
12 A: Yes, sir.
13 Q: And you're up against Victoria's way over here where my
14 right hand is?
15 A: Yes, sir.
16 Q: Okay. So you'd be one, two, three, four, five, six car
17 lengths away, correct?
18 A: Uh-huh (affirmative response).
19 Q: So it'd be kinda hard -- and you said it was dark -- it'd
20 be hard to see anything?
21 A: Correct.
22 Q: And you're concentrating on getting in your car?
23 A: Yes.
24 Q: And you don't hear a gunshot until you get in your car?
25 A: Yes, sir.

State v. Chestnut
TAMEKA MASON - REDIRECT BY PRATT

654

1 Q: And you told Ms. Pratt you had been convicted for giving
2 false information?

3 A: Yes, sir.

4 Q: And forgery and you're on probation for the forgery?

5 A: Yes, sir.

6 Q: That was recent?

7 A: Yes, sir.

8 Q: Thank you.

9 THE COURT: Any redirect?

10 MS. PRATT: Just one or two, Your Honor.

11 REDIRECT EXAMINATION OF TAMEKA MASON BY MS. PRATT:

12 Q: Tameka, in looking Eighty-seven, did you have -- the
13 Solicitor asked you about whether you were twenty or thirty
14 yards away, somewhere up here at the other parking lot; is
15 that right?

16 A: Yes, ma'am.

17 Q: You were seeing what was going on, where were you walking
18 to and from?

19 A: I was walking out of the bar.

20 Q: From the front door?

21 A: The front door, yes, ma'am.

22 Q: And you would be walking quickly?

23 A: Yes, ma'am.

24 Q: Did you see what you saw as you were walking?

25 A: Yes, ma'am. As I was coming out, me and my friend and my

State v. Chestnut
TAMEKA MASON - RECROSS BY RICHARDSON

655

1 sister, come out -- they over here somewhere, that's where all
2 that group of boys are. And so as I'm getting in, you can
3 hear the glass shatter over his head and we getting in. So I
4 stop and I looked over and there was a lot of guys -- I know
5 three was throwing hands, you know, on the guy that was on the
6 ground, which was Thoro, and the others ones were standing
7 around. It looked like they had weapons in their hands
8 because they was talking about guns. And by that time, we
9 just jumped in the car and as we were pulling off we hear a
10 shot.

11 Q: And would you have come from here down through the middle
12 or over to the other side here?

13 A: Through the middle.

14 Q: Through the middle?

15 A: Yes, ma'am, because she was backed up so that we was going
16 to the car so I didn't come down the middle of the parking
17 lot.

18 Q: All right. Thank you.

19 A: You're welcome.

20 Q: Nothing further.

21 THE COURT: All right, Solicitor, questions on those
22 particular questions asked.

23 RECROSS EXAMINATION OF TAMEKA MASON BY MR. RICHARDSON:

24 Q: When you hear the glass shatter, you're over by
25 Victoria's, correct?

State v. Chestnut
TAMEKA MASON - RECROSS BY RICHARDSON

656

- 1 A: Almost to the car, yeah.
- 2 Q: Almost to the car so you're real close to Victoria's?
- 3 A: Yes, sir.
- 4 Q: Real close to Third Avenue?
- 5 A: Yes, sir.
- 6 Q: Way far away from where the fight's going on?
- 7 A: But I could still see the fight as I'm coming down the
- 8 middle of the parking lot to get in the car, you could see
- 9 where the guys are, the group of guys are fighting.
- 10 Q: You saw them going out there before you ---
- 11 A: Yeah, I just see a lot of guys huddled over and I see the
- 12 bottle -- I hear the glass shatter over the man head and I got
- 13 in the car.
- 14 Q: Where are you when you hear the glass over the head?
- 15 A: Like almost to the car in the middle of the parking lot
- 16 where I was parked at ---
- 17 Q: Okay. Thank you, Your Honor.
- 18 THE COURT: All right, ma'am, you may step down.
- 19 Do you wish the witness to be excused?
- 20 MS. PRATT: Yes, Your Honor.
- 21 THE COURT: Any objection?
- 22 MR. RICHARDSON: No, sir, Your Honor.
- 23 THE COURT: All right, ma'am, you're released from your
- 24 subpoena and may go back to your regular duties.
- 25 All right. Your next witness, please, ma'am?

State v. Chestnut

666

MICHAEL DEWARREN SPIVEY - DIRECT BY PRATT

1 please, ma'am?

2 MS. PRATT: Thank you, Your Honor. I will call Michael
3 Spivey to the witness stand.

4 THE COURT: All right. If you'll please come around, Mr.
5 Spivey, and meet the Clerk right here at the corner of the
6 Bench.

7 MICHAEL DEWARREN SPIVEY, HAVING BEEN
8 SWORN TESTIFIES AS FOLLOWS:

9 CLERK: State your full name and spell your last name?

10 MR. SPIVEY: Michael Dewarren Spivey, S-P-I-V-E-Y.

11 THE COURT: Go ahead, Ms. Pratt.

12 DIRECT EXAMINATION OF MICHAEL DEWARREN SPIVEY BY MS. PRATT:

13 Q: Mr. Spivey, where do you live?

14 A: Myrtle Beach, South Carolina.

15 Q: How long have you lived in Myrtle Beach?

16 A: All my life.

17 Q: All right. And are you employed?

18 A: Yes.

19 Q: And what kind of work do you do?

20 A: Mobile detailing and pressure washing.

21 Q: And is that here in Myrtle Beach?

22 A: It's all over.

23 Q: All right.

24 A: It's mobile.

25 Q: Oh, it's mobile. Okay. So that's all over Horry County?

State v. Chestnut
MICHAEL DEWARREN SPIVEY - DIRECT BY PRATT

667

1 A: Yes.

2 Q: All right. And, Michael, just to get some things out of
3 the way at the beginning, you are a -- actually a co-defendant
4 in this case of the Defendant, Armando Chestnut; is that
5 right?

6 A: Yes.

7 Q: And you are, excuse me. And you are here testifying for
8 the Defense, correct?

9 A: Yes, ma'am.

10 Q: And you do have a prior record for a conspiracy on
11 possession with intent to distribute cocaine base; is that
12 right?

13 A: Yes, ma'am.

14 Q: All right. Now I want you to direct your attention back
15 to the events of March the 6th, 2012. Can you tell me where
16 you were that night?

17 A: I was at Third Avenue.

18 Q: All right. The 3rd Avenue bar?

19 A: Yeah, 3rd Avenue Bar & Grill.

20 Q: Excuse me. About what time did you arrive?

21 A: I wasn't certain. I want to say like about 10:30,
22 could've been earlier, could've been later.

23 Q: All right. And were you drinking that evening?

24 A: Yes.

25 Q: All right. What else were you doing that evening?

State v. Chestnut

668

MICHAEL DEWARREN SPIVEY - DIRECT BY PRATT

1 A: Really I was just there, I was just there like just
2 listening to the music.

3 Q: Okay. What kind of music were they playing that night?

4 A: Reggae.

5 Q: And you like Reggae music?

6 A: Yes.

7 Q: Okay. So you were there listening to the music, you got
8 there about 10:30-ish something like that. How many people
9 were in the bar?

10 A: I want to say when I came to that bar, I'm uncertain if,
11 if there was people over by the, coming in through the door
12 because you got your pool tables over like on the left-hand
13 side is where you come in through the door. I was on the
14 right-hand side by the bar and a little further down by the DJ
15 booth. I was just buying drinks walking back and forth, like
16 just dancing.

17 Q: All right. I'm gonna show you what's been marked as
18 Defendant's Exhibit Number Two and there are some labels and
19 numbers on it and just ask to pick what is closest to where
20 you were approximately during this -- you know around 10:30-
21 ish and on?

22 A: I was here and right back over here.

23 Q: So you are pointing to?

24 A: The bar.

25 Q: The L part of the bar?

State v. Chestnut
MICHAEL DEWARREN SPIVEY - DIRECT BY PRATT

669

- 1 A: Exactly.
- 2 Q: And back to the back of the bar?
- 3 A: Exactly.
- 4 Q: All right. And as you were there, how many people seemed
- 5 to be coming in?
- 6 A: I'd say it had to be at least about -- I want to say about
- 7 forty people.
- 8 Q: Okay.
- 9 A: Could have been more or less.
- 10 Q: Okay. Did you recognize all the people?
- 11 A: No, I mean I know, I know quite a few people. I know a
- 12 lot of people, but I mean like I saw people in there that I
- 13 knew. But I didn't like -- I wasn't there to see nobody. I
- 14 was just there, you know enjoying myself. It was about me for
- 15 real.
- 16 Q: All right. And did you see people that were people you
- 17 didn't recognize from Myrtle Beach?
- 18 A: That -- that's everywhere, that's every bar, any bar you
- 19 go to, you gonna see that.
- 20 Q: All right. Tell me what happened as the evening wore on.
- 21 Start around 1 o'clock, something like that.
- 22 A: I was drinking a drink. I was standing by the bar. I
- 23 heard a commotion.
- 24 Q: Where was the commotion?
- 25 A: Over by the pool tables.

State v. Chestnut

670

MICHAEL DEWARREN SPIVEY - DIRECT BY PRATT

1 Q: Okay.

2 A: So what I did, it was getting noisy, you know, people was
3 jumping around. I ran over there and they was just betting,
4 just being noisy betting. So I walked back.

5 Q: Excuse me, you said betting?

6 A: Yeah.

7 Q: Betting. Okay.

8 A: Betting.

9 Q: Okay. Go ahead.

10 A: So I walked back to the table -- I walked back to the bar;
11 I was still drinking. And then like I said, about fifteen
12 minutes later, I seen the deceased with a pool stick, he had a
13 pool stick and he was getting ready to hit somebody with it.
14 I don't know who he was gonna hit. So what I did, I grabbed
15 the pool stick from him and I told him, I said listen -- and
16 like we never, we didn't struggle or anything. It was like, I
17 said listen, man, whatever y'all going through, y'all can talk
18 about it. Y'all ain't got to go through this. So he let the
19 stick go and I put the stick down and I walked off. And then
20 when I walked -- I said something to the big guy because he
21 was kind of acting like, you know, he was kind of getting
22 rowdy and I told him the same thing. I said, man, look I
23 don't know what's going on man, but whatever y'all going
24 through, y'all can talk about it and you know every man is a
25 man. Every man grown and I walked back.

State v. Chestnut
MICHAEL DEWARREN SPIVEY - DIRECT BY PRATT

671

1 Q: Would you describe for me what -- you said to the
2 deceased, what did he look like?

3 A: He had dreads and he was slimmer. He was slim and he had
4 dreads.

5 Q: And you say the big dude, do you remember what he was
6 wearing or ---

7 A: To tell you the truth, I remember his name because it was
8 Damien, and I remember his name because even after the fact,
9 after everything escalated like -- after I got home, he
10 followed me and my baby's mother in the car with a gun.

11 Q: Okay.

12 A: All this was recorded, but at the same time, I mean.

13 Q: And let me get back to the night of the incident; that's
14 what's important here okay?

15 A: All right.

16 Q: Now, after you told these two gentlemen, you know, leave
17 it alone; where did you go and what did you?

18 A: I walked right back to my drink. When I walked back to my
19 drink and I said this countless times, I was drinking, I
20 turned facing the bar. When I turned back around and this is
21 just how it appeared to me, when I looked back around like a
22 vacuum was actually sucking everybody outside. That's just,
23 I'm being for real -- that's just how it appeared to me.

24 Q: Okay. And so people, there was nobody in that center area
25 by the end of that; is that what you're saying?

State v. Chestnut

672

MICHAEL DEWARREN SPIVEY - DIRECT BY PRATT

1 A: Everything was going so fast, it just seemed like
2 something just pulled everybody outside.

3 Q: All right. And what, did you see anything that went on
4 outside in the parking lot?

5 A: No.

6 Q: All right. And then I direct your attention a little bit
7 later, people started coming back in, particularly, the big
8 guy that you're talking about. Tell me what you saw then?

9 A: Quite honestly I was under the influence, but I don't
10 think I was like that but I questioned myself even after the
11 fact, because I was asking myself that like, Why did I hit
12 him? I know that I made a statement but at the same time I
13 questioned myself because I try to make the right decisions.

14 Q: Well, let me back you up because you haven't told the jury
15 about that. When he came back into the bar, what did you see
16 and what happened?

17 A: When the individual came back in?

18 Q: Yes, sir.

19 A: When the big guy came back in?

20 Q: Uh-huh (affirmative response).

21 A: When he came back in, he came back in and like he swung.
22 He came back through swinging actually. So I duck and I hit
23 him and when I hit him, he fell to the ground. And like I
24 explained myself, I like, if I was like into foolishness, the
25 man was out, he was down. I could have did anything but I

State v. Chestnut

673

MICHAEL DEWARREN SPIVEY - DIRECT BY PRATT

1 didn't. I just threw my hands up and backed up.

2 Q: Did you see Armando hit him?

3 A: Right then and there, no. I mean, for real, like I was so
4 much caught up in the, like -- I was trying to figure out like
5 what I did.

6 Q: Did you and Armando have any secret signal or anything
7 that said let's jump on this guy?

8 A: Me and Armando did not even talk until I called -- I want
9 to say I called Armando later on, way, way after everything.

10 Q: All right. I'm gonna show you some clips from what has
11 been marked as -- and entered into evidence as Defense Exhibit
12 Number Four.

13 MS. PRATT: Court's indulgence?

14 THE COURT: Yes, ma'am.

15 MS. PRATT: For the record, Your Honor, I'm showing the
16 clip which is marked Defense Exhibit Four, D, which is Camera
17 10 from about 1:12:46 forward. May I allow the witness to
18 come down please?

19 THE COURT: Would you see better if you came down?

20 A: Yes.

21 THE COURT: All right. Why don't you go stand over there
22 next to Ms. Pratt next to the microphone. You see that
23 microphone on the desk right there, if you could stand next to
24 that please. Thank you.

25 BY MS. PRATT:

State v. Chestnut
MICHAEL DEWARREN SPIVEY - DIRECT BY PRATT

674

1 Q: All right. Mr. Spivey, in this picture that you see, can
2 you see where you are?

3 A: No.

4 THE COURT: You need to speak up?

5 A: No.

6 Q: All right. And this area -- you see the pool tables; is
7 that right?

8 A: Yes.

9 Q: And this area here, do you know what that area is?

10 A: That's the area I'm at but -- up -- if you push the arrow
11 up, right over in that area there, that's where I'm at.

12 Q: Okay. All right. And you stated you saw a commotion; is
13 this what you talked about?

14 A: Yes.

15 Q: And who do you see on the right-hand -- the left-hand side
16 of the pool tables? What's happening right there?

17 A: I see individual grabbing a pool stick, that's about -- I
18 see the individual grabbing a pool stick.

19 Q: All right. And is that grabbing what you were discussing,
20 describing?

21 A: No, that's a separate incident. I never -- I was never
22 been aware of that incident there.

23 Q: Okay. I'm going to move this ahead a bit. Do you see
24 yourself here?

25 A: No, ma'am.

State v. Chestnut
MICHAEL DEWARREN SPIVEY - DIRECT BY PRATT

675

- 1 Q: And do you see where you are here?
- 2 A: No, I don't.
- 3 Q: Is this what you were describing?
- 4 A: No.
- 5 Q: About people leaving?
- 6 A: No.
- 7 Q: Okay. I'm going to show you now -- (To the Court) for the
8 record, Your Honor, this will be Clip B, Camera 8 beginning at
9 1:14:37. Mike, do you see yourself in these pictures?
- 10 A: Not as of yet.
- 11 Q: Is this you?
- 12 A: No, I don't think that's me.
- 13 Q: Okay. That's fine. Who -- is this person the one you
14 were describing that came in by you?
- 15 A: Damien.
- 16 Q: And is ---
- 17 A: That's me.
- 18 Q: That's you. All right. What -- would you please tell the
19 jury what was going on here?
- 20 A: When Damien came back through the door, he was swinging
21 and when he swung, I felt intimidated, I felt afeard and I
22 just reacted.
- 23 Q: All right. And do you see where Armando is at that point?
- 24 A: No.
- 25 Q: And after you swung, what are you doing here?

State v. Chestnut

676

MICHAEL DEWARREN SPIVEY - DIRECT BY PRATT

1 A: I looked.

2 Q: Looking? All right. You may return to the witness chair
3 if you will.

4 That night -- I direct your attention to that night, did
5 you see Thoro after the fight outside?

6 A: No. No, I didn't.

7 MS. PRATT: Court's indulgence?

8 THE COURT: Yes, ma'am.

9 BY MS. PRATT:

10 Q: Mike, just to give the jury an idea of the general feel
11 for the place, what, what did you hear as far as -- and I'm
12 talking about loud, soft, milling, commotion, that kind of
13 thing, describe what was going on ---

14 A: The atmosphere that night?

15 Q: The atmosphere, good, that night?

16 A: It was okay. I mean, like I said, everything was mellow
17 until whatever went wrong with that pool game.

18 Q: And after that, was it, how did it change?

19 A: Well after that incident occurred, I mean, everybody left.
20 I know I left. I left.

21 Q: When you left, did you hear any commotion outside?

22 A: Actually, I didn't because I like, I just went to my car
23 because like there was was -- shots was being fired and like,
24 I'm like, let me go. I jump in my car, I went home. And the
25 next morning, I got phone calls that things happened and I

State v. Chestnut

677

MICHAEL DEWARREN SPIVEY - CROSS BY RICHARDSON

1 called, I called the police department and asked them were
2 they looking for me and went and turned myself in.

3 Q: All right. Thank you. I have nothing further of this
4 witness. Please answer any questions that the Solicitor has
5 for you.

6 THE COURT: All right. Cross examination?

7 MR. RICHARDSON: Yes, sir.

8 CROSS EXAMINATION OF MICHAEL DEWARREN SPIVEY BY MR.

9 RICHARDSON:

10 Q: And you got a felony conviction?

11 A: Yes.

12 Q: And how long have you known the Defendant?

13 A: From childhood.

14 Q: So forever?

15 A: Yeah.

16 Q: Yeah. Both of y'all grew up here in Myrtle Beach, right?

17 A: Yes.

18 Q: You admitted -- you spoke with the Myrtle Beach Police the
19 next day, correct?

20 A: Yes.

21 Q: You stated you found, found you had a warrant for assault
22 and battery by a mob, right?

23 A: No. Lynching.

24 Q: Okay. And I think that might be what it used to be

25 called, but you're charged with assault and battery by a mob

State v. Chestnut
MICHAEL DEWARREN SPIVEY - CROSS BY RICHARDSON

678

1 second degree, correct?

2 A: Yes.

3 Q: And right after that, one, when you turned yourself in,
4 you knew you could make bond on that, right?

5 A: No.

6 Q: Well, you told them that your cousin was a bail bondsman
7 and you knew you could make bond and get out, correct?

8 A: I got a \$75,000 bond for a charge that the average person
9 get 3,000, \$2500 bond for. I mean, me, I felt like I was
10 over-punished, but I mean, you know, I'm not arguing.

11 Q: I'm asking you, did you tell the police you thought you
12 would be able to make bond and get out the next day?

13 A: For a simple assault, that's what I was thinking I was
14 gonna be charged for.

15 Q: You recall telling the police that you -- no doubt you
16 told them that you hit Damien Canty?

17 A: Yes.

18 Q: And you didn't call him Damien Canty that night, correct?

19 A: I didn't know who the guy was. I found out through my
20 warrant who he was.

21 Q: Okay. And when you told Ms. Pratt that he followed you,
22 were you talking about that night?

23 A: No, he followed me, and Kitelinger was aware of it. I
24 mean, I called, I called the police department, everybody was
25 aware of it.

State v. Chestnut

679

MICHAEL DEWARREN SPIVEY - CROSS BY RICHARDSON

1 Q: Not that night though?

2 A: No, this was after I was released.

3 Q: After you were released? No doubt about it, you knocked
4 him on the ground and then he got stomped?

5 A: Yeah.

6 Q: You remember telling Detective Kitelinger that you didn't
7 know who was chasing who when he came inside?

8 A: But I said I didn't -- I didn't.

9 Q: And you said basically you were just trying to make sure
10 he didn't get to Armando, correct?

11 A: I didn't know who was safe and wasn't armed. I just know
12 -- I was asking myself, I didn't know what really transpired.
13 I was kinda under the influence and what transpired, the dude
14 swung after me and that's why I hit him. I mean ---

15 Q: He swung after you or he swung after Armando when Armando
16 swung at him?

17 A: The guy -- you just seen the video. We all just watched
18 the video. You see where the guy took something and he swung
19 at me.

20 Q: Don't worry; we're not gonna watch the video again. I'm
21 asking you, did you tell the police you swung at him ---

22 A: I don't recall.

23 Q: --- to get him off Armando? You don't recall?

24 A: I don't recall.

25 Q: But you did talk to the police on March 6th, 2012?

State v. Chestnut
MICHAEL DEWARREN SPIVEY - CROSS BY RICHARDSON

680

- 1 A: I did.
- 2 Q: About lunchtime, right?
- 3 A: I'm not certain of what time -- I thought it was more
4 earlier than that.
- 5 Q: And no doubt you turned yourself in, correct?
- 6 A: Yes, I did.
- 7 Q: You said you weren't even a part of that scuffle, the pool
8 table scuffle?
- 9 A: We, we all just seen the video. I mean, I didn't play no
10 part in none of that. I wasn't -- I had no part to do with
11 nothing. I tried to stop a fight. I tried to stop a fight
12 from going on. I grabbed the guy with the pool stick. I
13 grabbed the pool stick. I mean if I'm part of a scuffle, if I
14 grab a pool stick from somebody that's pursuing somebody, I
15 mean don't you think that I would just grab the pool stick and
16 ---
- 17 Q: I'm not trying to put you in that. I'm just saying you
18 weren't involved in that, correct?
- 19 A: No, I wasn't.
- 20 Q: And you told Ms. Pratt that wasn't you grabbing the pool
21 stick on that clip we saw, right?
- 22 A: That wasn't me.
- 23 Q: That wasn't you?
- 24 A: Not on that one.
- 25 Q: Was there ---

State v. Chestnut
MICHAEL DEWARREN SPIVEY - CROSS BY RICHARDSON

681

1 A: In the early, in the earlier part I guess it was two
2 incidents where the guy grabbed the pool stick.

3 Q: How soon after you grabbed the pool stick, did everybody
4 go outside?

5 A: I can't tell you because -- I can't tell you because I
6 don't know. Like some things I seen, some things I didn't
7 see. I seen -- when I seen the guy grab the pool stick I
8 grabbed it. Maybe I wasn't paying attention when all this
9 other stuff was taking place, but what I saw, I grabbed the
10 pool stick and that was that.

11 Q: Well, prior to the shooting, you told the police you heard
12 a shot outside, correct?

13 A: Yeah.

14 Q: Now prior to the shooting, how soon before the shooting
15 did you grab the pool stick?

16 A: That was way before any of that.

17 Q: That was way before any of that?

18 A: That was in the -- listen, when they was playing pool in
19 the beginning when I first got there, shortly after I got to
20 the bar and I got to the bar and I said like about ten-
21 something.

22 Q: You told the police you got there about 11:00 to 11:30,
23 correct?

24 A: Listen, I don't know exactly what time I got there. I
25 mean you can look at the video. The video will show it for

State v. Chestnut

682

MICHAEL DEWARREN SPIVEY - CROSS BY RICHARDSON

1 itself. If you got the time, pull the video up, you'll see in
2 the video clip and where they were playing pool. The guy
3 grabbed the pool stick, was getting ready to hit somebody. I
4 grabbed the pool stick from the guy. He put up no resistance
5 or nothing. I didn't, I told him, I said, listen, whatever
6 y'all going through, y'all can talk about it like men.

7 Q: You've watched the video now, right, I mean other than
8 just watching it just now?

9 A: I seen a, I seen a -- I was allowed to see only a certain
10 part of that video due to the fact that I could only see what
11 had to do with me and the rest was like, the other, the other,
12 the other Defendants in the cases, so I was not allowed to see
13 it.

14 Q: Now when you saw the video, a little piece, that was with
15 Myrtle Beach Police Department?

16 A: No, I seen it with my lawyer.

17 Q: Okay. So you've seen that whole fight inside?

18 A: No.

19 Q: I asked you if you saw the whole fight inside?

20 MS. PRATT: Your Honor, I would ask that the Solicitor
21 allow him to finish his answer.

22 THE COURT: Please do, Solicitor.

23 BY MR. RICHARDSON:

24 Q: Please answer.

25 A: I didn't like really -- I just seen pieces and pieces, I

State v. Chestnut

683

MICHAEL DEWARREN SPIVEY - CROSS BY RICHARDSON

1 mean like and it's been so confusing because like I can't
2 remember like what I seen back then.

3 Q: Okay. The fellow we saw, that we just saw, grabbing the
4 pool stick, was that the same guy you grabbed the pool stick
5 from before?

6 A: The guy who grabbed the pool?

7 Q: The video clip we just watched.

8 A: Or the guy who that was grabbing the pool stick with the
9 dreads?

10 Q: Is that, is that , that is the same guy? You're saying
11 you broke up a separate fight with the pool stick?

12 A: I didn't break up no fight. It wasn't a fight. The guy
13 grabbed the pool stick and I grabbed a pool stick. It's
14 simple.

15 Q: I'll move on. No doubt about it, you told the police you
16 didn't know who was chasing who when they came inside the bar
17 after the shooting?

18 A: I wasn't sure what I said then. I mean that's been over a
19 year and I ---

20 Q: It would have been fresher in your memory back then,
21 correct?

22 A: Yeah, it probably would have.

23 Q: And you were drinking a good bit that night, correct?

24 A: I mean, yes. I wasn't ---

25 Q: Another -- you snapped like that and hit?

State v. Chestnut

684

MICHAEL DEWARREN SPIVEY - CROSS BY RICHARDSON

- 1 A: No. No. I was swung at and I swung.
- 2 Q: You told the police, yeah, I assaulted that man, correct?
- 3 A: I don't, I don't, I don't, I don't recall.
- 4 Q: You didn't tell the police I was defending myself?
- 5 A: I -- you said, are you telling me I didn't say that?
- 6 Q: I'm asking you a question. Did you tell the Myrtle Beach
- 7 Police Department that you were defending you?
- 8 A: I don't know what, listen, I don't know what I said, but I
- 9 do know I was defending myself and looking at the video, you
- 10 can tell that I was defending myself.
- 11 Q: You remember telling the police a guy came in and I hit
- 12 him?
- 13 A: That ain't how it happened.
- 14 Q: That's not what you said or ---
- 15 A: That's not how it happened; you saw the video, right?
- 16 We just watched it -- we all just watched the video.
- 17 Q: We have all watched the movie ad nauseam.
- 18 A: And we see the guy swung. We also saw that ---
- 19 Q: You told Myrtle Beach Police that you owe a debt of
- 20 loyalty to the Defendant, didn't you?
- 21 A: I owe my loyalty to anybody; anybody deserves loyalty if
- 22 they ain't did nothing wrong to me. But I mean just like I
- 23 said this as well, but that don't mean I would come and lie or
- 24 make up a story. I mean the facts are there. The facts are
- 25 there. The facts are on the -- you got the video there. The

State v. Chestnut
MICHAEL DEWARREN SPIVEY - CROSS BY RICHARDSON

685

1 facts show theyself.

2 Q: Did you tell the Myrtle Beach Police Department that you
3 owed a debt of loyalty to ---

4 A: Maybe I did, but the way they took, I don't know how they
5 took it, but I know what I meant when I said it.

6 Q: After you told the Myrtle Beach Police Department you owed
7 the Defendant a debt of loyalty, did you tell them, I owe
8 everybody a debt of loyalty?

9 A: No, maybe I didn't.

10 Q: You heard them tell the Myrtle Beach Police Department
11 that Myrtle Beach people come together.

12 A: I'm from Myrtle Beach. I'm gonna tell you something,
13 that's so far -- that's so far from the truth.

14 Q: Did you tell Myrtle Beach Police Department, Myrtle Beach
15 guys ---

16 A: I couldn't have told them that. I could not have told
17 them that.

18 Q: Is that a no?

19 A: I ---

20 Q: Or you don't recall?

21 A: I know that, I know that not to be true being from Myrtle
22 Beach.

23 MR. RICHARDSON: Your Honor, if you'd please instruct the
24 witness?

25 THE COURT: All right, sir. Listen to the question,

State v. Chestnut

686

MICHAEL DEWARREN SPIVEY - CROSS BY RICHARDSON

1 answer the question, then you may explain it.

2 MR. RICHARDSON:

3 Q: Did you tell Detective Kitelinger that the Myrtle Beach
4 people come together?

5 A: I don't recall telling Kitelinger such a thing.

6 Q: Did Myrtle Beach Police Department attempt to get the
7 Defendant's phone number off of your cell phone?

8 A: Yes.

9 Q: And did you freely give it to them?

10 A: That's not my job to give them his phone number or anyone
11 else's phone number. That wasn't my job.

12 Q: So the answer is no, you did not give them the phone
13 number?

14 A: No, I didn't even give them my phone. They took it.

15 Q: You knocked Damien Canty out, correct?

16 A: Where is he now?

17 THE COURT: Sir, just answer the questions yes or no and
18 then you may explain it.

19 Q: You struck Damien Canty?

20 A: I struck him.

21 Q: Damien Canty fell to the floor?

22 A: Yes.

23 Q: Damien Canty did not get up? Yes or no? Did he get up?

24 A: No.

25 Q: And some people would consider that knocked out, correct?

State v. Chestnut

687

MICHAEL DEWARREN SPIVEY - CROSS BY RICHARDSON

- 1 A: Yes.
- 2 Q: And after you knocked him down, other people from Myrtle
3 Beach jumped on him, correct?
- 4 A: Yes.
- 5 Q: You're the Defendant's buddy, correct?
- 6 A: Yes.
- 7 Q: I mean, you've been here all week. You're here for him?
- 8 A: Why wouldn't I?
- 9 Q: And you're here for him today?
- 10 A: Yeah. What, I suppose to turn my back on somebody in the
11 time of trouble?
- 12 Q: I'm not asking; I'm just ---
- 13 A: I mean, but that's the way you're trying to make it --
14 that's why you trying to make it seem. I mean, like I'm not
15 -- I'm not that type of person. I'm a man; I'm not a child.
16 And like the thing about this whole situation, it, it's bad.
17 I feel sorry for this lady over here who lost a son. You know
18 I have a mother -- I have a mother. I've done been in trouble
19 and, I mean, I've been in a great deal of trouble but I came
20 home and I changed. I'm not the same person I used to be.
21 But at the same time, that don't mean I'm gonna come in here
22 and try to cover up the truth for a lie. I mean I came here
23 to tell the truth and all. I could have been in the midst of
24 that. I could have been -- if this case could have spiraled
25 out to where I could've been in way more trouble than I'm in.

State v. Chestnut

688

MICHAEL DEWARREN SPIVEY - CROSS BY RICHARDSON

1 But at the same time, here it is, you getting ready to
2 prosecute me on that assault by a mob and I know by me coming
3 to testify in the Defense for them, that don't make it no
4 better on me. Because you can come at me on a whole different
5 level just due to the fact of me testifying for them. But I
6 came, not because I'm afraid, I came because I'm a man and I
7 feel it's the right thing to do. I mean, like, I told y'all
8 from the beginning what it was and that's just what it was,
9 man. I mean, you can try to -- you can try to assassinate my
10 character or try to make me look bad, man, but I know who I am
11 and I know what's going on.

12 Q: With regard to your statement you gave police, you struck
13 Damien Canty.

14 A: I did.

15 Q: And that's the same thing you said today, correct.

16 A: Yes.

17 Q: So, that doesn't really change my prosecution of you,
18 correct?

19 A: Okay. Okay. And once again, you told the police you owed
20 a debt of loyalty to ---

21 MS. PRATT: Objection, asked and answered, Your Honor.

22 THE COURT: I'll allow it one more time. You may
23 proceed, Solicitor.

24 BY MR. RICHARDSON:

25 Q: You told the police you owed a debt of loyalty to the

State v. Chestnut
MICHAEL DEWARREN SPIVEY - CROSS BY RICHARDSON

689

1 Defendant?

2 A: Yes, I did.

3 Q: At the end of your interview with the Myrtle Beach Police
4 Department -- and you were Mirandized when you gave a
5 statement, correct?

6 A: I don't know.

7 Q: You don't know?

8 A: No.

9 Q: Were you there freely and voluntarily?

10 A: Yes, I was.

11 Q: They didn't try to strong-arm you or threaten you in any
12 way?

13 A: No.

14 Q: At the end of that interview, did you joke with two police
15 officers about, just kidding, somebody took over my body?

16 A: Took over my bike?

17 Q: Did you tell Detective Clothier and Detective -- Officer
18 Tedone that you didn't really hit anybody, somebody took over
19 your body? Did you say that?

20 A: I said basically what I was saying and I always say that;
21 that's not nothing new that I say. I feel like with anybody,
22 if a person pushed you in a corner or if you -- something take
23 over you. A weak person will get strong in certain
24 situations when it come to defending theyself. So let's not
25 act like you don't understand what's being said and try to

State v. Chestnut

690

MICHAEL DEWARREN SPIVEY - CROSS BY RICHARDSON

1 take it and turn it around to be what you want it to be here.

2 Let's be for real here, man. A man's life is on the line.

3 A lady lost her son. I feel -- she's trying to find out like
4 getting it resolved -- resolving this situation. Man, I'm not
5 the culprit here.

6 Q: And I'm trying to get to the bottom of the situation. Did
7 you make that statement; yes or no?

8 A: Yes, I did.

9 Q: And you laughed after you said it, correct?

10 A: I did.

11 Q: At this point, when you gave your statement, you knew a
12 young man was dead and you knew another lay in the hospital,
13 correct?

14 A: I didn't -- you know when I found out that the guy was
15 dead? They didn't even mention nothing to a murder until way
16 almost at the end of the interview. I didn't knew nobody was
17 dead. I ain't no nobody got shot.

18 MR. RICHARDSON: Your Honor, I have no further questions
19 of this witness.

20 THE COURT: Any redirect?

21 MS. PRATT: No, Your Honor.

22 THE COURT: Do you wish the witness to be excused?

23 MS. PRATT: Please, Your Honor.

24 THE COURT: All right, sir. You are released from your
25 subpoena. You may go back to your regular activities.

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

719

1 MS. PRATT: Your Honor, I would call Armando Chestnut to
2 the witness stand.

3 THE COURT: All right, sir, please come around and
4 testify. Meet the Clerk right over here at the corner, sir.

5 CLERK: Please raise your right hand and put your left
6 hand on the Bible?

7 ARMANDO K. CHESTNUT, HAVING BEEN
8 SWORN TESTIFIES AS FOLLOWS:

9 CLERK: Please state your full name and spell your last?

10 MR. CHESTNUT: Armando Chestnut, C-H-E-S-T-N-U-T.

11 THE COURT: All right, sir, do you have a middle name,
12 sir?

13 MR. CHESTNUT: Kimokke, K-I-M-O-K-K-E.

14 THE COURT: Okay. And also, just for the record, spell
15 your first name also please?

16 MR. CHESTNUT: A-R-M-A-N-D-O.

17 THE COURT: Very good. You may proceed, Ms. Pratt.

18 MS. PRATT: Thank you, Your Honor.

19 DIRECT EXAMINATION OF ARMANDO CHESTNUT BY MS. PRATT:

20 Q: Armando, I know you're nervous. Do you need for me to
21 give you some water; you okay?

22 A: I'm okay.

23 Q: All right. You are the Defendant in this case, aren't
24 you?

25 A: Yes, ma'am.

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

720

- 1 Q: You need to sit up a little bit and speak into that
2 microphone so that everybody can hear you. Okay?
- 3 A: Yes.
- 4 Q: All right. Do you reside in the Myrtle Beach area?
- 5 A: Yes, ma'am.
- 6 Q: How long have you lived in Myrtle Beach?
- 7 A: All my life.
- 8 Q: All right. And you live -- are you living close to the
9 3rd Avenue Sports Bar or?
- 10 A: Like right around the corner from probably like a four or
11 five-minute drive.
- 12 Q: All right. And you've been here throughout the trial
13 because this is your trial, correct?
- 14 A: Yes, ma'am.
- 15 Q: And you're on trial right now for the offenses of murder
16 and attempted murder and pointing and presenting a firearm and
17 assault by a mob second degree; is that right?
- 18 A: Yes, ma'am.
- 19 Q: Okay. So you know and you're very familiar with the
20 incident we're talking about today?
- 21 A: Yes, ma'am.
- 22 Q: And in fact, you've sat through watching the videos and
23 all the evidence that's been presented, correct?
- 24 A: Yes, ma'am.
- 25 Q: And you have -- this is your chance to tell your story?

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

721

1 A: Yes, ma'am.

2 Q: You understand that?

3 A: Yes, ma'am.

4 Q: So, let's go back to the night and, well let me back up
5 for just one more thing before we get into it. You do have
6 two prior felonies, don't you?

7 A: Yes, ma'am.

8 Q: Okay. So let's back up then and start talking about what
9 happened on the night of March the 6th. Take me back to that
10 day somewhere around, I don't know, early evening and tell me
11 what you were doing. What was your plan for that evening?

12 A: I don't know if I called Annaliese or she called me, but I
13 think she called me and asked me did I want to go out and I
14 told her I would go out with her and she came by. And I
15 decided to go -- I didn't want to go to, to a regular club,
16 like where everybody would be, you know, I wanted to go to
17 Broadway somewhere. She -- and she being my girlfriend, she
18 just want, because she know I be at 3rd Avenue and all the
19 other clubs so -- and she just wanted me to -- she wanted me
20 to go to some of the clubs that I usually go to so she could
21 see, I guess -- I don't know if she wanted to see about
22 another girl that I was talking to or something, but -- so I
23 asked her before I left, I was like, you sure you want to go
24 to these clubs and she was like yeah, I'll go.

25 Q: And what was the name of the first club that you went to?

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

722

- 1 A: Sam's Beer Garden.
- 2 Q: All right. And did you spend some time at Sam's and then
3 where did you go from there?
- 4 A: I went to Jet Age.
- 5 Q: And how long did you spend there?
- 6 A: Probably ten, fifteen minutes.
- 7 Q: Okay. And then where did you go?
- 8 A: I left there and I went to 3rd Avenue Bar & Grill.
- 9 Q: Do you have any idea about what time of the night that
10 was?
- 11 A: I'm not sure. It probably was, oh probably about 12:30.
- 12 Q: Okay.
- 13 A: Somewhere around in there.
- 14 Q: Around midnight?
- 15 A: Yeah.
- 16 Q: Midnight/one o'clock? Okay. And at that time, was there
17 anything special going on at the 3rd Avenue Bar & Grill?
- 18 A: Not, not when I, when I first got there, everything was
19 cool when I first got there. Me and her walked in and it's a
20 mainly black club so she's white so when they seen me with
21 her, I guess everybody was looking, you know, but I took her
22 in there and we bought some drinks.
- 23 Q: How many drinks did you have?
- 24 A: At that time, like two drinks.
- 25 Q: Okay. And whereabouts were you sitting?

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

723

1 A: Like as soon as you come in 3rd like to the left. There's
2 some chairs right there by the pool table and we sat right
3 there.

4 Q: All right. I'm gonna show you what's been marked as
5 Defense Exhibit Two, which is the diagram of the bar and ask
6 if there's a number or whatever that's close to about where
7 you were sitting?

8 A: Like right over in here, number ten right here, right up
9 in this area by the window.

10 Q: By the window?

11 A: Yeah, by the window.

12 Q: And you were sitting at a table there with Annaliese?

13 A: It's not, it's not, there wasn't a table there; it was
14 some chairs right there, like two or three chairs right there.
15 They only got tables by the window right there.

16 Q: And what was going on around you?

17 A: Some guys was shooting pool. I seen a couple of fellows
18 that I knew. I seen a girl that I was working with at Kansas
19 City Steakhouse and this is the only people that I seen every
20 -- when I go in there.

21 Q: Give me some names of some fellows and again speak up a
22 little bit?

23 A: All right.

24 Q: So that they can all hear you. Give me some names of some
25 fellows that were there that you know?

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

724

- 1 A: I saw Thoro there, which is Dewayne.
- 2 Q: What is Thoro's real name?
- 3 A: Dewayne. He was Dewayne Durant.
- 4 Q: Okay.
- 5 A: I saw Michael, which is Spivey, Michael Spivey.
- 6 Q: And does he have another name that he goes by?
- 7 A: Gremlin.
- 8 Q: Gremlin?
- 9 A: Yes, ma'am.
- 10 Q: Okay. And who else was there?
- 11 A: I saw a gold-toothed guy named Gucci. I never knew his
- 12 real name until I got charged; I never knew his name until I
- 13 seen it in the paper, but I knew him by Gucci.
- 14 Q: And describe Gucci for me?
- 15 A: Very tall black guy, favor the rapper Gucci.
- 16 Q: Was he doing it -- what was he doing that night?
- 17 A: He was shooting pool.
- 18 Q: Okay. Who else did you see that you know?
- 19 A: I saw Alicia -- this girl named Alicia that that I worked
- 20 with. I saw a couple, well most of them was Jamaican people,
- 21 but I knew a couple, I like saw like two Jamaican girls I knew
- 22 and only people that worked there.
- 23 Q: Did you see people from another county than this that you
- 24 recognized as being from another county?
- 25 A: I didn't, I didn't know they was from a different counties

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

725

1 at the time, but I seen Gucci shooting pool with them so at
2 first, I thought it was Gucci's friends or somebody because
3 he's not from around the area but everybody know him, he shoot
4 pool. So, I'm thinking it's one of the partners. So I didn't
5 know where he was from at the minute, but I didn't, I didn't
6 know them period. I just seen a bunch of guys around the
7 table and around.

8 Q: All right. And then as the night progressed, what went on
9 around the pool tables?

10 A: It was bet. I think it was -- I don't know if it was \$100
11 bet on a pool game or not, but it was a bet on the game and
12 ---

13 Q: Who won?

14 A: Gucci won the game. So the guys was like, they was
15 willing to pay, you know like, they wanted, they wanted to --
16 Gucci won the game, but the guy was willing to pay but, Thoro
17 was wanting to bet more, wanted to bet on another game like;
18 he wanted to bet like two of three more hundred dollars on the
19 next game. So they got in an argument about that. The guy
20 paid Gucci. At the time I walked over there and I was like,
21 why are you arguing for what, why are you arguing with these
22 dudes, right? He was like, ha-ha like I just won a bet. I
23 want to bet two or three more hundred dollars on a game.

24 Q: So Thoro wanted to keep betting and make some more money;
25 is that basically it?

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

726

- 1 A: Yes, ma'am.
- 2 Q: And the fellows that you described who were shooting pool
3 with him didn't -- they wanted to stop; is that right?
- 4 A: Say it again?
- 5 Q: They wanted to stop, the other guys?
- 6 A: No, they didn't want to stop, they just was -- I guess
7 they was getting mad at Thoro because he was just being so
8 boisterous like -- he had so much money I guess, like they
9 were just like, you act like we ain't got no money and, you
10 know, but I will bet, but I didn't really, you know ---
- 11 Q: Okay.
- 12 A: --- catch on to it at the minute, but they was really like
13 just going back and forth about who got money and who don't
14 got money like they would bet \$500 and another one would bet a
15 thousand. It kept going back and forth at first.
- 16 Q: Would you say that the argument was escalating, getting
17 bigger, louder?
- 18 A: Yes, it was getting louder and louder, but at the same
19 time, I'm there, but I'm like telling, because I know Thoro,
20 you know; I'm telling him like chill out, man, like you got
21 the money so why you steady arguing for. Like you won the bet
22 so you got the money, leave it alone, you know.
- 23 Q: All right.. And did you, did Thoro stop?
- 24 A: Yeah, he backed off for a minute then because he had a
25 drink in his hand and he backed off. I remember him just

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

727.

1 turning around because I still had my -- I still had Annaliese
2 with me so I kept like looking back to make sure she was all
3 right. So then I went back to her and then I spoke to her and
4 she asked me what was going on and then I was telling her, it
5 ain't nothing really, nothing, just that they betting on a
6 pool game and they got, they got the money so I don't know why
7 they arguing. And like when I would turn back around, they
8 back to arguing again. I went back over there.

9 Q: Okay. And then what happened?

10 A: The argument got real out of hand and then one of the guys
11 grabbed a pool stick.

12 Q: Describe the guy that grabbed the pool stick?

13 A: He had dreads, kinda slim guy.

14 Q: Do you remember what kind of a jacket he was wearing?

15 A: At the time, I didn't, I don't recall what kind of jacket
16 it was. It looked -- from the camera, it looked like it was
17 green, but I don't know. It might've been brown, but I don't
18 know. But I couldn't tell you really what type of jacket -- I
19 can't recall or remember like that, but ---

20 Q: Okay.

21 A: I just remember the guy with dreads though.

22 Q: And the guy with the dreads grabbed the pool stick and
23 then what happened?

24 A: A dude, it was a dude that was on the other side that
25 grabbed it first and then if you, if you watch the camera

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

728

1 closely, you will see Michael Spivey come from the back of the
2 pool table and grab the pool stick and then you see, well you
3 see the bouncer and Mike get there about same time, but Mike
4 right behind the guy with the pool stick.

5 Q: Okay.

6 A: Both of them take it away but the bouncer got the pool
7 stick really.

8 Q: Okay. And because the bouncer and Mike were involved and
9 the fellow across the other side of the pool table, did the
10 fight keep going?

11 A: I mean, they was still arguing and still going at it back
12 and forth, back and forth. And then I heard some guys was
13 like saying that they was going to get they guns and this and
14 that, whatnot, but I didn't pay it no attention because I
15 didn't expect them -- expect nothing really to happen because,
16 you know, because I'm still with Annaliese so I'm not like, I
17 can't just, you know, walk off and see what's going on with
18 them and at the same time, she was with me. So I just -- you
19 know, it escalated, escalated, fighting, I mean arguing, but I
20 never pay it no attention like what was gonna but I did hear
21 guys say they was going to their cars to get guns.

22 Q: All right. And then after you heard that, what happened
23 as far as everybody that was in the club in that area, Mr.
24 Feaster, Mr. Graham and yourself or Michael Spivey, whoever
25 else was around; what happened there?

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

729

1 A: Where I was at?

2 Q: Yeah, and well, and moving forward to tell me what
3 happened next in that area?

4 A: I didn't see Thoro go out the door because I wasn't paying
5 -- I think I was over with -- still close to Annaliese, but I
6 wasn't talking to her at the time. I think I was talking to
7 somebody else and he must have went out the door but I didn't
8 know he go -- he went out the door.

9 Q: Okay.

10 A: So I, I asked Annaliese, I'm like -- because the club,
11 when I look back, the club was like, the pool table, everybody
12 from the pool table had done went out the door, everybody done
13 went out the door.

14 Q: And what did you see outside the front door?

15 A: There was a bunch of guys sitting right there. I didn't
16 -- like I said, at the time, I didn't know where they was
17 from, I didn't know them, but they was standing right around
18 the area of the pool -- I mean, the front door. I'm still not
19 knowing where Thoro at because I'm really -- my mind really
20 ain't on him because I didn't think they was gonna do nothing
21 or nothing. I just seen a bunch of guys around the door.

22 Q: All right. And then what happened?

23 A: I asked Annaliese, I was like, did you see where Thoro
24 went? And she's like, I think he went to the restroom. So I
25 stood right there and I was like, well, I'll make sure he's

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

730

- 1 all right, you know, he went to the restroom. So the restroom
2 was like in the back of the club.
- 3 Q: And on the diagram, which is Defense Number Two, about
4 where would the restrooms be? Are there numbers near to where
5 the restrooms are?
- 6 A: The restrooms are like right here by 8 or 7.
- 7 Q: The corner where the cameras are from that angle?
- 8 A: Yes, ma'am, 8 or 7.
- 9 Q: All right. So, you're thinking that Thoro has gone to the
10 restroom and you're by the front door; Annaliese is there by
11 the front door at the windows; and a lot of people are now
12 outside.. What happened next?
- 13 A: Then I sit there and waited to see if he come out the
14 restroom but he never come out the restroom. And I was like
15 well, Annaliese, you ain't -- you don't where he at? And she
16 said I think he's somewhere in here. So I started looking
17 around the club but the club was -- I ain't gonna say empty,
18 but where I was at, it was empty.
- 19 Q: All right.
- 20 A: I just notice a lot of people outside.
- 21 Q: So then what did you see?
- 22 A: Then I -- let me make sure I say this correctly. I went
23 out -- I told Annaliese that I about to walk out the door to
24 see if Thoro's out the door?
- 25 Q: Okay.

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

731

- 1 A: So by the time I got to the door, I was walking, I walked
2 out the door and I was just looking around and I looked down,
3 looked down the sidewalk and I see like two or three guys
4 jumping him.
- 5 Q: All right.
- 6 A: I didn't see when he got hit with the bottle in the head
7 because I didn't know he got hit with the bottle in the head,
8 but I know that there was two or three of them on him jumping
9 him.
- 10 Q: Okay.
- 11 A: Like I said, I didn't even know he was outside. I just
12 remember his white coat and I looked and I seen him on the
13 ground fighting. I didn't even know Corey was out there yet.
- 14 Q: All right.
- 15 A: But I was still in the club; I didn't even know that.
- 16 Q: All right. And what ---
- 17 A: And seen that ---
- 18 Q: Go ahead.
- 19 A: --- and I saw that -- I had my phone because -- I had my
20 gun in my pocket the whole time. It's just a little gun and I
21 had it in my pocket the whole time. I went to the car but I
22 didn't never get no gun out the car. I had my gun in my
23 pocket the whole time. I came through ---
- 24 Q: Had you been searched when you went into the club?
- 25 A: When I came through -- if you could look on the camera, I

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

732

1 never got searched when I went in there. Me and Annaliese
2 just walked straight in.

3 Q: Okay.

4 A: We never got searched because I guess the bouncer wasn't
5 there at the door at the time, so I walked right in with my
6 pistol in my pocket. The whole time I was in the club, I had
7 my pistol in my pocket.

8 Q: All right.

9 A: Okay. I went to Annaliese car.

10 Q: Uh-huh (affirmative response).

11 A: I had my phone and I had a couple of bags of marijuana. I
12 put my phone in the car and I put the weed up in the car.

13 Q: Okay. And then what did you do?

14 A: I run over there. When I run over there, I still don't
15 even know Corey over there because I didn't even know he was
16 out there helping Thoro at the moment. When I got there,
17 when, when I was pulling up there, I see the guys on Corey
18 too. So, it's like approximately six or seven of them right
19 in that little area and some still coming from cars.

20 Q: Okay. They're coming from cars?

21 A: Like ---

22 Q: I'm gonna show you what is State's Eighty-seven and ask
23 what area of this parking lot they would be coming from?

24 A: We see some guys that's running from this side over here
25 like -- see guys from here coming over here and I'm coming

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

733

- 1 from over here.
- 2 Q: Over here?
- 3 A: Yeah.
- 4 Q: Okay. For the record ---
- 5 A: From the parking lot.
- 6 Q: Let the record reflect that the first guys on State's
- 7 Eighty-seven he is saying is coming from about the area of the
- 8 tree; is that right?
- 9 A: Yes, ma'am.
- 10 Q: In that general area?
- 11 A: Uh-huh (affirmative response).
- 12 Q: There are some guys, I think you said, from around Number
- 13 12 and Number 10?
- 14 A: Yes, ma'am.
- 15 Q: Towards Number 10?
- 16 A: But it's most of them right over here, over in this area
- 17 in between these cars.
- 18 Q: So most of the people, for the record, are at Numbers 4,
- 19 5, 3, 7, that area there?
- 20 A: Yes, ma'am.
- 21 Q: And you were over somewhere near Camera 6?
- 22 A: I came, when I came out the club, the car was parked over
- 23 here.
- 24 Q: Over near this side?
- 25 A: Yes.

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

734

1 Q: Okay.

2 A: And I went over there, I put the phone up and I put the
3 weed up and I came running from over here. When I got there,
4 I -- when I got there, when I got to probably right here,
5 that's when I realized I see Corey.

6 Q: Okay.

7 A: I see Corey got the gun in his hand. At first I didn't
8 know it was Corey. I thought it was, I thought it was one of
9 them but then I looked again and it was Corey.

10 Q: Okay.

11 A: Corey was coming down hitting one of the guys with the
12 gun. And when they fell, I seen them falling like, like soon
13 as I got right here they was falling. As soon as I got right
14 there, like before I turned this curve right here, a gunshot
15 go off.

16 Q: And whereabouts do you think ---

17 A: Coming, coming from this area. It coming from right here
18 all in-between these cars.

19 Q: So for the record, you're pointing to Numbers 4, 5, 3 and
20 7, that area for the gunshot?

21 A: Yes.

22 Q: Did you have any idea who might have fired?

23 A: At the moment, I, I didn't know who was shooting, but I,
24 it felt like it was somebody close to me. So when I got right
25 here ---

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

735

- 1 Q: Tell me where right here is; tell me the number.
2 A: Like closer to 8 and, what is it, 9.
3 Q: Close to 8 or 9?
4 A: Yeah, I got close to 8 or 9. It seemed like as soon as I
5 got there, I heard a gunshot.
6 Q: Okay.
7 A: I already had my gun to my side, no in no threatening way
8 or nothing trying to -- I was just trying to -- really, I was
9 going over there to scare the guys off Thoro. But when I
10 heard the gunshot, I shot and I hit Canty in the arm.
11 Q: All right. And ---
12 A: But I didn't know at the, I didn't know at the time that I
13 hit nobody because nobody, nobody move or holler or, or gave
14 me the expression that I hit nobody but I just knew that there
15 was -- that everybody that was on Thoro and Corey backed off.
16 Q: And what were you thinking -- what was the reason that you
17 fired?
18 A: The reason I fired was I seen them jumping Thoro and I
19 seen them on Corey too. Corey came to his aid first. Like I
20 said, I didn't even know Corey was out there, period. I
21 didn't even know he was out there until I got about to over
22 here somewhere and I realized it was Corey with a gun in his
23 hand. And so Corey and the dude started fighting whatever,
24 whatnot and they fell in-between these cars right here.
25 Q: And let me stop you for a minute. When you say dude, who

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

736

- 1 do you mean?
- 2 A: Canty.
- 3 Q: The big guy?
- 4 A: The big guy.
- 5 Q: But he was wearing a white cap?
- 6 A: Yes, ma'am.
- 7 Q: And a jacket that had white and blue?
- 8 A: White and blue, I think.
- 9 Q: Okay. All right. And so you fired towards Corey and
- 10 Canty around Number 3; is that right?
- 11 A: Yes, ma'am.
- 12 Q: And then what happened?
- 13 A: And then I backed up. I backed up, people scattered
- 14 around, moving around, and then I come, I believe I come this
- 15 way and get over here by close to -- over in this area, one
- 16 through three, like third and fourth in the parking lot and
- 17 some guys over here that got guns that shoot towards me this
- 18 way ---
- 19 Q: And ---
- 20 A: --- one of these cars that was parked over here got hit,
- 21 but the, the investigative team, they didn't get to see the
- 22 car because the car was already gone by the time.
- 23 Q: And let me stop you for a second. When you say dudes over
- 24 here on the second parked row of cars, they would be somewhere
- 25 between the tree and the light on this exhibit; is that right?

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

737

- 1 A: Yes, ma'am.
- 2 Q: Okay. Then you say they were shooting towards this area?
- 3 A: This area.
- 4 Q: Okay.
- 5 A: When you see it on the camera, you see me come back this
- 6 way and I think that was the bouncer beside me too. If you
- 7 see him when he started ducking -- the guys over here shoot.
- 8 So, I raised my gun and I shot it. That's when I shot the
- 9 window of the car, I mean, the van.
- 10 Q: Okay.
- 11 A: In the van. That's where -- that's where the projectile
- 12 come from off -- on the ground. It come from the van. It
- 13 never penetrated thorough the van. It came from that car
- 14 window.
- 15 Q: Okay. So, so far, if I can talk about the projectiles
- 16 with you for a second. You shot Canty in the elbow?
- 17 A: Yes, ma'am.
- 18 Q: Okay. And so that's one projectile and you shot towards
- 19 here and ---
- 20 A: It hit the window. I didn't know -- like I said, I didn't
- 21 know what I hit until I looked at my paperwork and whatnot,
- 22 but they -- it hit this window.
- 23 Q: Okay.
- 24 A: It hit the window and it ricocheted back on this area
- 25 somewhere over here, over here this way.

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

738

- 1 Q: All right.
- 2 A: But I shot like -- I shot three times though.
- 3 Q: A total of three?
- 4 A: A total of three times.
- 5 Q: All right. And so after you have shot towards the van
- 6 that's on this opposite side, what happens next?
- 7 A: I believe I looked around and I think I seen Canty going,
- 8 going in the club -- going back in the club.
- 9 Q: Did you follow him?
- 10 A: And I followed him back in the club.
- 11 Q: Why did you do that?
- 12 A: Because I just know he was one of the guys that was
- 13 jumping Thoro and he's the one of the guys that started all of
- 14 this.
- 15 Q: Okay.
- 16 A: And I followed him inside the club.
- 17 Q: What did you see when you went inside the club, Armando?
- 18 A: When, when I walked inside the club, like right behind him
- 19 -- well, not really behind them, but I was behind them like
- 20 somebody went in before me, but I was behind them.
- 21 Q: So if I'm understanding what you're saying, there's Canty
- 22 going in and then there's someone and then there's you?
- 23 A: Yes.
- 24 Q: Okay. And what happened?
- 25 A: And then like I was going towards them to fight them. I

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

739

1 didn't ask nobody to help me fight, fight nobody or I didn't
2 tell nobody, say, come on let's get them. I knowed he was a
3 big guy, you know, but I done fought big guys before like I
4 didn't say come help me with this guy or none of that. When I
5 saw him, I went for me and him to fight on a fair one-on-one
6 fight.

7 Q: Okay.

8 A: He swung at me and I did not swing at him first.

9 Q: All right.

10 A: Look at the camera, he's swinging with his jacket at me.

11 Q: Okay.

12 A: And I never get a chance to hit him. I kicked him but I
13 never got a chance to hit him.

14 Q: And why didn't you get a chance to hit him?

15 A: Because Spivey hit him. I didn't even know Spivey was
16 right there. I didn't know he was gonna do that. I didn't
17 ask him to do that.

18 Q: Okay.

19 A: He did that on his own. When he hit him, I didn't even
20 know the dude was, just because he was a big guy, I don't, I
21 don't get knocked down and stumbled down and within one or two
22 seconds get back up. So I didn't know he was unconscious at
23 the minute. I didn't know that. I'm already -- my adrenalin
24 pumping, I'm already fighting, you know, already in the
25 fighting mode, so I didn't know the dude was unconscious at

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

740

1 all.

2 Q: Well, and do you even know that he was unconscious when
3 you kicked him?

4 A: I don't even know that. I can't say that. All I know I
5 went over there to kick him; I kicked him and I went to kick
6 again. Before I could kick the, the second or third time,
7 Feaster, the owner of the club, was pushing me. If you could
8 look and see the camera, I don't even hit him but one kick.
9 That's the only thing I get -- I hit him with was one kick.
10 The other two kicks, I didn't never, they never landed on him.

11 Q: Okay.

12 A: And you could see Feaster pushing me away.

13 Q: And what happened after that?

14 A: And then I seen Annaliese and I was like -- no, she was
15 like, I'm about to go, you know, I'm about to go.

16 Q: Was she upset?

17 A: Yeah, she was upset and I walked out the door and when I
18 walked out the door, I walked to her car.

19 Q: Okay.

20 A: And we got in the car and we left.

21 Q: And where did you go?

22 A: We went to her house.

23 Q: And what did you do there?

24 A: I got to the house and she was asking me what happened.

25 And I told her, I was like, well, they were jumping Thoro --

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

741

1 some guys was out there jumping Thoro. I don't know who they
2 was, some guys out there jumping Thoro, and I went to his aid,
3 I went to help because he's a friend of mine and it could have
4 been anybody, anybody I know friend, been a sister, brother,
5 somebody I seen get jumped, I'm gonna come help. And I just
6 felt bad for him because, you know, he was bleeding. They
7 done hit him in the head with a bottles and he was leaking
8 blood. And I told her that and I told her just like that. I
9 said, well, they was jumping him and I went out there to help
10 him. And I felt like if I didn't help him, ain't no telling
11 what would have happened to him. He could have been dead; he
12 could have been in the hospital; he could have been paralyzed,
13 anything. So and she was like, well, I heard gunshots. And I
14 was like yeah, I shot -- I know I shot at one of the dudes,
15 but I didn't know if I hit him. I still don't know I hit a
16 dude there. I don't even know this.

17 Q: Okay.

18 A: So she was like, well you think you hit him; I said I
19 don't know; I don't think I hit him, but if I ain't heard
20 nobody scream or holler or nothing so I don't think I hit
21 nobody, but I did scare everybody off Thoro.

22 Q: Okay.

23 A: So she was like, okay. All right.

24 Q: And then y'all went to bed, got up in the morning, did
25 you?

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

742

1 A: No, I think -- she did, you know, she was, she just was --
2 kept asking me certain little questions like why did you go
3 out there and I was like I had to help him, you know. Just
4 kept asking me little questions while we was having a drink.
5 And we watched a movie, smoked some marijuana -- the marijuana
6 I put in the car -- and that was it. Well, we laid down.
7 When I was taking off my clothes -- well, when I was taking
8 off my pants, she asked me -- she said that you got a little
9 blood on your pants. So I'm like oh, probably from fighting
10 the dude in the club. So she was like, oh, I'll wash them for
11 you; so she washed my pants.

12 Q: Did you ask her to wash them for any reason?

13 A: I didn't -- I didn't ask her to wash them. I never -- I
14 just recall her stating that I washed my hands, I never washed
15 my hand -- I never went in the house and washed my hands or
16 nothing to try to get nothing off of me like. I wasn't trying
17 to disguise nothing. I just remember her saying that she -- I
18 had blood on my pants and I didn't even know I had blood on my
19 pants. She's the one that initiated that I had blood on my
20 pants.

21 Q: Okay.

22 A: And for me to -- that she would wash them.

23 Q: So what happened the next morning?

24 A: The next morning, I woke up -- I don't know, I don't know
25 -- did I call before that -- did I call -- I'm trying to think

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

743

1 when I called, called you, I'm trying to think was it later on
2 that night before I called you or was it that morning?

3 Q: But you didn't reach me, correct?

4 A: Yeah, I called you after the incident. I think I called
5 you after the incident because I didn't know what happened and
6 I didn't know nobody got shot or nothing but I wanted to
7 advise you to contact the police department for -- and see was
8 they looking for me but I never got in contact with you.

9 Q: Okay.

10 A: And I think I called you that morning, too. I think Ms.
11 Paula answered the phone or said that you was in court. So I
12 never really got in contact with you that morning. I called
13 back that morning.

14 Q: Did you speak to Michael Spivey that morning?

15 A: Yeah. He called me that morning and he was like, he said
16 I think the police looking for us. So, I'm like for what,
17 like, cause I still don't think nobody got shot. I don't even
18 know nobody got shot. And he's like the police looking for us
19 and I was, like, for who. And he's like for me, you, Gucci
20 and Thoro. And I was like for what, the fight that happened
21 last night, and he was like, yeah. So he was like, well, I'm
22 going to the station to see, see what's going on. So I was
23 like, well, I'm gonna to call my mom and see if they been by
24 my house. He was like, all right. So I called my mom and I
25 was, like, mom, anybody, the police or anybody been by the

State v. Chestnut

744

ARMANDO K. CHESTNUT - DIRECT BY PRATT

1 house? And she was like, no, ain't no one came by the house
2 -- ain't no one came by the house. And I said, you sure? She
3 was like I'm sure. She's like, what's wrong? I say, a
4 incident happened last night at 3rd and I heard the police
5 looking for me. So if the police come out to my house, call
6 on the phone to let me know so I could go ahead and call Ms.
7 Barbara before I turn myself in and let her know that I'm
8 turning myself in. So she was, like, all right, all right.
9 But she called me back about ten or fifteen minutes later and
10 she said the police was out here ---

11 MR. RICHARDSON: Your Honor ---

12 Q: And, and don't, don't tell me what your mother said. That
13 would be hearsay. So after the phone call from your mom, what
14 happened? What did you do next? -- I guess.

15 A: My Mom -- I was saying that she called ---

16 Q: You can't say what your mama said.

17 A: All right. I'll skip that.

18 Q: After that was over, what did you and Annaliese do next?

19 A: Sat in the house. She didn't know -- she didn't know at
20 the time that I had, I had the gun. She didn't know it at the
21 time cause I ain't -- I wasn't trying to put in her nothing
22 cause she -- I know she, she's a good girl. She wasn't, she's
23 not, I know she going to school to be a radiologist. I wasn't
24 trying to put her in no harm's way. So I didn't want her to
25 let -- I didn't want her to know that I had a gun during that

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

745

1 time. So what I did when I put the gun up or while I was
2 putting the gun up in her dresser, she was walking by going in
3 the kitchen. And so she was like, what you -- what you are --
4 what are you doing with that? And I was like, man, it's the
5 gun I had last night. But she never knew really that night
6 that I had the gun ---

7 Q: Okay.

8 A: --- during that night because I kept it concealed from her
9 because I ain't -- I just know, you know, I didn't want her
10 act crazy. But I, I, she, she, she did hear me say at Sam's
11 earlier that day -- well, when we, the first club we went to,
12 she did hear me -- I did ask her to put the gun in her
13 pocketbook.

14 Q: Okay.

15 A: But she was like, nah, I can't -- I don't want to put it
16 in my pocketbook because her with an incident and ---

17 MR. RICHARDSON: Your Honor, once again, he's getting
18 into what other people said.

19 THE COURT: All right, sir. Please don't indicate what
20 other people told you, just what you did as a result of the
21 conversation. Thank you.

22 BY MS. PRATT:

23 Q: So let's go to the next morning and you and Annaliese;
24 what did you guys decide to do that, that morning?

25 A: Well, we got up and she was still asking me questions and

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

746

1 whatnot. Then, she was like, well, I got to go to work and I
2 was like, well, you gonna drop me off at my house at the
3 beach, but she stayed in like Surfside -- I mean, not
4 Surfside, Socastee area.

5 Q: Okay.

6 A: So, she -- I was like, well, I'm hungry, you can take me
7 by and get something to eat. So she -- I was like -- she say
8 where you want to eat at. So, I'm like, well, it don't matter
9 and just, I'm just hungry, I need something to eat. But we
10 got in the car and we got in the car and started riding down
11 the road and I just noticed a truck behind us like every turn
12 we turned, it turned. So when I asked her like who is -- who
13 is, who is guy behind you back, like -- she was just like,
14 well -- there was somebody at -- she had two jobs. She worked
15 with me at Kansas City Steakhouse and she worked somewhere
16 else and she was like, well, it might be ---

17 MR. RICHARDSON: Your Honor, once again, I object again
18 to hearsay.

19 MS. PRATT: Your Honor, I don't believe it's truth of the
20 matter asserted.

21 THE COURT: I'm gonna allow that conversation.

22 MR. RICHARDSON: Yes, sir, Your Honor.

23 THE COURT: Go ahead.

24 BY MS. PRATT:

25 Q: So, you were going to get something to eat.

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

747

1 A: Yes, ma'am.

2 Q: And you saw somebody behind you and you wondered what that
3 was -- what was going on. So what did you guys do at that
4 point in the way you were driving?

5 A: She realized -- I know I realized there was a car behind
6 her and I asked her who was this guy and whatnot behind you.
7 And she was like, well, probably somebody from my job that,
8 that stalk me or something. And I was like, well, all right,
9 whatever, you know. So, we steady riding but we going to get
10 something to eat and the car never stopped following us. So,
11 I was like -- I was like, Annaliese, man, I think that's the
12 police. And she was like, nah, it's not the police. I said,
13 man, I think that's the police. So, she was like, nah, I
14 don't think that's the police. So ---

15 Q: Okay.

16 A: --- she rode down the road a little farther and she was
17 like, well, I'm gonna make these turns to see if he's still
18 following me, if it's the police or not. So she made a turn
19 and the truck was still behind us. So that's when I realized
20 -- my instinct kicked in, like, you know, that's the police.
21 I had the gun on me but she didn't know it at the time because
22 I kept the gun concealed from her because I didn't want her to
23 freak out about the gun. So, when I noticed the police behind
24 her, I put the gun in my lap and she seen me put the gun in my
25 lap. And she was like, what you doing with the gun, cause she

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

748

- 1 thought I had it in the house but I didn't want to leave no
2 gun in her house, you know. So -- and she was on the way
3 taking me home. Well, we was going to get something to eat,
4 but she was taking me home afterwards. She had to work and I
5 realized the police -- well, a unmarked was behind us
6 following us. Me and Annaliese don't know what's going on.
7 Don't know, just being scared, just knowing that having a gun
8 on me -- I was scared and I threw the gun out the window.
9 Q: Okay. No question you threw the gun out the window?
10 A: Yeah, I threw the gun out the window.
11 Q: Okay. And then what happened?
12 A: Then they pulled us, they pulled the car. And when they
13 pulled the car, they got us out the car, then they arrested
14 us.
15 Q: All right.
16 A: And asked me what I threw out the window. I initially
17 said I didn't throw anything out the window, but like I said,
18 I was scared. I didn't know -- I don't know what's going on.
19 I still don't know nobody's shot or nothing yet. I just was
20 -- got rid of the gun just to get rid of the gun because I
21 knowed I was a felony and I'd been locked up before.
22 Q: All right. So, you were arrested and brought back to the
23 Myrtle Beach Annex; is that right?
24 A: Yes, ma'am.
25 Q: On the old Air Force Base?

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

749

1 A: Yes, ma'am.

2 Q: And what happened at that point?

3 A: When I got to Myrtle Beach, Detective Kitelinger -- well,
4 I was sitting outside in the patrol car and there was a lady
5 female officer that pulled up there with me. And I was just
6 sitting there in front of the Annex Building and a detective
7 came out and he said that, that Detective Kitelinger would be
8 there in a minute to speak with you. So I was like all right.
9 So, I sit in the car and waiting on them. I recall him -- I
10 knew who he was because I heard the officers were like,
11 there's Detective Kitelinger, that was in the car with me, the
12 female officer but I never met him before.

13 Q: Okay.

14 A: And I just remember him and another officer -- I don't
15 know if it was another detective or what, Truex or somebody.
16 I just remember seeing them with McDonald bags coming from
17 getting something to eat, I guess. I don't know.

18 Q: Okay.

19 A: And they came to the door -- he came to my door, he opened
20 my door. And he was like, I'm gonna need to talk to you and I
21 need to have a good conversation with you and I'm gonna need
22 you to tell me the truth. And I was like, all right.

23 Q: So you went inside the annex?

24 A: And I went in -- I went in and they put me in a conference
25 room.

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

750

1 Q: How did you know it was a conference room?

2 A: Because when I walked in there, I seen like drawings on
3 the board from ---

4 Q: Like a white board like this?

5 A: Yeah, like a chalkboard.

6 Q: Okay.

7 A: It seemed like people -- just got a bunch of drawings out,
8 I guess task force type operation or what -- I don't know. I
9 just knew it was a big conference room. So, I figured it was
10 the conference room.

11 Q: All right. And you waited there for a while?

12 A: I waited there. I sat there for a minute and then -- I
13 don't remember which detective it was, I know it was a female
14 and another guy and I sat there and they was asking me
15 questions about the crime. They was asking me, well, you
16 know, you just need to be truthful and did you do it and I'm
17 like, did what, because I don't know what -- I don't know what
18 was going on. I think they're talking about some fighting or
19 something but I don't know what he's referring to. So I'm
20 trying to get information out of him to see what he's talking
21 about, see how much information he know or what he's talking
22 about because I don't know really what he's referring to. So
23 I'm like -- then he's like, well, did you have anything to do
24 with or did you do it or did you have any involvement in it.
25 And I was, like, I couldn't understand where he was coming

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

751

- 1 from. And I was like, man, I ain't did nothing, you know.
- 2 Q: Did there come a point where you were moved into a little
- 3 interview room maybe the size of from here to where you are,
- 4 about that wide, with Detective Kitelinger and Detective
- 5 Truex?
- 6 A: Yes, I went -- I went in the interview room and he came in
- 7 -- I think he came in first or the officer or both of them
- 8 came in -- I can't remember. But they came in and told me
- 9 they needed to talk to me and whatnot. And he sat down and
- 10 asked me a couple of questions about I don't know -- what is
- 11 it, Miranda?
- 12 Q: He gave you your Miranda Rights, did he?
- 13 A: Yes, asked me how far I went in school. I told them I had
- 14 a GED.
- 15 Q: Hold on. Let me show you State's Exhibit One-Twenty-one
- 16 and ask if you remember seeing that form?
- 17 A: Yes, ma'am.
- 18 Q: And is that your signature on it?
- 19 A: Yes, ma'am.
- 20 Q: All right. So these are your Miranda Rights?
- 21 A: Yes, ma'am.
- 22 Q: And up in the top corner, there's some notes, did you
- 23 write those?
- 24 A: No, ma'am.
- 25 Q: All right. Go ahead. So Detective Kitelinger was it, did

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

752

1 he ask you questions?

2 A: He asked me how far I was and how far I was in school and
3 I told him I was GED. He asked me was I on any drugs or
4 alcohol. I told him I was smoking weed and I was drinking.
5 And asked me would I -- would I be able to -- would I be able
6 to answer his questions correctly. And somewhere in that form
7 it asks if questioned correctly and I told him yeah, maybe.

8 Q: Okay.

9 A: And he asked me something else, I'm trying to think of
10 all of it.

11 Q: And after all the questions that he asked you, you signed
12 the form, correct?

13 A: I signed the form.

14 Q: And he turned on the recorder or the recorder was already
15 on, correct?

16 A: Yes.

17 Q: Okay. And then you started telling them what you wanted
18 to tell them; is that right?

19 A: Yes, ma'am.

20 Q: Did you tell him the truth?

21 A: Not at first, no.

22 Q: Why?

23 A: Because I didn't know what he knew and I was scared at the
24 time so -- and I was, you know, on marijuana. I was just
25 smoking -- I just was smoked like two or three joints in the

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

753

1 house with Annaliese and all the drinking. She had wine and
2 liquor over there and I just -- I don't, I don't, I just
3 couldn't -- I just wanted to see how much he knew.

4 Q: So when you first were talking to Detective Kitelinger and
5 Detective Truex, you did not tell them the truth?

6 A: No, I didn't.

7 Q: Did there come a point where you started telling them what
8 went on?

9 A: Yes, I came to, I -- finally like was like, well, there
10 ain't no use for me sitting here and lie about it. So, I was
11 like well, I shot at -- I shot at the dude. But at the time,
12 it's -- it's two or three guys that are out there was with
13 them guys that had braids or dreads. I was not referring to
14 this -- I felt like, I felt like now that after I, you know,
15 think about it and all that I felt that I was trapped, right?
16 I think they just trapped me into saying that I shot this guy
17 and I kept telling them I shot either this guy or that guy and
18 then they just kept -- cause I didn't know nobody was dead. I
19 never knew that. I knew somebody, two people got shot, but I
20 never knew nobody was dead.

21 Q: And when did you find out that somebody was dead?

22 A: When he, when he finally told me that I -- he said, well,
23 I think you did it and that this guy died and, and I think you
24 did it and whatnot. I was like, I know ain't -- I know I
25 ain't do that.

State v. Chestnut
ARMANDO K. CHESTNUT -- DIRECT BY PRATT

754

1 Q: All right. And you kept telling him?

2 A: Yeah, I kept telling him that I didn't do it and I kept
3 saying back and forth to him like that's not the guy that I
4 hit. It cannot be. It's not the guy that I shot at because
5 the way everything happened, it happened so fast, but I just
6 know in my heart that that's not the guy that I shot.

7 Q: Okay. And when you talk about the shooting, you were
8 shooting into how many people that were around this area where
9 there were folks?

10 A: Roughly, Dewayne -- Wayne was right there; the bouncer was
11 right there; and then you probably got five or six guys from
12 Kingstree right there. So ---

13 Q: All in this whole area?

14 A: All in that whole area right there between from here, up
15 in here to over here -- all up in there.

16 Q: And let the record reflect he's pointing from Numbers 2 to
17 5 and then up to 10; is that right?

18 A: Yes, ma'am.

19 Q: Okay. And that's on State's Eighty-seven. So you told --
20 at the end of your statement, you ended up telling Detective
21 Kitelinger about the gun?

22 A: Yes.

23 Q: Okay. And you -- at the end he told you about the fellow
24 with the dreads dying?

25 A: Yes.

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

755

1 Q: And what did you try to tell him?

2 A: I, I, after I sit there and tell him like I did not shoot
3 him. I constantly kept telling him that's not the guy I shot.
4 And I told him like, I think the other detective, he was like,
5 well -- I say, so, what the big guy got shot with -- which I
6 was so zoned out at the time, I don't even know why I asked
7 him that question, but I asked him, well what, what did the
8 other guy get shot with. And the other guy was like he got
9 shot with a .40 by Corey. So I was like, it is -- this was
10 impossible because I'm there, I know what happened out there
11 that night. So, I kept saying to myself like, he can't be --
12 he got to be seeing a different from my point of view. You've
13 got to just look -- if you look at the camera closely, you
14 will see this man is running before -- he moving before I even
15 get there. He's been shot before I even get there. When I
16 arrived there, like I say, my gun was already to my side. So
17 when I arrived there, arrived there a shot was fired.

18 Q: Not from your gun?

19 A: Not from my gun.

20 Q: Okay.

21 A: When I heard a shot fire, I see Corey and I see Canty
22 falling and fighting with the gun or whatever. I never seen
23 the gun go in the air or nothing but -- until later, I didn't
24 -- I didn't -- it could've went off, it could have shot the
25 guy right then but I know my gun didn't shoot him. When he --

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

756

1 when I heard that shot -- but I don't know where the gunshot
2 come from but I heard it and I know it's close by me. So when
3 I pull out -- well, I already had my gun out, when I pull up
4 with my gun, I shot it.

5 Q: You shot?

6 A: He shoot towards the upper part of the body; I shot down
7 because I wasn't trying to hurt nobody. I wasn't trying to
8 harm nobody like that. I was just really trying to scare them
9 off Thoro and then I heard that but I heard a shot -- I really
10 -- my intention was to never even shoot period, it's just --
11 it's a reaction. It's a reaction thing. If I got my gun out
12 and I run towards to help this man and then I hear a shot and
13 I don't see nothing but a bunch of Kingstree guys on him so --
14 and at the time, I didn't even know Corey had a gun at the
15 time. So I don't know who's shooting.

16 Q: And Detective Truex or Detective Kitelinger, and I'm not
17 sure which one, they asked you in the interview about if, if
18 Corey shot the big dude then the dude with the dreads is on
19 you; do you remember that exchange?

20 A: Yes, ma'am.

21 Q: What was that all about in your mind? What was going on
22 when they were asking you that?

23 A: I just like -- I don't know -- it was just so weird
24 because he kept asking me the same thing when I kept telling
25 them like, well, there was two guys -- and I'm nervous too, so

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

757

1 -- and I'm scared. So I don't know what's going on but
2 there's two guys, I told them, I said there was two guys right
3 there, either the big guy or the dude with dreads.

4 Q: And when they asked you, well, if Corey shot the big guy
5 then the dude with the dreads is on you?

6 A: The dude with the dreads is on you. And I said, yeah,
7 because there was dudes with plait, dreads, they didn't -- it
8 wasn't one guy with dreads -- it wasn't just one of them with
9 dreads. They had plaits in their hair; I call that dreads.
10 So I didn't even know who got killed, period. But like when I
11 was locked up, I didn't know -- I didn't know until I got my
12 motion and -- I didn't know nothing.

13 Q: Okay.

14 A: I didn't know if he had dreads or not.

15 Q: Now there's an exhibit I'm gonna show you which has been
16 marked as Defense Number Ten and it says South Carolina Law
17 Enforcement Division Firearms Department and ask if you
18 recognize that document?

19 A: Yes, ma'am.

20 Q: And what is that?

21 A: That's the document that back when they took my firearm,
22 my gun and they went and tested it and see who did I shot and
23 where did my bullet come from.

24 MR. RICHARDSON: Your Honor, he's talking about an
25 exhibit. He's talking about testimony given by a SLED agent

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

758

1 already. This is an exhibit; it can speak for itself.

2 THE COURT: I appreciate that.

3 Ms. Pratt, if you would, why don't you rephrase your
4 question?

5 MS. PRATT: Certainly. Well, Your Honor, since he has
6 identified it, I would move it into evidence on the record in
7 front of the jury if that's acceptable?

8 THE COURT: Defendant's Ten, ladies and gentlemen,
9 already -- by the Court's ruling is in evidence without
10 objection. You may proceed.

11 MS. PRATT: Thank you.

12 BY MS. PRATT:

13 Q: Now you've reviewed this document and it means something
14 to you, doesn't it?

15 A: Yes, ma'am.

16 Q: Tell the jury what this document means to you in light of
17 the shell casings and the projectiles and what happened that
18 night please?

19 MR. RICHARDSON: Your Honor, it's improper opinion, if
20 he's gonna give an opinion as to what that report means.

21 MS. PRATT: I will change my question, Your Honor.

22 THE COURT: All right.

23 MS. PRATT: But give me a second.

24 THE COURT: Yes, ma'am.

25 BY MS. PRATT:

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

759

- 1 Q: This report ties projectiles and casings back to your gun,
2 does it not?
- 3 A: Yes, ma'am.
- 4 Q: What does that mean to you as far as what you did that
5 night?
- 6 A: It means that and it shows me that the gun that was, that
7 they took from me came back to the guy Damien, which I stated
8 to them that I shot.
- 9 Q: Okay.
- 10 A: And the bullet that came out of him, came from my gun.
- 11 Q: Okay.
- 12 A: And that's the gun -- it didn't come from the deceased.
- 13 Q: Okay.
- 14 A: And that's the gun that I been telling -- I mean that's
15 what I been telling them the whole time that I did not shoot
16 this guy that got killed. I shot the guy, Canty, and I told
17 them that the guy that got shot in the elbow constantly.
- 18 Q: Did you intend to shoot Canty?
- 19 A: I never intend to shoot him. I just was -- just trying to
20 scare them off him. Like I said, I didn't even know I shot
21 nobody because I never heard nobody holler or yell or nothing.
22 So I didn't even know I shot nobody.
- 23 Q: And the second projectile that was found somewhere in, in
24 the middle area here, what do you think that came from?
- 25 A: From, from when I went, when I was going down and, and the

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

760

1 Kingstree guys that was the other side of the parking lot --
2 well, not the whole other side, but by the van area, they
3 started shooting towards me and I turned around and fired two
4 shots. I believe -- I believe the one striking the car that
5 was later never identified because the car left, a bunch of
6 cars is left, from their fired bullet, I believe they hit a
7 car where I was at -- which all the cars had left, there
8 wasn't nothing but like probably three or four cars out there
9 left when it was probably twenty-five, thirty cars out there.

10 Q: Okay.

11 A: And from the window, I shot the window of a van and then
12 the bullet struck the window and ricocheted back off the
13 window.

14 Q: All right. Now when you were firing towards the group
15 where Corey and Canty and all were, the fellow with the
16 dreads, how was he facing you or back to you or sideways or
17 what was that? Tell us about that. Did you ---

18 A: It happened so fast but he was -- like I said from, he was
19 just because like when I came up, when I rolled up, he was
20 already in the, already in the -- like probably at the -- I
21 say at the backseat of a car door fighting right there in the
22 area with -- I think he was right there jumping, all of them
23 was jumping on Corey and Thoro.

24 Q: So he is looking at those fights?

25 A: Yeah.

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

761

- 1 Q: Okay.
- 2 A: He face -- he facing towards them.
- 3 Q: To them with his back ---
- 4 A: I'm, I'm -- I'm behind him.
- 5 Q: Okay.
- 6 A: I come up behind him. So when I come up behind him, he's
- 7 like backing up at the time but -- cause I guess shots was
- 8 fired. So he's backing up. He's turned around running.
- 9 Q: Okay.
- 10 A: And then he seen my gun fire. It looks like I'm shooting
- 11 at him but I'm not shooting at him. My, my bullet come back
- 12 to hit Damien Canty in the arm. That's the only shot that,
- 13 that I fired that hit somebody.
- 14 Q: Okay. Was that the only shot that you fired in that area
- 15 right there at the clump of people?
- 16 A: I shot one time -- from that shot you will see on it's
- 17 Number 8, my shell casing right there, right there, Number 8
- 18 and there's no way you can show me that on that tape or
- 19 nowhere you can show me that Canty was shot somewhere else,
- 20 nowhere but there. He was right there in between those cars
- 21 and that's the only shot I shot there and that's when he got
- 22 shot right there.
- 23 Q: And so if you were standing where you are on the witness
- 24 stand and I am Canty fighting with Corey, is that where you
- 25 say he got hit in the right elbow?

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

762

1 A: He got shot in the elbow.

2 Q: Okay. Armando, I am going to show you some video next and
3 just quickly just walk through -- these are from Defense
4 Exhibit Four.

5 MR. RICHARDSON: Your Honor, while this is warming up,
6 you want the jury to have a break? It's gonna take a minute
7 ---

8 THE COURT: I appreciate it. I would rather we finish
9 the direct examination before we do that. Thank you.

10 MR. RICHARDSON: Yes, sir, Your Honor.

11 BY MS. PRATT:

12 Q: All right, Armando, if you would come down. You've seen
13 the other witnesses, so you know, we need you to kind of speak
14 up close to this microphone. And I'm gonna play a couple of
15 these video clips for you, okay. And let's start with A,
16 which is Camera 9 from 1:12 in the morning. You were already
17 at the bar at that time were you, at 1:12?

18 A: Yes, ma'am.

19 THE COURT: You need to speak up, sir.

20 A: Yes, ma'am.

21 BY MS. PRATT:

22 Q: All right. When you see yourself coming into the picture
23 please tell me and I'll stop. Okay? You watch.

24 A: Right there, right there ---

25 Q: I'm sorry? Speak up.

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

763

1 THE COURT: You need to speak up, sir, when you get ready
2 to say something.

3 A: I can't ---

4 THE COURT: You want to turn the lights out?

5 MS. PRATT: He said something about the lights cause this
6 is bright.

7 BY MS. PRATT:

8 Q: This is -- all right. Tell me when you see yourself?

9 A: What time did you say it is? 1:13?

10 Q: Let me ask you who this fellow is here. See where the
11 pointer is; do you know who that is?

12 A: (No audible response.)

13 Q: Okay. Let's go on.

14 A: My eyes is bad.

15 Q: All right.

16 A: I can see over there but I can't see right there.

17 Q: And what do you see -- who's walking down the sidewalk
18 here?

19 A: Outside the door.

20 Q: Yes, sir.

21 A: Oh, Thoro.

22 Q: Okay. Who -- what is going on in this area outside? What
23 did you just see happen there?

24 A: By the white car?

25 Q: Yes.

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

764

- 1 A: The dude -- there's a dude by the white car, he gets in
2 his car and he grabbed a gun -- he's from Kingstree -- right
3 in front of the club.
- 4 Q: Okay. And we're at 13:49. Let me back up. Who is that
5 right there? Is that you?
- 6 A: Yeah.
- 7 Q: Okay. And that's at 13:51, is that right; 1:13:51?
- 8 A: Yes, ma'am.
- 9 Q: All right. All right. And now I'm going to play from
10 Camera 2, our Clip B. And for the record, this is Camera 2
11 from 1:13:20 in the morning. Okay? I'm gonna stop it ---
- 12 A: Can you blow it up.
- 13 Q: Pardon me?
- 14 A: Can you blow it up for me?
- 15 Q: Can we do it with the times on the bottom -- if we blow
16 it up, there's no times, okay. I'm gonna do it this way. You
17 tell me, I'm gonna stop it when you see people coming in. Who
18 is that?
- 19 A: That's Thoro.
- 20 Q: That's Thoro and that's at 13:25 A.M.; is that right?
- 21 A: Yes, ma'am.
- 22 Q: Okay.
- 23 A: At this time, I didn't even know he was out there right
24 here.
- 25 Q: Okay. And who do you see over here?

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

765

- 1 A: That's Canty right there.
- 2 Q: Okay. And who is this?
- 3 A: That's Corey.
- 4 Q: Okay. All right. What just happened at 1:14:01?
- 5 A: Thoro just got hit in the head with a bottle.
- 6 Q: Do you know who this person is?
- 7 A: Wayne, that's Wayne right there.
- 8 Q: All right. Is that you?
- 9 A: Yes, ma'am.
- 10 Q: And that's at 1:14:15; is that correct?
- 11 A: Yes, ma'am.
- 12 Q: Okay.
- 13 A: If you'll look real closely you'll see -- if you could
- 14 look between the cars, you'll see just before I get there the
- 15 dude is turned around running back.
- 16 Q: Okay. Is that what you're talking about?
- 17 A: That he running back already.
- 18 Q: Okay. And that's at 1:14:18, because ---
- 19 A: Yeah ---
- 20 Q: --- is that who you mean that's running?
- 21 A: Yeah.
- 22 Q: Okay. All right. I'll play Camera 8, on Clip E -- for
- 23 the record, this is Camera 8 from 1:14:31. Tell me when you
- 24 see something going on coming in the door that you want to
- 25 point out.

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

766

- 1 A: All right. The dude coming in the club right now.
2 Q: Is the dude that you ---
3 A: Cauty.
4 Q: All right.
5 A: And it's like somebody is like right in front of him, but
6 ---
7 Q: Right in there?
8 A: Yeah. Didn't see him when he come in.
9 Q: Okay.
10 A: He swung his coat at me.
11 Q: That's you?
12 A: Yeah.
13 Q: Okay.
14 A: You see me go over there ---
15 Q: I'm sorry. Speak up.
16 A: You see me go over there and kick him.
17 Q: All right. Will you take the witness stand again please,
18 Armando?
19 THE COURT: Don't unplug it.
20 MR. RICHARDSON: I'm not gonna unplug, Your Honor. No,
21 sir.
22 THE COURT: All right. Thank you.
23 MR. RICHARDSON: It's just not my intention.
24 THE COURT: Thank you. Very good.
25 BY MS. PRATT:

State v. Chestnut
ARMANDO K. CHESTNUT - DIRECT BY PRATT

767

1 Q: Do you have anything else that you want to tell this Court
2 and this jury?

3 A: I just want to say that, that -- that it shows itself that
4 I ain't killed no one. My gun came back to who I shot and hit
5 and that I was helping a friend. I could've -- it could've
6 been anybody that I know. I just came to his aid. All of
7 this wasn't meant to happen. I just tried to scare the guys
8 off of him. I just want just to look at the truth of it. I
9 wasn't trying to hurt no one. I wasn't trying to come out
10 there to be on some big bad bully type. I just come out there
11 to have a drink with my girlfriend. I was working. I wasn't
12 -- I was just being, you know, a normal person.

13 Q: Just out for a good time that evening?

14 A: Yes, ma'am. I wasn't trying to harm nobody at all. I
15 just -- I wasn't expect that to happen even though I had a gun
16 on me but I wasn't expecting that to happen. I just came out
17 there and, and I just seen him getting jumped and I seen him
18 bleeding and he was bleeding like a rascal, so I -- if it
19 really shot him -- because I didn't know he got hit in the
20 head with a bottle, I just know he was getting jumped -- all I
21 know, it could've been a stab wound, I don't know. I just ran
22 over there to his aid hoping he'd do the same thing for me. I
23 would have did it for anybody that I know, a friend of mine.
24 I couldn't just see nobody getting jumped by eight or seven
25 different people and nothing could be done like everything's

State v. Chestnut

768

ARMANDO K. CHESTNUT - DIRECT BY PRATT

1 my fault or and everything my blame. Those guys started the
2 whole thing. They initiate the whole thing from the
3 beginning, grabbing pool sticks and come out saying they going
4 to get guns, you know, like, they just -- it was just real
5 crazy for me. And at the same time, I got, I got my girl in
6 there with me. I never came out there to start no trouble
7 period, period. I just came out there to have a couple of
8 drinks because I was gonna -- I was taking her to every bar
9 that I usually go to. That was just the third bar and I was
10 gone go to another bar. I'm gonna sit there for a hour or
11 thirty minutes and go to another bar because I just -- too
12 much -- I stopped coming around that atmosphere anyway 'cause
13 I was working, doing what I had to do, that's how I met her,
14 work. And I wasn't trying to, I really wasn't trying to harm
15 nobody. I was just trying to scare those guys off, you know,
16 and I didn't know my intentions wasn't to -- I'm sorry for the
17 family but I just wanted them to know that I didn't, did not
18 do it.

19 Q: Thank you, Armando. Thank you. Please answer any
20 questions the Solicitor has for you.

21 THE COURT: All right. We're at cross examination. We
22 are going to take a short break before we do that. Ladies and
23 gentlemen of the jury, if you would go to the jury room for a
24 short period of time. Thank you.

25 (REPORTER'S NOTE: The jury exits the courtroom. 4:40 P.M.)

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

770

1 THE COURT: All right, Solicitor, cross examination.

2 MR. RICHARDSON: Thank you, Your Honor.

3 CROSS EXAMINATION OF ARMANDO KIMOKKE CHESTNUT BY MR.

4 RICHARDSON:

5 Q: Mr. Chestnut, I'm gonna show you State's Thirty-seven.

6 This is your handgun, correct?

7 A: Yes, sir.

8 Q: You had it with you on the night of March 6, 2012,

9 correct?

10 A: Yes, sir.

11 Q: You did show it to Ms. Testa at some point, correct?

12 A: Yeah, at some point, yeah.

13 Q: I mean, you showed it to her at Sam's at the very least?

14 A: Yeah.

15 Q: Asked her to put it in her pocketbook?

16 A: Yes.

17 Q: You fired it that night?

18 A: Yes.

19 Q: You took it back to Ms. Testa's house?

20 A: Yes.

21 Q: Now, you told Ms. Pratt that you had two prior felony
22 convictions, correct?

23 A: Yes.

24 Q: And you do realize that a felony conviction prohibits you
25 from possessing a firearm, correct?

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

771

- 1 A: Yes.
- 2 Q: State's Forty-one, that t-shirt is yours, correct?
- 3 A: Yes, sir.
- 4 Q: That's the t-shirt you had on whenever you were at 3rd
- 5 Avenue Sports Bar?
- 6 A: Yes, sir.
- 7 Q: That's the t-shirt you had on when you fired that weapon
- 8 repeatedly, correct?
- 9 A: Three times, sir.
- 10 Q: This is your hat, correct?
- 11 A: Yes, sir.
- 12 Q: UCLA hat? For the record, Your Honor, State's Ninety-
- 13 four. That's the hat you had on that night when you were at
- 14 3rd Avenue Sports Bar?
- 15 A: Yes, sir.
- 16 Q: And make no mistake about it, this black-and-white jacket,
- 17 that's yours?
- 18 A: Yes, sir.
- 19 Q: That's the jacket you had on at 3rd Avenue Sports Club?
- 20 A: Yes, sir.
- 21 Q: Nobody at 3rd Avenue Sports Club had a jacket like that?
- 22 A: I couldn't tell you that, but that's my jacket there
- 23 though.
- 24 Q: But you had it -- you had it on and you had it on when you
- 25 did the shooting?

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

772

- 1 A: Yes, sir.
- 2 Q: You had it on when you got back in Ms. Testa's vehicle?
- 3 A: Yes, sir.
- 4 Q: Had it on before the shooting?
- 5 A: Yes, sir.
- 6 Q: You never took it off while you were at 3rd Avenue Sports
- 7 Club?
- 8 A: No, sir.
- 9 Q: So anytime on that video we see somebody running around
- 10 with that hat and that jacket, that's you?
- 11 A: Yes, sir.
- 12 Q: So, when we see black-and-white striped jacket, hat in the
- 13 middle of that scuffle inside at the pool table, that's you?
- 14 A: It wasn't a scuffle.
- 15 Q: So, you weren't bumping chests with people in that video?
- 16 A: No.
- 17 Q: But no doubt about it, anybody we see with black-and-white
- 18 jacket and that hat on, that's you in that video?
- 19 A: Yes, sir.
- 20 Q: And you asked Ms. Testa to meet you at Sam's?
- 21 A: Yes, sir.
- 22 Q: And you, you drove from Sam's to Jet Age?
- 23 A: Yeah -- well, she didn't meet at -- we drove to Jet -- I
- 24 mean to Sam's -- from my house to Sam's. She didn't meet me
- 25 at Jet Age.

State v. Chestnut

773

ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

1 Q: So you're saying that she picked you up at your house and

2 ---

3 A: And went to Sam's.

4 Q: Well, who drove to Sam's?

5 A: I think she drove to Sam's cause she picked me up and I
6 just jumped in the car.

7 Q: Okay. And you drove from Sam's to Jet Age?

8 A: Yeah, I drove from Sam's to Jet Age.

9 Q: And you had the keys?

10 A: No, I didn't have the keys. When I got to Jet Age, the
11 keys was still in the car, so ---

12 Q: When you cranked the car to leave Sam's and go to the Jet
13 Age, you had the keys?

14 A: I never had the keys. The keys was, the car was already
15 -- when I got in the car ---

16 Q: Did Ms. Testa leave her keys in the car all the time?

17 A: No, what I'm saying ---

18 Q: How did you crank the car?

19 MS. PRATT: Your Honor, I'm gonna ask the Solicitor to
20 allow him to finish his answer.

21 THE COURT: Solicitor, please allow him time to answer.

22 MR. RICHARDSON: Certainly, Your Honor. I apologize.

23 A: What do you mean by having the keys?

24 BY MR. RICHARDSON:

25 Q: When you ---

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

774

- 1 A: I've got them in my pocket or just getting the car,
2 cranking up the car leaving and taking it out when I get to
3 the club and putting it in my pocket or how -- I mean, you've
4 got to be specific.
- 5 Q: I'm asking you a direct question.
- 6 A: Okay.
- 7 Q: When you left Sam's and you drove to the Jet Age, correct?
- 8 A: Yes.
- 9 Q: You drove?
- 10 A: Yes.
- 11 Q: Did you crank the car?
- 12 A: Yes.
- 13 Q: So at that point, you had the keys when you cranked the
14 car?
- 15 A: Yes.
- 16 Q: And when you got -- when you got to the Jet Age, did Ms.
17 Testa go in the Jet Age with you?
- 18 A: No.
- 19 Q: Earlier you stated that she wanted to see all the clubs
20 you went to, correct?
- 21 A: Uh-huh (affirmative response).
- 22 Q: But she didn't go in Jet Age?
- 23 A: She didn't go in Jet Age.
- 24 Q: Okay. Now, from Jet Age to 3rd Avenue Sports Bar, who
25 drove?

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

775

- 1 A: I drove.
- 2 Q: So, at that point, you had the keys when you cranked the
3 car to leave Jet Age and go to 3rd Avenue Sports Bar?
- 4 A: Yes.
- 5 Q: When you got out of the car at the 3rd Avenue Sports Bar,
6 what did you do with the keys?
- 7 A: I believe I had them.
- 8 Q: Okay. You had them. And that's what I asked; did you
9 have the keys?
- 10 A: I believe I had them then. When I got to -- I don't know
11 if I gave them back to her or not. I think I had them though.
- 12 Q: Did you lock the car before you went in 3rd Avenue Sports
13 Bar?
- 14 A: Yes, I think, yes.
- 15 Q: So you would have had to unlock it to get back in the car?
- 16 A: Yes.
- 17 Q: Let's talk about that statement, your statement at the
18 Myrtle Beach Police Annex. You were read your Miranda Rights,
19 correct?
- 20 A: Yes.
- 21 Q: And you stated you understood your rights?
- 22 A: Yes, I stated that -- I stated that I was smoking
23 marijuana and that I was drinking. And he asked me if I would
24 be able to understand some of the questions and I say maybe.
- 25 Q: And correct me if I'm wrong, I believe he asked, have you

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

776

- 1 had anything that would affect your comprehension or whatever
2 and you said I had some marijuana.
- 3 A: I had some marijuana and I told him I had alcohol also.
- 4 Q: You said you had alcohol too?
- 5 A: That's what was written on the paper, drugs and alcohol on
6 top of the form.
- 7 Q: Okay. Did you tell them you had it that day?
- 8 A: That day, he didn't never ask me when. He never asked me
9 how much or how much I'd been drinking or when. He just asked
10 me have, have I been drinking or have I had any drugs and I
11 told him I smoked some weed and that I was drinking.
- 12 Q: You heard your statement, correct?
- 13 A: Uh-huh (affirmative response).
- 14 Q: You're not slurring your words?
- 15 A: You hear me say it when I -- you barely hear me say when I
16 say alcohol when I, when I make my statement.
- 17 Q: I'm saying you're not slurring your words during your
18 statement, right?
- 19 A: I'm nervous, but I -- I don't know if I'm -- I don't think
20 I'm slurring but ---
- 21 Q: You're not slurring your words?
- 22 A: I was a little nervous.
- 23 Q: When you get up on your feet, you're not swaying from side
24 to side and moving back and forth, are you?
- 25 A: No, I'm not -- I'm not drunk.

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

777

- 1 Q: You're not drunk?
- 2 A: I'm not drunk, but ---
- 3 Q: You're not high?
- 4 A: I'm high.
- 5 Q: But you're not swaying, correct?
- 6 A: You don't have to be swaying to be high.
- 7 Q: You had a set of cuffs on, correct?
- 8 A: Yes.
- 9 Q: You had no problem working that water bottle?
- 10 A: That, that, that don't affect me from being high.
- 11 Q: You had no problem drawing?
- 12 A: That doesn't affect me from being high. It's a mind
- 13 thing.
- 14 Q: Did you have any problem standing?
- 15 A: That doesn't affect me from being high.
- 16 MR. RICHARDSON: Your Honor?
- 17 THE COURT: All right. Mr. Chestnut, you'll listen to
- 18 the question, you will directly answer the question. Then you
- 19 may explain it.
- 20 A: Okay. I'm sorry, sir.
- 21 THE COURT: Go ahead.
- 22 BY MR. RICHARDSON:
- 23 Q: Mr. Chestnut, did you, did you stumble at all when you
- 24 stood up in the interview room?
- 25 A: Not that I recall.

State v. Chestnut

778

ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

1 Q: Well, you saw it. Did you stumble at all?

2 A: Not that I recall. I don't recall stumbling.

3 Q: At one point, you have your handcuffs behind your back,
4 correct?

5 A: Yes.

6 Q: You reach over and you grab a bottle of water?

7 A: Yes.

8 Q: You unscrew it, correct?

9 A: Yes.

10 Q: You put it back around and drink from it, correct?

11 A: Yes.

12 Q: Put it back around, screw the top back on, correct?

13 A: Yes.

14 Q: You don't spill a drop?

15 A: I don't know if I spilled a drop or not. That doesn't --
16 still doesn't say that I'm high.

17 Q: The only thing that says you're high is you, correct?

18 A: All that movement doesn't saying that I'm high -- does not
19 say that I'm not high. It does ---

20 Q: Did you tell, did you tell us during the interview, man,
21 I'm high?

22 A: I told them that I was -- smoked marijuana. Asked me a
23 simple question, was I on drugs or if I did any alcohol and I
24 told him that I smoked marijuana and I was drinking.

25 Q: No doubt about it ---

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

779

- 1 A: I didn't tell him I was high.
- 2 Q: No doubt about it, nowhere on the video do you stumble?
- 3 A: Not that I recall, I don't stumble.
- 4 Q: Nowhere on the video do you have difficulty drawing?
- 5 A: No, that again doesn't say that I'm not high.
- 6 Q: You never told them how much marijuana or when?
- 7 A: No, because my mind -- marijuana controls the mind so it
- 8 doesn't -- you don't -- you don't act, I mean technically you
- 9 don't ask -- when a person asks you that, you don't just say
- 10 how much I been smoking or -- if he would've asked me that
- 11 then maybe I would have told him but he never asked me them
- 12 questions. So I didn't felt it was me to say nothing about
- 13 it.
- 14 Q: This was your opportunity to make a statement, right?
- 15 A: Yes.
- 16 Q: I mean, you understood your rights, correct?
- 17 A: I understood them, yes.
- 18 Q: So, you understood your rights?
- 19 A: I understood them.
- 20 Q: Okay. So you weren't that high, if at all?
- 21 A: I was, I was, I was smoking a couple of joints ---
- 22 Q: How much do you smoke regularly?
- 23 A: --- two or three joints. Huh?
- 24 Q: How much do you -- how regularly do you smoke?
- 25 MS. PRATT: Your Honor, I'm gonna object to that line of

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

780

1 questioning as to anything that is not in regards to the day
2 that he gave his statement or that night before; it's not
3 relevant.

4 MR. RICHARDSON: Your Honor, it's relevant to show
5 whether or not it would have a great effect.

6 THE COURT: I'm gonna allow the question. Thank you,
7 sir.

8 BY MR. RICHARDSON:

9 Q: How often do you smoke weed?

10 A: I smoke it on -- just on occasions like days I'm not
11 working or something, I smoke.

12 Q: We'll move on. The detectives never threatened you,
13 correct?

14 A: No, sir.

15 Q: They never made any promises to you?

16 A: No, sir.

17 Q: And you start in your interview by admitting you kicked
18 and stomped the big dude by the bar?

19 A: I kicked him once.

20 Q: So you knew who the big dude was, right?

21 A: Yeah, after -- after the fact, yeah.

22 Q: Because you knew that there was video in the bar, right?

23 A: I know there was video outside the bar. I didn't really
24 pay no attention when I was going in the club that they had
25 videos. Because I think not too long ago, before I realized

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

781

1 that they had cameras outside, so I didn't never really pay it
2 no attention, the inside really but I did know they had
3 cameras outside.

4 Q: You knew that Wayne Feaster was inside and he had to get
5 you off of Mr. Canty, correct?

6 MS. PRATT: Objection, compound question, Your Honor.

7 THE COURT: I'll allow the question. You may proceed.

8 A: I was, I was never on him. I just went over to kick him
9 one time and I went to kick again and he moved me and I kicked
10 again and he moved me. I never, I never kicked him but one
11 time.

12 Q: So you kicked at him?

13 A: Look at the camera. The camera will show for itself that
14 I kicked him one time.

15 Q: You're right. You're right, the camera just ---

16 THE COURT: Solicitor ---

17 MR. RICHARDSON: Yes, sir, Your Honor.

18 THE COURT: Just let him answer.

19 A: And when I went to kick him the second time, I was pushed
20 out the way in the process of kicking him. And then when I
21 kicked again, I was pushed again so I never, the last two
22 kicks never touched him.

23 BY MR. RICHARDSON:

24 Q: So, no doubt about it, you were attempting to kick him?

25 A: Yes, I was attempting to kick him.

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

782

- 1 Q: You kicked him once at least by your own statement?
- 2 A: Yes.
- 3 Q: And then you attempted to kick him at least twice more?
- 4 A: Yes.
- 5 Q: And when you gave a statement on March 6th at what -- 3
- 6 o'clock in the afternoon or something like that?
- 7 A: I don't know exactly what time it was. I can't, I can't
- 8 just tell you what time it was. It was in the afternoon
- 9 though.
- 10 Q: You admitted to kicking him repeatedly, correct?
- 11 A: Not repeatedly.
- 12 Q: You lie to Detective Kitelinger about firing a gun, don't
- 13 you?
- 14 A: Yes, sir, I did at the beginning.
- 15 Q: For at least twenty-three minutes you lie to him about
- 16 firing the gun, don't you?
- 17 A: I don't know exactly how long it was but I did lie to him
- 18 at the beginning.
- 19 Q: You changed your story several times during the course of
- 20 that interview, didn't you?
- 21 A: It wasn't several, several courses, but I, I, I realized
- 22 that it wasn't no use for me to just sit here and just prolong
- 23 it and just be honest about it because I know that what I did
- 24 and I did not kill nobody, so ---
- 25 Q: So you decided to be honest during the interview?

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

783

- 1 A: Yes.
- 2 Q: And so you told Detective Kitelinger, I fired one time,
3 correct?
- 4 A: When I, when I say I fired one time, I fired one time
5 towards the guy that -- when I went to break the fight up, not
6 saying the whole entire time I fired one time. The guy got
7 shot one time; that's what I meant by that. It's not saying
8 that I fired one single shot.
- 9 Q: Well at this time you didn't ---
- 10 A: Never, never you hear me say that that I fired one single
11 shot and that's it. I fired one time at the guy, at the guy,
12 Canty; that's what I -- that's what I meant, not saying that I
13 fired one throughout the whole course of the incident.
- 14 Q: You told Detective Kitelinger you only had one bullet that
15 night, didn't you?
- 16 A: That's when I lied.
- 17 Q: Well, that's after you said you only shot one time?
- 18 A: I don't know exactly when it was, after or before.
- 19 Q: No doubt about it though ---
- 20 A: I just know that, that there wasn't no use for me to sit
21 here and lie and I told him what I did. And I told him
22 constantly that I shot at the guy. Whoever got hit in the
23 elbow, that's who I shot. And he told me no, I did not shoot
24 him. He told me that that's who Corey shot. He said that I
25 shot the guy that got -- that died. And I kept telling him

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

784

1 that I did not shoot that guy that died, that I shot the guy
2 in the elbow. So when the SLED report come back, it speaks
3 for itself what I shot. It does not speak about me shooting
4 the deceased period.

5 Q: When the SLED report comes back -- when did you get it?

6 A: I don't know exactly the day I got it. When I got it, I
7 just knowed in my heart from the start, from when I told him
8 that when I first got that report I knew what I said was
9 correct.

10 Q: No, when you got this report, you knew you had to change
11 your story for the jury?

12 A: Change my story? How I'm gonna change my story here. So
13 SLED, the forensic people, the ballistic people, they, they
14 test my gun. I don't have no control over that. How, how,
15 why would I, I mean how does that change my story; what story
16 is there changed. They, it speaks for itself. My gun come
17 back to shoot Canty in the elbow, nothing else, nothing else,
18 period. So how would I want to change my story? If there
19 ain't no -- there's no changing in it. So you saying SLED
20 tampered with it or ---

21 Q: Okay. Once again, you told Detective Kitelinger you fired
22 one time, correct?

23 A: One time during the fight between the cars, not saying
24 that I fired one entirely shot.

25 MR. RICHARDSON: Your Honor, could the witness please

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

785

1 answer yes or ---

2 THE COURT: I believe he gave you an answer.

3 BY MR. RICHARDSON:

4 Q: You tell Detective Kitelinger you shot at the one in grey
5 or the one with dreads with the red jacket, don't you?

6 A: When I recall saying dreads, again, there's guys that got
7 plaits in their hair, dreads in their hair. Dreads, if you
8 have dreads, you can plait your hair into dreads. There was
9 several guys out there that had dreads and plaits in their
10 head. I didn't know who Canty was. I didn't know -- all I
11 knew was which one that I shot towards. I didn't know who,
12 who if he got hit or not or -- I didn't know that. I didn't
13 know the person died or nothing. I never knew that until I
14 was questioned. At the end of my questionnaire, they tell me
15 that I shot the guy that got killed and I knew that wasn't
16 right. I knew that was -- from them saying that, I know that
17 was incorrect.

18 Q: Before any of that is said, before they tell you the guy
19 with the dreads died, they asked you who shot the big guy,
20 correct?

21 A: Yes, but it was, it, it's, it's -- Canty's not the only
22 big guy out there, so, you got to -- you got to look at the
23 whole picture like. I mean it, it speaks for itself like. I
24 don't see what you're trying to get at, but it speaks for
25 itself. Like I say, the gun that you have it's not the murder

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

786

1 weapon and I've been saying this for the last sixteen,
2 seventeen months. I did not kill McFadden.

3 Q: You agree this is a red jacket?

4 A: It's a red jacket.

5 Q: It's a red jacket. You told Detective Kitelinger you went
6 to go put your weed and phone in Annaliese' car?

7 A: Yes.

8 Q: So you had her keys at that point?

9 A: Yes.

10 Q: Instead of playing the video, I'm gonna show you what's
11 been marked as State's Two -- Your Honor, if I may approach?

12 THE COURT: Yes, sir.

13 Q: State's Two and State's Three, you saw the video; is that
14 you walking to Annaliese' car?

15 A: Yes.

16 Q: And is that you getting her -- getting in her car?

17 A: I'm not getting in it. I never sit in the car.

18 Q: You never sat in the car. So, the jury's not gonna see
19 you sit down in that car on the video?

20 A: They see me reach in but I never got in and sit down
21 inside the car.

22 Q: State's Number Four, is that you?

23 A: Walking back.

24 Q: Okay. And you're walking back, correct?

25 A: Yeah, well from the picture it look like I'm walking, but

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

787

1 I think I'm about to go to help Thoro with the fight, but the
2 pictures -- so I guess I'm walking.

3 Q: Well, you've seen the video. You start running whenever
4 you get down beside the cars, correct?

5 A: Probably so. I, I don't remember seeing that part of it.

6 Q: Well, let's get ---

7 A: I don't know exactly where I started running from -- but I
8 know it's in the area, I could probably say I was running from
9 over in that area.

10 Q: Why did you go put your weed and your phone up?

11 A: I just put it up just in case, cause I went out there
12 really to fight.

13 Q: You went out to fight?

14 A: I put my phone up because my phone had been cracked so
15 many times -- so I just put my phone up and I put whatever --
16 I just dugged in my pockets and grabbed my phone but I
17 realized I had the weed in my pocket so I put that in the car
18 too and I went to fight.

19 Q: No doubt about it, you went to go put your phone and weed
20 up so that -- because you were about to go get in a fight?

21 A: I was about to go help a person in a fight, if getting in
22 the fight will help him.

23 Q: Did you see -- now, you said you saw Thoro get attacked,
24 correct?

25 A: Thoro?

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

788

- 1 Q: Uh-huh (affirmative response).
- 2 A: Yes.
- 3 Q: You saw him get attacked and then you went to your car?
- 4 A: Yes. Well, when I walked out the door, when I looked --
- 5 when I walked out the door, I see that they was jumping him,
- 6 so then I went to my car. But if you trying to say that I got
- 7 a gun out the car, I never got no gun out the car. I had my
- 8 gun on me the whole time, the whole time. And if you want to
- 9 go on the camera, it'll show for itself -- if you go back to
- 10 when I came in that club, I never got searched, period. Me
- 11 and Annaliese just walked straight in the club. So I never
- 12 went and got no gun.
- 13 Q: Did we see video of you coming in the club?
- 14 A: If you got it. You should have it.
- 15 Q: Has this jury seen any video of you coming in the club?
- 16 A: I don't know. You should have it if, if, if they, if you
- 17 -- if you don't have it, it should be somewhere. You've got
- 18 two hours of tape, so -- two or three hours of tape, so you
- 19 should have it.
- 20 Q: Yes or no?
- 21 A: It should show that when I came in the club that I was
- 22 never pat down or touched.
- 23 Q: What time did y'all get to the club?
- 24 A: I can't recall exactly, but I feel -- I feel that, well,
- 25 not even -- the incident happened what, at 1:10, 1:15? So

State v. Chestnut

789

ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

1 around -- I say roughly 12:20, 12:30, 12:40 I was probably
2 coming in the club. I don't know exactly. I don't know
3 exactly what time it was. I know that I wasn't pat down and I
4 had a gun on me.

5 Q: So you see, according to your testimony, you see Thoro
6 getting beat on, correct?

7 A: Yes.

8 Q: And you want to help him?

9 A: I wanted to come to his aid to help him because it's five
10 or six guys that's beating him.

11 Q: So before doing that, before running to help him, you
12 decide to walk ---

13 A: See ---

14 Q: --- to your car and put your phone away?

15 A: Yes.

16 Q: And your weed?

17 A: I wasn't -- it wasn't even -- I wasn't walking, I was
18 walking real fast to the car. It wasn't like I just came
19 outside and -- I came outside and I looked around as I was
20 walking to the car. I seen him over there getting jumped and
21 I speeded up to my car.

22 Q: So the jury will see on the video that you speed up?

23 A: You see me walk fast to the car. They will see that, yes.

24 Q: You agree that as you walk away from the car, you have
25 your gun in your hand?

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

790

- 1 A: I walk away from the truck?
- 2 Q: Yes.
- 3 A: Yes, I think I did have it in my hand, yes.
- 4 Q: You slide that action?
- 5 A: I don't know exactly when I slide it or not but I know I
- 6 had the gun in my hand.
- 7 Q: Right-handed or left-handed?
- 8 A: I don't -- I can't recall how I -- I can't recall. I had
- 9 the gun in my hand. But I'm right-handed so I might have had
- 10 the gun in my right-hand, I might've had it in my left; I
- 11 don't know.
- 12 Q: You don't care which one you shoot with?
- 13 A: No, I don't, I don't -- it's just not like I just go
- 14 around shooting, so ---
- 15 Q: When you got to Annaliese' vehicle, you had the keys,
- 16 correct?
- 17 A: Yes.
- 18 Q: You could have left?
- 19 A: I could have left?
- 20 Q: Uh-huh (affirmative response).
- 21 A: Left her?
- 22 Q: Well, on the way out, you could've grabbed Annaliese. You
- 23 said you were talking to her, correct?
- 24 A: I didn't -- first of all, why would I leave someone that's
- 25 getting jumped? Would you want somebody to leave you? If

State v. Chestnut

791

ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

1 somebody sees -- one of your friends see you at a gas station
2 and you getting jumped by six guys and he pull and get some
3 gas, you think it's okay for him to drive off?

4 Q: Where are you when you see Thoro get jumped?

5 A: Where am I?

6 Q: Uh-huh (affirmative response).

7 A: I'm coming out the club.

8 Q: So, you're coming out the club when you see Thoro get
9 jumped?

10 A: I'm coming out the club when I -- when I looked down --
11 when I come out the club and I looked down the sidewalk
12 because I was really looking for them at the same time, I
13 didn't think about it but at the same time, I remember
14 Annaliese saying that he was in the bathroom, but at the same
15 time, I didn't see him come out the bathroom. So when I come
16 out the club, I look and I see him down, down the sidewalk
17 approximately from here to that wall, getting jumped.

18 Q: Earlier when you were watching the video, you said your
19 eyes aren't too good, didn't you?

20 A: Yeah. I could see somebody getting jumped from here to
21 the wall.

22 Q: You can see what you want to see?

23 A: Sir, again, I could see individual getting jumped from
24 here to that wall, sir.

25 Q: And you're at the door, correct?

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

792

- 1 A: Coming out the door, walking.
- 2 Q: A whole line of cars between you and where Thoro was?
- 3 A: No, when I come out the door, the sidewalk's right there
- 4 or even come out this door. There's two doors you can go out;
- 5 this door or this door. If you go out the right door -- if
- 6 you go out the right door, you're closer to the cars. If you
- 7 go out the left door, you're right on the -- right in front of
- 8 the sidewalk. So, when I come out the door, I walk and I look
- 9 and I see him getting jumped.
- 10 Q: So, you looked down the sidewalk and you see him getting
- 11 jumped?
- 12 A: I seen him getting jumped on the sidewalk.
- 13 Q: You can see through those other people that are out there
- 14 and you can see Thoro?
- 15 A: See him get jumped. He the only one I knew that I had a
- 16 white sweater on, hoodie on, with some blue jeans on that
- 17 night -- I'm thinking blue jeans.
- 18 Q: Now right here, State's Number Twelve, is that what you
- 19 see, Thoro getting jumped?
- 20 A: Yeah.
- 21 Q: And that's what you see, Thoro getting jumped?
- 22 A: He, he, he right there. They bout to -- he's about to hit
- 23 him with the bottle.
- 24 Q: And whenever you see this, where are you located?
- 25 A: I'm still in the club, before he even -- this is like --

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

793

- 1 seems like approximately a minute after this, I see him
2 getting jumped. I didn't never seen him when he got -- first
3 initially hit with the bottle; I never saw that part.
4 Q: So this whenever he's getting hit though, correct?
5 A: Is that when he getting hit?
6 Q: Uh-huh (affirmative response).
7 A: I guess that's about hit him with a bottle; I don't think
8 he got hit yet, but they about to hit him with the bottle.
9 Q: Okay. And you're in the club at this point?
10 A: I'm right there by the door, about to come out the door.
11 Q: What time does it say on that picture?
12 A: 1:14.
13 Q: 01, correct?
14 A: Yeah.
15 Q: Now I think you looked at this earlier, this is State's
16 Number Three and you said that's you at least going in the
17 car, right?
18 A: Uh-huh (affirmative response).
19 Q: What time does it say?
20 A: 1:14:02.
21 Q: That's correct, about one second apart?
22 A: Yeah, you can see me walking out the club. I just tell
23 you I'm about to come out the club.
24 Q: You remember telling, telling the detectives that you shot
25 the one with the dreads because he had the pool stick earlier?

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

794

1 A: I don't, I don't -- again I'm thinking the one with the
2 dreads because there was several guys with dreads, again,
3 there was several guys that had dreads and plaits. But I
4 remember telling the detective something referring to that,
5 that I think that's the one that I maybe hit with -- that had
6 the pool stick. But confirming from, from what I think about
7 and what I remember and from what came back from SLED, that
8 wasn't the guy.

9 Q: You've tailored your ---

10 A: I didn't know who got shot at the moment. I didn't know
11 nothing. I didn't -- like I said then, I did not know which
12 guy got shot. All I knew there was two guys said was shot;
13 that was it. That's all I knew. And I sit there in
14 Annaliese' house the whole time thinking like who could have
15 got shot.

16 Q: No doubt about it, the detectives asked you, was that one
17 of the reasons you shot him because he grabbed the pool stick
18 and you said basically, correct?

19 A: I said something referring to that, but it wasn't, it
20 wasn't like I'm just gonna shoot this guy because he got --
21 this is one of the guys that had a pool stick at me. I wasn't
22 coming out there to harm no one. Like I didn't even know
23 nothing like this was gonna happen like. It just happened
24 like. I didn't come out there to harm nobody or hurt nobody.
25 I went out there to have a couple of drinks and I was getting

State v. Chestnut

795

ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

1 ready to go to another bar. I didn't, like, I was gonna come
2 out there and say, okay, this guy right here grab a pool stick
3 -- I'm not that -- I don't do that.

4 Q: Why did you have a gun?

5 A: I always had the gun because -- I always had the gun for
6 protection.

7 Q: Because you're ready to fight?

8 A: No, that's not the reason why I have a gun. Don't you
9 have a gun? Is that the reason why you have a gun because you
10 ready to fight? Don't you protect yourself?

11 Q: There's a big sign outside of Wayne's that says no weapons
12 inside, correct?

13 A: Uh-huh (affirmative response).

14 THE COURT: Is that a yes, sir?

15 A: Yes, sir.

16 Q: And you took a weapon inside, correct?

17 A: Yes, sir.

18 Q: And I'd have to take your word that you weren't searched
19 on the way in?

20 A: The camera will show for itself. That's all I'm saying.
21 That's all you got to do, look on the camera. When I walk in
22 the club, I was not searched.

23 Q: You told the police that you ran over and saw them hitting
24 your home boy, correct?

25 A: Yeah, they was jumping him.

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

796

1 Q: And you just saw the pictures, you were actually over at
2 your car when they were -- when the fight started, weren't
3 you?

4 A: When it first started, I was -- yeah, I was just -- I just
5 probably come out there. He was already hit with a bottle.

6 Q: He was already hit with the bottle by the time you got out
7 to the car?

8 A: Probably so, but I know when I looked back around -- when
9 I left the car, he was still getting jumped. When I looked
10 around and I saw that he was down on the sidewalk getting
11 jumped, the fight had already started before I even -- before
12 I even touched the -- probably got to open the door of the car
13 he was already getting jumped.

14 Q: Once again, I'm gonna show you State's Number Two again.
15 What time do we see?

16 A: 1:13:58.

17 Q: 1:13:58. We see you headed in the car at 1:14, I think,
18 02 and we see the fight at 1:14:01?

19 A: Three seconds. Three seconds.

20 Q: So are you in the car when the fight starts?

21 A: If, if, if you see -- if -- the car is parked on the side
22 right out -- as soon as you walk out the club, you can make a
23 short -- from this end of this table right here to that door,
24 the parking lot right there. So, it's not like it take me
25 six, seven seconds to get to the car. Approximately, it would

State v. Chestnut

797

ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

1 take me -- walking out the club going to the car, it would not
2 take me no more then I was speed walking. So, it would not
3 take me no more than two or three seconds to get to the car.
4 He's already getting jumped.

5 Q: You told the police you swung before you fired, correct?

6 A: I was going in to swing.

7 Q: You told the police you did not throw a gun out at first,
8 didn't you?

9 A: Yes.

10 Q: And that's a lie?

11 A: That's a lie.

12 Q: Later you admit that you threw the gun out, correct?

13 A: Yes.

14 Q: And that's whenever they showed you we got the gun?

15 A: The reason why -- it wasn't that -- the reason why I was
16 telling them that I did -- I didn't have -- I didn't throw the
17 gun out was because I did not know what was going on. Again,
18 I was scared and I didn't know what they knew. And I felt
19 like it was best me to find out what they knew before I tell
20 them what I did.

21 Q: You told Mr. ---

22 A: I eventually told him what I did.

23 Q: You told Ms. Pratt -- are you finished with your answer,
24 I'm sorry?

25 A: I'm finished.

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

798

- 1 Q: You told Ms. Pratt that this projectile here?
- 2 A: Yes.
- 3 Q: You said that must've come off this van?
- 4 A: From on my reports and from my understanding of my motion
- 5 and from the CSI Investigator, that bullet came from the van.
- 6 Q: What, what did they say that tells you that came ---
- 7 A: If you look in the motion, if I can get the motion and
- 8 show you, it says that the bullet hit the window, never
- 9 penetrated through the window, and ricocheted.
- 10 Q: Did it say it ricocheted back?
- 11 A: A bullet coming that fast hitting the window, don't you
- 12 think it would ricochet at least ten, fifteen foot?
- 13 Q: You don't think it would ricochet off an angle and go out
- 14 and away from that van?
- 15 A: It is away from the -- it's in front of -- it's way in the
- 16 front of -- it's on the other side of the parking -- it's on
- 17 the other side in front of by the club.
- 18 Q: You agree that typically a windshield is curved, correct,
- 19 and angled down?
- 20 A: Yeah, it's up like that, yeah.
- 21 Q: And when things hit it, they fall at an angle, correct?
- 22 A: I can't say that; I'm not -- I can't say that. But from,
- 23 from, from your investigation and your invest -- CSI that
- 24 investigated the crime scene, state's that that bullet came
- 25 from this window.

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

799

1 MR. RICHARDSON: Your Honor, that's outside the record, I
2 believe.

3 THE COURT: Solicitor, I -- you asked the question and
4 he's responding.

5 MR. RICHARDSON: Yes, sir. Yes, sir.

6 BY MR. RICHARDSON:

7 Q: You're talking about your motion. You know a shell casing
8 was found at Number 8, correct?

9 A: Yes.

10 Q: You know that from your motion, Jamal McFadden had a
11 through and through bullet wound, correct?

12 A: Yes.

13 Q: You know it entered his left side, exited his right side,
14 correct?

15 A: I don't know exactly what side, but yes, I know, I know it
16 entered through, yes, sir.

17 Q: You agree as you look on here we go straight across to
18 where that projectile -- where the projectile is found from
19 this shell casing, correct?

20 A: You got to bring it forward a little closer?

21 Q: You having trouble seeing? I'm sorry.

22 A: It's a -- I'm not -- say what now?

23 Q: You agree that a shell casing is here and a projectile is
24 here, correct?

25 A: Yeah.

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

800

1 Q: Okay. There is a through and through wound for Jamal
2 McFadden; it enters one side and exits the other?

3 A: Jamal McFadden had to get shot from -- how can he get shot
4 from -- and the bullet come from way -- from -- it's
5 impossible.

6 Q: Because you shot him. They seen it on the video at close
7 range, correct?

8 MS. PRATT: Objection, Your Honor ---

9 A: No.

10 MS. PRATT: The Solicitor is arguing with the witness.

11 THE COURT: He's posing a question. The ---

12 A: No, you're wrong.

13 THE COURT: --- the witness can agree or disagree. Thank
14 you.

15 A: I'm gonna say this, if, if you feel like that projectile
16 is came from out this man's body, why wasn't this projectile
17 tested for any blood and anything that concerned this man.

18 BY MR. RICHARDSON:

19 Q: You heard testimony that there was no blood on the bullet,
20 correct?

21 A: Okay. So why -- how can you say that the bullet went
22 through and went through that way -- no, you cannot say that.

23 Q: Because you admitted you shot the one with dreads, didn't
24 you?

25 A: No, I admitted to shooting the guy in the elbow. You

State v. Chestnut

801

ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

1 cross it and say all the other things and made me basically
2 say the guy with dreads. It's, it's, it's like I said,
3 there's two or three guys that had braids and dreads in their
4 hair. So at the moment, I didn't know who got hit but I know
5 I didn't shoot the guy.

6 Q: State's Eighteen, that is your arm extended, correct?

7 A: Yes.

8 Q: That is the victim, Jamal McFadden, correct?

9 A: He's already -- he's already coming -- he's already coming
10 out this hole. He's already -- you can't even see down there.

11 Q: Because you ran in that hole with the gun, correct?

12 A: Listen, I was there. You just going off of what you see
13 and I'm telling you I was there.

14 Q: You're right; I'm going off of what I see. You saw the
15 video, correct?

16 A: You cannot see that -- you can't -- I'm there and I know
17 where my gun came back to me and shooting this guy in the
18 elbow and you can't deny that.

19 Q: I agree you shot him. I agree. We have a report,
20 correct, that shows you shot Damien Canty in the elbow,
21 correct?

22 A: So, what -- so, when did you shoot David Canty? Can you
23 tell me that?

24 Q: You watched the video. You've see the video before?

25 A: Tell me when I shot David Canty.

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

802

1 THE COURT: Mr. Chestnut, it's your job to answer
2 questions not ask them. Thank you, sir.

3 A: Okay. I'm sorry.

4 THE COURT: Answer the question, sir.

5 MR. RICHARDSON: Thank you, Your Honor.

6 BY MR. RICHARDSON:

7 Q: On Camera Number 2, the one we've been talking about, at
8 1:14:36, do you recall seeing Damien Canty walk back towards
9 the parking lot, this direction, back towards this tree?

10 A: I, I -- he was -- he had to've been still over there in
11 the area where they was fighting, There ain't no way he could
12 have got up within two or three seconds and got over there and
13 him -- he was on the ground fighting.

14 Q: You saw in the video everybody scatters at about 1:14:19,
15 correct.

16 A: I don't know exactly what time it was but I see people
17 scattered.

18 Q: 1:14:19 to 1:14:36 is about twenty seconds, correct, a
19 little bit less?

20 A: Yes.

21 Q: And you saw yourself walk back off the same direction
22 Canty goes at 1:14:41, correct?

23 A: I walk -- which way, which way you trying to tell me now?

24 Q: At 1:14:36, Mr. Canty walks back towards this lighted area
25 here?

State v. Chestnut
ARMANDO K. CHESTNUT -- CROSS BY RICHARDSON

803

- 1 A: I don't recall him being over in that area?
- 2 Q: Do you recall following him in this area, about a few
- 3 seconds later?
- 4 A: I never follow him in that area.
- 5 Q: So you never followed after Mr. Canty?
- 6 A: No, I never followed him in the area.
- 7 Q: No doubt about it that that's your black-and-white striped
- 8 shirt?
- 9 A: Yes.
- 10 Q: Do you remember Detective Kitelinger asking you -- I think
- 11 it was something along the lines -- now, Armando, we need to
- 12 know if you're just trying to help a friend out, are you just
- 13 trying to save a friend, and you still denied shooting the
- 14 gun, didn't you?
- 15 A: That's just before I told him the truth.
- 16 Q: It was ten minutes before you told him that you shot ---
- 17 A: Just before I told him the truth.
- 18 Q: Because they gave you a little more evidence.
- 19 A: He told me what he knew. He say he knew a little more and
- 20 step by step where I been at and I just eventually told him
- 21 what I did.
- 22 Q: You told Detective Kitelinger and Detective Truex that the
- 23 3rd Avenue Sports Bar was a Myrtle Beach place, correct?
- 24 A: It's a Myrtle Beach place?
- 25 Q: Uh-huh (affirmative response).

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

804

- 1 A: It's a club in Myrtle Beach.
- 2 Q: No, you stated this is a Myrtle Beach place.
- 3 A: What do you mean, like, it's a Myrtle Beach club.
- 4 Everybody in Myrtle Beach go to the club, I guess it's a
- 5 Myrtle Beach club.
- 6 Q: You stated that the Myrtle Beach guys outnumbered the
- 7 Hemingway guys, correct?
- 8 A: It's probably more Myrtle Beach people in there from not
- 9 saying like -- because you got people that's Jamaican that's
- 10 in the club, they stay on Myrtle Beach, so I call them Myrtle
- 11 Beach, too. So, I mean, it wasn't that many people in there I
- 12 knew from Myrtle Beach. There was people in there, but ---
- 13 Q: Did you tell Detective ---
- 14 A: I couldn't tell you -- I couldn't tell you how many people
- 15 really exactly was in there. I just know the Myrtle Beach
- 16 people. I didn't know how many Kingstree guys was in there or
- 17 how many Myrtle Beach guys in there. But I knew that it's a
- 18 possibility that Myrtle Beach probably had more people than
- 19 anybody else that come out there because it's a club that
- 20 everybody go to and it's right there in Myrtle Beach, so, I'm
- 21 figuring you from Myrtle Beach.
- 22 Q: Did you tell Detective Kitelinger that them Hemingway boys
- 23 were outnumbered?
- 24 A: Outnumbered, I probably did.
- 25 Q: There were only six or eight of them?

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

805

1 A: At the time that's when I realized there was six or eight
2 of them, but after I realized it was more than that.

3 Q: When it came time for trial you realized there were more
4 than that?

5 A: No, when I -- when I got my understanding and I got my
6 motion and I looked, there was more guys, when I saw the tape,
7 there was more guys.

8 Q: When you could tailor your testimony if you decided there
9 were more guys, correct?

10 MS. PRATT: Objection, Your Honor.

11 A: When I what?

12 MS. PRATT: Badgering the witness.

13 THE COURT: Solicitor, let's just stick to what we're
14 hear about. Thank you.

15 MR. RICHARDSON:

16 Q: When you first gave your statement, you had not seen the
17 video, correct?

18 A: No, sir.

19 Q: At this time, you have seen the video?

20 A: Seen pieces of it.

21 Q: We've all seen the video.

22 A: Yes, sir.

23 Q: And you've had a year to decide what to say, correct?

24 A: No, my whole intention was the same -- same thing.

25 Q: So, your statement ---

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

806

- 1 A: When I stated, when I stated a year and a half ago, I told
2 him -- I told him who I hit, Canty, the guy in the elbow. And
3 if you'll play the tape back, you will see me say it, the guy
4 got hit in the elbow, so it -- and it's the same thing and
5 that's what -- and he told me, no, you shot the other guy.
6 And I said, well, so who shot Canty? He told me that Corey
7 shot Canty and I told him you got that backwards ---
8 Q: You never told ---
9 A: --- because I did not shoot that guy.
10 Q: You never told Detective Kitelinger or Detective Truex
11 about hearing any other gunfire, did you?
12 A: Yes, I said there was other guys out there shooting.
13 Q: Before you shot, you told Detective Kitelinger and
14 Detective Truex you heard other shots?
15 A: I heard them, yeah, I told them when I rolled up, I heard
16 a shot.
17 Q: You never told police about hearing anybody say that they
18 were going to get their guns, did you?
19 A: I think I did told them they were going to get their guns
20 because that's what they -- that's why remembered hearing the
21 dude in the club say he was going to get his gun. So I know I
22 had to tell them.
23 Q: So, that should appear on your interview, correct?
24 A: It should.
25 Q: You didn't tell police that you smoked that morning, did

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

807

1 you?

2 A: When he, when he asked me my Miranda Rights, I told him I
3 smoked.

4 Q: You said, hey, I smoked just a little while ago; I smoked
5 this morning?

6 A: He never -- he never asked me when I smoke. I just answer
7 his question. He asked me did I, do I, am I on any drugs or
8 alcohol and I say I smoked some weed and I drunk a little
9 alcohol.

10 Q: You told the detectives that you shot one time and put the
11 gun in your pocket, correct?

12 A: No, I don't recall saying that.

13 Q: You watched your video, did you hear yourself say you shot
14 the gun one time and put it in your pocket?

15 A: I do not recall saying I shot one time and put the gun in
16 my pocket.

17 Q: Do you recall ---

18 A: I recall saying that I shot at dude one time, but I don't
19 remember saying I put no gun in my pocket.

20 Q: Do you recall showing the police detectives, I shot one
21 time and I put the gun in my pocket? Do you recall showing
22 them that?

23 A: Showing them that I shot one time and put the gun in my
24 pocket?

25 Q: Yes, sir, that's my question.

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

808

1 A: I don't recall -- I got to see that. I don't recall that.

2 Q: Let's talk about that fight inside at the pool table,
3 okay, or altercation; you said there wasn't no punches thrown,
4 right?

5 A: Not at the moment, no, there wasn't no punches thrown.
6 Ain't no punches throwed inside the club, just the guy grabbed
7 a pool stick and was attempting to hit somebody with the pool
8 stick.

9 Q: You're right in the middle of it all, correct?

10 A: I wasn't in the middle. I was just right there telling my
11 friend to chill out, don't worry about it, you got your money
12 so leave it alone. I wasn't in the middle of nothing. There
13 was no beef with me or I had nothing -- control over who was
14 betting. The bet was on before I even got there.

15 Q: That friend you're talking about, you're telling him to
16 chill out, is that Thoro?

17 A: Yeah, I'm telling him, listen, you got some money, don't
18 worry about betting back, leave it alone.

19 Q: So Thoro was the one barking?

20 A: He not barking. He just trying to bet back.

21 Q: He's stirring it up?

22 A: He's not stirring it up. He's just trying to bet back.

23 Q: And after that pool cue is grabbed inside by Mr. Graham,
24 it's done with, correct?

25 A: What do you mean, done with it?

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

809

1 Q: Well, the fellow who grabbed the pool stick, once it's
2 taken from him, he doesn't have a weapon anymore, correct?

3 A: Yes.

4 Q: So he's -- all he's got are bare arms -- bare hands now?

5 A: But they -- but all of them start saying they going out to
6 the car to get their guns.

7 Q: Ms. Pratt showed you a clip of a video, and you said,
8 yeah, that's a boy getting a gun?

9 A: Yes.

10 Q: We can see the gun on the video?

11 A: If you look closely, you could see it.

12 Q: You tell Detective Kitelinger about him getting the gun
13 out of that car?

14 A: I never noticed until I seen the tape. It's a lot of
15 things I didn't see until I saw the tape.

16 Q: So you're saying that night, you never saw a gun?

17 A: Huh?

18 Q: You're saying that night, you never saw a gun?

19 A: Yes, I saw guys with guns that night, but I didn't
20 particularly see him with a gun.

21 Q: Did you tell Detective ---

22 A: I didn't know he had a gun that night but when I saw the
23 tape and I seen -- because I -- I'm familiar with him and I
24 know him. He's from Kingstree but I know him.

25 Q: I thought you just said you didn't know any of these

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

810

1 fellows from Kingstree?

2 A: Just that one guy that I knew from Kingstree. Not, not,
3 not the crowd. He, he, he wasn't even with those guys. He
4 didn't even come there was those guys?

5 Q: Is that Gucci?

6 A: He come in that -- he come in that club all the time and
7 -- it's just that I know him from Kingstree. He been on the
8 Beach for about five -- four or five years.

9 Q: What's his name?

10 A: Mike.

11 Q: Okay. So Gucci's from Kingstree too originally, correct?

12 A: Gucci ain't from Kingstree; Gucci's from Georgetown.

13 Q: So earlier when you said you didn't know any of those guys
14 from Kingstree ---

15 A: I did not know any of them. Only one, I ---

16 Q: But now you're saying you did?

17 A: I didn't even see him in the club, so it's like -- I never
18 ran across him to say nothing to him in the club. So, I
19 didn't even notice he was in the club, but when I saw the
20 vehicle, I realized who he was. That's Mike. I know him. So
21 it wasn't like I walked past them and I spoke to them in the
22 club. I never said nothing to him in the club. I never
23 noticed he was even in the club. I never knowed he was even
24 involved in it until I looked and see him go in his car and
25 get his gun out his car. And if you look ---

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

811

1 Q: So, that night ---

2 A: And if you look you would see him with a gun.

3 Q: So that night, you didn't see him get a gun out of the
4 car?

5 A: That night I didn't see them get a gun out of the car, no.

6 Q: The fight outside, you never threw a punch, correct?

7 A: I never had a chance to.

8 Q: And you, you were concerned with the fight that was going
9 on in between the cars, correct?

10 A: I was really concerned with -- cause -- my main concern
11 was with Thoro because it was -- it was too many guys on him.
12 Like I said, I didn't know Corey was out there at the time
13 until I got probably a car away and I realized him hitting the
14 dude in the back of the head with a gun. But at the time I
15 saw that I thought Corey was somebody else, but then when I
16 got a better view of it, I realized it was Corey and then the
17 guy turned around and started fighting Corey and so -- and
18 then another guy come up and was fighting Corey with him. So
19 it, it's like seven, seven probably seven or eight guys on two
20 guys beating them when I roll up there.

21 Q: So you're stating that you actually were already over at
22 the cars when you saw Corey hit him in the back of the head?

23 A: I was going towards the car.

24 Q: You were going towards the car or you were at the cars?

25 A: I just stated where I was going; I was going towards the

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

812

- 1 car.
- 2 Q: Where were you in the parking lot?
- 3 A: What do you mean where was I?
- 4 Q: When you saw Corey ---
- 5 A: I'm here. I coming -- I coming from here; I came from up
- 6 here, I'm coming.
- 7 Q: When ---
- 8 A: I looked, I looked when I got about right here ---
- 9 Q: Uh-huh (affirmative response).
- 10 A: --- and I see a guy hitting him with -- well, with a gun
- 11 in his hand. I didn't know who he was until a came a little
- 12 closer and I -- as I see him, he's falling down fighting with
- 13 the other guys. There's another guy pulling up at the same
- 14 time hitting him too.
- 15 Q: So you're saying by the time Corey hits the big fellow; is
- 16 that big fellow Mr. Canty?
- 17 A: I don't know exactly which one he hit -- whoever the one
- 18 turned around and started fighting him.
- 19 Q: You're already over at the fight though?
- 20 A: I'm right, just pulling up, not even probably, I don't
- 21 know exactly how many seconds but I'm right there.
- 22 Q: Now and I think you've already said, no doubt about it you
- 23 turned around and fired back towards the tree area and the
- 24 light, correct?
- 25 A: Yes.

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

813

1 Q: You fired that way?

2 A: Yes, I hit the van and it was another car that was around
3 there that I hit. It was nothing -- it was -- because people
4 was leaving and the cars got hit but they didn't know probably
5 until later on that they car had a bullet in it or whatnot
6 because everybody just left out the parking lot. So the
7 investigative team never got there to really investigate the
8 cars. If the all the cars was out there, then you would've
9 had a clear view of what really, really happened.

10 Q: So the videos not a clear view of what really, really
11 happened?

12 A: Yeah, it's a clear view, but it's -- but you don't see the
13 cars that was there. You just going on speculation that you
14 saying that just because you see a projectile on, on a, on a
15 road that doesn't say that this projectile is came through
16 someone. That doesn't, that doesn't prove nothing. You've
17 got -- it's the car that left that got -- cars got hit that
18 had bullets in it that left the scene.

19 Q: Let me show you what's been marked as State's Thirty-five,
20 correct, that's -- you see that?

21 A: Uh-huh (affirmative response).

22 Q: That's a projectile. And it's been marked and identified
23 as coming out of David Canty's elbow, correct?

24 A: Okay.

25 Q: See how it looks?

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

814

- 1 A: Yes.
- 2 Q: Okay. Not too flat, correct?
- 3 A: It is flat, but it's not -- I don't know. I'm not
- 4 familiar with projectiles so ---
- 5 Q: And that's from striking an elbow, a bone.
- 6 A: It hit a bone?
- 7 Q: Now you see Thirty-six that's been identified as coming up
- 8 off the parking lot?
- 9 A: Yes.
- 10 Q: Okay. Is that in better condition than the one that came
- 11 out of Mr. Canty's elbow?
- 12 A: I can't, I can't, I'm not, I'm not -- I can't tell you
- 13 because I don't know.
- 14 Q: Well, you just told me that there's no way that it cut
- 15 through anybody's body, it had to hit a windshield?
- 16 A: Okay. I'm gonna say this. If you feel that my gun went
- 17 through someone's body, whole body, why wouldn't it go through
- 18 Canty's arm? Why wouldn't that gun go through his whole arm
- 19 and you telling me that gun would go through his whole body?
- 20 It got to be a powerful more gun to go through his whole body
- 21 than to go through a arm.
- 22 Q: Your biggest concern is Thoro, correct?
- 23 A: Yes, and I'm going out there to help him, yes, sir.
- 24 Q: I mean, you want to help Thoro?
- 25 A: I didn't know Corey was out there at the time until I

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

815

- 1 rolled up. My biggest concern, I'm going out there to aid
- 2 Thoro because there's four or five guys on him and I'm going
- 3 to help him.
- 4 Q: And he's leaking?
- 5 A: He's leaking.
- 6 Q: How bad?
- 7 A: Blood all on -- coming down his face like a ---
- 8 Q: All coming down his face?
- 9 A: Yeah.
- 10 Q: And so whenever Damien Canty runs inside, you went inside
- 11 after him, right?
- 12 A: Yes, I did, like -- somebody was in front of me but I went
- 13 right behind him, yeah.
- 14 Q: And then when he gets knocked down, you run over and you
- 15 stomp down on his head, right?
- 16 A: No, I never hit his head. I hit his shoulder. I never
- 17 hit his head period.
- 18 Q: And you stomped at him at least twice more, right?
- 19 A: I stomped down but never hit him the second -- the last
- 20 two times.
- 21 Q: Were you aiming at the floor or at his head?
- 22 A: I was aiming really anywhere I could hit him at but I
- 23 didn't hit him in the head.
- 24 Q: And when you get pushed back, you just kind of stomp away,
- 25 correct?

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

816

1 A: I leave. I left out.

2 Q: Before that, you go back over to Mr. Canty again, correct
3 and Mr. Feaster pushes you away again?

4 A: Probably so. I think so. But I didn't do nothing like
5 ---

6 Q: You didn't go in his pockets?

7 A: No, I don't want to go in his pockets.

8 Q: And then you walk out with Ms. Testa, correct?

9 A: Yeah.

10 Q: And what point do you grab Thoro, whose bleeding real bad
11 and you're worried about, what time do you grab him and take
12 him to the hospital?

13 A: Listen, when Thoro -- when I came back through the club
14 and, and I went, when the shot went off and I came back around
15 from the car from where when I shot towards and hit the van,
16 Thoro -- I went back round -- after I shot the shot, I went
17 back round to go check on Thoro and he was coming towards my
18 way. Then I seen the guy that was all -- that started the
19 whole commotion, which was the Canty, and I went in to fight
20 him.

21 Q: And you never take Thoro to the hospital?

22 A: How I'm gonna take him? I mean he got his own car. I'm
23 not thinking he's gonna ---

24 Q: You're not thinking he's hurt that bad?

25 A: Yeah, he's hurt; I know he's hurt; he's bleeding, but

State v. Chestnut

817

ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

1 everything done happen so fast -- what I supposed to do, just
2 stop everything and just say, come on, take me to the
3 hospital. I already knew he -- he wasn't even go to the
4 hospital because just knowing him, I know he's not gonna go to
5 the hospital. If his arm was, the only way he would have went
6 to the hospital if something was broke on him. Other than
7 that -- or if he was shot or something. And I just knew that
8 he wasn't gonna go to no hospital anyway, so -- but I did call
9 him and ask him was he all right.

10 Q: So, you scatter all these people with your shooting, you
11 stomp Canty, you stomp on out and get in your car and leave
12 without even checking on Thoro again?

13 MS. PRATT: Objection to compound question, Your Honor.

14 A: I told you I called.

15 THE COURT: I'll allow the question.

16 A: I called him.

17 BY MR. RICHARDSON:

18 Q: When did you call him?

19 A: Like probably right -- as soon as I got in the car.

20 Probably not even two or three minutes, I called him to make
21 sure he was all right.

22 Q: That ride home ---

23 A: That was Corey called him and he told Corey that they got
24 me bleeding and was he all right and he say he -- I'm all
25 right. I'm gonna go and let my girl stitch me -- well, patch

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

818

- 1 me up. He didn't say he was going to the hospital. I just
2 know he was bleeding. He had cuts in his head. I know that.
3 Q: You rubbed that gun down for prints back at Annaliese'
4 house, didn't you, that's why you got the towel?
5 A: I never rubbed no gun down for prints.
6 Q: That ride back to Annaliese' house, it took about fifteen
7 minutes?
8 A: From where, the club?
9 Q: Uh-huh (affirmative response).
10 A: Fifteen, twenty minutes probably.
11 Q: Fifteen or twenty minutes. You told her that you shot at
12 the one with dreads?
13 A: I don't remember recall telling her that.
14 Q: You told her you shot?
15 A: She stated that; I did not say that. I don't know who
16 told her -- I ain't told her that.
17 Q: Who else was in the car with y'all?
18 A: When?
19 Q: On the way back to her house from the club?
20 A: Just me and her. She never asked me about who I shot. I
21 told her I shot -- I don't know if somebody got shot or not.
22 She never asked me who was it or who -- she never asked me
23 that.
24 Q: You told her you shot one time, correct?
25 A: Yes.

State v. Chestnut

819

ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

1 Q: Because you didn't want to look bad in front of her, did
2 you?

3 A: No, I told her I shot one time, again, leaving in the
4 crowd right there where they was fighting. But Canty got hit
5 in his arm right there.

6 Q: You told Ms. Testa you shot one time, yes or no?

7 A: I told her I shot one time in the area. I did not say I
8 shot one time throughout the whole fight.

9 Q: You don't want to be like some cold blood -- you didn't
10 want to seem like some cold-blooded gunslinger in front of Ms.
11 Testa, did you?

12 A: It wasn't, it wasn't even -- I don't think -- I wasn't
13 even like that. I don't even consider myself nothing -- no
14 cold -- I don't even think like that.

15 Q: She was your new girlfriend you'd been dating two weeks?

16 A: No, I been knowing her. I been dating her longer than two
17 weeks. That's something -- I don't -- it's new to me like.
18 It was a shock to me for her to even say that, like, I mean
19 I'd been working with her for like five or six months and I
20 was dating her for two weeks?

21 Q: You put the gun in a drawer at her house?

22 A: Yes.

23 Q: And it's that gun?

24 A: Yes.

25 Q: You wrap it in a towel at some point?

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

820

- 1 A: No, I ain't wrapped nothing in a towel.
- 2 Q: You smoked some marijuana, correct?
- 3 A: Yes.
- 4 Q: You watch a movie?
- 5 A: Yes.
- 6 Q: Go to sleep?
- 7 A: I drink wine and went to sleep, yes.
- 8 Q: You get on the phone the next day and call your buddies,
- 9 correct?
- 10 A: No, I didn't call no buddies.
- 11 Q: You didn't call Gremlin?
- 12 A: I didn't -- he called me.
- 13 Q: Well, and so you didn't call Thoro the next day to check
- 14 on him?
- 15 A: I talked to Thoro that next day.
- 16 Q: Well, that's your buddy, right?
- 17 A: No, you're saying like buddies, I didn't call -- I called
- 18 to check on him and that was it.
- 19 Q: Did you text anybody back and forth?
- 20 A: About what? I don't remember texting nobody like ---
- 21 Q: Did you call and leave voice mails?
- 22 A: No, I don't leave no voice mail.
- 23 Q: And you didn't get up and go to the police department?
- 24 A: I called Barbara, which has been my attorney since I been
- 25 knowing her since I been a juvie -- I called her and I never

State v. Chestnut

821

ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

1 got an answer. That night, this same night, as soon as I
2 basically, as soon as I like -- right after I got off phone
3 with Thoro, asking Thoro was he all right, riding down the
4 highway, I google her number because I did not have it. I
5 google her number and got her number and I called her. And
6 that's probably what, approximately what, about 1:30 not even
7 probably ten minutes after we left the club. So, it wasn't
8 that I was trying to hide or I was trying to run. I did call
9 her but I never got in contact with her. And I woke up that
10 morning and, yes, I called her again.

11 Q: You understood you had a right to an attorney whenever you
12 got -- gave a statement?

13 A: Yes, but I was still trying to, basically I wanted to
14 speak with her before but I never could contact with her.

15 Q: At any point, did you tell Detective Kitelinger and
16 Detective Truex or any other body in law enforcement, hold on,
17 I need Ms. Pratt here?

18 A: To be honest, when I was in the conference room, I made
19 that statement to, to one of the officers that was in there,
20 but they never said nothing.

21 MR. RICHARDSON: Your Honor, we need to approach.

22 THE COURT: Yes, sir. Y'all come up.

23 (REPORTER'S NOTE: A bench conference was held off the record
24 in the presence of the jury but out of hearing of the jury.)

25 BY MR. RICHARDSON:

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

822

- 1 Q: It was loud inside the club, right?
- 2 A: Music was playing.
- 3 Q: It was loud, right?
- 4 A: Yeah.
- 5 Q: It would've been hard to hear anybody say anything in
- 6 there, correct?
- 7 A: It depends on how far away you were from a person.
- 8 Q: How far -- you said these people were talking about going
- 9 to get guns -- how far away were you?
- 10 A: I was like right there, like not far, probably from here
- 11 to the corner of that desk right there.
- 12 Q: This far?
- 13 A: Probably so.
- 14 Q: And the music's loud?
- 15 A: Yes but you can still hear a person say they going to get
- 16 guns.
- 17 Q: No doubt about it, this gun is yours?
- 18 A: Uh-huh (affirmative response).
- 19 Q: No doubt about it, you didn't hand that gun to anybody
- 20 else that night after you shot it the first time, correct?
- 21 A: You talking about after I left the club or that night?
- 22 Q: Did anyone else that night have your gun?
- 23 A: Later on that night, yes.
- 24 Q: Who's that?
- 25 A: I gave the gun to I think it was Twan but he came -- I

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

823

1 told him I'd get it back to him -- I'd get it back from him
2 and I ended up getting it back from him later on that night
3 when I was at her house. She didn't know, she was sleeping in
4 the bed so -- I called him and give him directions to the
5 house and I met him outside.

6 Q: Okay. Any of the shell casings we found on the scene,
7 those three shell casings, you don't argue that those come
8 from your gun, correct?

9 A: That what the SLED report that came back to, so, it had
10 to've been.

11 Q: Your gun is not a magic gun; it doesn't expel three shell
12 casings at one time?

13 A: No.

14 Q: It doesn't expel two projectiles at one time?

15 A: No, sir.

16 Q: There was an argument inside and Wayne breaks it up,
17 correct?

18 A: Wayne breaks it up? Well, I don't know -- well, Wayne was
19 there. I don't really who break it up but I just seen the
20 guys going outside and say they going to get their guns so I
21 don't know who really break it up.

22 Q: Wayne had to get you off of Damien Canty when he was on
23 the ground, correct?

24 A: He pushed me away.

25 Q: And you did go to the car before you ever shot it,

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

824

1 correct?

2 A: Yes, but that's not saying that I didn't -- that I went to
3 get a gun.

4 Q: Did you have anything in your hand when you went to the
5 car?

6 A: Keys.

7 Q: And did you have anything in your hand when you walked
8 away from the car?

9 A: My gun in my hand.

10 Q: Okay. You saw the video. Everybody scattered when you
11 pointed that gun and fired, didn't they?

12 A: They was just scattering just before I even shot my gun.
13 You look at the camera, that's what I'm telling you, a shot
14 was fired before I even got there.

15 Q: After shooting your gun three times, you go back in the
16 club?

17 A: Yes.

18 Q: Cauty is on the ground when you go kick him, correct?

19 A: Yes, but I'm not thinking -- I'm thinking he just fell or
20 something. I'm not thinking he's about to get up, so I ain't
21 -- if I'm fighting a person and, and if I see him fall and
22 because I done been, I done got hit and fell and got right
23 back up. So I'm not thinking, so I went over there to kick
24 him before he get up. I'm not thinking nothing else like,
25 it's a fight so that's just part of fighting.

State v. Chestnut
ARMANDO K. CHESTNUT - CROSS BY RICHARDSON

825

1 Q: No doubt about it, you told numerous lies to both
2 Annaliese Testa and to Will Kitelinger and to the Myrtle Beach
3 Police Department?

4 A: Annaliese Testa, what do you mean I told lies to her?
5 About what? I didn't lie to ---

6 Q: You told her you shot one time and you shot three times?

7 A: I told her I shot one time in the area where the guys was
8 fighting and I didn't say -- I didn't lie to her. I lied at
9 the beginning of my statement. I corrected myself and I did
10 -- there wasn't nothing for me to hide.

11 MR. RICHARDSON: Your Honor, I have no further questions
12 of this witness.

13 THE COURT: Redirect?

14 MS. PRATT: None, Your Honor.

15 THE COURT: You may step down, sir.

16 A: All right.

17 THE COURT: Reply witnesses?

18 MR. RICHARDSON: Your Honor, the State won't call reply.

19 MS. PRATT: Your Honor, may we approach?

20 THE COURT: I'm sorry, before I said reply witnesses, I
21 was under the assumption but -- does the Defense rest?

22 MS. PRATT: Your Honor, I don't believe we can, but I
23 need to bring a witness tomorrow morning.

24 THE COURT: Madam Forelady, members of the jury, you go
25 to the jury room right now.

State v. Chestnut
MOTIONS

845

1 murder, voluntary manslaughter, attempted murder, assault and
2 battery high and aggravated nature, and then pointing and
3 presenting a firearm, assault and battery by a mob second
4 degree, third degree, assault and battery first degree and
5 assault and battery second degree. And then the general
6 charge that we have as to greater or lesser offenses. If you
7 have reasonable doubt as to whether the Defendant is guilty of
8 the greater or lesser, should you resolve that now in favor
9 the Defendant and find him guilty of a lesser offense if it is
10 your view of the evidence and it has been proven to you beyond
11 a reasonable doubt.

12 And then the final thing would be the self-defense and
13 why don't I go over that with you so that y'all can tell me if
14 you're in agreement with that or you have exceptions to that.

15 Yes, sir, you were standing up for something?

16 MR. RICHARDSON: Yes, sir, Your Honor. I don't know if
17 this is the proper time but the State would just like to take
18 exception to the self-defense charge and draw the Court's
19 attention to State v. Slater. I think the case is on point in
20 this ---

21 THE COURT: I have read State v. Slater and also the
22 Supreme Court decision of State v. Slater.

23 MR. RICHARDSON: Yes, sir. That's, I'm sorry, that's the
24 one I was referring to.

25 THE COURT: I realize that's now at 373 S.C. 66, 644

State v. Chestnut
MOTIONS

846

1 S.E.2d 50, 2007 decision of the South Carolina Supreme Court
2 and I also have looked at State v. Burroughs.

3 MR. RICHARDSON: Yes, sir.

4 THE COURT: A Supreme Court decision that's found at 334
5 S.C. 256, 513 S.E.2d 104. Now, in Slater and there it found
6 that basically it wasn't proper, but they're talking about the
7 particular facts and circumstances of the case. And obviously
8 they indicate that a self-defense charge is not required
9 unless it's supported by the evidence. In that case, they
10 said the clear evidence in that case Slater failed to meet the
11 first requirement, that is he was not without fault in
12 bringing on the difficulty.

13 Well, in this particular case, there is conflicting
14 testimony as to whether or not the Defendant participated in
15 bringing on the difficulty or not. So I can't weigh
16 credibility and believability. I can't decide which testimony
17 to believe. Therefore, there is a reasonable interpretation
18 of the evidence that supports self-defense. There is also a
19 reasonable interpretation of the facts and evidence that
20 indicate self-defense is not warranted and not available to
21 the Defendant but that's the jury's job in weighing the
22 evidence and deciding what they're gonna believe and what
23 they're not gonna believe. I can't -- unless it was a bench
24 trial, that's not my job. So I believe self-defense is proper
25 and I will charge it and let me go over what it is my

State v. Chestnut
MOTIONS

847

1 intention to do.

2 Now I'm not gonna read every single word here that I'm
3 gonna say to the jury, but I believe I'll give you an
4 extremely good idea of what I'm gonna tell the jury. I will
5 indicate the Defendant has raised the defense of self-defense.
6 It's a complete defense and, if established, you must find the
7 Defendant not guilty. I will then immediately say the State
8 has the burden of disproving self-defense by proof beyond a
9 reasonable doubt. If you have a reasonable doubt of the
10 Defendant's guilt after considering all the evidence including
11 the evidence of self-defense, then you must find the Defendant
12 not guilty. On the other hand, if you have no reasonable
13 doubt of the Defendant's guilt after considering all the
14 evidence, including the evidence of self-defense, then you
15 must find the Defendant guilty. And we talk about the
16 elements without fault, the Defendant must be without fault of
17 bringing on the difficulty. In -- when I'm talking about
18 without fault, as I indicated to Ms. Pratt before, I will have
19 the statement at the mere unlawful possession of a firearm in
20 and of itself does not automatically bar a self-defense
21 charge. A person can be acting lawfully even if he is in
22 unlawful possession of a weapon if he was entitled to arm
23 himself in self-defense.

24 Then I'm gonna go on to talk about mutual combat. If the
25 Defendant voluntarily participated in mutual combat for

State v. Chestnut
MOTIONS

848

1 purposes other than protection, the killing of the victim
2 would not be self-defense, further talk about mutual combat.

3 The second element is imminent danger. Is that the
4 Defendant was actually in imminent danger of death or serious
5 bodily injury or the Defendant actually believed they were in
6 imminent danger of death or serious bodily injury.

7 The right to act on appearances, the Defendant does not
8 have to show prudent person that he was actually in danger.
9 It was enough if the Defendant believed he was in imminent
10 danger and a reasonable person or ordinary firmness and
11 courage would've had the same belief.

12 Intoxication of the victim may be considered in deciding
13 whether the Defendant's fear of death or bodily injury was
14 reasonable.

15 The final element is the Defendant had no other way,
16 probable way to avoid the danger of death or serious bodily
17 injury to act as the Defendant did in this particular
18 instance.

19 Degree of force, a person cannot be required to make an
20 exact calculation as to the degree or amount of force which
21 may be needed to avoid death or serious bodily harm.
22 Defendant has the right to use the force needed to avoid death
23 or serious bodily harm. It does not have to be limited to the
24 degree or amount of force used by the victim.

25 Continuing until the threat of harm is ended, the

State v. Chestnut
MOTIONS

849

1 Defendant is justified in defending himself or others and in
2 firing the first shot, then the Defendant is also justified in
3 continuing to shoot until it is apparent that the danger of
4 death or serious bodily injury has completely ended.

5 And then we go on to talk about the defense of others.
6 Under the law of self-defense, the Defendant may take
7 another's life in the defense of others. The right to
8 intervene to protect another person is subject to the same
9 rights and limitations as the right of self-defense. The
10 Defendant may take the life of a person who assaults a friend,
11 relative or bystander if that friend, relative or bystander
12 would have had the same right of self-defense. And we go on
13 and talk about some of the same things that we talked about in
14 self-defense. Also right to act on appearances, we'll talk
15 about that again. Defendant does not have to show that the
16 person that Defendant defended was actually in danger. It's
17 enough that the Defendant believed the person was in imminent
18 danger. Defendant has the right to act on appearances even
19 though the Defendant's beliefs may have been mistaken.

20 So, that would be my intention as the charge on self-
21 defense. Understanding the State did not want me to do that,
22 going beyond that, do you have objections to what it is my
23 intention to charge?

24 MR. RICHARDSON: No, Your Honor.

25 THE COURT: All right. Ms. Pratt?

State v. Chestnut
MOTIONS

850

1 MS. PRATT: No other requests, Your Honor.

2 THE COURT: All right. So that is my intention as to the
3 Court's charge to the jury in this case.

4 Anything else that the State wants me to consider?

5 MR. RICHARDSON: Starting at 11:00.

6 THE COURT: Well, how about as to the charge, anything
7 else?

8 MR. RICHARDSON: No. No, sir, Your Honor.

9 THE COURT: All right.

10 MR. RICHARDSON: No, sir, Your Honor, I believe you
11 covered all -- I did wish to ask I assume it's your standard
12 reasonable doubt charge where you do the hesitate to act and
13 the firmly convinced language?

14 THE COURT: Yes.

15 MR. RICHARDSON: Yes, sir, just wanted to double-check on
16 that.

17 THE COURT: And if you want me to, Ms. Pratt, you want me
18 to read the whole thing to you? It's pretty short.

19 MS. PRATT: Please, Your Honor.

20 THE COURT: All right. Sure. All right. Let me find
21 it.

22 Reasonable doubt is the kind of doubt that would cause a
23 reasonable person to hesitate to act. The State has the
24 burden of proving the Defendant guilty beyond a reasonable
25 doubt. Proof beyond a reasonable doubt is proof that leaves

State v. Chestnut
BY THE COURT

851

1 you firmly convinced of the Defendant's guilt. There are very
2 few things that, in this world that we can know of absolute
3 certainty. The law does not require the State of South
4 Carolina to give you that degree of proof. What is required
5 is based on your consideration of the evidence, you are firmly
6 convinced that the Defendant is guilty of the crime or crimes
7 charged, you must find the Defendant guilty. On the other
8 hand, if you are not firmly convinced that the Defendant is
9 guilty of the crime or crimes charged, then you must give the
10 Defendant the benefit of the doubt and find him not guilty.

11 That's the entire. All right.

12 MR. RICHARDSON: Thank you, Your Honor.

13 THE COURT: Anything that, Ms. Pratt, that you would like
14 me to add to what we have already described?

15 MS. PRATT: No, Your Honor.

16 THE COURT: All right. There will be one final
17 opportunity after I charge the jury. I'll send them out and
18 tell them don't begin the deliberations and when we get done
19 excusing the alternates then I will ask the State and the
20 Defense if they've got any additions, deletions or objections
21 to the charges given and then obviously the State and Defense
22 will have an opportunity to bring it again to the Court's
23 attention. But what I've talked about, that's what I intend
24 to tell to the jury unless y'all bring something else to my
25 attention. All right.

State v. Chestnut
CLOSING BY PRATT

855

1 give you the charge on the law, the law that you will apply to
2 the facts and evidence you find to be true in this particular
3 case and then I'll submit the case to you for your
4 deliberations and your unanimous decision on all matters to be
5 presented.

6 So with that, I'll recognize Ms. Pratt.

7 MS. PRATT: May it please the Court?

8 THE COURT: Yes, ma'am.

9 CLOSING BY MS. PRATT:

10 MS. PRATT: Good morning. Ladies and gentlemen of the
11 jury, in three minutes lives change and in four seconds lives
12 can change forever. In this case, we have a span between 1:11
13 on the morning of March the 6th, 2012 and about 1:15 when
14 these lives of these people completely changed. One life
15 ended. That is not a situation that we take lightly. But I
16 want to remind you a little bit -- and we're not gonna play
17 the video -- but we're gonna remind you a little bit about
18 some of the times and how important those are as to what
19 happened in this case because I really believe there's a
20 couple of key factors that we need to, to point out to you.

21 First of all, as you heard, at 1:11 in the morning of
22 March the 6th, 2012, everyone was getting along quite well at
23 the 3rd Avenue Sports Bar & Grill. By 1:12:52, 1:12-fifty-two
24 seconds, McFadden grabbed a pool stick in an argument with
25 Thoro. At 1:13:18 Thoro leaves the club. At 1:13:26, just

State v. Chestnut
CLOSING BY PRATT

856

1 about eight seconds later -- so remember, it's happening very
2 quickly -- the Kingstree boys start to leave the bar after
3 Thoro.

4 At 1:13:44, that's about another twenty seconds, Canty
5 and four of his home boys walked down to Thoro, Canty with a
6 bottle in each hand. At 1:13:55, McFadden walks along the
7 sidewalk. He comes into the picture toward Canty and the
8 Kingstree boys and Thoro. At 1:13:56, a second later, Corey
9 is getting his gun. At 1:13:57, Armando starts to walk
10 towards his car. And as you'll see on State's Exhibit Two at
11 1:13:58, Armando is walking to his car. He turns around and
12 he comes back from his car and changes the gun from one hand
13 to the other. It's a matter of one second to two seconds from
14 the time that Corey got his.

15 Okay. At 1:14:01 A.M. the fight -- fatal beginning of
16 this, I believe -- Canty strikes Thoro with a bottle. For
17 seventeen long -- and that is State's Exhibit Number Twelve --
18 for seventeen long seconds and if you counted and you think
19 one thousand, two thousand, think how long those are, maybe
20 with a blow every second or two blows every second because
21 there's several people, the attack continues on Thoro and then
22 changes over to being on Corey. So, we have Thoro and Canty
23 first, then Corey is there. Canty turns and starts fighting
24 with Corey, as Corey testified to you.

25 And during that attack, Mr. McFadden moves down from the

State v. Chestnut
CLOSING BY PRATT

857

1 right-hand side from the center of the parking lot and comes
2 into the area between the cars to see what's going on. Maybe
3 to participate; it's hard to tell. It's hard to tell. But
4 there's a group not only of Thoro and two or three Kingstree
5 people, Corey and Canty, McFadden and at least one other
6 person and then as you seen on the video and as you heard from
7 the witnesses, Mr. Feaster comes down, the owner of the bar,
8 and Allen Graham comes down, the bouncer, and Armando comes
9 into the picture. And there's other people that you saw
10 throughout the scene.

11 At 1:14:17, Armando shoots towards the fight. Thoro,
12 several Kingstree boys, Canty, Corey and at least two others,
13 including McFadden; that's the area he points towards.
14 McFadden ducks, turns towards Armando running past him towards
15 the back parking lot and people scatter.

16 I realize that for most of you, a club like this, and
17 most of the people in this courtroom, a club like this is
18 completely foreign. These kinds of scenes aren't things that
19 you've gone to. You don't go to a restaurant and expect that
20 half the people have guns; we don't have that kind of a
21 situation in our experience. And I think in order to really
22 look at this complete situation, I have to bring you into the
23 scene. I have to see if you can understand what was going on
24 because the one thing that was horrible about that video is
25 that it's a silent movie. There was no sound. If you could

State v. Chestnut
CLOSING BY PRATT

858

1 have heard a gunshot, if you could have heard the noise, the
2 commotion, the threats, the screaming, the curses, the words
3 they were using and I'm sure it was coming from all sides,
4 you'd have a better picture. You might be able to listen and
5 see if, as according to Wayne Feaster and Allen Graham, there
6 really was a gunshot from the sidewalk. You would know that.
7 But we don't have that because there's no audio. You can't
8 take this in a vacuum and think that what you see on the video
9 is what, is all that is going on, because it's not. And even
10 silent movies when they used to be popular a little bit before
11 my time, had a musical background, a score behind them and
12 they would have a, a da-da-da-da-da kind of sound when there
13 was something fast and heavy going on and they'd have soft
14 tinkling music when there was something loving going on. You
15 need sound and we just don't have that here today. This video
16 is too stale. Silence makes it seem like this was all a
17 civilized slow, easy restrained kind of situation, but I
18 submit to you that that's not what was going on. There were a
19 lot of people moving quickly, a lot of noise, a lot of
20 threats. And as you heard from two or three of the witnesses,
21 gunshots being fired.

22 I think that this is the error that the police made in
23 their whole handling of this case. I think it was easy to
24 review the video, get who they thought the people were, decide
25 what they thought happened and simply go from there. But when

State v. Chestnut
CLOSING BY PRATT

859

1 you can't here what's going on, you're hearing the words,
2 hearing bottles breaking, hearing the threats and the curses,
3 how can you have a full picture? I think we could be making
4 the same mistake in this trial if we try to act as Monday
5 morning quarterbacks and think that the video tells us
6 everything. We've seen enough video over the last four days,
7 I certainly agree with that, but it's important. And I'm not
8 discounting the fact that having the video is great for
9 telling us where people were and what was going on, but it
10 doesn't tell you everything. I submit to you that if you
11 believe the video is accurate and you should just rely on
12 that, that you're making a big mistake because what it shows
13 does matter, but the Court is going to instruct you as part of
14 the charge on self-defense that a defendant has the right to
15 act on appearances. That means that he has the right to
16 respond to what he perceives is going on so long as what he
17 perceives is what a reasonable person would perceive. And you
18 can't tell what appearances were without having the testimony
19 of the witnesses and the sounds that you have.

20 To determine how it appears, we've got to listen to the
21 witnesses and you heard from several people that were actually
22 there. The first witness you heard from that was present was
23 Wayne Feaster and he told you how McFadden grabbed the pool
24 cue. He told you that he had to stop that argument. He told
25 you that one dude hit Thoro with a bottle and that that

State v. Chestnut
CLOSING BY PRATT

860

1 happened first outside. He saw a silver and black gun fly
2 into the air. Now just imagine the violence and the strength
3 that something like that that what's going on causes a gun to
4 fly into the air. He saw Canty and Corey Myers fighting
5 between the cars. He said I thought I heard a gunshot before
6 Armando came into the scene. Remember though he said but
7 after I watched the video, I thought maybe I was wrong. Well,
8 the fact is, that sound is part of what's not on the video and
9 is part of the chain of events that started this. If Feaster
10 believed he heard a gunshot, then it's reasonable to believe
11 that Corey thought he heard a gunshot and that Armando thought
12 he had heard a gunshot and that's part of right to act on
13 appearances.

14 Wayne didn't want to admit that any guns could be in his
15 club but he knew it was possible. He did say that to us.

16 Corey Myers, the State's only witness, makes the point
17 that Thoro was in trouble and he was going to help him. Corey
18 stated that the argument at the pool table was between a guy
19 from Kingstree and Thoro. And Thoro is really the particular
20 person that we are looking at as the person who is being
21 defended from the very beginning. Corey heard trash talk. He
22 heard a threat from Kingstree that a person was gonna kill him
23 and that they were getting their guns. And then he said to
24 you, four to six Kingstree guys swarmed Thoro. So he ran over
25 there to help because there was no one else there at that time

State v. Chestnut
CLOSING BY PRATT

861

1 from Myrtle Beach to help. Corey said the big guy, meaning
2 Canty, struck Thoro first and when Thoro tried to hit Canty --
3 I mean, when Corey tried to hit Canty, Canty turned and
4 attacked him and that's when the gun flew out of his hand and
5 fell to the ground. It appeared to Corey that Thoro was in
6 serious trouble.

7 Now when you compare what's happening with Corey and with
8 Armando, you have to remember that Armando got his gun within
9 a second of when Corey went to get his and you'll see the
10 pictures. The pictures go back into evidence with you so you
11 can look through them and check this evidence out, but I want
12 you to look at that. Within a second or two, we've got two
13 Myrtle Beach guys going to their cars and realizing that
14 something is going on down there that needs to be handled and
15 it's Thoro being attacked. Both those men went to take care
16 of him. If it appeared to Corey that the Kingstree guys were
17 trying to kill Thoro, then why would it be any different for
18 Armando.

19 Now, Corey had some credibility issues and there was some
20 bad choices by the police that made it -- that didn't help the
21 situation. Because the police did not go get a search warrant
22 right away, because they let him sit in jail for two days
23 before they interrogated him and because they let him sign a
24 Consent to Search that said, oh yeah, just pick up these four
25 or five little things. We really don't know some of the

State v. Chestnut
CLOSING BY PRATT

862

1 things about Corey that we might know if it had been handled
2 differently. If the police had done with Corey what they did
3 with Armando and Annaliese, they would have gotten a search
4 warrant, gone straight to Corey's house, gotten everything
5 within twelve hours, I guess, of when the crime occurred, and
6 we'd know if anything had been set out, if anything had been
7 cleaned, if anything had been moved, if anything had been
8 added. We don't know that. We will never know whether the
9 right number of bullets were collected, whether there was a
10 casing in the chamber. We don't know if his clothes were
11 washed and then placed there on the floor.

12 Agent Simmons told you that one reason there might be
13 only particle of gunshot residue on Corey's jacket was that
14 they might -- it might've been washed or I think I used the
15 example of a sticky buddy, the gunshot would come off. But
16 it's likely that it could have been washed and she mentioned
17 that. And I think you guys will appreciate State's Exhibit
18 Eighty-five, which is the clothes at the corner of the bed.
19 How many women do you know, the girlfriend that's living in
20 here, that would actually leave somebody's clothes laying at
21 the corner of the bed for two days?

22 And Corey told you himself that he set everything out and
23 you'll see the picture -- I think you did when we were doing
24 the, the actual testimony. You'll see pictures of the gun
25 laid out, folded boxer shorts and the bullets in a nice little

State v. Chestnut
CLOSING BY PRATT

863

1 clump right there are all ten that he says fit in his gun.
2 Since when do we let Defendant's tell the police what they can
3 take?

4 We went through a demonstration with Agent Parnell about
5 the Taurus, which is Corey's gun. We aren't gonna know
6 because of the timeframe whether there was still a casing in
7 that Taurus, but it's not that hard for Corey to have picked
8 up the gun and he would have picked up the Taurus -- which
9 you'll back there but it's gonna have a safety on it, a
10 gunlock I should say -- pick it up, he's holding it, he's got
11 his finger on the trigger. At the same time, easy, move the
12 safety, hand it over. He could, at that point, when he's
13 fighting with Canty and he swings down, the gun could have
14 fired. And if that happened, the casing would have been in
15 the chamber as the agent said. We don't know if that
16 happened. We know it's defect with that particular gun but we
17 don't know if that happened because of what happened in the
18 actual, I guess, investigation of the case. If that gun had
19 fired, we would have heard a gunshot. It would've fit with
20 what Wayne Feaster told you, would've fit with what Allen
21 Graham told you, would've fit with what Armando told you.
22 Corey didn't want anybody to think that he fired. He knew
23 when he turned -- was sitting in jail for two days before he
24 was interrogated that he knew somebody was dead. He knew
25 somebody was hurt. He wasn't gonna let it be possible that

State v. Chestnut
CLOSING BY PRATT

864

1 his gun had fired.

2 And remember the entire situation did not happen in the
3 silence of the video and it's not on the video because as you
4 remember, this entire area on State's Exhibit Eighty-seven
5 with the Markers 13, 18, and 19, none of that is on the video.
6 But we see in the video people coming back and forth, down
7 this way, out and back and around on that scene. So, we don't
8 know what's going on over there and we don't know if there's
9 gunshots. We know that such guns, revolvers, exist and are
10 typical, 9's and .38's as the agents told you that can be
11 firing gunshots here or around here and there wouldn't be any
12 casings at all. Even Detective Kitelinger admitted that there
13 was an area on this picture that was not on the video.

14 Allen Graham, the bouncer, told you that out of nowhere,
15 the Kingstree guys with the dreads grabbed the pool cue. The
16 fight was diffused, people went outside. He saw four or five
17 Kingstree guys jump Thoro and hit him with a bottle. He did
18 not believe that Thoro was making any kind of threatening
19 gesture; do you remember the Solicitor asking him that? He
20 kept trying to explain that he thought he was getting to his
21 jacket doing something like this but not a threatening
22 gesture. And then the Solicitor asked him, well is the video
23 more accurate or is what you saw more accurate; remember
24 that's not the standard. The standard is the right to act on
25 appearances.

State v. Chestnut
CLOSING BY PRATT

865

1 Tameka Mason told you she saw the attacks as she and her
2 friends moved from the bar to their cars over by the
3 restaurant. So on the diagram -- I shouldn't have put it
4 down. On this diagram, as she comes from here from the little
5 bar and grill and comes through here to get to her car over
6 there, she is passing by getting all the incident that's going
7 on here. She said she thought she saw Thoro being jumped by
8 at least three Kingstree guys and there were a couple of
9 Kingstree guys behind them with guns. Corey went to help
10 Thoro; that's what she said. And then Armando came up. Of
11 course, she heard a shot and took off and I don't blame her.
12 Her car was somewhere over here. She and her girlfriends got
13 in it and it's like, feet don't fail me now, let's get out of
14 this area.

15 Michael Spivey testified. Now, Michael is a Codefendant
16 and he testified in Armando's fault -- case, which put him in
17 a situation where he's now dealing -- he's still dealing with
18 his charges and he knows that the State is probably not gonna
19 be willing to help him in any way. Michael couldn't speak to
20 much that was outside. And you know if he was gonna lie about
21 it, he could have said, oh yeah, I was standing by the door,
22 saw the whole thing. He didn't try to do any of that. He
23 spoke to the fight that began with Kingstree in the bar and he
24 spoke to the fight that happened afterwards that when Canty
25 came back in. I mean, and what he said was clearly set out on

State v. Chestnut
CLOSING BY PRATT

866

1 the video as well. When Canty came back in the bar, he was
2 still attacking. That guy was pumped up on some adrenaline
3 because he comes back in and he's throwing his jacket and he's
4 fighting with Michael and he's fighting with Thoro and he's
5 fighting with Armando. And Michael said when he was still
6 attacking, I knocked him down and he did. He knocked him down
7 pretty much with one punch. Allen Graham backed that up and
8 said when Canty came back in the bar, he was swinging at
9 everyone, attacking anyone in his way. Michael hit him and
10 then Armando came up right behind him and kicked him. And you
11 see Armando kick him. He's not trying to deny that. He
12 didn't deny it with the Solicitor. He said he kicked him one
13 time and said the other two kicks didn't land but he doesn't
14 say he didn't do it. He's trying to tell you what happened.

15 Your job as jurors is hard, it is, because you have to
16 judge the credibility of all of these witnesses and figure out
17 which parts of their stories are true. And the Judge is gonna
18 tell you that the credibility is basically believability. You
19 use your common sense and you don't have to believe everything
20 that somebody says, you don't have to believe -- you know,
21 none of it. You can pick and choose what fits with you and
22 what resonates as true for you and the way that you do that is
23 looking at the context and what you know from the other
24 evidence, what you saw with the gunshot residue, what you see
25 with the pictures, what you know about the bullets.

State v. Chestnut
CLOSING BY PRATT

867

1 Unfortunately, the Myrtle Beach Police Department did not
2 - they made choices that mean you only got half the picture.
3 They identified the two Kingstree guys as victims; did not
4 identify Thoro and Corey as victims. So, we got two victims
5 from Kingstree but we've got two victims from Myrtle Beach.
6 They didn't do that. They decided right away that Armando and
7 Corey had intended to murder McFadden and Canty and charged
8 them right away that way. You remember that there were
9 already warrants when Corey turned himself and when they found
10 Armando and Annaliese in that vehicle. They already had the
11 warrants. They didn't care what anybody else was saying; they
12 made up their minds. They could have just as easily charged
13 the Kingstree boys with assault by a mob. And when I had
14 asked them -- they decided not to do it. And when I asked
15 Detective Kitelinger about attempted murder and the elements,
16 he quickly cut in, I don't know the elements. Why did -- and
17 I think you need to think about this. A person who is the
18 head of violent crimes thirteen years with the force, lot's of
19 experience before then, doesn't know the answer to that
20 question? Why didn't they charge Kingstree; I don't know.
21 But they didn't even try to find out the names. They didn't
22 put Canty into investigative detention at the hospital. They
23 decided right away that the Kingstree boys weren't gonna be
24 their problem. They were gonna focus on the people that they
25 could easily find here in Myrtle Beach, whether it was

State v. Chestnut
CLOSING BY PRATT

868

1 justified or not.

2 All of the fact witnesses said Canty hit Thoro with the
3 bottle first. How did the police department ignore that? And
4 when asked why he didn't test the broken bottle, Detective
5 Kitelinger said he didn't see that there was any reason to do
6 it because he interpreted something different from the video
7 that maybe Thoro put his arm and so when Canty tried to block
8 the punch, the bottle flew out of his hand. Well, we might've
9 known something if he tested it. But his interpretation
10 doesn't fit with any of the witnesses, not even their
11 witnesses. Detective Kitelinger made a big show about wanting
12 to investigate Thoro. He knew his name was Hubert Dewayne
13 Durant. He already had warrants for Armando and Corey so why
14 was he even saying that he dearly needed to talk to Thoro?
15 And we showed you that Thoro was arrested by Myrtle Beach
16 driving in November and was in jail from December till
17 January. Sure it's after the crime, but if they're really
18 looking for Thoro, you know they have guys that are checking
19 the website which, as Captain Safford said, is updated three
20 times a day and is on there for a year. So if they wanted to
21 find him, they would've done that. Myrtle Beach arrested
22 Thoro.

23 They didn't check the back parking lot area. They
24 decided not to test McFadden's clothes for gunshot residue.
25 They didn't bag McFadden or Canty's hands before being treated

State v. Chestnut
CLOSING BY PRATT

869

1 so we don't know if those gunshot lifts, residue lifts are
2 accurate. Nobody collected Canty's t-shirt or his jacket so
3 they weren't tested. No one tested the broken beer bottle for
4 fingerprints or blood. No one tested the projectile for blood
5 to see if it was the one that went through McFadden or the one
6 that bounced off the mini-van. And you remember that was
7 pretty important to Armando when he was testifying yesterday.

8 You will have in your jury room these two projectiles,
9 which are State's Thirty-five and Thirty-six. You will be
10 able to look at them yourselves and see whether you believe
11 one of those is a bullet that bounced off and deflected off
12 the minivan or whether it's one that went through a person.
13 There's discoloration on the bullet that comes from Canty's
14 elbow. And remember that cars had driven through the crime
15 scene, so we don't know if everything that's on this diagram
16 is exactly where it would have been when the incident
17 occurred. Things are going to move a little bit. This is not
18 a soft, dirt parking lot. It's asphalt although it's not
19 black topped. So there's, things aren't gonna move too far
20 but they certainly could move.

21 You have Dr. Proctor's testimony and Dr. Proctor is one
22 of the finest pathologists. We've used him here for years.
23 He will, he told you first of all that McFadden had .09
24 alcohol, pot and ecstasy in his system. And the Judge is
25 gonna tell you that you have the right to consider that when

State v. Chestnut
CLOSING BY PRATT

870

1 you're making your deliberations in determining what Armando
2 thought was happening. It may have been true for every single
3 person that was in there; we know pretty much everybody was
4 drinking. It was Reggae night and they were in there drinking
5 from 9:00, 10:00, 11 o'clock at night. That is part of the
6 appearances that you have the right to act upon, is that
7 toxicology report.

8 But more importantly, Dr. Proctor told you and the Band-
9 Aids fell off -- I am wearing the same dress, but the Band-
10 Aids fell off. He told you that the bullets went in from left
11 to right. This is where the bullet went in. Okay. Now if
12 McFadden, if the fights are happening over here where, close
13 to where the Bailiff is at the edge of your jury area, and
14 McFadden is watching, the only way a bullet gets in from left
15 to right is either a gunshot from the sidewalk, which is what
16 some people testified to, remember they're going left to right
17 and he's looking this way at the fight or McFadden would have
18 to turn this way for Armando to hit him. We don't see
19 McFadden on the video turned this way before a shot, before
20 Armando shot, shoots. We see him turn towards Armando after
21 the gunshot and we see Armando stepping back as he's shooting
22 and McFadden coming by.

23 Detective Kitelinger's statement about the testing, when
24 I asked him why he didn't test some things, was very telling
25 because he said why would I, what evidence could it give us to

State v. Chestnut
CLOSING BY PRATT

871

1 what purpose. And I guess my answer is we need a fuller
2 picture. We needed a fuller picture than what went on. Now,
3 Armando gave a statement to the police on March the 6th. And
4 I'll tell you he lied throughout at different times in that
5 statement. Not unusual. Kitelinger told you that that's
6 something that people do. Annaliese did it; Corey did it.
7 They started out lying because they want to find out what's
8 going on; they're scared; they're gonna see if they're smarter
9 than the police; and if they can figure out what's happening.
10 But by the time they get to the end of the statement, they're
11 admitting things they need to admit. They realize they need
12 to tell some things about what's going on and their statement
13 changes. Armando told you he was under the influence of pot
14 and alcohol. They didn't give him two days like they did
15 Corey. They went ahead and interviewed him anyway. And I
16 submit to you that being under the influence of pot is
17 different looking than being under the influence of alcohol.
18 When people are high, they speak in a disjointed fashion.
19 They may not tell things the way that it happened so they
20 focus on different things. They get stuck on a thought. You,
21 as the jury, first of all, get to decide whether or not his
22 statement was voluntary; that's part of your job. And
23 Armando was scared that exactly what happened was going to
24 happen, that he'd get arrested and be part of this thing.
25 Kitelinger didn't really want his side of the story. He

State v. Chestnut
CLOSING BY PRATT

872

1 wanted his confession to be a piece of icing on the cake.

2 Armando did finally admit the gun and admitted to
3 shooting either, if you listen, he said either the one with
4 the dreads or the slim guy. It was Detective Kitelinger who
5 kept pushing him to pick one. But as Armando told you on the
6 stand that he's shooting towards something. He's not shooting
7 at one; he's shooting towards the clump, the group.

8 I know I got a little heated with Detective Kitelinger
9 and I apologize for that. God's still working with me, even
10 at my age, on my temper. I just hope you won't hold anything
11 that I did against my client, okay?

12 The bullet evidence is very important to Armando. He put
13 in a SLED report in his testimony. He wants you to look at
14 that. He wants you to think about the fact that we've got
15 three casings. We've got two fragments. One of which is out
16 of Canty's elbow and remember it's his right elbow. So if
17 Canty is fighting somebody and Armando shoots toward the
18 clump, he would get hit in the right elbow. And there's one
19 bullet that's found close to this area here, not far, and
20 you'll see that on the diagrams and talk about it.

21 Armando says that that second bullet fragment came off
22 the windshield. It did not come out of McFadden's body and we
23 will never know which bullet actually killed McFadden. We
24 don't know. It went through him. There's no way to tell.

25 Armando did testify yesterday and you know that he didn't

State v. Chestnut
CLOSING BY PRATT

873

1 have to. He wanted you to hear his side of the story and I'm
2 sure the Solicitor is gonna try to say that he's had time to
3 make -- to look at his evidence and put it together and get it
4 all straight. You get to choose whether you believe what he
5 said or not. You get to judge his credibility the same way
6 that you judge it with your children; how did they look at
7 you, how did they tell it, did they stay consistent? You know
8 my mama used to say a liar better have a good memory because
9 people that are telling the truth stick to the same thing.

10 Solicitor tried really hard to shake him on cross and I
11 think he stayed with the same story very close. I think he
12 was right there trying to tell you the story of what happened
13 to him that night. You get to judge that credibility. That
14 is your choice; your job, I should say.

15 And I think that the State is probably going to try to
16 use Annaliese Testa's testimony in order to say that he was in
17 a big cover-up and that's why he asked her to wash the jeans
18 and he threw out the gun. But if he's trying to cover
19 something up by washing the jeans, why didn't he tell her to
20 wash the jacket and the t-shirt too. It's not a cover-up.
21 He did try to throw out the gun -- or he did throw out the
22 gun. And certainly, again knowing that something had happened
23 by then, knowing that he was afraid.

24 In order to decide this case, you are gonna have to
25 separate the incidents as to victims and to places where

State v. Chestnut
CLOSING BY PRATT

874

1 things happened. The State has charged Armando with murder in
2 the death of Jamal McFadden. Murder is the killing of any
3 person with malice aforethought. And if there is no malice
4 aforethought, then there's a lesser included offense of
5 voluntary manslaughter, which means an unlawful killing of a
6 human being in sudden heat of passion with sufficient legal
7 provocation. The Judge is gonna give you the law. I'm giving
8 you a very short version on these things, but he will give you
9 the law. A person has the right to defend themselves and
10 others near them. Self-defense and defense of others are
11 complete defenses, not a sort of defense, not okay, we'll do a
12 little lesser included because he's kinda sorta this way; they
13 are complete defenses. If you find that they acted in self-
14 defense, then they are not guilty, both Corey and Armando.
15 And the State has the burden of disproving self-defense.

16 So I'm gonna tell you what self-defense is just like I
17 did in my opening and make sure you understand what the
18 elements are. The Judge is gonna tell you the law and what he
19 tells you is the right law, but I believe that this is very
20 close to what he's gonna -- or not exactly -- exactly what
21 he's gone tell you. A person is justified in using deadly
22 force -- and deadly force means shooting at somebody -- in
23 self-defense when first of all, the Defendant was without
24 fault in bringing on the difficulty. Nobody said that Armando
25 started this fight. The fact witnesses did not say that.

State v. Chestnut
CLOSING BY PRATT

875

1 They said that Kingstree attacked Thoro -- everyone, if the
2 State's people.

3 The second element, the Defendant actually believed that
4 he was in imminent danger of losing his life or sustaining
5 serious bodily injury or he actually was in such imminent
6 danger. For this element, I want you to keep thinking about
7 Thoro because Armando is acting in defense of others and the
8 other he is defending is Thoro. So we look at this and
9 analyze it in regards to Thoro. Did Armando believe that
10 Thoro actually was in imminent danger? Well, he had a whole
11 bunch of guys jumping on him. He'd been hit by a bottle; he
12 was down; he was being kicked; he was in danger; there's no
13 question about it. If the defense is based on his actual
14 belief of imminent danger, would a reasonable prudent person
15 think the same thing? Would somebody reasonable, a reasonable
16 man in law school was kind of this fictitious person, but it's
17 a person who's supposed to be completely, calm, level and
18 reasonable in making all the decisions. So does a reasonable
19 person believe that there is imminent danger to Thoro, to
20 Corey, to Armando? And then number four, the Defendant had no
21 other probably means of avoiding the danger of losing his own
22 life or sustaining serious bodily injury than to act as he
23 did? For Thoro, Thoro couldn't leave. Once he was hit with
24 the bottle, he could not leave. Corey, once Canty was on him,
25 could not leave. Now you can say that Armando could have

State v. Chestnut
CLOSING BY PRATT

876

1 chosen not to come to the fight but then you're asking him to
2 stand back and let his friends be beaten and possibly killed.
3 There were a lot of them on them. There were gunshots. We
4 don't know what might have happened. You're asking him to
5 stand back and not do what a reasonable person would do in the
6 situation. And when you're defending someone else, you're not
7 guilty of taking the life of another who assaults somebody if
8 that friend, relative or bystander would have had the right to
9 defend himself. So if Thoro had the right to defend himself;;
10 if Corey had the right to defend himself; then Armando had the
11 right to defend them. Unfortunately, the group that's in the
12 corner in-between the cars is a clump of people and McFadden
13 is caught in the crossfire. We don't know what his exact
14 involvement is. We don't have any testimony as to what he was
15 doing. Was he getting any licks in; I don't know. Was he
16 just standing there watching; was he having a gun in his
17 pocket thinking he was gonna shoot, we don't have any idea,
18 but he's part of the group and he's caught in this.
19 When a defendant claims self-defense, the State is required to
20 disprove the elements beyond a reasonable doubt. If you are
21 looking at the charge of murder, voluntary manslaughter as to
22 Jamal, if you're looking at attempted murder or assault and
23 battery of a high and aggravated nature which is a lesser
24 included of that as to Damien Canty, self-defense is an
25 absolute defense. Defense of others is an absolute defense

State v. Chestnut
CLOSING BY PRATT

877

1 and that means not guilty. And if you believe that Armando's
2 shot was the shot that killed McFadden, and that's a big if,
3 it's still not guilty because Armando was defending Thoro.
4 Sometimes self-defense means having a superior weapon. There
5 were three, maybe four, maybe five from Kingstree. Thoro and
6 Corey were outnumbered. They only had two hands and two feet
7 each and I submit to you but for Armando firing that shot, if
8 he had not fired that shot, the attack would have continued.
9 Because you saw it on the video, just as soon as that shot was
10 fired, people stopped and scattered. It stopped the attack on
11 those boys.

12 The Solicitor may try to claim that this was mutual
13 combat. Mutual combat is when there is a mutual intent and
14 willingness to fire. Well, you looked at the video, do you
15 think that was a mutual intent, that those boys wanted to get
16 into a fight? They didn't start it. In fact, the fight
17 stopped in the bar and then people went out and went after
18 Thoro. Mutual combat is more like meet me out back and we'll
19 settle the score. It's the parties talking to each other
20 saying we'll both -- we'll go out there and deal with it.

21 There's another charge of assault and battery by a mob
22 both second and a lesser included of I think it's third
23 degree. In order to find assault and battery by a mob on
24 Damien Canty, you're looking at the incident that happened
25 inside the bar afterwards and you have to -- the State has to

State v. Chestnut
CLOSING BY PRATT

878

1 prove to you that there was a mob, which is an assemblage of
2 two or more persons with the premeditated plan and intent to
3 cause harm to another person. When you looked at the video
4 that you did, you did not see a combination of people. You
5 didn't see Michael Spivey and Thoro and Armando agreeing we're
6 gonna get Canty. What you saw was Canty attacking Michael
7 Spivey and that's important because if there's no mob, then
8 there's no assault and battery by a mob. There's a further
9 lesser included and that's assault and battery and there's
10 different degrees. Assault and battery is an assault or a --
11 and battery is the actual connection or the touching or the
12 blow to the person. If you believe that all we have with
13 Armando is the stomping, that can be considered an assault and
14 battery, but again, self-defense is a complete defense to that
15 also. And the Judge is gonna charge you that you are
16 justified in going all the way to the end if you're justified
17 in defending yourself in the beginning. So if there's still a
18 threat from Canty when he comes back into the bar, then
19 Armando is justified in making sure that he was down for the
20 count.

21 Canty didn't come to tell you about his injuries. All
22 we've got is a picture. So you're gonna have to figure out
23 whether he has serious bodily injury or great bodily injury
24 from the picture because we didn't get any testimony about
25 that.

State v. Chestnut
CLOSING BY PRATT

879

1 The last charge that they have is pointing and presenting
2 and that's pointing a gun at somebody and the Judge is gonna
3 tell you that a person is allowed to do that in self-defense
4 if they're justified in self-defense. The Judge is also gonna
5 tell you that even somebody who doesn't have the right to own
6 the gun has the right to arm himself if he is acting in self-
7 defense or defense of others.

8 Now, I know you're tired and I've talked a long time. I
9 just want to touch on two other things; presumption of
10 innocence and reasonable doubt. The presumption of innocence
11 is important in this country. It's what we're based on. What
12 it means is if each person that comes into Court and that
13 means Armando, Corey, Michael and Annaliese, all four of them
14 have charges, are presumed innocent of those charges until the
15 State removes and proves beyond a reasonable doubt that they
16 are not innocent. The Supreme Court calls it like a cloak of
17 innocence, so I wore my white coat. It's like they have to
18 take the coat off bit by bit to prove that somebody's guilty.
19 Otherwise, they remained clothed with that presumption of
20 innocence. And reasonable doubt, His Honor is gonna define
21 for you, but it is something that, that, that would cause a
22 reasonable person to hesitate to act -- that's one of the
23 definitions -- or if you're believing something beyond a
24 reasonable doubt, you're firmly convinced of it. If you have
25 doubt, you have to resolve it in favor of the Defendants here.

State v. Chestnut
CLOSING BY PRATT

880

1 And I submit to you that there's reasonable doubt of
2 guilt from the testimony of these people and it's the things
3 I've already told you: Thoro being attacked first; Canty still
4 swinging. I'm sure that you consider this -- when you
5 consider all of it you're have your doubts and those doubts
6 have to be resolved in favor of the Defendant. You know,
7 Kitelinger was interesting in his statement when he
8 interrogated Armando because he set it out for you. When he's
9 talking to Armando, do you remember him leaning back in the
10 chair and he says dit-dit-dit-dit let me finish. Here's my
11 dilemma, is Armando a cold blooded killer or Armando somebody
12 who acted in the heat of the moment to protect a friend?
13 Kitelinger made his decision before he heard all the facts,
14 didn't investigate anymore. You have heard the testimony of
15 people who were there, of experts, from the autopsy, about the
16 guns, about the shells. You have a duty to sift through all
17 the evidence to reach a verdict that speaks the truth.

18 Ladies and gentlemen, nowhere in this country should a
19 person have to stand by and let their friends be attacked and
20 beaten or risk death and injury themselves. When you consider
21 all the evidence, I am confident that you will realize and be
22 firmly convinced that Armando acted in self-defense in
23 defending Thoro and Corey and you will find him not guilty of
24 all of these charges.

25 Thank you for your time and attention.

State v. Chestnut
CLOSING BY RICHARDSON

881

1 THE COURT: All right, Solicitor.

2 CLOSING BY MR. RICARDSON:

3 MR. RICHARDSON: The last word, the final say; that's
4 what this case is about. It's not about self-defense. In the
5 early morning hours of March 6, 2012 Armando Chestnut and his
6 fellows, his crowd from Myrtle Beach that outnumbered those
7 Hemingway boys by his own statement, had had enough of them
8 inside the club. So he went out to get ready for a fight. If
9 you believe his statement, he put his phone away and he knew
10 he was gonna fight or the State would submit to you, he goes
11 to get a gun because he's empty-handed when he goes out to
12 that car. But, when he leaves walking away from his car, he is
13 sliding the action on the gun ready to do death, ready to get
14 in the last word. His pride had taken a hit. Thoro's pride
15 had taken a hit and they were gonna finish the argument. On
16 March 6, 2012, he got the last word. He got the last word
17 that night; you're getting the last word today. You will, you
18 will see loudly and clearly and truly that this is not self-
19 defense. This is not self-defense. You saw the video and
20 thankfully we're not watching it right now. You see there
21 after everything has ended inside, walk down to his car,
22 actually get in his car and get back out. And when he gets
23 back out, he is some distance away, not two feet away like Mr.
24 Graham said, but some distance away from Damien Canty and his
25 friends. Damien Canty has come outside, two beers in his

State v. Chestnut
CLOSING BY RICHARDSON

882

1 hand; he's not armed to fight. He's been kicked out of the
2 club just like Mr. Feaster said. Mr. Graham may have said
3 we'll let him back in, I mean -- I'm sorry -- yes, Mr. Graham
4 may have said we'll let him back in, but Mr. Feaster, the
5 club's owner, tells you if they're kicked out, they're out.
6 But he's walking out with his beer, he's gonna finish those
7 beers and go home. And Ms. Pratt tells you, well, we haven't
8 heard from Damien Canty about what he was doing of his
9 injuries. We haven't heard from Thoro either. He hadn't come
10 and told us what his intents are. We didn't find him.

11 MS. PRATT: Objection, Your Honor.

12 THE COURT: Sustained. Continue on, Solicitor.

13 MR. RICHARDSON: Yes, sir, Your Honor. But we do know
14 Thoro walks back and, before he ever walks back, Corey Myers,
15 another one from Myrtle Beach, goes in between these fellows
16 and Canty. He was over there by the fight by the pool table.
17 They don't do anything because their intent is not to fight at
18 that point. And Thoro walks back to him. Why? He knows
19 Armando Chestnut's got his back. He knows where Armando went.
20 He knows Armando's getting armed, maybe Thoro's got a gun.
21 But he's gonna get the last word. He goes up and -- whether
22 flips his jacket, throws a punch, whatever, Mr. Canty doesn't
23 do anything until that motion is made and then yeah, he slings
24 a bottle at him. I don't know if he hit him in the head. I
25 don't know if he hit him in the arm, cut the arm -- I don't

State v. Chestnut
CLOSING BY RICHARDSON

883

1 know. I know the beer bottle is -- Michelle McSpadden said
2 there was no blood on them. There's blood on the ground but
3 no blood on the beer bottle. They're getting the last word.
4 And when the Defendant made his statement, Annaliese Testa,
5 he's trying to get his last word in to her. He wants to look
6 good and when he gets in into the police, he wants to get the
7 last word with them. He searches after a little bit of
8 evidence and gets his last word in. And then yesterday on the
9 stand, he wants to get the last word in again. He's got a
10 right to explain his answers, but he didn't want to answer.
11 But he wants to get the last word in just like he did on March
12 6th, 2012 and he spoke loudly and clearly and we know he was
13 the one that spoke because you see the people's reactions in
14 the video. Mr. Feaster and Allen Graham, Allen Graham, it was
15 hard to believe a lot of his testimony but I believe him when
16 he says ---

17 MS. PRATT: Objection, Your Honor.

18 THE COURT: I'll gonna allow that. You may continue.

19 MR. RICHARDSON: He stops on the first shot and you see
20 him walking, walking, walking until you see Armando Chestnut
21 point that gun at an unarmed Jamal McFadden and pull the
22 trigger. And he speaks his word loudly, getting that final
23 word in as he turns toward the crowd as they scatter from his
24 shots and fires another one. And he speaks loudly again as we
25 see Damien Canty walk off scene, out of the parking lot

State v. Chestnut
CLOSING BY RICHARDSON

884

1 unarmed walking back towards that tree and you see the
2 Defendant walk and then take off after him. And he stamps an
3 exclamation point on his word when he goes inside that club,
4 following, following Damien Canty. We've heard testimony that
5 Thoro was actually trying to fight Mr. Canty again and we see
6 it on the video -- you see the Defendant come in and point at
7 Damien Canty, or I hope you can see that, throw a punch at
8 Damien Canty. We see Damien Canty -- yeah, he takes a swing
9 and swings his jacket at him. And then we see Mike Spivey
10 knock him down. And as he's falling another one of Mr.
11 Chestnut's buddies hits him and then they begin kicking,
12 stomping. He says kicking, I only kicked him once. But you
13 watch the video, he is raising his knee way up in the air and
14 coming down, last word. But today, you get the last word and
15 that word should be guilty of assault and battery by a mob
16 when he and his buddies tried to beat Damien Canty's head into
17 that floor, in the carpet with concrete underneath. Guilty of
18 attempted murder for following Damien Canty out and shooting
19 him in the parking lot; guilty of pointing and presenting a
20 firearm because he did just that; and certainly guilty of
21 firing that fatal blow to Jamal McFadden that rips from his
22 left side through his right side leaving a shell casing on one
23 side and a projectile on the other. If there's no blood on
24 it, the projectile, we know it's through and through. We know
25 that it is almost pristine. It's even in better condition

State v. Chestnut
CLOSING BY RICHARDSON

885

1 than that which ripped through and lodged in the bone on
2 Damien Canty. So it hadn't hit any bone, just soft tissue. He
3 got the last word in but you'll find him guilty. That'll be
4 your last word.

5 In just a few minutes, Judge John's gonna begin to give
6 you some instructions. He'll remind you again that as always
7 from the beginning he told you, you are the judges of the
8 facts. You always have been from the moment you swore in.
9 You're the judges of the facts. You take all of the testimony
10 from the stand, all of the evidence that has been produced,
11 and you'll take that to the jury room and you're gonna weigh
12 it. But the Judge will tell you he's the Judge of the law.
13 So he's gonna give you the law to apply to those facts. He's
14 gonna give you the ground rules. He's gonna tell you about
15 direct and circumstantial evidence. He'll tell you direct
16 evidence is something that points directly to a fact, such as
17 an eye witness that says I saw this, I saw that. He'll tell
18 you that circumstantial evidence is a chain of facts that lead
19 up to one ultimate conclusion, something along that line. And
20 he'll say they weigh the same. They have an equal weight and
21 when it comes to direct testimony, direct evidence, you got to
22 judge that by credibility. As he told you at the beginning,
23 you come in here with good common sense, use it. You judge
24 people every day. Look at their demeanor on the stand, how
25 they sound, how they respond. Does what they say make sense?

State v. Chestnut
CLOSING BY RICHARDSON

886

1 Is it corroborated by evidence, physical evidence? Does it
2 add up? And when you're doing that, you'll realize Ms. -- I
3 think it was Tameka Mason, her statement doesn't add up. She
4 said she saw somebody get cracked over the head with a pool
5 cue inside. We don't see that. The pool cue is grabbed away.
6 And she's close inside, she should be able to see that. And
7 then she said she is walking away intent on getting to her
8 car, but really how much is she gonna be seeing back over
9 behind her. She said she walks near it but she's intent on
10 getting to her car and it's dark, she admits it's dark. Does
11 she have somebody reward, somebody she's known her whole life,
12 dated? You got Mr. Graham, judge his credibility. Well, he
13 was in a very -- was he scared for the fight that was going
14 on? No, he was just walking over there following his boss,
15 Mr. Feaster. He's not overly scared. And what he saw that
16 night, he tries to tell you, oh yeah, I saw all of this, I was
17 standing out here, but when he's asked, he was in a position
18 where he could not see how the fight started. He stood behind
19 everybody until the fight started and he ever so concerned
20 that he walked over there. Just like Mr. Feaster, just like
21 everybody else, everybody gathering around for a fight. Mr.
22 Feaster told you that the Myrtle Beach and Hemingway together
23 fight. Mike Spivey, he was inside. I agree with him, he was
24 inside. He said he grabbed a pool cue and then he couldn't
25 find himself on the video. I don't know. And the Defendant,

State v. Chestnut
CLOSING BY RICHARDSON

887

1 I'm gonna get back to his credibility in a minute.

2 But the Judge is also gonna tell you about the
3 Defendant's statement. You get to judge whether it was
4 voluntarily given, judge by what you saw. He was read his
5 rights. He said he understood his rights and signed off he
6 understood his rights. He's trying now to say, oh, I was way
7 too high. I told them I was drunk and marijuana. He never
8 said when he had marijuana, how much marijuana; he indicated
9 he could go ahead. Did he respond appropriately to the
10 questions? Did what he say make sense that day? That's how
11 you judge his statement. Listen to the Judge on that. And
12 the Judge is gonna talk to you about assault and battery by a
13 mob, two or more people engaged together for a common purpose
14 committing an assault causing serious bodily injury. Mr.
15 Chestnut and his friends all gather around until Mr. Wayne
16 Feaster backs them off and they stomped Damien Canty as he lay
17 unconscious on the floor. He goes to the hospital; he's there
18 for some time. That's serious bodily injury, assault and
19 battery by a mob second degree.

20 Attempted murder, he is shot in the arm. I don't have to
21 show that the wound was in the heart or the lung or that he
22 almost died, it's done with a deadly weapon. He is shot in
23 the arm. It lodges in his arm and has to be removed.

24 Pointing and presenting, that's an easy one.

25 And murder, the Judge is gonna tell you that murder is

State v. Chestnut
CLOSING BY RICHARDSON

888

1 the unlawful killing of another with malice aforethought, no
2 doubt about it. We have an unlawful killing here because
3 self-defense failed. It's the unlawful killing of another,
4 Mr. McFadden, with malice. The Defendant, after the fight
5 that's off inside, done, goes out to his car, grabs a gun,
6 runs to action and fires into an unarmed man. We see him
7 crumple, get back up, a few seconds later as he's trying to
8 stumble away, he looks down to see where he's wounded.

9 And the Judge will tell you about reasonable doubt. The
10 Judge is gonna tell you, I mean -- I'm sorry -- self-defense.
11 The Judge is gonna tell you that the Defense has raised self-
12 defense as an issue in this trial. And he'll tell you that
13 if, if self-defense is established, that's a complete defense.
14 The State must rebut it beyond a reasonable doubt. And he'll
15 tell you that there are certain requirements, certain elements
16 that must be met to establish self-defense. The Judge will
17 tell you what is required to establish the claim of self-
18 defense -- and I'm sorry for the misspelling here -- but he'll
19 say, number one, the Defendant and in place of himself for
20 defense of others, the rules still apply. For him to defend
21 himself, the Defendant must be without fault. And for the
22 defense of others that the person defended must be without
23 fault in bringing on the difficulty. The Defendant fails --
24 when the Judge says these elements must be met, every one of
25 them, all the elements must be made. It's like a four-legged

State v. Chestnut
CLOSING BY RICHARDSON

889

1 chair; you knock out one leg that chair falls flat and is no
2 good. One element not met for any reason. You must prove
3 beyond a reasonable doubt and be left firmly convinced.
4 There's no self-defense. But the Defendant is seen at the
5 pool table, pushing and bumping. He's right in the middle of
6 it. He's not an innocent bystander. Defendant goes to the
7 car either to put his phone and weed away because he's gonna
8 be in a fight or to get his gun because he's getting ready to
9 go do damage, getting ready to kill. The Defendant fires an
10 unarmed Jamal McFadden as Jamal McFadden runs away. The
11 Defendant fires at others as they run away. The Defendant and
12 others stomp an unconscious man. He takes a gun into a fist
13 fight and we know he is the first shot. We can guess he's the
14 only shot because we find no other casings. They search that
15 area for four hours and no other shell casings. Ms. Pratt
16 wanted to talk about a 9 millimeter; no 9 millimeter was ever
17 found.

18 With regard to Thoro and Therell, Thoro walks toward
19 Canty, somebody he had a disagreement with earlier. He knows
20 he was in an argument with a Kingstree fellow and he either
21 throws his jacket up or -- watch the video -- he throws a
22 punch. About a second later Damien Canty takes his -- this
23 man who has gone out to drink and he just takes a swipe at
24 him. Thoro is also involved inside.. So that's the first
25 element and you're out on that one. Self-defense is dead but

State v. Chestnut
CLOSING BY RICHARDSON

890

1 we'll be through the rest. The Defendant and the person
2 defended must be in actual danger of death or serious bodily
3 injury or have a reason to believe they are in that danger.
4 There's no credible testimony, no credible testimony, no
5 physical evidence that anyone else other than the Defendant
6 fired a gun. Mr. Feaster said yes, I heard a gun originally,
7 but he watched the video and said you know what, I never saw
8 Corey fire. Corey didn't fire. And nobody runs until you see
9 the Defendant fire his gun. No testimony as to how afraid
10 Thoro was. There is testimony that Thoro still wants to fight
11 after he's been in the scuffle out here. So he's not
12 seriously injured. He's not near death. The Defendant does
13 not appear to be scared on the video. Of course he's not
14 scared. He's running over there with a gun because he is
15 going to do what he intended to do. And once again with that,
16 Ms. Pratt was right, the Judge is gonna charge you with mutual
17 combat and on the Defendant being at fault. If you can find
18 either Thoro was either engaged in mutual combat, he did
19 something to provoke that attack, provoke both Canty into
20 swinging at him, or the Defendant did in any way, if they
21 engaged in that mutual combat, they did something for to
22 provoke the fight or came to some agreement and they walked
23 towards people that had a disagreement with and make an
24 aggressive motion, that's being at fault. But with regards to
25 whether there is a belief of serious bodily injury, it tells

State v. Chestnut
CLOSING BY RICHARDSON

891

1 you whether or not a reasonably prudent person would have had
2 the same belief. A reasonably prudent person would not go to
3 his car and get a gun. Thoro's not hurt and the Defendant
4 certainly doesn't think Thoro's hurt because he doesn't take
5 him to the hospital. So when he tells you he bleeding so
6 badly and he needs so much help, that's a lie. I don't doubt
7 that he didn't bleed, but it's not serious. They keep wanting
8 to say it's two on six or two or four or two on eight and Mr.
9 Feaster told you plenty of Myrtle Beach men were running into
10 that fight. There is ample protection for a fist fight. The
11 Defendant just wanted ratcheted up a level.

12 Finally, the Defendant and the person defended had no way
13 of avoiding the danger. Thoro actually goes to his car to get
14 in and leave. The Defendant has keys to Annaliese' car; he
15 can leave. He says, what, I'm gonna leave my girl there? No,
16 no. She's at the bar. On your way out say, hey, there's
17 trouble, let's get on out of here. Defendant runs to a fist
18 fight with a gun in hand. Thoro goes to his car. Is he
19 getting a gun; I don't know. Is he putting his phone and weed
20 away cause he's getting ready to fight; I don't know. Thoro
21 walks to Canty holding up two beers and Thoro throws Thoro's
22 hands up and makes some move towards Canty. That provokes the
23 attack. So there's ample ways they could have avoided this
24 attack. So the Defendant just fail on the one element but
25 them all. And the State only needs to knock out one element

State v. Chestnut
CLOSING BY RICHARDSON

892

1 for the defense -- for self-defense to fall flat and for the
2 defense of others to fall flat.

3 Now the Judge is gonna tell you that to knock that down,
4 the State's got to give you evidence that proves the Defendant
5 guilty and proves it wasn't self-defense beyond a reasonable
6 doubt. But that's a magic term, you've all heard it, read it
7 books, seen it in movies, heard it on T.V. The Judge will
8 tell you that what reasonable doubt is, is evidence that
9 leaves you firmly convinced and that's it, leaves you firmly
10 convinced that it wasn't self-defense and firmly convinced
11 that the Defendant did the acts he's charged with. That he
12 did kill with malice aforethought Jamal McFadden; that he did
13 assault, with his buddies, Damien Canty; that he shot Damien
14 Canty in an attempt to murder him; and that he pointed and
15 presented a firearm. And how do we do that? We do that by
16 presentation of a confident, admissible and most importantly,
17 the relevant evidence. That's my only job, Mr. Hyman's only
18 job, to give you confident, admissible and the relevant
19 evidence that will assist you, the triers of fact, in
20 rendering a true and just verdict. You see my job is not to,
21 to befuddle, to try and throw up a bunch of different theories
22 hoping you will get lost, to try and talk about a possible
23 defect in a Taurus handgun. That Corey Myers, I think, as I
24 recall the demonstration, would've had to had the gun in his
25 left hand because he's left-handed, as you see it in the

State v. Chestnut
CLOSING BY RICHARDSON

893

1 video, reach over undo the safety, pull the trigger halfway,
2 re-engage the safety, let the trigger go and then you're ready
3 to fire. Pure speculation doesn't work. We're don't try and
4 talk about shell casings that weren't found. Our job is to
5 give you that confident, admissible and relevant evidence. So
6 let's look at that. Let's look at the evidence that's been
7 determined to be. Ms. Pratt talks to you about some times --
8 and I'll get on those real quick so we won't have to watch the
9 video. But we know, we know from Annaliese' testimony and
10 from the Defendant's testimony, they went to Sam's. And the
11 story Annaliese told you today or two days ago, same statement
12 she made well over a year ago. Pretty much the same statement
13 she gave the day she was arrested. Whose story has changed?
14 Armando Chestnut. But Annaliese tells us they went to Sam's.
15 He asked her to hide his gun. Well, he's got to have his gun.
16 They go from Sam's to Jet Age. Now the Defendant says that
17 Annaliese wants to go see all the bars and stuff he hangs out,
18 but she doesn't go in Jet Age with him. He leaves her in the
19 car. That sounds a little funny. She wants to see it but she
20 doesn't want to go in. But she said he had to go in and take
21 care of some business. So, they leave there fifteen or twenty
22 minutes later and they get to 3rd Avenue Sports Bar. And I
23 know that the video is burned into my head and I imagine yours
24 is at this point, but we see that scuffle inside. It's a
25 little bit after 1:00 -- it's about 1:10 I think when the

State v. Chestnut
CLOSING BY RICHARDSON

894

1 argument really does start. And there's some pushing and
2 there's some shoving, back and forth. And at some point, it
3 appears that Jamal McFadden is aggravated enough or feels
4 threatened enough from getting pushed and having the Defendant
5 get up in his face, that when he grabs a pool cue and it's
6 immediately taken from him. And Mr. Feaster tells you -- Mr.
7 Feaster tells them they got to get outside. They got to get
8 outside. He kicked them out. It's Mr. Feaster's club. He
9 makes the rules. He's kicked them out. And so they exit and
10 we see on the video exactly what happens and that video is
11 important. It's a little grainy. It's hard to see when those
12 lights are on, I know. But the time stamps are important
13 because they pick that up about 1:13 -- 1:13:38 you see Thoro
14 get in his car. He gets in his car. 1:13:44, we see Thoro
15 get out of that car. So he's in there six seconds. 13:50 --
16 1:13:51, we see Canty and one friend walking down the
17 sidewalk. There's others behind. I don't dispute that.
18 They're certainly not within two feet of Thoro at this point.
19 Corey walks right in between them going to his car and they
20 take no action. That shows you Canty's intent was not to go
21 fight. They're walking down the sidewalk because their cars
22 are all parked along there. They're walking down the sidewalk
23 because that's the sidewalk, that's where you walk. And he
24 stops walking. It is Thoro that walks towards him. And at
25 1:13:59, you see Thoro either throw a punch, put his hands up,

State v. Chestnut
CLOSING BY RICHARDSON

895

1 do something to provoke Mr. Canty. And at 1:14:01, Canty
2 reacts, he throws.

3 Now the Defendant yesterday told you, yep, saw the whole
4 thing. Saw him get hit and he was getting pummeled and that's
5 when I decided to go to the car. The fight does not erupt
6 until 1:14:01. At 1:13:55, 56, 67, 58, we see the Defendant
7 walking to his car. He isn't scared for his good buddy Thoro.
8 He's not scared. He's going to his car either by his own
9 accord to put his weed and his phone away because he knows
10 he's gonna fight and it's already been scuffed up enough or to
11 get his gun and we see the Defendant. Now yesterday he says,
12 nope, never got in the car; nope, just opened the door. Watch
13 the video 1:14:03, it appears that he sits down and he's there
14 for five seconds because at 1:14:08 he gets out of his car and
15 he's still not running. He wants to tell you how scared he is
16 for Thoro at this point but you'll watch him, he gets out the
17 car, doesn't run straight over to the fight because he's got
18 to load that weapon. He knows he's about to go do dirt. He
19 walks, gets a round in chamber and then he walks up and he
20 says, oh man, I'm running late to the fight, so he runs over
21 there and we see him. Now we do see Allen Graham on that
22 video. We see him walking, we see him walking and we see I
23 believe it's the Defendant cut right in front of him. And we
24 see the Defendant right hand now, he goes into the fight and
25 he's got the gun in his hand. No doubt about it, he's got the

State v. Chestnut
CLOSING BY RICHARDSON

896

1 gun in his hand. And that's when we see Jamal McFadden. I
2 don't know if he looks and sees the gun. I don't know if he
3 just said I can't break the fight up. I don't know what he
4 says but I know you can see him. He begins to run and he gets
5 up and he's running fine for about a second because it's
6 1:14:19, 1:14:17 when the Defendants sticking that gun down in
7 the fight; nobody's scattering. At 1:14:19, we see Mr.
8 McFadden run, crumple, he has his arm drawn out. A few second
9 later, we see Mr. McFadden running away and now he's looking
10 -- he's been shot in his belly just as Dr. Procter said. We
11 know that's the first shot because that's when Allen Graham
12 stops, we see Wayne Feaster stop, we see a girl, we don't even
13 know who it is and she's walking over towards the fight and
14 she stops and ducks in between cars. And Allen Graham says he
15 knows the Defendant. Yeah, he does. And he's glad the
16 Defendant didn't shoot him because he lets him cut right in
17 front of him. He waves him on by as he's got that gun because
18 he doesn't want to get caught up to get shot by the -- he's a
19 Myrtle Beach guy and he goes and ducks. Watch the video. At
20 1:14:24, you'll see the Defendant turn and fire towards the
21 parking lot. At 1:14:36, we can see Canty walking out where
22 the fight was up towards that brown line and off camera. We
23 see before that the Defendant coming back around down the
24 sidewalk towards Canty. Canty knows what's up and starts to
25 leave. At 1:14:41 the Defendant chases after Canty and it's

State v. Chestnut
CLOSING BY RICHARDSON

897

1 only after that, we see him go off. We see some people
2 reacting, ducking after that. Perhaps that's when Canty gets
3 shot. We know the Defendant does shoot him because it lands
4 in his elbow. And when he's not able to knock him down with a
5 bullet, he goes inside, points him out, takes a swing at him,
6 and his fellows takes swings at him. And once he's on the
7 ground, they commence to the tail-cutting. When he's on the
8 floor, they're stomping him. They beat him to the floor and
9 stomp on him until Wayne Feaster pushes them back.

10 Folks, we see all that. We've heard different sides
11 about what happened. I submit to you, every witness the
12 Defense put up, not credible. Allen Graham isn't -- at least
13 Wayne Feaster told you, I didn't see who actually shot. He
14 said I didn't hear a shot. He said I may have said then I
15 thought Corey shot in the air. Corey, Corey takes the stand
16 and tells you, tells you he takes his pistol out. This is the
17 man who legally owns that firearm, bought it, and he's got it
18 out and he doesn't hear a shot. And how do we know that?
19 Because he doesn't fire, because he takes the gun and he uses
20 it as a club and you see it in the video. You actually see
21 him lose it. I think it's at 1:14:10, 1:14:11, before the
22 Defendant ever comes in the picture and we see him lose his
23 gun. So, when the Defense stands up and says oh Corey fired;
24 he doesn't even have his gun. He's on the ground fighting at
25 this point. It ain't Corey's gun. Corey's gun is over there

State v. Chestnut
CLOSING BY RICHARDSON

898

1 on the ground. Corey tells you he finds it a little bit later
2 and picks it up. We actually see him put it back away on the
3 video after the shooting. We can tell when the first shots
4 fired and just as Dr. Proctor said, the wounds are consistent
5 with that video. When you see Jamal McFadden crumple, that is
6 consistent. We end up finding the shell casings over there
7 and blood over there. Defendant has, Jamal has his hand on
8 this car and the shot goes out. The Defendant wants you to
9 believe that it came from the ricochet off the windshield.
10 Folks, common sense will tell you, an object traveling as fast
11 as a bullet striking an object that's angled like a windshield
12 is not gonna bounce back. It'll go over to the side. It'll
13 have some damage, a windshield is pretty hard. And you heard,
14 Ira Parnell told you, that bullet doesn't look like it's hit
15 anything except maybe soft tissue, something soft, not a hard
16 windshield. Folks, you know what happened at the club.

17 And the Defendant gets his girlfriend, Annaliese Testa, a
18 girl he's only been dating two weeks and he says let's go and
19 they drive away. He doesn't wait around to take Thoro to the
20 hospital. He doesn't check on any of his other buddies he was
21 so scared for, but he says let's go and they leave. And on
22 the way back, he's on the phone. And I don't doubt that he
23 tried to call Ms. Pratt. I think he stated it was about 1:30
24 in the morning. He knows he's done some dirt. Calling his
25 buddies. And they get there and Annaliese says what's going

State v. Chestnut
CLOSING BY RICHARDSON

899

1 on and at some point he says, I shot at the guy, the guy with
2 dreads. I shot at the guy, but I only shot once. Them other
3 fellows was shootin. He's got to look better in front of her.
4 He's got to look better. He's been dating her two weeks. He
5 doesn't want to seem like some evil killer. And her statement
6 about what he said, that's the same statement she made on
7 March 6th, the same statement she made about two weeks later
8 in the proffer interview and that's the same thing she sat on
9 the stand and told you yesterday. And she tells you how to
10 get to the house and the Defendant washes his hands, washing
11 the powder off. And she says, yeah, I washed his jeans. She
12 saw some blood on his pants. That's why she washed the jeans.
13 She saw him stomp the devil out of Damien Canty and I assume
14 that's where the blood came from, but she does that and then
15 they smoke weed. He's so concerned, but they smoke weed, they
16 drink some wine and go to sleep. Annaliese doesn't tell you
17 anything about smoking weed the next morning when they wake
18 up, doesn't say anything about drinking more when they wake
19 up. She says they go to sleep and wake up late and start
20 getting ready. She gets a shower. The Defendant's on the
21 phone the whole time. She doesn't tell you that she sees the
22 Defendant smoking any dope. There wasn't dope found when they
23 were arrested because he wasn't. As they go down the road,
24 Agent Miller tells you the Defendant is laying back in the
25 seat; he's trying to hide. He's got that gun -- Annaliese

State v. Chestnut
CLOSING BY RICHARDSON

900

1 tells you -- and he dumps it outside because he's got to get
2 rid of it because he knows that he's about to get pulled. He
3 knows there's police. And whenever they make a turn he thinks
4 he can get rid of it without them seeing him. He's still got
5 his clothes in the back. And no doubt today he admits, okay,
6 now I'll tell you I shot three times. When he was on the
7 stand, he told you that when he went in and he got arrested,
8 he said that basically he wanted to get interviewed so he
9 could find out what information the police had. Now that's
10 probably a little bit true because he see him during his
11 interview. As he gets more and more information, the story
12 begins to change, it begins to evolve. And today or
13 yesterday, now that he's sat through the whole trial, he's
14 read his discovery, his story's changed again. Watch his
15 statement, watch his interview. He's read his Miranda. He
16 understands his Miranda. Well, does he appear high, does he
17 appear drunk? No. Watch his legs jumping, he's nervous
18 because he knows he's done killed somebody. They tell him
19 from the get-go, you're being charged for murder. And they
20 don't suggest the answer. They say listen we know you were
21 shooting; who did you shoot?

22 Not one time does he say Damien Canty. Not one time does
23 he -- he doesn't know the name. He doesn't say, hey, there
24 was a big guy I stomped on in the club. He begins by saying I
25 kicked a big guy in the club -- I kicked a big guy in the

State v. Chestnut
CLOSING BY RICHARDSON

900

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2 rid of it because he knows that he's about to get pulled. He
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State v. Chestnut
CLOSING BY RICHARDSON

901

1 club, yeah, I did that, because he knows Wayne Feaster was
2 there, right there. He doesn't know who saw him shoot. And
3 for twenty-three minutes, at least twenty-three minutes, he
4 denies ever firing that handgun. After about ten minutes,
5 Detective Kitelinger gives him an option of self- defense.
6 That's when he says, hey, I need to know if you're a cold
7 blooded killer or you were helping a friend out and so he's
8 got to sit there and think about that for a while and he still
9 denies for about ten more minutes. So he finally says all
10 right, all right, well, I did fire one time. I did fire one
11 time but my gun only had one bullet. Now when I asked him
12 about that statement yesterday, he said nope, I didn't say
13 that. Folks, you saw the statement. He said I only one
14 bullet, I fired and I put the gun in my pocket. Now if he's
15 gone lie about a little thing like that, it's got to -- you've
16 got to question the rest of his testimony. He's tailored his
17 testimony to fit the facts that have been produced. Hoping
18 that you will believe that he will get the last word he told
19 you he shot the one with the, or the one with the dreads and I
20 think the guy with the dreads, the guy with the red jacket.
21 Now he's trying to say there was other people with plaits and
22 braids and those could be considered dreads. He never says
23 that. He never says he saw anybody else grabbing a gun. Yes,
24 sir, I heard somebody else fire. There's no evidence of that
25 folks. You've seen the video. When he tells that statement,

State v. Chestnut
CLOSING BY RICHARDSON

902

1 he's trying to get the last word in again. He lies to
2 Annaliese, he lies to the police, why not lie to you. He's
3 got everything to gain. The one thing he said that's
4 accurate, watch the video -- it'll show everything. They
5 show everything. On March 6th, 2012, the Defendant got the
6 last word in and he spoke loudly, once, twice, three times.
7 Did he go out that night and say I'm gonna go and kill Jamal
8 McFadden? No. But when he went to that car and armed
9 himself, not for self-defense but to get the last word in,
10 that's malice, folks. From where he's sitting in the car, he
11 can't even see the fight that's going on. And you see his
12 reaction, he's not worried about a fight going on until he's
13 already armed. He got the last word in that night, but not
14 today.

15 The verdict means truth, speak the truth, speak loudly
16 and speak final. The Defendant is guilty of assault and
17 battery by a mob for the vicious stomping his buddies
18 inflicted upon Damien Canty. The intent can be formed like
19 that and that's when the conspiracy was formed, hit him, knock
20 him down and they all going in together.

21 Guilty of pointing and presenting a firearm because he
22 does that. We see it on the video and it's not in self-
23 defense.

24 Guilty of attempted murder as he chases down Damien Canty
25 and fires at him. And most seriously, guilty of the murder of

State v. Chestnut
BY THE COURT

903

1 Jamal McFadden. He wants to argue about you didn't pull a
2 bullet out of him. Well, it's through and through and we do
3 find the evidence. The shell casing here and the projectile
4 here. There's no blood on it, nothing to test. Other than it
5 comes back to his gun. Find him guilty.

6 BY THE COURT:

7 THE COURT: All right, ladies and gentlemen, if you would
8 go to your jury room for a short break please. Thank you.
9 Everyone else remain seated.

10 (REPORTER'S NOTE: The jury exits the courtroom. 10:44 A.M.,
11 The following takes place outside the presence of the jury.)

12 THE COURT: All right. We'll take a short break. Thank
13 you.

14 MS. PRATT: Your Honor, may we approach for just a
15 moment?

16 THE COURT: Certainly.

17 MS. PRATT: Thank you, Your Honor.

18 (REPORTER'S NOTE: A bench conference was held off the record
19 outside the presence of the jury.)

20 THE COURT: All right, Ms. Pratt, you want to present
21 some matters to the Court?

22 MS. PRATT: Thank you, Your Honor. Your Honor, first of
23 all, I would like to put my grounds for my first objection
24 when the Solicitor said we haven't heard from Thoro either,
25 that this was an impermissible comment on the Defense allowing

State v. Chestnut
BY THE COURT

904

1 or presenting a witness. And I realize the Court sustained
2 that objection and I, I just want to put that reasoning on
3 the, on the, on the record.

4 THE COURT: Well, after I sustained the objection, did
5 you ask me to do anything else?

6 MS. PRATT: No, I did not, Your Honor.

7 THE COURT: All right.

8 MS. PRATT: And then the second objection that I had when
9 he said I believe him; again the reasoning is that the
10 Solicitor cannot bolster a witness' testimony by his own
11 personal opinion.

12 THE COURT: Well, I appreciate that and, you know, it's
13 not my job to object. I didn't think he was doing it then.
14 He might have been doing it later but it's not my job to
15 object.

16 MS. PRATT: I'm very concerned about those things and how
17 they'll affect the jury. I need to talk my client about a
18 potential of what would happen if we made a motion for a
19 mistrial.

20 THE COURT: Well you need to make your motions now.

21 MS. PRATT: Okay. I do want to ask -- and I would --
22 sir, just a second. I want to ask for an additional charge
23 because the Solicitors made an inference in the statement that
24 he made that the fact that Armando armed himself and that that
25 was malice. I would ask that the Court charge that if he is

State v. Chestnut
BY THE COURT

905

1 acting in self-defense, there is no inference of malice by the
2 use of a deadly weapon and I believe that that case ---

3 THE COURT: I don't think I'm gonna charge that at all
4 that there's an inference.

5 MR. RICHARDSON: I think that's been stricken from the
6 charge, hasn't it, Your Honor?

7 THE COURT: I'm sorry.

8 MR. RICHARDSON: I think that inference had been stricken
9 from the charges.

10 THE COURT: I'm not going to say that.

11 MR. RICHARDSON: Yes, sir.

12 MS. PRATT: I believe, I understand that, but I believe
13 the Court should charge that, that the arming of himself is
14 not malice because he said in his closing that it was.

15 THE COURT: That's a, that's a comment on the facts. I
16 can't do that. That's making a direct comment on the facts.
17 I cannot do that.

18 MR. RICHARDSON: Your Honor ---

19 THE COURT: Once again, I'd be saying he armed himself.
20 It may be very well be that he said he did; that's for the
21 jury. I -- I'm not gonna talk about the facts of the case.
22 So I'm not gonna do that. What else would you want me to do?

23 MR. RICHARDSON: Your Honor, the appropriate time ---

24 MS. PRATT: Your Honor?

25 THE COURT: Just stop for a second.

State v. Chestnut
MOTIONS

906

1 Yes, ma'am, go ahead?

2 MOTIONS:

3 MS. PRATT: Your Honor, based on the statement that the
4 Solicitor made at the beginning about not hearing from Thoro,
5 which was sustained, at this time, I would make a motion for a
6 mistrial. The Solicitor cannot make a comment that affect
7 that -- implies that we had any duty to produce any evidence
8 at all. The standard of course is did the statement so affect
9 the trial as to make it a conviction, if there is one, become
10 a denial of due process. And the problem that I have is that
11 particular statement creating something that the jury is going
12 to be thinking about back there.

13 THE COURT: Well ---

14 MS. PRATT: If we can't do that, if there is no mistrial,
15 then I would ask for a curative instruction that states ---

16 THE COURT: I'll be glad to give a curative instruction
17 that. The problem you're -- and the difficulty you're giving
18 the Court is, you didn't ask for it when it happened; that's
19 the problem. You need to ask for things when they happen.
20 That gives the immediate impact to the jury. I'm not sure
21 they were listening at that point in time anyway, but aside,
22 just assume they were.

23 I will instruct the jury that it is improper and the
24 State cannot vouch for the believability or credibility of the
25 witnesses. That's not proper. And I'll tell you, Solicitor,

State v. Chestnut
MOTIONS

907

1 you did it more than once. It wasn't objected to, but you did
2 it more than once.

3 MR. RICHARDSON: Your Honor ---

4 THE COURT: You can't, you can't do that.

5 MR. RICHARDSON: It's not my intent to ---

6 THE COURT: Well, I appreciate it wasn't your intent;
7 it's what you did.

8 MR. RICHARDSON: Yes, sir, Your Honor.

9 THE COURT: All right. I don't think that a mistrial is
10 proper. I think it is proper that the Court instruct the jury
11 and tell them that the State cannot vouch for the
12 believability or credibility of the witnesses. That's not
13 proper.

14 Anything else you want me to tell them, ma'am?

15 MS. PRATT: That there's no duty of the Defense to
16 produce any -- and I think that may be in your charge but ---

17 THE COURT: I'm certainly gonna do that and I -- you
18 know, when we start talking about the presumption of
19 innocence, there's a whole section of the charge that's about
20 State has to prove the Defendant guilty beyond a reasonable
21 doubt. I don't -- I don't know how many times we're gonna say
22 that throughout the entirety of the trial. I'll make it clear
23 that Defendant has nothing to prove. So I, I'm certainly
24 gonna say that and I'm gonna say that more than once, but I,
25 when I'm talking about the credibility and the believability

State v. Chestnut
MOTIONS

908

1 of the witnesses, I will put in there about the State cannot
2 vouch for the credibility and believability of the witnesses
3 and it's not proper for them to do so. If they find that the,
4 or they believe the State did that, they'll disregard it.

5 MS. PRATT: Thank you, Your Honor.

6 THE COURT: All right.

7 Yes, sir, anything else from the State?

8 MR. RICHARDSON: Your Honor, with regard to calling
9 attention to a witness not being called, I would ask the Court
10 to take a look at State v. Douglas in which when the Defense
11 does put up, it actually states and, Your Honor, for the
12 record, it's 332 S.C. 67, 504 S.E.2d 307, states however,
13 where, as here, the Defendant presents evidence at trial and
14 there are witnesses seemingly accessible to the accused or
15 under his control, or should be cognizant of material and
16 relevant facts and competent to testify thereto, and whose
17 testimony would presumably aid him or substantiate his story
18 if it were true, it is not improper for prosecuting attorney
19 to comment upon Defendant's failure to produce him.

20 THE COURT: I think that is improper. I don't care what
21 that case says. I appreciate what that case says ---

22 MR. RICHARDSON: Yes, sir.

23 THE COURT: --- I'm telling you, I think that's
24 absolutely and totally and completely improper.

25 MR. RICHARDSON: Yes, sir.

State v. Chestnut
MOTIONS

909

1 THE COURT: All right. I, I understand what you're
2 telling me what that case says.

3 MR. RICHARDSON: Yes, Your Honor.

4 THE COURT: For the State to indicate the Defendant has
5 to do anything is absolutely, completely, totally improper,
6 never ever, ever, ever should be done in the case.

7 MR. RICHARDSON: Yes, sir, Your Honor.

8 THE COURT: All right. And I'm gonna stick with that
9 until the day I die.

10 MR. RICHARDSON: Certainly, Your Honor.

11 THE COURT: All right. Thank you very much. We'll take
12 a short break. Thank you.

13 MS. PRATT: Thank you, Your Honor.

14 MR. RICHARDSON: Thank you, Your Honor.

15 (RECESS - 10:52 A.M.)

16 *****OFF THE RECORD*****

17 (On the Record - 11:00 A.M.)

18 THE COURT: All right. Solicitor, is the State ready for
19 the jury?

20 MR. RICHARDSON: Yes, Your Honor.

21 THE COURT: Defense?

22 MS. PRATT: Defense is ready, Your Honor.

23 THE COURT: Ask the jury to come in.

24 (REPORTER'S NOTE: The jury returns to the courtroom. 11:01
25 A.M.)

State v. Chestnut
CHARGE TO JURY

910

1 CHARGE TO JURY:

2 THE COURT: All right, ladies and gentlemen, it's now my
3 duty and responsibility to give you the law that you will
4 apply to the facts and evidence you find to be true in this
5 particular case. I told you at the very beginning that one of
6 your jobs and duties and responsibilities was to judge the
7 credibility and that is the believability of witnesses that
8 have come before you during this particular trial. Regarding
9 this believability, you can believe one witness against
10 several, several against one, believe a portion of what a
11 witness says and disregard the remaining portion of it. If
12 you've got a good and sound reason for doing so, you can
13 disregard in its entirety the testimony of a particular
14 witness. Now, how do you this? You look at whether the
15 witness has exhibited to you any kind of interest, bias,
16 motive, prejudice that they might have in giving you the
17 testimony they gave you from the witness stand. You consider
18 the opportunity for knowledge; how did they come about that
19 information that they gave you from the witness stand. You
20 can even consider their demeanor; how did they appear when
21 they're testifying before you. Take all that into
22 consideration.

23 I will tell you, there was an objection that was
24 sustained and it's a proper rule of law that the State may not
25 vouch for the credibility or the believability of witnesses,

State v. Chestnut
CHARGE TO JURY

911

1 tell you that they believe them because that's not their job.
2 It's your job to judge witnesses' credibility and
3 believability. And if you believe the State has done that,
4 you disregard it. It's your collective judgment as to the
5 credibility and believability of the witnesses that is proper.
6 Now, in this judging of credibility and believability, it
7 doesn't matter from where the truth comes, from what portion
8 of what a witness or what portion of the evidence, you find
9 that evidence which convinces you of its truth. And just
10 remember what I told you at the very beginning, judging
11 credibility and believability is something you do every single
12 day of your life. You're using your good common sense, you're
13 using your good judgment, you apply the facts and evidence in
14 this case, you find that evidence which convinces you of its
15 truth. Your verdict can't be the result of any kind of
16 passion, prejudice or sympathy. You don't have any friends to
17 reward. You don't have any enemies to punish. You've got to
18 be and your job is to have an examination of the facts in
19 evidence, find the evidence that convinces you it's true.

20 During the presentation of this case and virtually every
21 single case that's tried, you've got what are called the two
22 types of evidence, direct and circumstantial evidence. Direct
23 evidence, that's the testimony of somebody who claims to have
24 knowledge of a fact. What they saw, what they heard, what
25 took place in their presence. Now, circumstantial evidence,

State v. Chestnut
CHARGE TO JURY

912

1 that's proof of a chain of facts indicating the existence of a
2 fact. The law doesn't make any distinction between the two.
3 You look at all the facts and evidence in this case, and
4 again, you find that evidence which convinces you of its
5 truth.

6 In this case, I qualified more than one witness to give
7 their opinion in this case. Normally, we don't allow people
8 to give their opinion. They've got to talk about what they
9 saw or what they heard, what actually took place. But some
10 witnesses by reason of their education, training and
11 experience, will allow them to give an opinion in a specified
12 field of study or work and just because I did that doesn't
13 give them any special status. Again, your job, weigh all the
14 evidence, look at all the evidence and, again, you find that
15 evidence which convinces you of its truth.

16 During the course of the trial, in the testimony of the
17 Defendant in this matter, there was prior record of the
18 Defendant was introduced. Now, it may be considered by you,
19 if at all, only for the purpose of evaluating, or judging,
20 evaluating the credibility or the believability of the witness
21 and for no other purpose. You cannot, you must not consider
22 any kind of a prior record if any of the Defendant is any
23 evidence of the guilt of the crimes for which he is charged
24 here today. You give that evidence the weight you believe it
25 deserves, again, if any, and it's only on that issue of

State v. Chestnut
CHARGE TO JURY

913

1 credibility and believability, not on whether or not he
2 committed these offenses or not.

3 The rules also provide that the testimony of a witness
4 may be discredited or impeached by showing the witness has
5 been convicted of a crime for which they could've been
6 imprisoned for more than one year or a crime that involves
7 dishonesty. Again, that type of evidence is again only for
8 the purpose of credibility and believability and not for any
9 other purpose. Witnesses can testify, they're allowed to
10 testify, even if you've got a prior record, it's just a fact
11 that a jury can consider, if you want to, on their credibility
12 and believability.

13 The statement of the Defendant was admitted by the Court
14 in evidence in this case. Now, while I determined it was
15 proper evidence to be presented in this case, it is you, the
16 jury, that makes the ultimate decision of several things: Did
17 the Defendant make the Statement? If he made the statement,
18 you have to determine whether the statement was made by him
19 voluntarily and of his own free will. That means the
20 statement was not caused by any kind of pressure, force, fear,
21 threats, coercion or intimidation or hope, promise of
22 leniency, or reward of any kind. In determining whether the
23 statement was voluntary, you can consider the characteristics
24 of the Defendant, the details of the questioning. Some
25 factors you can look at are: The age of the Defendant; the

State v. Chestnut
CHARGE TO JURY

914

1 Defendant's education or lack thereof; the Defendant's mental
2 ability or capacity; the Defendant's background and
3 environment; the place and length of the detention; the nature
4 of the question; the advice or lack thereof to the Defendant
5 of his constitutional rights, including but not limited to the
6 right to remain silent, that any statement can be used in a
7 court of law against him, the right to have a lawyer present,
8 that if you cannot afford a lawyer one will be appointed to
9 represent you, that you can stop making a statement at any
10 time you chose. You consider all these circumstances before
11 you give any weight to the statement and you have to decide if
12 it was the free and voluntary and knowing statement of the
13 Defendant.

14 I'll reemphasize this throughout. The State has the
15 burden of proof on everything. So, the State has the burden
16 of proof on this. The State has the burden of proof beyond a
17 reasonable doubt, that's the standard the State has on every
18 single thing, beyond a reasonable doubt, that the alleged
19 statement was voluntary. If you determine it was voluntary,
20 you can give it the consideration you deem is proper whatever
21 consideration you want to give to it at all. If you determine
22 it was not his free and voluntary statement, then you don't
23 consider it at all.

24 Intent. In order to establish criminal liability,
25 criminal intent is required. Criminal intent, as again with

State v. Chestnut
CHARGE TO JURY

915

1 everything else, must be proven by the State of South Carolina
2 beyond a reasonable doubt. Criminal intent is a matter that
3 must be determined by the jury from the circumstances
4 surrounding the situation. Obviously, it can't be proved to
5 you by mathematical certainty and medical science can't look
6 into somebody's brain and tell you their intent. So, you have
7 to look at the facts and circumstances and determine. Intent
8 can be inferred from the circumstances shown to have existed.
9 The element requiring intent is from your determination of the
10 facts and circumstances. It doesn't have to be direct and
11 positive. It can be established by circumstantial or
12 inference just as any other fact in the case.

13 Now, criminal intent obviously is a mental state, a
14 conscious wrongdoing. It's up to you to determine what the
15 Defendant intended to do based on the circumstances shown to
16 have existed.

17 I told you at the very beginning, the Defendant pled not
18 guilty to the indictment and that plea put the burden on the
19 State of South Carolina to prove the Defendant guilty beyond a
20 reasonable doubt of the crimes charged. I told you then and
21 I'm gonna reaffirm now, the Defendant has nothing to show to
22 you. The Defendant has nothing to prove to you. I told you
23 at the very beginning, the Defendant need not even show up for
24 trial because they don't have a thing to show to you or prove
25 to you. The State has to prove the Defendant guilty of the

State v. Chestnut
CHARGE TO JURY

916

1 crime charged beyond a reasonable doubt. That's what has to
2 happen. This presumption of innocence didn't end at the
3 beginning of the trial and it hasn't ended now. Example we
4 always give is it's like a robe of righteousness that's placed
5 on the shoulders of the Defendant at the beginning of the
6 trial and it stays on the shoulders of the Defendant unless
7 and until the State rips that robe of righteousness from the
8 shoulders of the Defendant by evidence that you believe is
9 true and convinces you of the guilt of the Defendant of the
10 crime charged beyond a reasonable doubt. This is not just
11 some legal phrase or legal theory. It's an important right to
12 which every defendant, to which every American is entitled
13 unless you the jury are satisfied of the evidence of the
14 Defendant's guilt beyond a reasonable doubt.

15 Reasonable doubt. The kind of doubt that would cause an
16 ordinary reasonable person to hesitate to act, the State has
17 that burden with everything in this case. Proof beyond a
18 reasonable doubt is proof that leaves you firmly convinced of
19 the Defendant's guilt of the crime charged. Now, there are
20 very few things we can know with absolute certainty. The law
21 doesn't require the State to give you that kind of proof.
22 What is required is that if based upon your consideration of
23 the evidence, you are firmly convinced the Defendant is guilty
24 of the crime charged, you just find the Defendant guilty. On
25 the other hand, based upon your view of the evidence, the

State v. Chestnut
CHARGE TO JURY

917

1 evidence you find to be true, you are not firmly convinced the
2 Defendant is guilty of the crime charged, you must find the
3 Defendant not guilty giving him the benefit of the doubt.

4 What is the Defendant charged with? Let's go through the
5 different crimes. And as I told you at the very beginning,
6 each one of them is a separate decision. You've got to
7 analyze each one of them differently. Each of them have
8 different elements that the State has to prove to you beyond a
9 reasonable doubt. So, it's a separate decision on every
10 single one of them. Just because you decide one way on one of
11 them doesn't automatically mean you've got to decide that same
12 way on the next one. Separate decisions on every crime.

13 All right, the first one, murder. The Defendant is
14 charged with murder. The State has to prove to you beyond a
15 reasonable doubt that the Defendant killed another person with
16 malice aforethought.

17 Malice, that's hatred, ill-will, hostility towards
18 another person. It's the intentional doing of a wrongful act
19 without just cause or excuse and with the intent to inflict an
20 injury or under circumstances the law would infer some evil
21 intent.

22 Malice aforethought does not require that malice exist
23 for any particular time before it's committed but malice must
24 exist. It must exist in the mind of the Defendant just before
25 and at the time the act is committed. There has to be this

State v. Chestnut
CHARGE TO JURY

918

1 combination of the evil intent and the act.

2 Now, malice aforethought can be expressed or inferred.
3 What that means is you look at whether it's been established
4 to you by direct evidence or circumstantial evidence which was
5 been proved, again, beyond a reasonable doubt.

6 Expressed malice, that could be, as an example, a person
7 speaking words which expressed hatred or ill-will or when
8 another person or a person prepares beforehand to do the act
9 which was later accomplished.

10 Malice can be inferred from conduct that shows a total
11 disregard for human life. Inferred malice can also arise when
12 the deed is done with a deadly weapon. A deadly weapon is any
13 kind of article, instrument or substance which is likely the
14 cause of death or great bodily harm. Whether an instrument
15 has been used as a deadly weapon depends on the facts and
16 circumstances of each case.

17 If you believe the State has not proved to you beyond a
18 reasonable doubt that the Defendant is guilty of the crime of
19 murder, you may consider what is called a lesser included
20 offense. The Defendant does not have to be charged with a
21 lesser included offenses, they are contained within the
22 original crime. So, contained within the crime of murder is
23 also the crime of voluntary manslaughter. So, if you find the
24 State has not proved to you beyond a reasonable doubt the
25 Defendant is guilty of the crime of murder, you can consider

State v. Chestnut
CHARGE TO JURY

919

1 whether or not the State has proved to you beyond a reasonable
2 doubt that the Defendant committed the crime of voluntary
3 manslaughter.

4 To prove voluntary manslaughter, the State has to prove
5 to you beyond a reasonable doubt that the Defendant took the
6 life of another in the sudden heat of passion based upon
7 sufficient legal provocation. Both the heat of passion and
8 sufficient legal provocation must be present at the time of
9 the killing to constitute voluntary manslaughter.

10 Sudden heat of passion may, for a time, affect a person's
11 self-control, temporarily disturb a person's reason. The
12 sudden heat of passion must be the type that would make an
13 ordinary person unable to coolly reflect on their actions and
14 circumstances and would produce this uncontrollable impulse to
15 do violence.

16 Sufficient legal provocation must be the type that would
17 cause a person of ordinary reason and caution to become
18 enraged and to lose control temporarily. The provocation
19 needed for voluntary manslaughter must come from some act of
20 or related in some way to the victim. Now, if the heat of
21 passion has cooled or if there was enough time between the
22 provocation, if any, and the killing for the passion of a
23 reasonable person to cool, the killing would not be voluntary
24 manslaughter. In deciding whether a reasonable person
25 would've had enough time to cool off, you should consider all

State v. Chestnut
CHARGE TO JURY

920

1 the circumstances surrounding the killing. You may consider
2 the nature of the provocation, if any, the Defendant's mental
3 and physical state and the circumstances and relationships
4 between the parties.

5 The next crime that the Defendant is charged with is
6 attempted murder. So, we'll start off with what is attempt.
7 An attempt is an effort to accomplish a crime which does not
8 succeed. An attempt includes a specific intent to do a
9 particular criminal act along with the act falling short of
10 what was actually intended. To prove attempt, the State --
11 again, the State has to prove everything to you -- the State
12 must prove beyond a reasonable doubt that the Defendant
13 committed some kind of overt act beyond mere preparation in
14 furtherance of the crime. There must be some overt act
15 committed by the Defendant in the effort to commit the crime.

16 The State also has to prove to you beyond a reasonable
17 doubt that the act constituting the attempt was done with the
18 intent to commit that kind of crime. This means the Defendant
19 consciously intended to complete the act comprising the crime.
20 And again, the intent can be shown by all the acts and
21 circumstances surrounding the situation from which you could
22 infer the intent.

23 So, attempted murder, the Defendant is charged with
24 attempted murder. In order to prove the crime, the State has
25 to prove the Defendant attempted to kill another person with

State v. Chestnut
CHARGE TO JURY

921

1 malice aforethought. Again, that's express or implied.
2 Remember, malice, that's hatred, ill-will, hostility towards
3 another person. It's the intentional doing of a wrongful act
4 without just cause or excuse and with an intent to inflict an
5 injury. This, again, malice doesn't have to exist for any
6 particular time. It has to exist exactly when the Defendant
7 acts. At that time, there has to be that malice; it has to be
8 in the mind of the Defendant just before and at the time he
9 acts. Again, it can be expressed or inferred. Expressed is
10 things that are direct evidence. Again, somebody might
11 express hatred or ill-will towards another person, something
12 like that, preparing beforehand, an example, lying in wait for
13 somebody. It can be inferred also, again, from conduct
14 showing a total disregard for human life. And inferred malice
15 can also arise when that deed is done with a deadly weapon.
16 Again, a deadly weapon is any kind of article, instrument or
17 substance which is likely to cause death or great bodily harm.
18 And you look at the facts and circumstances and decide whether
19 or not that is correct.

20 The specific intent is not an element of attempted murder
21 but there has to be a general intent to commit serious bodily
22 injury. Intent means intending the result which actually
23 occurs not accidentally or involuntarily.

24 All right. Now, the Defendant is also charged with --
25 I'm sorry -- under voluntary manslaughter. Again, and just so

State v. Chestnut
CHARGE TO JURY

922

1 I let you know, I've got verdict forms that go through every
2 single one of these. You're gonna go through one at a time.
3 So, I'll talk about that again at the end.

4 Voluntary manslaughter. It's got a lesser included
5 offense. Just like murder had voluntary manslaughter,
6 attempted murder has what is called assault and battery high
7 and aggravated nature as a lesser included offense. So, if
8 you don't think the State has proved to you beyond a
9 reasonable doubt the Defendant committed the crime of
10 attempted murder, you'll consider assault and battery high and
11 aggravated nature.

12 A person commits the offense of assault and battery high
13 and aggravated nature if the person unlawfully injures another
14 person and great bodily injury occurs to another person or the
15 act was accomplished by means likely to produce death or great
16 bodily injury.

17 Great bodily injury is defined as bodily injury which
18 causes a substantial risk of death or which causes serious
19 permanent disfigurement or protracted loss or impairment of
20 the function of a bodily member or organ. That's a lesser
21 included offense.

22 The next crime that the Defendant is charged with is
23 assault and battery by a mob. Now, regarding assault and
24 battery by a mob, we've got to define first what's an assault
25 and what's a battery. There will be several of these, so --

State v. Chestnut
CHARGE TO JURY

923

1 and this definition will apply every time I talk about assault
2 and every time I talk about battery.

3 An assault occurs when a person unlawfully attempts or
4 offers to commit a violent injury on another person and has
5 the ability to complete the attempted injury. The assault is
6 the intentional creation of reasonable fear of immediate
7 bodily harm. Just for an assault, that's the offer, so
8 nothing has to actually take place.

9 The battery is the completion of the assault. The
10 assault is the offer, the battery is the actual completion of
11 it. It's the unlawful touching of another person. This
12 touching can be caused by a part of the accused body or any
13 object the accused puts in motion. Battery is the completion
14 of the assault by using or applying force to another person
15 however slight in a rude, angry or resentful manner without
16 legal justification for doing so.

17 So, keeping in mind those definitions of assault and
18 battery, he is charged with assault and battery by a mob,
19 second degree. In order to prove assault and battery by a mob
20 in the second degree, the State has to prove beyond a
21 reasonable doubt that an act of violence was committed by a
22 mob on the body of a person which results in serious bodily
23 injury to the person. And in that a mob is a gathering of two
24 or more persons without the authority of law for the
25 premeditated purpose of and with the premeditated intent of

State v. Chestnut
CHARGE TO JURY

924

1 committing an act of violence on that person.

2 Now, regarding serious bodily injury, we would look then
3 to the definition, it's the same as great bodily injury
4 meaning bodily injury which causes a substantial risk of death
5 or which causes serious permanent disfigurement or protracted
6 loss or impairment of the function of a bodily member or
7 organ.

8 If you don't believe the State has proved to you beyond a
9 reasonable doubt assault and battery by a mob second degree,
10 there's lesser included and there's gonna be several of these.
11 We're gonna have third degree, assault and battery by a mob
12 third degree and then we're gonna go on to assault and battery
13 first degree and assault and battery second degree. Big
14 difference between assault and battery by a mob second and
15 third degree and the other two is, obviously, we're not
16 talking about a mob in those other two. The mob being, again,
17 two or more people, not the common term of the mob. The law
18 says it's two or more people.

19 All right. So, what's assault and battery by a mob,
20 again, remember assault and battery, offer, completion, third
21 degree. In order to prove assault and battery by a mob third
22 degree, the State has to prove beyond a reasonable doubt that
23 an act of violence was committed by a mob on the body of a
24 person which results in bodily injury to the person. Again,
25 the mob is a gathering of two or more people without authority

State v. Chestnut
CHARGE TO JURY

925

1 of law for the premeditated purpose of and with the
2 premeditated intent of committing an act of violence on that
3 other person.

4 Now, the bodily injury that we talk about in assault and
5 battery by a mob third degree is moderate bodily injury and
6 that means physical injury requiring treatment to an organ
7 system of the body other than skin muscles and connective
8 tissues except when there's penetration of the skin or the
9 muscles or the tissues that require surgical repair or when
10 treatment of the injuries requires regional or general
11 anesthesia.

12 All right. Assault and battery by a mob second degree.
13 The State has to prove to you beyond a reasonable doubt. If
14 you don't think they've done it, assault and battery by a mob
15 third degree, beyond a reasonable doubt. If you don't think
16 the State has proved that to you, you go on to the next one.

17 The next one is assault and battery first degree.
18 There's no mob; there's one person. Assault and battery first
19 degree. A person commits the offense of assault and battery
20 in the first degree if the person unlawfully offers or
21 attempts to injure another person with the present ability to
22 do so and the act is either accomplished by meetings likely to
23 produce death or great bodily injury.

24 Again, great bodily injury causes a substantial risk of
25 death of which causes serious permanent disfigurement or

State v. Chestnut
CHARGE TO JURY

926

1 protracted loss or impairment of the function of bodily member
2 or organ. If you don't think the State has proved that to you
3 beyond a reasonable doubt, you look at assault and battery
4 second degree, again the action of one person. A person
5 commits the offense of assault and battery in the second
6 degree if the person unlawfully injures another person or
7 offers or attempts to injure another person with the present
8 ability to do so and either bodily -- moderate bodily injury
9 to another person results or could have resulted.

10 Moderate bodily injury again means the physical injury
11 requiring treatment to an organ system of the body other than
12 the skin, muscles or tissues except when surgical repair is
13 required or when the treatment of the injuries requires the
14 use of regional or general anesthesia.

15 The next crime the Defendant is charged with is pointing
16 and presenting a firearm. The State has to prove to you
17 beyond a reasonable doubt the Defendant presented, pointed a
18 firearm at another person. It does not matter whether the
19 firearm was loaded or unloaded. So, pointing and presenting,
20 the State has to prove to you beyond a reasonable doubt the
21 Defendant pointed, presented the firearm to another person.
22 It doesn't whether that firearm was loaded or unloaded.

23 In looking at all these charges, and we have talked about
24 a number of the charges that have the greater offense and the
25 lesser offense, the rule of law is if you have a reasonable

State v. Chestnut
CHARGE TO JURY

927

1 doubt as to whether the Defendant is guilty of the greater or
2 the lesser offense, it's your duty to resolve that doubt in
3 favor of the Defendant and find him guilty of the lesser
4 offense if that's your view of the evidence. The evidence you
5 find to be true and, again, if it has been proven to you
6 beyond a reasonable doubt. Everything has to be proved to you
7 beyond a reasonable doubt; greater or lesser offense doesn't
8 matter.

9 Now, in this matter, there has been raised the issue of
10 self-defense. I'll say it again in here, the Defendant
11 doesn't have to prove anything to you. The Defendant doesn't
12 have to prove it to you self-defense. What has to happen is
13 the State of South Carolina has the burden of disproving self-
14 defense by proof beyond a reasonable doubt. The State has the
15 burden of proof on everything. So, self-defense is a complete
16 defense if it is established under the terms we're gonna talk
17 about. If you find it has been established under all of the
18 terms we're gonna talk about, it is a complete defense if you
19 were to find the Defendant not guilty of a particular crime
20 that you associated with. The State again has the burden of
21 disproving self-defense by proof beyond a reasonable doubt.
22 If you have a reasonable doubt of the Defendant's guilt after
23 considering all the evidence including self-defense, then you
24 must find the Defendant not guilty.

25 On the other hand, if you have no reasonable doubt of the

State v. Chestnut
CHARGE TO JURY

928

1 Defendant's guilt after considering all the evidence including
2 the evidence of self-defense, you must find the Defendant
3 guilty if the State has proved it to you beyond a reasonable
4 doubt all of the elements of the crime.

5 So, what's required to establish self-defense? The
6 defendant must be without fault -- the Defendant must be
7 without fault in bringing on the difficulty. If the
8 Defendant's conduct was the type which was reasonably
9 calculated to and did provoke a deadly assault, the Defendant
10 would be at fault in bringing on the difficulty and would not
11 be entitled to an acquittal based on self-defense. Now, I
12 will tell you the mere unlawful possession of a firearm in and
13 of itself does not automatically bar self-defense. A person
14 can be acting lawfully even if he is in unlawful possession of
15 a weapon if he was entitled to arm himself in self-defense.

16 If the Defendant voluntarily participated in mutual
17 combat for a purpose other than protection, the killing of the
18 victim is not self-defense. This is true even if during the
19 combat, the Defendant feared death of serious bodily injury.
20 However, if before the killing is committed, the Defendant
21 withdraws or tries in good faith to avoid contact, he would be
22 without fault.

23 For mutual combat, there has to be a mutual intent and
24 willingness to fight. This intent may be shown by the acts
25 and conducts of the parties and circumstances surrounding the

State v. Chestnut
CHARGE TO JURY

929

1 combat. In addition, it must be shown that both parties were
2 equally armed.

3 Second element of self-defense is that the Defendant was
4 actually in imminent danger of death or serious bodily injury
5 or that the Defendant actually believed he was in imminent
6 danger of death or serious bodily injury.

7 If the Defendant was actually in imminent danger, it must
8 be shown that a person of ordinary reason and prudence would
9 have believed that and would have struck the fatal blow to
10 prevent death or serious bodily injury. If the Defendant
11 believed he was in imminent danger of death or serious bodily
12 injury, it must be shown that a reasonable prudent person
13 would have had that same belief, a reasonable person of
14 ordinary firmness and courage -- in deciding whether the
15 Defendant was or actually believed they were in imminent
16 danger, you consider all the facts and circumstances including
17 all of the evidence presented.

18 Right to act on appearances. The Defendant does not have
19 to show that he was actually in danger. It is enough if the
20 Defendant believed he was in imminent danger and a reasonably
21 prudent person, ordinary person that has ordinary firmness and
22 courage would've had that same belief. The Defendant has the
23 right to act on appearances even though the Defendant's belief
24 may turn out to be mistaken. It is for you to decide whether
25 the Defendant's fear of immediate death or serious bodily

State v. Chestnut
CHARGE TO JURY

930

1 injury was reasonable and would've been felt by an ordinary
2 person in the same situation. Intoxication of the victim may
3 be considered in deciding whether the Defendant's fear of
4 death or bodily harm was reasonable.

5 The final element of self-defense is that the Defendant
6 had no other probable way to avoid the danger of death or
7 serious bodily injury than to act as the Defendant did in this
8 particular circumstances.

9 Degree of force. A person cannot be required to make an
10 exact calculation as to the degree or the amount of force
11 which may be needed to avoid death or serious bodily harm.
12 Therefore, in self-defense, the Defendant has the right to use
13 the force needed to avoid death or serious bodily harm. The
14 force used in self-defense does not have to be limited to the
15 degree or the amount of force used by the victim. The
16 Defendant has the right to use so much force as appeared to be
17 necessary for complete self-defense or self-protection and
18 that a person of ordinary reason and prudence would've had
19 that same relief. The Defendant is justified in defending
20 himself or others in firing the first shot and the Defendant
21 is justified in continuing to shoot until it is apparent that
22 the danger of death or serious bodily injury has completely
23 ended.

24 Defense of others. Under the laws of self-defense, the
25 Defendant may take the life of another in the defense of

State v. Chestnut
CHARGE TO JURY

931

1 others. The right to intervene to protect another person is
2 subject to the same rights and limitations as the right of
3 self-defense. What we talked about here applies when you act
4 in the defense of another. So, a Defendant can take the life
5 of a person who assaults a friend, relative, just some
6 bystander if that friend, relative or bystander would've had
7 the right of self-defense. To show that the person being
8 defended had the right of self-defense, it has to be shown
9 that the person being defended and the Defendant were both
10 without fault in bringing on the difficulty. They can't be at
11 fault in bringing on the difficulty.

12 The defense of another person is excusable if the
13 Defendant had reasonable grounds to believe and in good faith
14 did believe that the person being defended was in imminent
15 danger of death or serious bodily harm from the victim. In
16 deciding whether the person defended actually was or that the
17 Defendant believed the person was in imminent danger of death
18 or serious bodily injury, you again consider all the facts and
19 circumstances. Again, the Defendant has the right to act on
20 appearances. The Defendant does not have to show that the
21 person being defended was actually in danger. It's enough
22 that the Defendant believed that person was in imminent danger
23 and, again, reasonable person would've had that same belief
24 that the Defendant had.

25 All right. Ladies and gentlemen, that is the law that

State v. Chestnut
CHARGE TO JURY

932

1 you're gonna apply to the facts and evidence you find to be
2 true. Let me go over each and every form that you're gonna be
3 looking at.

4 I'm gonna start with the very first one, murder. On the
5 charge of murder of Jamal McFadden, that's who we're talking
6 about, the charge of murder of Jamal McFadden, the State has
7 charged Mr. Chestnut with that crime. We, the Jury, by
8 unanimous consent, find the Defendant Armando K. Chestnut, two
9 choices, not guilty or guilty. You pick one. If you find the
10 Defendant not guilty of murder, you go on to count two, the
11 lesser included, voluntary manslaughter. Obviously, if you
12 found him guilty of murder, you skip voluntary and go on to
13 the next crime. But, if you found him not guilty of murder,
14 you go on to the lesser included, voluntary manslaughter.

15 On the charge of voluntary manslaughter, We, the Jury, by
16 unanimous consent, find the Defendant Armando K. Chestnut,
17 again two choices, not guilty or guilty. I've got to put one
18 before the other and I've done it all these, don't assign
19 anything to that. Once you've made that decision you go on to
20 the next crime charged. That's the first crime charged,
21 murder. You've got murder, voluntary manslaughter, is part of
22 it if you don't find him guilty of murder.

23 Next crime, attempted murder. On the charge of attempted
24 murder of Damien Canty -- so, they've charged him with murder
25 of Jamal McFadden and they're charging him with the attempted

State v. Chestnut
CHARGE TO JURY

933

1 murder of Damien Canty. We, the Jury, by unanimous consent
2 find the Defendant Armando K. Chestnut not guilty or guilty.
3 If you find the Defendant not guilty of attempted murder of
4 Damien Canty, you then go to the lesser included charge,
5 assault and battery high and aggravated nature. Obviously, if
6 you found him guilty, you skip on to the next crime. If you
7 haven't found him guilty of that, if you found him not guilty,
8 you go on to assault and battery, high and aggravated nature.
9 On the charge of assault and battery high and aggravated
10 nature of Damien Canty, We, the Jury, by unanimous consent
11 find the Defendant Armando K. Chestnut, two choices, not
12 guilty or guilty. Once you've done that, you proceed on to
13 the next crime.

14 The next crime being pointing and presenting a firearm.
15 On the charge of pointing and presenting a firearm at Damien
16 Canty and/or Jamal McFadden, We, the Jury, by unanimous
17 consent find the Defendant Armando K. Chestnut not guilty or
18 guilty. Remember, murder, is regarding Jamal McFadden;
19 attempted murder Damien Canty; pointing and presenting, the
20 State alleges both or either. Not guilty or guilty, you make
21 a decision and you go on to the last crime charged. Last
22 crime charged as to subcategory, there's four crimes.

23 Assault and battery by a mob second degree, serious
24 bodily injury. On the charge of assault and battery by a mob,
25 second degree, serious bodily injury of Damien Canty, we, the

State v. Chestnut
CHARGE TO JURY

934

1 Jury, by unanimous consent find the Defendant Armando K.
2 Chestnut, two choices, not guilty or guilty. If you find him
3 guilty, you knock on the door and let the bailiff know you've
4 reached a verdict on all the charges. You find him not guilty
5 of that one, you go to the lesser included, third degree. On
6 the charge of assault and battery by a mob third degree,
7 bodily injury of Damien Canty, we, the Jury, by unanimous
8 consent find the Defendant Armando K. Chestnut, two choices,
9 not guilty or guilty. You find him guilty of that one, again,
10 you knock on the door and let the Bailiff know. You find him
11 not guilty of that one, you go again to another lesser
12 included. Assault and battery first degree, no mob,
13 single person. Assault and battery first degree, on the
14 charge of assault and battery first degree of Damien Canty,
15 we, the Jury, by unanimous consent find the Defendant Armando
16 K. Chestnut, two choices, not guilty or guilty. If you find
17 him not guilty, go on to the last one.

18 Assault and battery second degree, single person. On the
19 charge of assault and battery second degree of Damien Canty,
20 we, the Jury by unanimous consent find the Defendant Armando
21 K. Chestnut not guilty or guilty. Once you've done that, you
22 knock on the door and let the Bailiff know.

23 Again, four crimes, there are some subcategories to each
24 crime but there's four crimes and you have to make an
25 independent decision as to each one of them. Each one of them

State v. Chestnut
CHARGE TO JURY

935

1 has different elements. Did the State prove it to you beyond
2 a reasonable doubt that the Defendant is guilty of that
3 particular crime charged beyond a reasonable doubt based on
4 the facts and evidence you find to be true. Your decision
5 must be unanimous on all these matters. Unanimous obviously
6 means twelve/zero. It doesn't mean eleven/one, ten/two, any
7 combination thereof.

8 So, Madame Forelady, when you've gone and your jury has
9 well and truly deliberated and you've gone through each of
10 these matters and you have marked on the verdict form not
11 guilty or guilty, you sign your name, put today's date, you're
12 telling the Court every single member of the jury agrees,
13 everybody believes it, that's it, that's my verdict.

14 So, what I'm gonna ask that you do, Madame Forelady, go
15 to your jury room with the other regular members of the jury.
16 The two alternates, that's Ms. Tyler -- I'm sorry -- Mr. Tyler
17 and Ms. Scott, Mr. Tyler and Ms. Scott, y'all stay with us
18 here in the courtroom. The rest of you ladies and gentlemen
19 go to the jury room. Do not, do not start your deliberations.
20 When I send in the verdict form and all these exhibits, then
21 you start your deliberations. All right? Thank you very
22 much.

23 (REPORTER'S NOTE: The jury retires to the jury room. 11:49
24 A.M.)

25 THE COURT: All right. As to the alternates in this

State v. Chestnut
CHARGE TO JURY

936

1 matter, is there any reason the Court cannot now excuse the
2 alternates from their duties and responsibilities? From the
3 State?

4 MR. RICHARDSON: I think they've done their service, Your
5 Honor.

6 THE COURT: All right. From the Defense?

7 MS. PRATT: None, Your Honor.

8 THE COURT: All right. Your job was to step in the shoes
9 of one the regular members of the jury for some reason they
10 couldn't go forward, they got ill or whatever the reason was.
11 They all seem ready, willing and able to go forward with the
12 duties and responsibilities. So, I'm able to let you go at
13 this point in time. I know we ordered lunch and it will
14 probably be here in about ten minutes if you want to wait for
15 that, that's great. They can put you in a separate jury room
16 right down there but other -- you know, other than that,
17 you're free to go. Obviously free to go now if you want to; I
18 guess that's your choice. I want to thank you for your
19 service. You did -- you know, you were there able for the
20 Court to call on you if needed. You've earned that exemption
21 for three years, so if the Clerk of Court sends you the
22 notice, remember you've got that exemption for three years and
23 that's for the Circuit Court. I have to tell you, if you get
24 called by city court or your local magistrate or a federal
25 judge, you've got to go see them but you don't have to come

State v. Chestnut
CHARGE TO JURY

937

1 see us in Circuit Court for the next three years. All right.

2 Thank you very much.

3 (REPORTER'S NOTE: Alternates released and exit the
4 courtroom.)

5 THE COURT: All right. Exceptions, deletions, additions
6 to the charge from the State?

7 MR. RICHARDSON: Your Honor, I believe all was covered
8 sufficiently.

9 THE COURT: From the Defense?

10 MS. PRATT: Your Honor, I have two concerns.

11 THE COURT: All right.

12 MS. PRATT: First, the easy one, pointing a firearm at
13 any person, the Statue 16-23-410 actually has a sentence in it
14 that says, This section must not be construed to abridge the
15 right of self-defense. I would want to be clear that self-
16 defense applies to pointing and presenting as well as all of
17 the other ---

18 THE COURT: Well, I wouldn't say that. If you want me
19 to, I'll remind them that self-defense is applicable in all of
20 the crimes charged. I would say that.

21 MS. PRATT: Okay.

22 THE COURT: I think that would cause undue influence on
23 the jury for me to point out any particular crime but I'll be
24 glad to say, I just remind you that self-defense, if proper,
25 is applicable to all crimes charged.

State v. Chestnut
CHARGE TO JURY

938

1 MS. PRATT: The other concern I have, Your Honor, is that
2 you did state that malice could be inferred by the use of a
3 deadly weapon. The case of State v. Devon Frazier which is --
4 I have it under the Appellate case number -- oh, here it is,
5 736 S.E.2nd 301, 401 S.C. 224, I have copies if the Court
6 desires, states that in a situation of self-defense it is not
7 inferred malice in regard -- juries shall be charged that
8 malice may be inferred from the use of a deadly weapon where
9 evidence is presented that would reduce mitigate, excuse or
10 justify a homicide caused by the use of a deadly weapon.
11 That's from Dickey in regards to self-defense.

12 THE COURT: Solicitor?

13 MR. RICHARDSON: Your Honor, listening to the charge, I
14 thought you had it at a different point, I do -- I mean -- I
15 was listening and I've heard both charges pre Dickey and after
16 Dickey. If you could just recite the ones again -- I know you
17 read it from your jury instructions.

18 THE COURT: All right. What do you want me to do, Ms.
19 Pratt?

20 MS. PRATT: I think a charge that states that if they
21 find -- if they believe the Defendant to have acted in self-
22 defense then there is no inference of malice in the use of
23 deadly weapon because it is a complete defense. Does that
24 make sense? Am I thinking correctly?

25 THE COURT: Yes, ma'am. It's making sense. I just need

State v. Chestnut
CHARGE TO JURY

939

1 to ---

2 MS. PRATT: I'm sorry.

3 THE COURT: That's all right. All right. First -- all
4 right. So, the very first thing I would say is self-defense
5 is applicable to all crimes charged. That acceptable
6 regarding the first issue?

7 MS. PRATT: Would you say all four charge -- crimes
8 charged, Your Honor, simply to emphasize that is all four.

9 THE COURT: To every crime charged -- how about to every
10 crime charged?

11 MS. PRATT: Yes, sir.

12 THE COURT: All right. Very good. To every crime
13 charged. All right. And then if self-defense has been
14 established, I probably ought to say again it's the State's
15 burden to -- the State's burden to disprove self-defense
16 beyond a reasonable doubt. It is a complete defense and in
17 murder and attempted murder, there can be no inference of
18 malice by the use of a deadly weapon. Would that be
19 acceptable?

20 MS. PRATT: Yes, Your Honor.

21 MR. RICHARDSON: And, Your Honor, of course, just on both
22 of them, I think just a little bit different views with
23 pointing and presenting, I would just prefer it if you would
24 say it basically as it states here, if self-defense is
25 established it applies to all crimes.

State v. Chestnut
CHARGE TO JURY

940

1 THE COURT: To every crime charged because ---

2 MR. RICHARDSON: Yes, sir. I understand -- I don't -- I
3 didn't mean to say established when you're talking about the
4 pointing and presenting, you did say it whenever you were
5 talking about removing the malice with the deadly weapon.

6 THE COURT: Okay. Well, the first thing I'm gonna say is
7 self-defense is applicable to every crime charged. That's the
8 very first thing I'm gonna say. All right. I'm not gonna
9 pick a crime because I think that give undue influence to
10 them. So, I'll just say it's applicable to every crime. Then
11 I'm gonna say, if self-defense has been established and I
12 remind you, it's the State's burden to disprove beyond a
13 reasonable doubt self-defense. It is a complete defense and
14 in murder or attempted murder, there can be no inference of
15 malice by use of a deadly weapon. Or if you want me to say,
16 Ms. Pratt, in any crime there can be no inference of malice by
17 the use of a deadly weapon. I don't -- if you want me to say
18 that.

19 MS. PRATT: I would rather you say the murder and
20 attempted murder since the other one is specifically ---

21 THE COURT: All right, fine, I will. That's great, I
22 will say that then, that's fine, murder and attempted -- so,
23 anything else from the State that you ---

24 MR. RICHARDSON: No, sir, Your Honor.

25 THE COURT: All right. From the Defense, anything else,

State v. Chestnut
CHARGE TO JURY

941

1 Ms. Pratt?

2 MS. PRATT: No, Your Honor. Thank you.

3 THE COURT: All right. Very good. Ask the jury to come
4 back in, please.

5 (REPORTER'S NOTE: The jury returns to the courtroom. 11:59
6 A.M.)

7 THE COURT: All right. Ladies and gentlemen, it's been
8 called to my attention that I should bring something to your
9 attention and I believe it's proper to do so and it's in
10 regards to self-defense. Self-defense is applicable to every
11 crime charged, just to be clear about that. It's applicable
12 to every single crime charged in this matter. Now, if self-
13 defense has been established -- and I remind you now, it's the
14 State's burden to disprove self-defense beyond a reasonable
15 doubt. Again, the State has that burden on everything. It is
16 a complete defense. And in particular, murder and attempted
17 murder, there can be no inference of malice by the use of a
18 deadly weapon. If there's self-defense, there is no inference
19 that can be associated with the use of a deadly weapon. It's
20 not -- that's not proper in self-defense if it's established.
21 And again, the State has the burden of disproving it beyond a
22 reasonable doubt.

23 Do you know if lunch has gotten here yet or not?

24 BAILIFF: It hadn't got here yet.

25 THE COURT: It has not yet. All right. It should be

State v. Chestnut
CHARGE TO JURY

942

1 fairly shortly. It should be arriving fairly shortly, ladies
2 and gentlemen, so, I mean, you can do whatever you want to but
3 I would assume when it gets there, it'll be delivered to you
4 and y'all can take a break and enjoy it. What we'll be doing
5 shortly is sending in the -- all the exhibits and the verdict
6 forms to you and as soon as all that gets to you, they are
7 delivered to you by the Bailiff, then you can begin your
8 deliberations. All right? Thank you very much. You can
9 retire to the jury room.

10 (REPORTER'S NOTE: The jury retires to the jury room. 12:02
11 P.M.)

12 THE COURT: Okay. Further additions or deletions to the
13 charge as given by the State?

14 MR. RICHARDSON: No, sir, Your Honor.

15 THE COURT: By the Defense?

16 MS. PRATT: None, Your Honor.

17 THE COURT: All right. Thank you, ma'am.

18 MR. RICHARDSON: I'm having a T.V. brought up, Your
19 Honor, with a DVD player to see if this disc will play in the
20 DVD player.

21 THE COURT: Okay.

22 MR. RICHARDSON: I'm saying, we can send a T.V. back
23 there if this disc will play in that rather than ---

24 THE COURT: Well, we've got to make sure before we do
25 that ---

State v. Chestnut
CHARGE TO JURY

943

1 MR. RICHARDSON: They're bringing it up so I can test it.

2 THE COURT: Well, before we send anything back to them,
3 let's see, otherwise, I think we're gonna have to find a
4 laptop. I think that's probably the easiest thing to do is
5 find a laptop that can go in there with them. Okay?

6 MR. RICHARDSON: Yes, sir, Your Honor.

7 THE COURT: All right. We'll be at ease until y'all
8 figure that out. Do not send in any exhibits until we get
9 that figured out one way or another. All right. Thank you.

10 MR. RICHARDSON: Your Honor, I'm also gonna take the
11 additional step of going downstairs to see if they have a
12 laptop down there.

13 THE COURT: That'd be great. Thank you.

14 (12:03 P.M.)

15 *****OFF THE RECORD*****

16 On the Record.

17 (3:00 P.M.)

18 COURT'S EXHIBIT NUMBER TWO

19 MARKED FOR IDENTIFICATION

20 THE COURT: Counsel the jury has sent the Court a note
21 and they would like to have the elements of the law for murder
22 and manslaughter read to them again. I am talking about the
23 issue about the deadly weapon, so we won't have that again, so
24 I won't talk about that in there. So, my intention is to call
25 the jury in and go over those two aspects of the law with them

State v. Chestnut
CHARGE TO JURY

944

1 and ask them if there's anything else they would need. If
2 they don't, then just send them back in for further
3 deliberations.

4 Anything else from the State?

5 MR. RICHARDSON: No, sir, Your Honor. Thank you, Your
6 Honor.

7 THE COURT: Anything else from the Defense?

8 MS. PRATT: We would ask that the Court charge that as
9 stated before self-defense is a complete defense to both
10 charges.

11 THE COURT: I will ask them if they would like for me to
12 give them any further instructions as to self-defense. I'll
13 ask them that question and we'll see what they say. All
14 right?

15 MS. PRATT: Yes, Your Honor.

16 THE COURT: All right. Thank you.

17 All right. Ask the jury to come in, please.

18 MR. RICHARDSON: Your Honor, prior to the jury's entry,
19 the State would just ask if the question be if they need any
20 further instruction on any other element or any other charge
21 that was given instead of directing it to self-defense,
22 because they have not asked about that.

23 THE COURT: Well, I appreciate that but since it's so
24 related in this case, I think I'd probably ask that or all
25 aspects of the law including self-defense.

State v. Chestnut
CHARGE TO JURY

945

1 MR. RICHARDSON: Thank you, Your Honor.

2 THE COURT: All right. Thank you.

3 (REPORTER'S NOTE: The jury returns to the courtroom. 3:04
4 P.M.)

5 THE COURT: All right. Madame Forelady, ladies and
6 gentlemen of the jury, I got your note as to further
7 explanation of the law of murder and manslaughter and I'll go
8 over that with you and then I'll have one other question with
9 you at that point in time.

10 A Defendant being charged with the crime of murder, the
11 State has to prove to you beyond a reasonable doubt that the
12 Defendant killed another person with malice aforethought.
13 Malice is hatred, ill-will, hostility, hostility towards
14 another person. It is the intentional doing of a wrongful act
15 without just cause or excuse and with an intent to inflict an
16 injury or it's under circumstances that the law will infer an
17 evil intent. Malice aforethought does not require that malice
18 exist in the mind of the Defendant for any particular time
19 before the act is committed but malice must and has to exist
20 in the mind of the Defendant just before and at the time the
21 act is committed, the murder. Therefore, there has to be this
22 combination of evil intent and the act.

23 Now malice aforethought can be shown to you by the State
24 beyond a reasonable doubt either expressed or inferred.
25 Example of -- it's either like direct evidence or by

State v. Chestnut
CHARGE TO JURY

946

1 circumstantial evidence. Expressed malice can be shown when
2 a person speaks words which express hatred or ill-will for
3 another person or when the person prepares beforehand to do
4 the act, the murder which was later accomplished. An example
5 of that could be lying in wait for a person to commit a murder
6 or any other acts of preparation going to show that the deed
7 was within the Defendant's mind. And now malice can be
8 inferred from a showing by the State beyond a reasonable doubt
9 of conduct that shows a total disregard for human life. Now,
10 that's the definition of murder.

11 Voluntary manslaughter. You look at -- first, obviously,
12 you're looking at murder. If you do not find the State has
13 proved that to you beyond a reasonable doubt, you look at the
14 lesser included offense. Voluntary manslaughter being a
15 lesser included offense of murder, you can consider that
16 particular crime. So, to prove voluntary manslaughter, the
17 State has to prove to you beyond a reasonable doubt that the
18 Defendant took the life of another in the sudden heat of
19 passion based on sufficient legal provocation. Both heat of
20 passion and sufficient legal provocation must be present at
21 the time of the killing to constitute voluntary manslaughter.
22 So, heat of passion may for a time affect a person's self-
23 control and temporarily disturb that person's reasoning. The
24 sudden heat of passion has to be the type that would make an
25 ordinary, ordinary person unable to coolly reflect on their

State v. Chestnut
CHARGE TO JURY

947

1 actions, what they were doing and would produce the
2 uncontrollable impulse to do violence. Now, sufficient legal
3 provocation has to be the type that would make an ordinary
4 reasonable person to become enraged and to lose control of
5 themselves temporarily. The provocation needed for voluntary
6 manslaughter must come from some act or in related in some way
7 to the victim. If the heat of passion has cooled, if you
8 would find that or if there was enough time between the
9 provocation, if any, and the killing for the passion of a
10 reasonable ordinary person to cool, the killing would not be
11 voluntary manslaughter. In deciding whether a reasonable
12 person would've had enough time to cool off, you consider all
13 the circumstances surrounding the matter. You can consider
14 the nature of the provocation that comes from the victim or
15 surrounding and the reasonable circumstances around the victim
16 and, if any, the Defendant's mental and physical state and the
17 circumstances then and there existing.

18 So, those are the two definitions of murder and voluntary
19 manslaughter. Is there any other aspect of the law that you
20 would like the Court to go over including but not limited to
21 self-defense or any other aspect of law? Anything else?

22 All right. Thank you, ma'am. If you'll take the jury
23 back and resume your deliberations, please. Thank you.

24 (REPORTER'S NOTE: The jury retires to the jury room. 3:09
25 P.M.)

State v. Chestnut
CHARGE TO JURY

948

1 All right. Additions, deletions, exceptions to the
2 charge from the State?

3 MR. RICHARDSON: No, sir, Your Honor.

4 THE COURT: From the Defense?

5 MS. PRATT: None, Your Honor.

6 THE COURT: All right. Thank you. All right. We'll be
7 at ease until the jury needs us.

8 MR. RICHARDSON: Thank you, Your Honor.

9 (RECESS - 3:10 P.M.)

10 *****OFF THE RECORD*****

11 (On the Record - 4:15 P.M.)

12 THE COURT: Thank you very much. You may be seated.
13 Thank y'all.

14 All right. Solicitor, Ms. Pratt, the, the Court's been
15 informed that the jury has reached a verdict in this matter.

16 Is the State ready to receive it?

17 MR. RICHARDSON: We are, Your Honor.

18 THE COURT: And the Defense?

19 MS. PRATT: Yes, Your Honor.

20 THE COURT: All right. Very good. I'll say as I usually
21 do that we've asked the jury to do a very difficult thing.
22 We'll receive their verdict with respect and silence. Thank
23 you very much.

24 Ask the jury to come in.

25 (REPORTER'S NOTE: The jury returns to the courtroom. 4:20

State v. Chestnut
VERDICT OF JURY

949

1 P.M.)

2 VERDICT OF THE JURY:

3 THE COURT: All right. Madam Forelady, has your jury
4 returned the verdicts in the matter?

5 JUROR 319: Yes, we have.

6 THE COURT: All right. Could you hand the verdict forms
7 to the Clerk, please, ma'am?

8 JURPR 319: Everything's been ---

9 THE COURT: Yes, ma'am, you need to return them.

10 JUROR 319: Everything has to be signed and dated, right?

11 THE COURT: Yes, it does. All right. I'll look through
12 them just to make sure.

13 All right, ma'am, you may publish these verdicts.

14 CLERK: Indictment number 2012-GS-26-3115, State of South
15 Carolina, County of Horry versus Armando Chestnut on the
16 charge of murder of Jamal McFadden, we, the jury, by unanimous
17 consent, find the Defendant Armando K. Chestnut, not guilty.

18 Indictment number 2012-GS-26-3115, State of South
19 Carolina, County of Horry versus Armando K. Chestnut on the
20 charge of voluntary manslaughter of Jamal McFadden, we, the
21 jury, by unanimous consent, find the Defendant guilty.

22 Indictment number 2012-GS-26-3116, State of South
23 Carolina, County of Horry versus Armando K. Chestnut on the
24 charge of attempted murder of Damien Canty, we, the jury, by
25 unanimous consent, find the Defendant guilty.

State v. Chestnut
VERDICT OF JURY

950

1 2012-GS-26-3118, State of South Carolina, County of Horry
2 versus Armando K. Chestnut, on the charge of assault and
3 battery by a mob second degree serious bodily injury of Damien
4 Canty, we, the jury, by unanimous consent, find the Defendant,
5 Armando K. Chestnut, not guilty.

6 2012-GS-26-3118, State of South Carolina, County of Horry
7 versus Armando K. Chestnut, on the charge of assault and
8 battery by a mob third degree bodily injury of Damien Canty,
9 we, the jury, by unanimous consent, find the Defendant,
10 Armando K. Chestnut, not guilty.

11 Indictment number 2012-GS-26-3118, State of South
12 Carolina, County of Horry versus Armando K. Chestnut, on the
13 charge of assault and battery first degree of Damien Canty,
14 we, the jury, by unanimous consent, find the Defendant,
15 Armando K. Chestnut, not guilty.

16 Indictment number 2012-GS-26-3118, State of South
17 Carolina, County of Horry versus Armando K. Chestnut, on the
18 charge of assault and battery second degree of Damien Canty,
19 we, the jury, by unanimous consent, find the Defendant,
20 Armando K. Chestnut, guilty.

21 2012-GS-26-3117, State of South Carolina, County of Horry
22 versus Armando K. Chestnut, on the charge of pointing and
23 presenting a firearm at Damien Canty and/or Jamal McFadden,
24 we, the jury, by unanimous consent, find the Defendant guilty.

25 Dated July 19th, 2013 signed by Foreperson Jerry Vibbert.

State v. Chestnut
VERDICT OF JURY

951

1 Ladies and gentlemen of the jury, if this is your
2 verdict, so signify by raising your right hand. Thank you.

3 THE COURT: All right. The jury, all the jurors having
4 affirmed their verdict by the raising of their right hand.

5 Does the State wish the jury polled?

6 MR. RICHARDSON: No, sir, Your Honor.

7 THE COURT: Does the Defense wish the jury polled?

8 MS. PRATT: Please, Your Honor.

9 THE COURT: All right, Madam Clerk, if you would please
10 poll the jurors.

11 CLERK: When I call your juror number, if you will please
12 stand.

13 Juror 139, is this your verdict?

14 JUROR 139: Yes.

15 CLERK: Is this still your verdict?

16 JUROR 139: It is.

17 CLERK: Thank you.

18 101, is this your verdict?

19 JUROR 101: Yes.

20 CLERK: Is this still your verdict?

21 JUROR 101: Yes.

22 CLERK: Thank you.

23 316, is this your verdict?

24 JUROR 316: Yes.

25 CLERK: Is this still your verdict?

State v. Chestnut
MOTIONS

955

1 sentencing sheets?

2 THE COURT: Yes, sir.

3 Well, Ms. Pratt, any motions from the Defense at this
4 time?

5 MS. PRATT: Yes, Your Honor.

6 MOTIONS:

7 MS. PRATT: At this time, we would make a motion in
8 arrest of judgment. We would renew, first of all, all the
9 previous motions, objections and exceptions that have been
10 made throughout this trial this week. We are asking for a
11 motion in arrest of judgment as to the guilty verdicts of
12 voluntary manslaughter, attempted murder, pointing and
13 presenting and the assault and battery second. We believe
14 that specifically and especially in light of the attempt -- of
15 the question regarding murder and voluntary manslaughter, that
16 the jury felt they had -- I believe that they felt they had to
17 come back with some kind of verdict out of those choices and
18 not potentially consider the self-defense and the, and the
19 issue of perhaps a not guilty on that situation. I believe
20 that they've not had sufficient time to review and properly
21 consider all the evidence and therefore their verdict would
22 have been the result of passion and emotion because we had a
23 deceased person in that situation. They may have been
24 affected by the recent events that have been occurring around
25 the country in regards to the trial of George Zimmerman. I

State v. Chestnut
MOTIONS

956

1 believe that, Your Honor, the Solicitor's remark in closing,
2 first of all, in the bolstering of the witnesses that he had
3 and also in the comment concerning the Defense not producing
4 Thoro or Thoro not being here was enough to deprive my client
5 of due process.

6 I would also respectfully state that the statement
7 regarding the inference of malice in regards to a deadly
8 weapon in the first jury charge, while the Court gave a
9 curative instruction, was not enough to remove the taint and
10 therefore, even there though was a second jury charge, which
11 did not include that inference, that there is a danger that
12 that affected the due process in regards to that charge.

13 So therefore, respectfully, Your Honor, I would ask that
14 this Court grant my motion in arrest of judgment and set aside
15 and direct a verdict of not guilty.

16 THE COURT: All right. The -- I'm taking your motions as
17 a motion for a new trial. The only motion that can be made to
18 test a sufficiency of the evidence in a criminal trial once
19 the Court has denied a directed verdict is a new trial.

20 MS. PRATT: Yes, Your Honor.

21 THE COURT: In Civil Court, of course we have a judgment
22 notwithstanding the verdict that's not available in, in
23 Criminal Court.

24 So I denied your motions for directed verdict that were
25 set forth in the record and, in that, I ruled that the

State v. Chestnut
MOTIONS

957

1 evidence was sufficient to submit the question of guilt to a
2 jury. As I previously indicated, I do believe, first, that
3 there was more than sufficient competent and proper evidence
4 in the case to sustain the jury's verdict and find the
5 Defendant guilty beyond a reasonable doubt of the crimes that
6 they found him guilty of, that is voluntary manslaughter of
7 Jamal McFadden, attempted murder of Damien Curry [sic], the
8 assault and battery second degree and the pointing and
9 presenting a firearm, assault and battery second degree on
10 Damien and the pointing and presenting a firearm.

11 As to the issues you raised, the jury had the matter for
12 at least five-and-a-half hours before they rendered a verdict
13 -- I'm sorry, four-and-a-half hours -- over four-and-a-half
14 hours. They got it, the evidence was turned into them at 1
15 o'clock. It is by the clock there 4:32 currently. So they,
16 without a doubt, had more than sufficient evidence to and time
17 to consider the evidence in this matter.

18 I asked the jury at the very beginning if there were any
19 reasons of any kind that they believe they could not give to
20 the Defendant a fair and impartial trial and none of them so
21 indicated.

22 The issue about the matter in Florida I think is so
23 unrelated that I don't see how any in any shape, manner or
24 form it could have affected them in this particular case and
25 besides the fact that they indicated they could render a true

State v. Chestnut
MOTIONS

958

1 and just verdict by the Court's questioning originally.

2 The Court dealt with the question you mentioned about
3 bolstering the witness by the State. I sustained your
4 objection. There was no request at that time to do anything.
5 At the end of the -- when it was raised, I did so bring the
6 matter to the jury's attention and informed them to disregard
7 anything that the State might have done in that regard. I re-
8 emphasized enumerable times, the State's burden to prove the
9 Defendant guilty beyond a reasonable doubt. The State having
10 the burden on every single aspect in the case and I stated
11 that over and over again.

12 Regarding the matter of malice, the Court did give what I
13 believed to be a proper curative instruction and in fact the
14 jury came back again and asked for the definitions of murder
15 and voluntary manslaughter and the Court gave an instruction
16 that was clear and without that issue so there's no question
17 that they understood and knew exactly what it was that they
18 were considering.

19 On all those issues, I do not find there's any reason
20 presented that a new trial should be granted in this matter.
21 I do find that it was properly conducted, proper evidence was
22 presented to the jury, they considered the evidence, had
23 sufficient time to do so, there was more than sufficient
24 evidence in the record to convict the Defendant of all of the
25 crimes of which he was convicted beyond a reasonable doubt

State v. Chestnut
SENTENCE OF THE COURT

959

1 Therefore, I respectfully decline to grant your motion for a
2 new trial.

3 Any other matters?

4 MS. PRATT: Nothing before the sentencing, Your Honor.

5 SENTENCE OF THE COURT:

6 THE COURT: All right. Very good. All right, Solicitor,
7 present that to me.

8 MR. RICHARDSON: Certainly, Your Honor. Your Honor, I'm
9 handing up to you the properly drafted sentencing sheets. I
10 had one sentencing sheet that had some wrong numbers on there
11 I had made; that has been -- I'll show this to Ms. Pratt, if
12 you want me to.

13 THE COURT: Yes, sir.

14 MR. RICHARDSON: It was charged properly but it had been
15 wrong.

16 THE COURT: The form had the wrong number on it?

17 MR. RICHARDSON: Number on them wrong.

18 THE COURT: Number and you've corrected that?

19 MR. RICHARDSON: Yes, sir.

20 THE COURT: Please show that to Ms. Pratt.

21 MR. RICHARDSON: For the record, it's on the -- it's on
22 battery second degree, it was lesser included of the assault
23 and battery by a mob.

24 THE COURT: All right.

25 MR. RICHARDSON: Your Honor, I also -- I also have to

State v. Chestnut
SENTENCE OF THE COURT

970

1 sir.

2 MR. CHESTNUT: Sir, I just wanted to say that I know in
3 my heart that I did not kill anyone. I'm sorry for her son.
4 All this happened so fast. All I was doing was trying to help
5 a friend. I could have known her son and I would have seen
6 the same people jump on other friend, I would've did the same
7 thing. It wasn't that it was something planned or I went and
8 just do something to kill somebody or shoot at somebody or
9 it's nothing like that. It's just that I just seen guys
10 jumping on one of my friends and I didn't know who they was
11 and I just went over there to aid. It wasn't for me about
12 being what I'm gonna do in front of my friends because I, I'm
13 not that type of person like. I've been -- yeah, I've been in
14 jail twice. I've been out in the street for like eight years
15 straight with no trouble, no nothing. I got locked up for
16 driving with no license a couple of times but, other than
17 that, I live a normal life. I work, go home, stay with my
18 mother because she's sick. So, my twin, he's locked up. He's
19 doing a ten-year sentence, you know, and he'll be home soon,
20 but it's just that he's been gone for eight years. He was
21 gone -- it seem like all our life, like, either -- case we
22 twins and my mother, that's the only child she's got, me and
23 him. So I feel like -- it seems, I don't know what it is, but
24 it just seem like every time he in jail, I'm out of jail. Now
25 he's about to come home and I'm in jail. I don't even -- I

State v. Chestnut
SENTENCE OF THE COURT

971

1 can't remember the last time we got together and celebrated a
2 birthday together. It's just -- it's just been so crazy like.
3 And I just, I just want to the Court to know that I ain't -- I
4 just was helping a friend that I thought would do the same for
5 me and I realize that I shouldn't even -- I mean, now I
6 realize that -- I mean I'm gonna feel bad for not helping him,
7 but I feel like he didn't come here to show the Court what
8 happened and I feel like he just turned his back, I guess. I
9 don't know. It's just, it's just a street thing I guess, it
10 just they don't want to deal with the police or, or the
11 investigators or solicitors. It's just an environment that I
12 grew up around all my life like and with dealing with people
13 like, period, like. And it's real hurtful to me because I
14 felt like he should've been here and he should've came forward
15 and let the Court and let the jury know what happened. Again
16 I am sorry for the family, but I honestly want to say that I
17 know in my heart that I did not kill this young man. I just,
18 I just, I just want to let that be known that -- and I just
19 fight for my life by -- because if I felt I was wrong or if I
20 did something, I would have took a plea and went on about my
21 business. But I know I wasn't wrong. I know I didn't kill
22 nobody. I know I shot a guy in the elbow. I didn't know I
23 killed no one. I know that for a fact that I didn't.

24 THE COURT: All right, sir.

25 MR. CHESTNUT: And just that it's a lot, it's a lot of

State v. Chestnut
SENTENCE OF THE COURT

972

1 things that's in this case that I felt like, you know, that --
2 it hurts me because it's just sad but, you know, like again,
3 I'm sorry for the family but it's just sad for me to be going
4 through this. I don't feel like I -- I shouldn't be going
5 through this like. And I feel -- now, I feel like I made a
6 mistake, but then again, I feel like what if I just didn't
7 mess with -- not help, what would've possibly happened to him
8 like could he have possibly died or could he possibly got
9 paralyzed or anything and it is, it is real hurtful. I don't
10 know which way to turn like and it's real hurtful to me and I
11 just want the Court to know that. I just want you to take
12 that into consideration.

13 THE COURT: All right, sir. Thank you. Thank you.

14 MR. CHESTNUT: Thank you.

15 THE COURT: Let me ask you a question, Ms. Pratt?

16 MS. PRATT: Yes, Your Honor.

17 THE COURT: The State served the notice of intention to
18 seek the sentence of life without parole. Looking at the
19 statute -- I'm sure you've looked at it.

20 MS. PRATT: Yes, sir.

21 THE COURT: You see any discretion in that statute at
22 all?

23 MS. PRATT: I see the word shall, Your Honor, but I have
24 a great deal of faith in judicial discretion.

25 THE COURT: And I appreciate that. What does the Code

State v. Chestnut
SENTENCE OF THE COURT

973

1 Section say? It says notwithstanding any other provision of
2 law, except in cases in which the death penalty invokes, on a
3 conviction for a most serious offense as defined by this
4 section. He got convicted of voluntary manslaughter and
5 attempted murder; both of them are most serious offenses, two
6 different incidences involving two different parties. A
7 person must be sentenced to a term of imprisonment for life
8 without the possibility of parole. It's not may or can be; it
9 says must be, if that person has either one or more prior
10 convictions for a most serious offense. He has a conviction
11 of voluntary manslaughter, 1995-GS-26-172. He pled guilty to
12 it on or about October 13th, 1995. It's a most serious
13 offense. I don't know of any case law, anything that I know
14 of that indicates that the prior conviction, just because of
15 when it was, would have any effect on this. It says any prior
16 conviction. The history of this statute -- and I don't know
17 the terms of it at that point in time -- the history of the
18 statute indicates that it started in 1982 through Act Number
19 358 and 1986 Act Number 462. There have been amendments, a
20 number of amendments throughout the years. I don't see any
21 discretion in the statute.

22 I will tell you for the record, I think it should have
23 discretion. I do not think all facts can fit in one cookie
24 cutter design and the Court hearing the facts of a case ought
25 to be able to have discretion in this and not be mandated to

State v. Chestnut
SENTENCE OF THE COURT

974

1 give this sentence without any consideration to the facts and
2 evidence before it. I don't think that's right. But the
3 statute does not say and does not give me discretion and I
4 know of no case law or statute that says I can disregard the
5 clear meaning of the statute. The clear statement says must
6 be sentenced to a term of imprisonment for life without the
7 possibility of parole. And I'm gonna say it again for the
8 record, if I had discretion in this matter regarding 2012-GS-
9 26-3115 and 3116, I would sentence the Defendant to the
10 maximum sentence that was imposed under those crimes. Without
11 the notice of life without the possibility of parole, that
12 would be thirty years, but that is not the sentence in this
13 matter because of 17-25-45, what he was convicted of today and
14 his prior record.

15 Therefore, 2012-GS-26-3115, State of South Carolina,
16 County of Horry versus Armando K. Chestnut regarding voluntary
17 manslaughter, the sentence of the Court is the Defendant is
18 committed to the State Department of Corrections for a term of
19 imprisonment of life without the possibility of parole.

20 Regarding 2012-GS-26-3116, attempted murder, the sentence
21 of the Court is the Defendant is committed to the South
22 Carolina State Department of Corrections for a sentence of
23 life imprisonment without the possibility of parole.

24 Regarding 2012-GS-26-3117, pointing and presenting a
25 firearm, the Defendant is committed to the State Department of

State v. Chestnut
SENTENCE OF THE COURT

975

1 Corrections for a determinate term of five years concurrent
2 with 3115 and 3116.

3 2012-GS-26-3118, assault and battery second degree, the
4 Defendant is committed to the State Department of Corrections
5 for a determinate term of three years concurrent with 2012-GS-
6 26-3115 and 3116.

7 Thank you very much.

8 MS. PRATT: Thank you, Your Honor.

9 MR. RICHARDSON: Thank you, Your Honor.

10 **(Adjourned - 5:11 P.M.)**

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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF HORRY) COURT OF GENERAL SESSIONS
) (2012-GS-26-3115) (3116) (3117)
 3) (2012-GS-26-3118)

4
 5 STATE)
 6)
 7 VERSUS) TRANSCRIPT OF RECORD
 8)
 9 ARMANDO K. CHESTNUT) September 4, 2013
) Conway, S. C.
 10)

11 B E F O R E:

12 HONORABLE STEVEN H. JOHN, Judge.

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

14 BRADLEY RICHARDSON, ESQ.
 15 ASSISTANT SOLICITOR FOR HORRY COUNTY
 16 ATTORNEY FOR STATE

17 BARBARA W. PRATT, ESQ.
 18 ATTORNEY FOR DEFENDANT

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DIXIE COX EUBANK
 CIRCUIT COURT REPORTER
 FIFTEENTH JUDICIAL CIRCUIT

1 (THE FOLLOWING TAKES PLACE ON SEPTEMBER 4, 2013.)

2 THE COURT: This is in the matter of (2012-GS-26-
3 03115), (03116), (03117), and (03118). It is Notice of
4 Motion, and Motion to Reconsider the Sentence in the case of
5 the State of South Carolina versus Armando K. Chestnut, In
6 (2012-GS-26-03115) the jury found the Defendant guilty of
7 Voluntary Manslaughter, and pursuant to the terms of 17-25-45
8 the Defendant's prior convictions and the mandatory language
9 of the sentencing statute the Court sentenced Mr. Chestnut to
10 life imprisonment without the possibility of parole.

11 Regarding the other matters, (2012-GS-26-03118), Mr.
12 Chestnut was convicted of the crime of Assault and Battery by
13 mob, second degree, serious Bodily Injury, as well as -- I'm
14 sorry -- he was found not guilty of that crime. I'm sorry.
15 He was found not guilty of Assault and Battery by a mob, third
16 degree, bodily injury. He was found not guilty of Assault and
17 Battery, first degree, in those -- in that particular matter.
18 He was found guilty of Assault and Battery, second degree, in
19 that particular offense.

20 All right. I guess I failed to mention he was found
21 guilty of Attempted Murder in 2012-GS-26-03115). In that
22 particular crime the Court found that, again, pursuant to the
23 statute, that the sentence was the same.

24 All right. If you would like to proceed then, Ms.
25 Pratt, with your Notice of Motion and Motion to Reconsider.

1 **MS. PRATT:** Thank you, Your Honor.

2 And Your Honor, for the record, we are asking the Court
3 to reconsider it's ruling on the Motion for a New Trial as
4 well. I believe you stated the sentencing, but certainly our
5 motion includes the Motion for a New Trial as well.

6 **THE COURT:** All right. Very good.

7 **MS. PRATT:** Thank you, Your Honor.

8 Your Honor, there are several concerns that we have in
9 regards to issues that came about through the trial itself.
10 The first that my client has asked me to raise, which would be
11 one of the motions that we had renewed as part of our Motion
12 for a New Trial, was the admission of his confession. We
13 understand that the Jackson vs. Dino hearing took place prior
14 to the actual beginning of the trial before Your Honor, and at
15 that time you ruled that, in -- after viewing the tape, if I
16 can summarize it, you felt that by viewing what he had done on
17 the tape that he was not under the influence to such a degree
18 that it would cause his confession to be involuntary, or in
19 other -- some other manner inadmissible in this particular
20 case; however, Your Honor, after my client testified, and
21 testified to the fact that he had used alcohol and marijuana
22 prior to being arrested and interrogated by Detective
23 Kitelinger we wanted to raise the fact that, based on an
24 intoxication by marijuana it may not be as obvious on the
25 actual video tape of that confession as it -- as perhaps a DUI

1 type of intoxication would be. Certainly we know that
2 marijuana does not always cause someone to be able to open a
3 bottle, which I think was one of the things that the Court
4 raised as showing that he was not intoxicated. What it does
5 is, it reduces the ability to make reasonable decisions and
6 changes your level of inhibitions, and therefore he might have
7 been -- his testimony was, as the Court may remember, that he
8 was not able to process and make the right decisions as to
9 what he was telling the Detective in that particular
10 confessions, and because of his testimony we would ask the
11 Court to reconsider that ruling. If the confession would be
12 inadmissible we would argue that that would entitle him to a
13 new trial based on the fact that it would be impossible for
14 the jury to make their decision and un-ring the bell of the
15 actual confession.

16 The second argument that we would make, Your Honor, as
17 to do with the statements made by the Solicitor during his
18 closing argument. As the Court is aware, the Solicitor
19 vouched for witnesses, and also raised the issue, and we
20 objected to the fact that Thoro was not put forward by the
21 defense. Of course we were very careful not to open the door
22 in our closing argument about what Thoro might say, but simply
23 used the situation of Thoro to point out to the jury just what
24 a horrendous investigation Myrtle Beach had actually done, the
25 fact that it was very one-sided, that it was not properly

1 investigated in a fair and balanced manner. They certainly
2 never, as my client is very concerned, they never considered
3 the fact that the boys from Kingstree, Canty, McFadden and
4 others, should not have been -- should have been at least
5 investigated and possibly charged with an assault by mob, or
6 an assault and battery with intent to kill, or attempted
7 murder for their attack on Thoro, but we did not make any
8 statements as to what Thoro might have said, and therefore we
9 did not open the door for the Solicitor to be allowed to
10 comment on the Defendant's failure to present a defense
11 witness, or uncalled witnesses, and certainly his personal
12 opinion as to credibility of the State's witness is an
13 important concern. The standard there is, did the statement
14 so infect the trial as to make the conviction become a denial
15 of due process, and certainly those statements move that --
16 the case toward that standard, along with the prior argument
17 that we made about the confession, and certainly the
18 subsequent one that we are about to raise.

19 I think that what happens with the closing argument,
20 when the Solicitor raises, or even says the word Thoro, and we
21 objected and you sustained it, there was a pregnant pause, and
22 I'm sure that the jury wondered, and had no ability, of
23 course, to factor in that he never should have said the word.
24 It would not have been the -- I'm sure the jury also was
25 wondering why Thoro wasn't there anyway, but it's not up to

1 the Solicitor to suggest that the Defendant had the duty to
2 provide him, and we certainly did not say in our closing that
3 the State had the duty to provide him at trial, but simply
4 that Detective Kitelinger did not do his job, and had the
5 ability to find Thoro there at the jail that December, and had
6 already made up his mind as to what he was going to do. We
7 also would argue that that would not be harmless error given
8 the circumstances of the entire trial.

9 Most troubling to the Defense, Your Honor, is the jury
10 charge in which the statement of the inference of malice on
11 two separate occasions in the transcript. On page eleven in
12 the transcript -- and I have a copy for the Court -- this was
13 a partial transcript that was ordered by the Solicitor and
14 which we obtained a copy. On page eleven the Court states
15 on -- beginning on line nineteen when it's talking about
16 malice, "Malice can be inferred by the conduct. It shows a
17 total disregard for human life. Inferred malice can also arise
18 when the deed is done with a deadly weapon", and then goes on
19 for three more lines to talk about a deadly weapon.

20 I know this Court is aware that the case of State v.
21 Belcher, which is 685 S.E. 2d 802, specifically talks about
22 the fact that when there is a raising of self-defense, as the
23 Court knew there was, then the inference of malice in regards
24 to a deadly weapon shall not be charged in the jury charge.
25 The same to -- that inference of malice was in the context of

1 talking about murder, and then again when we are talking about
2 the attempted murder on page fourteen, again the Court states
3 that "Inferred malice can arise when the deed is done with a
4 deadly weapon", and that is on -- begins on line twenty-three
5 of page fourteen, and page twenty-four -- line twenty-four.

6 And the problem with it is that I don't know that it can
7 be cured in the way that the Court did it. A permissive
8 inference -- and **Belcher** traces all the way back to what
9 happened when it used to be rebuttal presumptions, and then,
10 because of due process concerns we now talk about it in terms
11 of a permissive inference. It does not mean that what we are
12 looking at is an, if there's self-defense then there is no
13 presumption, and that was the way that the Court couched it's
14 curative instruction after I raised that issue. It is on page
15 thirty-three when the charge -- and thirty-four, where we
16 start -- we talked about how to deal with that issue, and you
17 are ---

18 **THE COURT:** Thirty-four is what I actually said to the
19 jury.

20 **MS. PRATT:** Yes, Your Honor, thirty-four, beginning at
21 line sixteen.

22 **THE COURT:** Right.

23 **MS. PRATT:** And if you see the way that you used your
24 curative instruction, I say this with all respect, you
25 actually say to it -- to the jury, "If there is self-defense

1 ..., page thirty-five, line two, "...there is no inference",
2 and that makes it an "if then" statement, and I'm not sure
3 that **Belcher** talks about an "if then" statement. **Belcher**
4 talks about an absolute prohibition of saying that, and I
5 think that the fact that it was stated twice makes it
6 difficult to un-ring that bell for the jury as well. I think
7 that's borne out in the fact that we have inconsistent
8 verdicts, and while I know that we can have inconsistent
9 verdicts, it's interesting to me that in the murder case, in
10 the murder charge, where they found him guilty of voluntary
11 manslaughter ---

12 **THE COURT:** Well, it's two different people, right?

13 **MS. PRATT:** I'm sorry, sir.

14 **THE COURT:** Inconsistent. It's two different people.

15 **MS. PRATT:** I understand. But I think it's the issue
16 of malice, because -- and that's where my whole problem of
17 this comes in. Voluntary manslaughter as to McFadden says,
18 we've decided there's no malice, for whatever reason, even
19 though it's a deadly weapon, but when you look at attempted
20 murder with Canty they had to find malice, and they should not
21 have been able to find malice with Canty in regards to that
22 inference, and I think that's the problem that they had as a
23 jury.

24 **THE COURT:** Well, I mean, isn't that what I said? I
25 appreciate the first instruction -- again, as I told you, I

1 had it deleted. When I was reading it from the screen it came
2 back in again and I read it. I don't know why I did, but I
3 did. You brought it to my attention. It was proper. And it
4 told the jury, when we talked about self-defense -- and again,
5 there was two issues, but talked about self-defense, "And I
6 remind you now it's the State's burden to disprove self-
7 defense beyond a reasonable doubt. Again, the State has that
8 burden on everything. It is a complete defense. And in
9 particular, murder and attempted murder, there can be no
10 inference of malice by use of a deadly weapon." Okay. So I -
11 - that statement is clear. And I go on to say, "If there is
12 self-defense there is no inference that can be associated with
13 the use of a deadly weapon." It's not proper in self-defense,
14 if it's established, and the State has the burden of
15 disproving beyond a reasonable doubt. So there's no inference
16 of malice when there's self-defense.

17 **MS. PRATT:** But part of the problem in **Belcher**, Your
18 Honor, is that they believe that it's confusing and
19 prejudicial to the jury to deal with self-defense and the
20 inference of malice, and even when you state you can't have
21 one without the other, which is the "if then" statement, it's
22 still confusing and prejudicial to the jury, and that was the
23 concern in **Belcher**, and I believe that, given the fact that we
24 have these inconsistent verdicts the jury must have been
25 confused about what malice actually means, and whether they

1 could infer it, otherwise, they would have had to come back
2 with a different lesser-included charge, without malice, on
3 Canty, because it was the same behavior, and in fact, with
4 Canty ---

5 **THE COURT:** Well, it wasn't the same behavior. He had
6 different actions to the two defendants. His actions in
7 regards to the two defendants were different. Okay. It is
8 not the same actions. His actions in regards to the one where
9 there was attempted murder was different than his actions
10 where the jury found him guilty of voluntary manslaughter, so
11 I don't think it's correct that his actions were the same. He
12 -- there are different facts that the jury considered, it had
13 to have considered if they found him guilty for each party, so
14 I don't agree with that, that it's the same acts.

15 **MS. PRATT:** Well, and if I can state for the record
16 that it would be clearer that self-defense was the issue in
17 regards to Canty, because Canty was the one that was -- not
18 only had started by attacking Thoro, but also was in the
19 process of attaching and fighting with Corey when the gunfire
20 started in the incident, so if anybody had a situation of
21 self-defense or defense of others it would have been in
22 regards the Canty, and not so necessarily in regards to
23 McFadden, and my client absolutely denies the bullet from his
24 gun being the one that hit McFadden, and that -- I know that's
25 a question of fact; it's a big concern for him, because the

1 bullet that they say may have gone through McFadden was never
2 tested for DNA, and that's something that, again, it happened
3 because of the -- a bad investigation that he's very concerned
4 about.

5 But I think that that points out even more clearly to me
6 the problem with the jury charge, because if they believe that
7 there was malice in regards to Canty then there is no reason
8 for them to have not found malice in regards to McFadden
9 unless they were just confused about what they could do with
10 self-defense and with malice.

11 And for those reasons, Your Honor, we would be asking
12 that you grant us a new trial.

13 Also, Your Honor, I think in regards to sentencing I
14 would like to place on the record that while -- and we made
15 some arguments about this at the time. I understand that the
16 statute appears not to give the Judge any discretion, but it
17 is my belief that, under the Separation of Powers, that the
18 Judge has to have some discretion in regards to sentencing.
19 Certainly the Legislature has put in place some very firm
20 language, but when you have a defendant who is similar to
21 mine, whose prior most serious offense is close to twenty
22 years ago, or seventeen years ago, certainly a very long time
23 before, there should be some discretion allowed, and I believe
24 that it would be something where the Court should have that
25 discretion, given that the Judiciary is suppose to have that

1 ability to make those kinds of decisions, and so we would also
2 be appealing the sentence, and asking that the Court step
3 outside of the language that the Legislature has, since it's
4 probably an improper shifting of the burden of the sentencing
5 from the Judiciary where it properly belongs.

6 **THE COURT:** All right. Solicitor.

7 **MR. RICHARDSON:** Thank you, Your Honor.

8 With regard to the admission of the confession, the
9 State would argue that, with regard to any marijuana use, the
10 only testimony we have with regard to the Defendant's
11 intoxication, comes from the Defendant, and that would go to
12 credibility, not to admissibility, Your Honor; it's whether or
13 not the jury believed he was under the influence. Obviously
14 they did not. And in admitting the confession into evidence,
15 Your Honor, you made calculations -- or you made the
16 observations that the Defendant was able to manipulate his
17 body well, able to get a bottle of water from behind his back
18 while his hands were cuffed. He spoke eloquently during that.
19 There is no error there.

20 With regard to the statements that I made during the
21 closing -- and I understand the Court's ruling on that -- the
22 State would just -- would differ from Ms. Pratt. While they
23 did not call that in their closing, that the State didn't call
24 Thoro, his absence was noted by defense throughout the entire
25 trial, including Detective Kitelinger saying, you didn't go

1 out and see him. They said he was easy enough to go get.
2 They put up testimony. They put up other witnesses. But I
3 understand that -- assuming arguendo that it was improper,
4 Your Honor, pursuant to your ruling, Your Honor, I would argue
5 that it's harmless error that was cured. It was objected to
6 and it was sustained.

7 With regard to the Motion for New Trial, based off of
8 the erroneous charge, I've reviewed the case law. I
9 understand **Belcher**, and since 2009 they have held in self-
10 defense cases that the inference of malice cannot be held --
11 or cannot be charged whenever there is a self-defense
12 argument, by the use of a weapon. And they even go further,
13 Your Honor, saying that's not harmless error, but an error may
14 be corrected, and can be deemed cured if curative instruction
15 is given. That's pursuant to **State v. Green**, 330 S.C. 551,
16 499 S.C. 2d 817. "An instruction to disregard competent
17 evidence may cure and error. Mistrial may yet be required,
18 depending on the facts of the particular case, if the
19 defendant, notwithstanding the curative instruction, suffered
20 some prejudice." In this case there was no prejudice, Your
21 Honor. That was **State v. Simpson**, 325 S.C. 37, and 479 S.C.
22 2d 57. "The determination of prejudice must be based on the
23 entire record, and the result would generally turn on the
24 facts of each case", and that's under **Douglas**, Your Honor, 367
25 S.C. 498, 523 S.C. 2d 59. That case -- that was a Court of

1 Appeals case from 2006. That case was later overturned, but
2 it was overturned, not off of that, Your Honor, but instead it
3 was overruled with regard to admission of expert testimony
4 from a forensic interviewer, so that -- the State would argue
5 that holding stands.

6 "A mistrial should only be granted when it's absolutely
7 necessary, and the defendant must show both error, and
8 resulting prejudice in order to be entitled to a mistrial",
9 and that's under State vs. Harris, 340 S.C. 63, 530 S.C. 2d
10 628. That's a 2000 case, Your Honor, from the Supreme Court.

11 You have a copy of your charge, Your Honor. I'm not
12 going to argue that it wasn't said that malice could be
13 inferred. That was -- it was, Ms. Pratt made the proper
14 objection, and you went into giving a curative charge, Your
15 Honor.

16 With the curative charge, you've read over it, Your
17 Honor. I think it more than compensates for any error. You
18 stated, "Ladies and gentlemen, it has been brought to my
19 attention that I should remind you of something -- bring
20 something to your attention. I believe it's proper to do so
21 in regards to self-defense. Self-defense is applicable to
22 every crime charged, just to be clear about that. It's
23 applicable to every single crime charged in this matter, no
24 matter if self-defense has been established, and I remind you
25 now that it's the State's burden to disprove self-defense

1 beyond a reasonable doubt. We get charged right there, Your
2 Honor, that it's our burden. Yet again, self-defense gets
3 charged. It's a complete defense. In particular, in murder
4 and attempted murder there can be no inference of malice by
5 the use of a deadly weapon. If self-defense -- there is no
6 inference that can be drawn from the use of a deadly weapon.
7 And that's not -- that's not proper in self-defense if it's
8 established. That's if it's established that it's taken
9 straight from the self-defense charge, Your Honor.

10 Again, the State has the burden of disproving it beyond
11 a reasonable doubt. That was the record. Page thirty-four,
12 lines sixteen through twenty-five, and page thirty-five, lines
13 one through six.

14 The jury retired to the courtroom. They got the
15 evidence at approximately one o'clock, thirteen hundred hours,
16 Your Honor. They began deliberations, and then they asked for
17 a recharge on murder and self-defense. At this time the
18 charge that was given to them omitted any reference to the
19 inference of malice by use of a deadly weapon.

20 Your Honor, the Defendant fails to -- any prejudice with
21 regard to the charge, whether it's erroneous or not, or
22 uncured or not. He cannot show prejudice because the jury did
23 not return a verdict of murder, which requires malice; they
24 returned a verdict of voluntary manslaughter, which requires
25 no malice; it's just merely the unlawful killing of another,

1 with proper legal justifi- -- or legal reason.

2 Your Honor, and the Supreme Court holding that mistrial
3 should only be granted when absolutely necessary -- the
4 defendant -- the defense just does not meet their burden.

5 With regard to Ms. Pratt's argument that there are
6 inconsistent verdicts, I think the Court hit right on the
7 head, Your Honor, there are two separate victims. We see the
8 shot that kills Jamel McFadden as the Defendant rushes in, no
9 doubt inflamed at that point, and he pops him one time.

10 But then the State -- we saw the video ad nauseam -- the
11 Defendant runs back out in the parking lot, firing again and
12 again, and then chases Mr. Canty, the victim on the attempted
13 murder, into the club, and he beats on him in there. That in
14 itself shows malice. He keeps going after them. There is
15 no -- no more threat to Thoro or anybody else, only to Mr.
16 Canty at that point, Mr. McFadden who has since passed.

17 Your Honor, the curative charge was exhaustive.
18 Certainly I believe it went further than the Court needed to
19 go. I think all the Court would have been required to do to
20 sustain the verdict is just say it was wrong to charge an
21 inference of malice can result from the use of a deadly
22 weapon; do not consider that, but you went over on that, and
23 the jury was charged yet again, omitting the malice, Your
24 Honor.

25 Inasmuch, certainly, as the Defendant has suffered no

1 prejudice with the voluntary manslaughter that charge should
2 stand as the -- separate and apart victims, with regard to
3 attempted murder, that should stand, pointing and presenting,
4 once again, that should stand, Your Honor. The jury was
5 sufficiently cured from any erroneous charge, and the verdict
6 should stand, Your Honor.

7 With regard to the sentencing, Your Honor, it is the
8 state of the Law, and I fully understand the Court's
9 trepidation with how life without the possibility of parole is
10 -- is imposed under our current statutory scheme. I
11 understand the defense's argument every time, but the fact is,
12 that is the state of the Law, Your Honor, and while the
13 Defendant's prior conviction may have been some eighteen years
14 before that, I believe in 1995, he served ten years for
15 voluntary manslaughter. He's got another body on him, Your
16 Honor. He wasn't out and not causing any more harm. After he
17 got out of prison he does have other convictions, none of them
18 dealing with murder, but as I recall he had some drug
19 convictions after that, Your Honor. We are not talking about
20 somebody who is pure as the driven snow here. There's a
21 reason why the State sought, and got Legislation for life
22 without, and that should be the sentence in this case, Your
23 Honor.

24 Thank you.

25 **THE COURT:** Thank you.

1 All right. In this particular matter, as to the issues
2 raised for a new trial in this matter, as to the admission of
3 the confession the Court ruled at the Jackson v. Dino hearing
4 that the confession was proper, I went through all of the
5 perimeters at that point in time - I don't intend to repeat
6 those at this point in time - but I set forth specifically the
7 Court's belief that the confession was proper under my
8 standard, the standard that the Court has, which is different
9 than what the jury has, but under the standard that the Court
10 has, as set forth at the motion hearing, that it was proper
11 evidence to be produced at the trial. I did tell the jury,
12 and properly instructed to them the State's burden regarding
13 the confession, the State's burden, beyond a reasonable doubt.
14 I went through all of the elements regarding the burden of the
15 State as to the confession, and I do think that it was proper
16 to be considered by the jury.

17 As to -- so again, I just reaffirm the previous ruling
18 of the Court on all of the grounds and explanation I set forth
19 previously at the Jackson v. Dino hearing, as well as the
20 explanation to the jury that it was their decision regarding
21 the confession, under the standards I set forth in my charge
22 to them, and again, the State's burden to prove it to them
23 beyond a reasonable doubt.

24 As to the State's -- or the question about the State's
25 either vouching for witnesses or questioning whether or not

1 the Defense should call a particular person, when the matter
2 was raised to the Court's attention at the time of the closing
3 argument by the Defense I sustained the objection at that
4 point in time. I did not allow the State to continue in that
5 matter. I did as requested by the Defense in that particular
6 issue. I do not find, at this point in time, that a new trial
7 should be granted when the Court sustained the objection, as
8 well as when the matter was raised to the Court's attention.
9 I find that I properly ruled at that point in time, and if
10 there were any other times that there was anything -- I'm not
11 saying there was, but if there was anything else objectionable
12 to be had to the State's argument that matter was not raised
13 to the Court at that time, and therefore I have no opportunity
14 -- had no opportunity to correct it at the time. When the
15 matter was raised I ruled, and properly corrected.

16 As to the jury charge, again, I said that at the time of
17 the trial when the matter was raised to the Court's attention
18 after the charge. I had deleted it, it came back on the
19 screen, I read it, I shouldn't have, I acknowledged that at
20 the time. I called the jury back in. I was very clear
21 telling them it was not part of the case. I think it was a
22 proper curative instruction immediately after the charge.
23 Thereafter the jury, on it's own, several hours later, came
24 back and asked for a recharging of murder and voluntary
25 manslaughter, and I indicated at the time we weren't going to

1 go back and make the same error that I had made previously,
2 and I charged them properly on murder and voluntary
3 manslaughter. They did not hear anything that they should not
4 have. I specifically asked the jury if they wanted any other
5 things charged to them. I asked them, you know, including but
6 not limited to self-defense, did they want to hear that again.
7 The jury foreman clearly indicated to the Court at that point
8 in time that what I instructed them was what they wanted to
9 hear; they didn't want to hear anything else, even though I
10 had specifically asked them, do you want to hear anything
11 else, including, but not limited to self-defense, and the
12 forelady, on behalf of the jury, indicated no, they heard what
13 they wanted to hear. I had responded to their request, and
14 properly charged them. The matter was raised to the Court, I
15 gave a curative instruction, again, the jury, on it's own,
16 asked for instructions, proper instructions were given to
17 them. I just cannot see any prejudice to the Defendant in
18 this particular matter. On the facts of this particular case
19 I just don't see any prejudice to the Defendant. Based on the
20 facts -- and there are different facts for -- as I explained
21 to the jury. They were trying a number of trials in one, and
22 I specifically talked to them about that, and the facts on
23 each one of them, and what the State had to prove to them
24 beyond a reasonable doubt was different on each one of them,
25 and I just don't see the prejudice to the Defendant in this

1 particular matter.

2 As to the issue of the sentence, the language of the
3 statute is mandatory. The language of the statute gives
4 absolutely no discretion to the Court based on any underlying
5 facts or circumstances. It is clear that is what the
6 Legislature wanted to do. You look at the Legislative
7 history, you look at the notes attached to the statute, it's
8 clear that the Legislature did not want to give any discretion
9 to the Court. If you had these prior convictions everybody
10 was in the same boat, and everybody gets life in prison
11 without the possibility of parole; no exceptions are allowed.
12 That's the mandatory language of the statute. I followed the
13 mandatory language of the statute. I do not find it is proper
14 for the Court to change the mandatory language of the statute
15 as set forth by the Legislature in this particular matter.

16 I note your argument about the different branches of
17 government, and the different responsibilities that each of
18 them have. As I stated earlier, if I had been granted
19 discretion in this matter I would have exercised discretion,
20 and I would not have sentenced this particular Defendant to
21 life in prison without the possibility of parole. I would not
22 have given him that sentence, but I did not have that
23 discretion. It was not allowed. It is not allowed by the
24 statute, therefore I sentenced him in accordance with what the
25 Law of the State of South Carolina is at this time, therefore,

1 based upon the matters raised in your Motion for a New Trial
2 as set forth to the Court at this time, the Court declines to
3 grant your Motion for a New Trial, and remands the Defendant
4 to the custody of the South Carolina Department of Corrections
5 pursuant to the sentences imposed for the crimes he was
6 convicted of, and the sentences the Court gave him regarding
7 those crimes he was convicted of.

8 Thank you very much.

9 **MR. RICHARDSON:** Thank you, Your Honor.

10 **MS. PRATT:** Thank you, Your Honor.

11 **THE COURT:** Solicitor, if you would, I would like for
12 you to do a proposed order regarding these matters, and when
13 you can, e-mail it to my Clerk and to Ms. Pratt.

14 All right.

15 **MR. RICHARDSON:** Certainly, Your Honor. I just ask for
16 a couple of days on that.

17 **THE COURT:** Yes sir. Absolutely. No -- no problem
18 with that.

19 Thank you very much.

20 **MR. RICHARDSON:** Your Honor, do you want a copy of the
21 cases I cited, or ---

22 **THE COURT:** No, I don't need that. I don't need that.

23 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

24

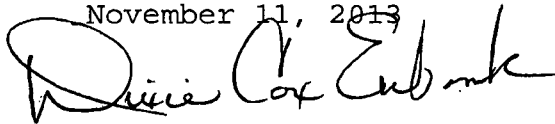
25

C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the **MOTION HEARING** of the captioned case, relative to appeal, in the **COURT OF GENERAL SESSIONS** for **HORRY COUNTY, SOUTH CAROLINA**, on the **4th day of September, 2013**.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

November 11, 2013



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

WITNESSES

Everest Carrison Myrtle Beach Police Department

DOCKET NO. 2012-GS-26-03115

The State of South Carolina
County of Horry

Bradley C. Richardson
12H01112

COURT OF GENERAL SESSIONS

August, 2012 TERM

CERTIFIED COPY

2013 OCT -4 AM 10:06

Melanie ...
CLERK OF COURT
HORRY COUNTY

ARREST WARRANT NUMBER

M350858

CDR: 0116 16-03-0010, 0020

DOA: 3/7/2012

THE STATE

VS.

ACTION OF GRAND JURY

Armando K Chestnut

B/ M

DOB: 1
SSN: 1

ATTORNEY: Pratt, Barbara Wilson

Foreperson of Grand Jury
Date: *[Signature]*

VERDICT

Indictment for

MURDER

J. Gregory Hembree, Solicitor

ORIGINAL

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY.)

INDICTMENT
MURDER

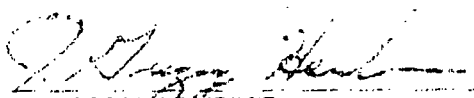
At a Court of General Sessions, convened on July 26, 2012, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010.0020.

That Armando K Chestnut and/or Co-Defendants did in Horry County, on or about March 6, 2012, willfully, feloniously, and intentionally kill the victim, Mel McFadden, with malice aforethought, either express or implied, by means of a shooting, and the victim did die as a proximate result thereof on or about March 6, 2012 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

CERTIFIED COPY
2013 OCT -4 AM 10:06
CLERK OF COURT
HORRY COUNTY

WITNESSES

Everest Carrison Myrtle Beach Police Department

DOCKET NO. 2012-GS-26- 03116**The State of South Carolina**

County of Horry

Bradley C. Richardson
12H01112

COURT OF GENERAL SESSIONS

August, 2012 TERM

ARREST WARRANT NUMBER

M350859

CDR: 3410 16-03-0029

DOA: 3/7/2012

ACTION OF GRAND JURYForeperson of Grand Jury
Date

JUL 26 2012

VERDICTForeperson of Petit Jury
DateCERTIFIED COPY:
2013 OCT -4 AM 10:06Melanie Huggins
CLERK OF COURT
HORRY COUNTY**THE STATE**

vs.

Armando K Chestnut

B/ M

DOB:
SSN:

ATTORNEY: Pratt, Barbara Wilson

Indictment for

ATTEMPTED MURDER

J. Gregory Hembree, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

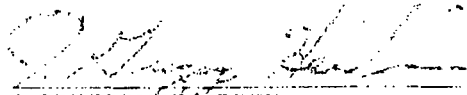
INDICTMENT
ATTEMPTED MURDER

At a Court of General Sessions, convened on July 26, 2012, the Grand Jurors of Horry County present upon their oath:

ATTEMPTED MURDER
CDR: 3410 16-03-0029

That Armando K Chestnut and/or Co-Defendants did in Horry County on or about March 6, 2012 with intent to kill Damien Canty, attempt to kill the victim with malice aforethought, either expressed or implied in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

CERTIFIED COPY
2013 OCT -4 AM 10:06
CLERK OF COURT
HORRY COUNTY

WITNESSES

Everest Carrison Myrtle Beach Police Department

DOCKET NO. 2012-GS-26-

03117

The State of South Carolina

County of Horry

Bradley C. Richardson
12H01112

COURT OF GENERAL SESSIONS

August, 2012 TERM

ARREST WARRANT NUMBER

M350860

CDR: 0122 16-23-0410

DOA: 3/7/2012

ACTION OF GRAND JURYForeperson of Grand Jury
Date:

JUL 26 2012

VERDICT

BILL

Foreperson of Petit Jury
Date:CERTIFIED COPY
2013 OCT -4 AM 10:06
Melanie [unclear]
CLERK OF COURT
HORRY COUNTY**THE STATE**

vs.

Armando K Chestnut

B/ M

DOB:
SSN: :

ATTORNEY: Pratt, Barbara Wilson

Indictment for

POINTING / PRESENTING A FIREARM

J. Gregory Hembree, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT
 POINTING / PRESENTING A FIREARM

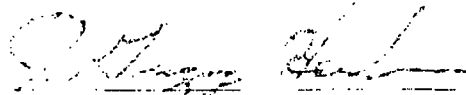
At a Court of General Sessions, convened on July 26, 2012, the Grand Jurors of Horry County present upon their oath:

POINTING / PRESENTING A FIREARM

CDR: 0122 16-23-0410

That Armando K Chestnut and/or Co-Defendant(s) did in Horry County on or about March 6, 2012, point or present a loaded or unloaded firearm, to wit: a handgun, at Damien Canty and/or ⁷⁹Mel McFadden, in violation of Section 16-23-0410, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 J. GREGORY HEMBREE
 FIFTEENTH CIRCUIT SOLICITOR

Melanie
 CLERK OF COURT
 HORRY COUNTY

2013 OCT -4 AM 10:06

CERTIFIED COPY

WITNESSES

Everest Carrison Myrtle Beach Police Department

DOCKET NO. 2012-GS-26-

03118

The State of South Carolina**County of Horry**Bradley C. Richardson
12H01112**COURT OF GENERAL SESSIONS****August, 2012 TERM****ARREST WARRANT NUMBER**

M350861

CDR: 3432 16-03-0210(C)
DOA: 3/7/2012**ACTION OF GRAND JURY**Foreperson of Grand Jury
Date:

JUL 26 2012

VERDICTForeperson of Petit Jury
Date:CERTIFIED COPY
2013 OCT -4 AM 10:06Melissa [unclear]
CLERK OF COURT
HORRY COUNTY**THE STATE**

vs.

Armando K Chestnut

B/ M

DOB:
SSN:

ATTORNEY: Pratt, Barbara Wilson

Indictment for

~~ATTORNEY~~/ASSAULT AND BATTERY BY
MOB
SECOND DEGREE - SERIOUS BODILY
INJURY

J. Gregory Hembree, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF HORRY)

~~ARmando K Chestnut~~/ASSAULT AND BATTERY BY MOB
SECOND DEGREE - SERIOUS BODILY INJURY

At a Court of General Sessions, convened on July 26, 2012, the Grand Jurors of Horry County present upon their oath:

~~ARmando K Chestnut~~/ASSAULT AND BATTERY BY MOB
SECOND DEGREE - SERIOUS BODILY INJURY

CDR: 3432 16-03-0210(C)

That Armando K Chestnut, while joined with others and acting as a mob, did in Horry County, on or about March 6, 2012, commit an act of violence which resulted in serious bodily injury to ~~Armando K Chestnut~~ and/or Damien Canty, in violation of Section 16-3-0210(C), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

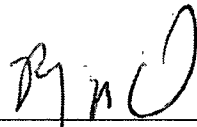
J. Gregory Hembree
J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

CERTIFIED COPY
2013 OCT -4 AM 10:06
CLERK OF COURT
HORRY COUNTY

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."

October 1, 2015



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

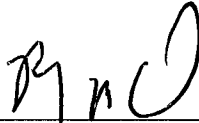
ATTORNEY FOR APPELLANT

RECEIVED
OCT 01 2015
SC Court of Appeals

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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."

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OCT 01 2015

SC Court of Appeals

ATTORNEY FOR APPELLANT