

VOL. II of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Deadra L. Jefferson, Circuit Court Judge

ORIGINAL

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THE STATE,

RESPONDENT, OCT 12 2015
SC Court of Appeals

V.

JAMES KEVIN BETHEL, JR.

APPELLANT

APPELLATE CASE NO. 2013-002478

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT # 71 (Video)

STATE'S EXHIBIT # 157 (Video)

1 A. Yes, sir.

2 Q. Okay. Could you breathe real well?

3 A. Somewhat so. A little bit.

4 Q. You could breathe a little bit. And now where were you
5 whenever the gunshot went off?

6 A. I was at the -- by then I was at the bottom of the ramp.

7 Q. Okay. Do you have any idea how many gunshots went off?

8 A. No, sir.

9 Q. After getting pepper-sprayed but before the gunshot went
10 off, in that time period, can you describe what James was
11 doing?

12 A. After -- say that again.

13 Q. After you got pepper-sprayed---

14 A. Uh-huh.

15 Q. ---but before the gunshot went off, in that time period,
16 could you describe what James was doing or do you recall?

17 A. I believe he was probably still up there with the owner
18 because after we got pepper-sprayed we were trying to get out
19 of the way and off the ramp and stuff after they -- because,
20 you know, it was all in the air up there, so...

21 Q. Okay. So you said it was in the air?

22 A. Yes, sir.

23 Q. Now, did -- did you see the shooting?

24 A. No, sir.

25 Q. What happened after the shooting? What did you do?

1 A. Got out of the parking lot.

2 Q. What do you mean you got out of the parking lot?

3 A. I had went across -- went across the street like where
4 the bowling alley went (verbatim).

5 Q. Okay. Did you see J.J. shoot him?

6 A. No, sir.

7 Q. Okay. But you heard a gunshot?

8 A. Yes, sir.

9 Q. How many gunshots did you hear?

10 A. There was a couple of them.

11 Q. Okay. Did you see anyone with a gun?

12 A. I saw one of the bouncers was shooting.

13 Q. Okay. One of the bouncers or one of the security
14 guards?

15 A. Well, it probably was the security guards, one of them.

16 Q. Okay. How far away -- the person who sprayed you with
17 mace, can you estimate how far away they were?

18 A. Honestly, no, but it was all at the top of the ramp
19 though.

20 Q. But could they -- would they have -- did they spray you
21 in the face -- in the chest first and then---

22 A. No, they was---

23 Q. ---in your face?

24 A. They was spraying like the face.

25 Q. Okay. Would he have been real close to you? Can you

1 recall?

2 A. It would have been closer to like at the top like what
3 Curtis -- because that's how Curtis got sprayed because he
4 got sprayed bad that night.

5 Q. Okay. And you sort of got the second-hand from him?

6 A. Yes, sir.

7 Q. Okay. When you say he got sprayed bad, did he have a
8 lot of pepper spray on his face?

9 A. Yes, sir.

10 Q. While y'all were outside, did you hear Ernest and Black
11 arguing?

12 A. They was -- they was down -- yes, sir, they was down
13 there talking amongst each other with -- I think there was
14 like another bouncer or something that came down there, too.

15 Q. Okay. Were they yelling at each other?

16 A. The bouncers? Yes, sir, they was yelling.

17 **Mr. Shaffer:** Okay. Court's indulgence.

18 **The Court:** Uh-huh.

19 By Mr. Shaffer:

20 Q. And once again, did you say -- did you say that there
21 was mist in the area? Is that -- did I hear you correctly?

22 A. Yes, sir.

23 **Mr. Shaffer:** Okay. No further questions.

24 **The Court:** Any questions for the witness?

25 **Ms. Campbell:** Thank you, Your Honor.

1 **The Court:** You may proceed.

2 Cross-Examination

3 By Ms. Campbell:

4 Q. Let me get one thing straight real quick. You're
5 friends with J.J.

6 A. Yes, ma'am.

7 Q. You've known him for a long time?

8 A. Yes, ma'am.

9 Q. And you consider him a pretty good friend?

10 A. Yes, ma'am.

11 Q. That night, prior to going to the club, where were you?

12 A. Where was I before the club?

13 Q. Yes, sir.

14 A. I was at like a hotel.

15 Q. What hotel?

16 A. The InTown Suites.

17 Q. The InTown Suites?

18 A. Yes, ma'am.

19 Q. Why were you at a hotel that night?

20 A. My homegirl had a room.

21 Q. And you mentioned that the four of you - you, Curtis,
22 J.J. and Ernest -- you're friends with -- y'all are all
23 friends.

24 A. Yes, ma'am.

25 Q. All went to the club together first.

- 1 A. Yes, ma'am.
- 2 Q. Did you ever leave the club and come out?
- 3 A. Yes, ma'am.
- 4 Q. Where did you go?
- 5 A. Motel 6.
- 6 Q. Why did you go to Motel 6?
- 7 A. To pick up Ernest's sisters.
- 8 Q. And did you know how old Ernest's sisters were?
- 9 A. No, ma'am.
- 10 Q. Did you know how old Ernest was?
- 11 A. 20? 21? I'm not exactly sure though.
- 12 Q. Could have been 19?
- 13 A. I don't know. Probably so.
- 14 Q. Did you know his sister was 16?
- 15 A. Uh-huh.
- 16 Q. But they wanted to go to the club with y'all.
- 17 A. Yes, ma'am.
- 18 Q. And then y'all met back up with J.J. again.
- 19 A. Came back to the club.
- 20 Q. And you mentioned you were drinking.
- 21 A. Yes, ma'am.
- 22 Q. Do you drink a lot?
- 23 A. Yeah, I drink.
- 24 Q. Did you drink a lot that night?
- 25 A. Yeah, I drunk a good amount.

1. Q. And what were you drinking?

2. A. Ciroc.

3. Q. Where did you get it?

4. A. The club.

5. Q. And who provided it for you?

6. A. The waitress.

7. Q. Did you pay for it?

8. A. No, ma'am.

9. Q. Did you drink any of the Ciroc out of the bottle that
10 J.J. brought in?

11. A. Yes, ma'am.

12. Q. Who was paying for everything that night?

13. A. J.J. and a couple of people had -- we had our own little
14 money.

15. Q. Y'all had a little money?

16. A. Yes, ma'am.

17. Q. Did J.J. have a lot of money?

18. A. He had a little bit on him. A little bit amount, yes,
19 ma'am.

20. Q. Did J.J. work?

21. A. Yes, ma'am.

22. Q. Where did he work?

23. A. Wal-Mart.

24. Q. And did you know he had \$1500 in his pocket to use at
25 the club that night?

1 A. No, ma'am.

2 Q. Did you see him spending any money?

3 A. Yes, ma'am.

4 Q. So he spent money while he was there.

5 A. Yes, ma'am.

6 Q. And when you spend money at a strip club like this, how
7 -- how did he spend it that night?

8 A. With -- at the bar buying the bottle and throwing it at
9 strippers.

10 Q. Before I forget, back in 2006 you were convicted on a
11 possession of a stolen pistol charge?

12 A. Yes, ma'am.

13 Q. And then in 2011 you got a burglary in the second degree
14 and petit larceny -- grand larceny conviction. Excuse me.

15 A. Yes, ma'am.

16 Q. And then in 2012 you were convicted of assault and
17 battery second degree.

18 A. Yes, ma'am.

19 Q. And as the defense counsel asked you, you're currently
20 incarcerated?

21 A. Yes, ma'am.

22 Q. Was it Ernest's idea to bring his sisters to the club or
23 J.J.'s or whose?

24 A. I don't know; they just wanted to come.

25 Q. How much did you drink that night?

1 A. I had a couple -- I had a couple of shots.

2 Q. A couple of shots?

3 A. Yes, ma'am.

4 Q. And your testimony on direct I believe was that y'all
5 were in the club; right?

6 A. Yes, ma'am.

7 Q. And you were over near the bar.

8 A. Yes, ma'am.

9 Q. And that for some reason Black didn't want y'all there
10 that night.

11 A. Yes, ma'am.

12 Q. He had a grudge against y'all.

13 A. Yes, ma'am.

14 Q. Because y'all weren't doing anything wrong.

15 A. No, ma'am.

16 Q. Do you know why the bouncers were asking y'all to leave
17 that night?

18 A. No, ma'am.

19 Q. Because y'all weren't doing anything wrong.

20 A. No, ma'am.

21 Q. And you mentioned your first encounter was that Black
22 just went to the manager and said he wanted y'all out of
23 there because y'all were behaving.

24 A. Yes, ma'am.

25 Q. Doing nothing wrong. How many people were in that club

1 that night?

2 A. It wasn't that packed. I'd say about 60, 70.

3 Q. Been more packed before?

4 A. Yeah.

5 Q. Sixty or 70 people. And out of those 60 or 70 people,
6 Black just happened to have a grudge with you and J.J. and
7 Ernest and Curtis.

8 A. Yes, ma'am.

9 Q. And y'all weren't doing anything wrong.

10 A. No, ma'am.

11 Q. Y'all were in there for about 45 minutes to an hour when
12 he asked for y'all to be kicked out for not doing anything
13 wrong.

14 A. Yes, ma'am.

15 Q. Do you know if he was going around and picking on any
16 other people there?

17 A. No, ma'am, I wasn't paying no attention.

18 Q. It was just you.

19 A. Yes, ma'am.

20 Q. And did you have any prior grudge with Black?

21 A. No, I don't even know him.

22 Q. Did you know of anybody having a grudge with Black?

23 A. No, ma'am.

24 Q. So on this night is when Black decides that he has a
25 grudge against y'all and wants y'all to be kicked out, but

1 then the manager said no because y'all were spending money.

2 A. Yes, ma'am.

3 Q. Do you remember the manager having a conversation with
4 y'all about your behavior?

5 A. He didn't have a conversation with us. I said he was
6 talking to J.J.

7 Q. Okay. Do you remember him talking to J.J. about how
8 y'all needed to calm down and to act right?

9 A. Yes, ma'am. We calmed down.

10 Q. So y'all were doing something.

11 A. No, we was talking loud.

12 Q. Okay. So now you say you were talking loud.

13 A. Yeah, but we was just talking amongst each other though
14 when he came and pushed me.

15 Q. Okay. Let's go to that point. Where were you when he
16 pushed you?

17 A. By the bar.

18 Q. By the bar?

19 A. Yes, ma'am.

20 Q. And there's just that one main bar in that middle room;
21 right?

22 A. Yes, ma'am.

23 Q. And y'all were right by that bar; no doubt about that.

24 A. Yes, ma'am.

25 Q. And in that bar there's actually a bartender behind it;

1 right?

2 A. Yes, ma'am.

3 Q. And y'all were right by that bar; there's no question
4 about that.

5 A. Yes, ma'am.

6 Q. And Black came over and pushed you.

7 A. Yes, ma'am.

8 Q. No doubt in your mind about that.

9 A. Yes, ma'am.

10 Q. And then you said he pushed Ernest.

11 A. Yes, ma'am.

12 Q. Was Ernest also right by that bar?

13 A. That's when Ernest had came over there to see what was
14 going on..

15 Q. At that point he pushed Ernest, and this is after you
16 already know you have a grudge. The manager has already
17 talked to you about your behavior.

18 A. Uh-huh.

19 Q. And then he comes back---

20 A. Yes, ma'am.

21 Q. ---and he pushes you. And where did he push you?

22 A. Like in my chest.

23 Q. Like on your chest? Like here?

24 A. Yes, ma'am.

25 Q. And he just pushed you back?

1 A. Yes, ma'am.

2 Q. Did you hit the bar?

3 A. No, I didn't hit the bar.

4 Q. Did you fall over?

5 A. No, I didn't fall over. I moved a couple of steps back
6 though.

7 Q. And at that point Ernest comes over.

8 A. Yes, ma'am.

9 Q. How is Ernest behaving that night?

10 A. Ernest was -- I mean, just basically we was all focused
11 on the strippers.

12 Q. And at that point he pushes Ernest.

13 A. Yes, ma'am.

14 Q. Did Ernest fall into the floor?

15 A. No, ma'am.

16 Q. Did he fall down on the ground?

17 A. No, ma'am.

18 Q. And at that point it's obvious this guy has a grudge
19 against y'all.

20 A. Yes, ma'am.

21 Q. But at that point did he say anything to you?

22 A. He was talking trash.

23 Q. What was he talking?

24 A. He was saying he was going to beat us up.

25 Q. Do you remember giving a statement to the police after

1 they found you after you left the bar that night?

2 A. They ain't found me. I turned my -- I went up to the
3 station on

4 Q. After they made contact with you, after they tracked you
5 down. It's not like you went there until they tracked you
6 down.

7 A. I didn't go there until I saw it on the news.

8 Q. And your grandmother actually took you down there.

9 A. Yes, ma'am.

10 Q. And that was on the 22nd---

11 A. I don't know what---

12 Q. ---two or three days after this.

13 A. I don't know what day it was on.

14 Q. And that's after they made contact with you and your
15 family.

16 A. Yes, ma'am.

17 Q. It wasn't like you went there 'til they made contact
18 with you.

19 A. I had my people call up there when it was on the news.
20 They told me to come up there.

21 Q. Okay. Do you remember giving a statement?

22 A. Yes, ma'am.

23 Q. Have you had a chance to look at that statement?

24 A. Yes, ma'am.

25 Q. And who showed you that statement?

1 A. The -- that's the investigator or somebody.

2 Q. And when you went over that statement, did you tell me
3 in here where you talked about him threatening to beat you
4 up?

5 A. No, I don't believe that is...

6 Q. You don't think it's in---

7 **Court Reporter:** Can you repeat that? I didn't
8 understand.

9 By Ms. Campbell:

10 Q. Do you want to look at it?

11 A. What? Are you talking about in this statement right
12 here or just throughout the whole...

13 Q. Anywhere in that whole statement do you talk about how
14 Black threatened to beat you up?

15 A. Oh, no, ma'am, I didn't say it there.

16 Q. Okay. Thank you, sir. Then you testified on direct
17 about how when Black came in there and pushed you, then all
18 the other bouncers came in.

19 A. Yes, ma'am.

20 Q. And that was in the bar.

21 A. Yes, ma'am.

22 Q. So they came rushing into the bar area where y'all were.

23 A. No. They was already -- I believe they was -- there was
24 a couple of them already in there because the bouncers got to
25 be throughout the club, throughout in the strip club.

1 Q. So your testimony is there were multiple bouncers in
2 that strip club that night?

3 A. Yes, ma'am.

4 Q. Can you describe them?

5 A. They had on regular clothes. They -- I guess they're
6 all -- they're all homeboys or whatever. They just work --
7 they know the owner, I guess. They was in regular clothes.

8 Q. Okay. Did they beat you up?

9 A. No, ma'am.

10 Q. Did they threaten to beat you up?

11 A. Yes, ma'am.

12 Q. Now your story is they threatened to beat you up?

13 A. They wanted to fight. They was saying that they wanted
14 to fight us.

15 Q. Okay. Do you remember looking at that statement where
16 you put in there that the other people came up -- these
17 bouncers came up from nowhere and wanted to fight you?

18 A. I said they -- I believe I said the bouncers came up,
19 but I didn't mention anything about fighting.

20 Q. I believe you said the bouncers -- "That's when they all
21 got together, the bouncers, and said that we had to go."

22 A. Yes, ma'am.

23 Q. And you were saying -- this is what you told the police
24 back in on August the 22nd: "That we needed to go because
25 there was too much conflict going on, too much tension."

1 A. Yes, ma'am.

2 Q. That's what you told the police back then. Is that
3 right?

4 A. Yes, ma'am.

5 Q. But today you're saying that they were threatening to
6 beat you up, too.

7 A. There was threats throughout the whole -- throughout the
8 whole time we was in there.

9 Q. And, again, y'all weren't doing anything wrong.

10 A. No, ma'am.

11 Q. And at that point y'all get escorted out into the lobby
12 area where you pay.

13 A. Yes, ma'am.

14 Q. And then you get escorted out on to the porch area.

15 A. Yes, ma'am.

16 Q. Were y'all being thrown out or were y'all being --
17 voluntarily leaving?

18 A. We was leaving. We was voluntarily leaving..

19 Q. So why would the bouncers escort you?

20 A. They were just -- they basically -- they was bum-rushing
21 us, but we was still just leaving out regardless.

22 Q. They were bum-rushing you now?

23 A. Yes, ma'am.

24 Q. Was that in the hallway?

25 A. Yeah, that's when we was in the hallway.

1 Q. And so in the hallway now they're bum-rushing you.

2 A. Yes, ma'am.

3 Q. What does bum-rushing mean?

4 A. Basically when all of them came and just -- how Black
5 came and got in my face.

6 Q. So they were getting in your space?

7 A. He -- yeah, he had got all in my face.

8 Q. Because y'all hadn't done anything wrong and they were
9 throwing you out, but y'all were voluntarily leaving? I'm
10 not understanding.

11 A. We was leaving the club. The owner -- the only one --
12 the owner that's -- basically the owner said he knew that
13 there was a conflict. Basically the conflict kept going on,
14 so he was telling us we had to leave. So we was leaving
15 anyway because of the simple fact of what was going on. We
16 couldn't even be in there without the man just kept coming up
17 trying to start something. So we was leaving out, so that's
18 when James was still talking to the owner in the hallway.
19 That's when Black came out with the other bouncers. That's
20 when Black got all in my face.

21 Q. Did that make you angry?

22 A. Oh, yeah.

23 Q. Okay. Did that make James angry?

24 A. James was still talking to the owner.

25 Q. Did you know James had a gun that night?

1 A. No, ma'am.

2 Q. He didn't talk to you about having a gun in his pants?

3 A. No, ma'am.

4 Q. At some point y'all end up out on the deck.

5 A. Yes, ma'am.

6 Q. And you're aware that there's a deck area right outside
7 the door?

8 A. Yes, ma'am.

9 Q. And then the ramp that you've had drawn for you -- and
10 today you've put James at the top of the ramp?

11 A. Yes, ma'am.

12 Q. And Curtis and you were right there below him.

13 A. Yes, ma'am.

14 Q. Is what you're saying today.

15 A. Yes, ma'am.

16 Q. And then Ernest was at the bottom.

17 A. Yes, ma'am.

18 Q. And who was at the bottom with Ernest?

19 A. Black and another -- another bouncer.

20 Q. Do you remember giving a statement back on August 22nd
21 about where everybody was when you got pepper-sprayed?

22 A. Yes, ma'am.

23 Q. And said you were on the ramp, going down the ramp.

24 A. Yes, ma'am. We was at the top. We was basically at --
25 you know, the porch is still right there where the ramp is

1 at.

2 Q. Do you remember them asking you who all got pepper-
3 sprayed?

4 A. Yes, ma'am.

5 Q. And you were very specific.

6 A. I said me and Curtis.

7 Q. Okay. So that's who got pepper-sprayed?

8 A. That's who I know got pepper-sprayed.

9 Q. Do you remember telling them where Ernest and J.J. are
10 when you were sprayed?

11 A. Ernest was at the bottom and J.J. was at the top.

12 Q. Do you remember specifically you said J.J. was at the
13 top of the ramp near the door?

14 A. Yes, ma'am. The door is right there where the ramp is
15 at. It's not too -- but so far apart.

16 Q. Okay. But he was near the door, according to what you
17 said back then.

18 A. Yes, ma'am.

19 Q. But that's changed now because now he's at the top of
20 the ramp.

21 A. No. The ramp -- the top of the ramp and the door is
22 nothing like a couple of feet away. You could -- like four
23 steps and you're at the door. It's not that far away.

24 Q. Do you remember talking to the police about getting
25 pepper-sprayed back on August the 22nd?

1 A. Excuse me?

2 Q. Do you remember talking to the police about what
3 happened when you got pepper-sprayed?

4 A. Yes, ma'am.

5 Q. And that Curt was overexaggerating the pepper spray?

6 A. Yes, ma'am.

7 Q. Then you mentioned again that it was just the two of you
8 that got sprayed.

9 A. Yes, ma'am.

10 Q. So you were specific again about who got sprayed.

11 A. Yes, ma'am.

12 Q. Do you remember them asking you about where you were
13 when the first gunshot went off?

14 A. Yes, ma'am.

15 Q. And then they asked you specifically: "Where was J.J.
16 when you heard the first gunshot?"

17 A. He was coming -- he was coming down -- he was coming
18 down a ramp. He was behind us the whole time.

19 Q. Okay. So your sworn testimony to this jury is you're
20 absolutely sure -- in fact, you said, "He was beside us, kind
21 of like close to us. He was coming down the ramp."

22 A. Yes, ma'am.

23 Q. So your testimony is is that when the first shot -- when
24 GaWayne Franklin got shot the first time, J.J. was beside you
25 on the ramp.

1 A. Yes, ma'am. We was all right there on the ramp coming
2 down.

3 Q. And J.J. is your friend.

4 A. Yes, ma'am.

5 Q. You also mentioned when defense counsel asked you about
6 what happened when you got sprayed with it -- he asked you
7 about how it affected you.

8 A. Uh-huh.

9 Q. And it actually got in your eyes, you said?

10 A. Yes, ma'am.

11 Q. And it made you close your eyes?

12 A. Yes, ma'am.

13 Q. And he even asked you about your breathing; right?

14 A. Yes, ma'am.

15 Q. Because pepper spray kind of makes you not able to see
16 or do anything for a little while; isn't that right?

17 A. Yes, ma'am.

18 Q. So how do you know where J.J. was?

19 A. Because I remember when he was on the ramp. He couldn't
20 have went nowhere else besides down the ramp.

21 Q. And that's your testimony is J.J. was beside you when
22 the shots went off.

23 A. Yeah, J.J. was close by us; yes, ma'am.

24 Q. On the ramp.

25 A. Yes, ma'am.

1 Q. You didn't testify that you didn't see the shooting, but
2 you did tell the police you were able to see the security
3 guard shooting.

4 A. Yes, ma'am.

5 Q. And, again, just for the record, was it Black that
6 sprayed you with the mace?

7 A. I don't know who sprayed the mace, honestly.

8 Q. Well, where was Black, as you testified to?

9 A. He was down on the ramp.

10 Q. So Black had nothing to do with anybody getting sprayed
11 that day.

12 A. No, he didn't spray nothing.

13 Q. In fact, he was down at the bottom, according to you.

14 A. Yeah, still trying to fight. He was the homeboy.

15 Q. He and his little homeboy were trying to fight?

16 A. Yes, ma'am, because they jumped over at the top of the
17 ramp where you -- on the other end of porch they was jumping
18 over the thing, over the balcony, whatever it is.

19 Q. So they jumped over the balcony.

20 A. Uh-huh.

21 Q. And then, according to you, they were down at the bottom
22 of the ramp.

23 A. Yes, ma'am.

24 Q. When you got pepper-sprayed.

25 A. Yes, ma'am, because they knew where we was parked at

1 because we was parked in the parking lot, so still they was
2 trying to -- they was trying to block us off.

3 Q. How did they -- how did Black know where you were parked
4 if he was the inside bouncer?

5 A. Because when we got there, all the -- there was still
6 bouncers out the door. It wasn't just him down there. There
7 was another one that may have had on a hat or something.

8 Q. A man in a hat?

9 A. Yes, ma'am.

10 Q. Let's keep going. You're pepper-sprayed. Curtis is
11 pepper-sprayed. Y'all are incapacitated for seconds at
12 least.

13 A. Yes, ma'am. Mine's didn't really hit 'til it got on my
14 eyes from -- because it was in my hair.

15 Q. It was in your hair?

16 A. Yes, ma'am.

17 Q. And you had those dreads, so it kind of dripped down?

18 A. Yes, ma'am.

19 Q. Okay. And at that point you heard shots.

20 A. Yes, ma'am.

21 Q. You see actually, according to you, the security guard
22 shooting at someone. Could you tell who he was shooting at?

23 A. No, ma'am.

24 Q. Where was J.J.? Was he still next to you?

25 A. No, ma'am.

1 Q. Do you know where he went?

2 A. No, ma'am.

3 Q. He was behind you on the ramp. Where did he go?

4 A. I didn't see the security guard shoot 'til I got between
5 the cars because when I first heard a gunshot I got out of
6 the way. I didn't stay around in the mix of it.

7 Q. So at this point you've been the victim of Black.

8 You've been the victim of the other bouncers. You've been
9 the victim of a security guard who sprayed you with mace.

10 There are gunshots going off. So what do you do?

11 A. Got out of the way.

12 Q. You left?

13 A. I got out of the way when the gunshots -- I went between
14 the cars when the gunshots started going off.

15 Q. Were you scared?

16 A. Yeah.

17 Q. So did you call the police?

18 A. Call the police?

19 Q. I take it that's a no?

20 A. No, ma'am.

21 Q. Did you get other people to call the police when you
22 felt threatened and your life was in danger? You were a
23 victim over and over that night.

24 A. No, ma'am. The police came.

25 Q. So did you go up and talk to the police about what you'd

1 seen, what you knew, what had happened to you?

2 A. No, ma'am, because they were so worried about what was
3 going on, but the police did stop and talk to me when I was
4 at the top on over by the bowling alley. And they said --
5 she said -- it was a white lady and she said she was going to
6 be right back.

7 Q. A white lady talked to you at the bowling alley?

8 A. At the bowling alley right across the street. I wasn't
9 in the bowling alley area, but I was on that sidewalk.

10 Q. Okay. So did you stay there at the scene so you could
11 tell the police what you knew about what had happened that
12 night that led up to the shooting?

13 A. No, ma'am. My baby's mama had done saw me -- they saw
14 me as they was driving by. They took me to go get my car. I
15 went and dropped Curtis off at home, and I did go back over
16 there to find out what was going on.

17 Q. Your baby's mama just happened to be driving by the
18 strip club at 3 a.m. in the morning to pick you up?

19 A. Yes, ma'am. That's . They was coming from a
20 club or someplace else.

21 Q. Back when you talked to the police about how you left,
22 you said you had been picked up by two females.

23 A. Yes, ma'am.

24 Q. Her name is Aston and Tashi?

25 A. Yes, ma'am.

1 Q. They came from the Carriage House.

2 A. (Witness nodded head up and down.)

3 Q. Is that your baby's mama?

4 A. Yes, ma'am, Aston.

5 Q. You didn't tell the police that?

6 A. No, because she wasn't my baby's mama at the time.

7 Q. Then you got them to take you to your car?

8 A. Yes, ma'am, at the Motel 6.

9 Q. Then you took Curtis home in West Columbia?

10 A. Yes, ma'am.

11 Q. And then you rode back by Mr. Lucky's.

12 A. Yes, ma'am.

13 Q. Why was that?

14 A. To see what was going on.

15 Q. Was it to maybe pick up your friend J.J. after he had
16 just shot somebody?

17 A. No, ma'am. I was going out there to see what was going
18 on.

19 Q. So at that point were the police still out there?

20 A. The police wasn't at Lucky's. They had -- like there
21 was a couple of them. It had died down, but they wasn't --
22 they wasn't there as deep as they was.

23 Q. Okay. Well, at that point were the police there that
24 you could talk to?

25 A. Yes, ma'am.

1 Q. So did you stop and tell them what you knew about what
2 happened that night?

3 A. No, ma'am. I had no license and I been drunk.

4 Q. So you were drunk that night.

5 A. Yes, ma'am.

6 Q. But you have this very clear memory of how you were
7 victimized.

8 A. Say that again. Excuse me?

9 Q. You have a very clear memory of how you were victimized
10 that night.

11 A. Yes, ma'am.

12 Q. Let me ask you this: The next day did you get together
13 and talk to Ernest?

14 A. No, ma'am.

15 Q. Did you get together and talk to Curtis?

16 A. I went back over to his house that next day.

17 Q. Did y'all talk about what you were going to say to the
18 police if they ever approached you?

19 A. No, ma'am. We was trying to figure out what was going
20 on.

21 Q. Well, let me ask you this: Before you left the parking
22 lot that night, did you notice a dead body in the middle of
23 the parking lot?

24 A. No, ma'am. I ain't even see a dead body.

25 Q. You were able to see the shooting across the parking

1 lot, but you missed the dead body next to the ramp.

2 A. Yes, ma'am.

3 Q. You didn't know J.J. had a gun?

4 A. No, ma'am.

5 Q. Did you have a gun?

6 A. No, ma'am.

7 **Ms. Campbell:** That's all I have.

8 **The Court:** Any redirect?

9 **Mr. Shaffer:** Yes, Your Honor.

10 Redirect Examination

11 By Mr. Shaffer:

12 Q. Troy?

13 A. Yes, sir.

14 Q. In the entire time that you've been up here today, have
15 you ever -- have you used the used the word victim one time?

16 A. No, sir.

17 Q. Whose words were those?

18 A. Y'all was using the word victims.

19 Q. Huh?

20 A. Y'all was using the word victim.

21 Q. Okay. And when you talked to the police about the
22 pepper spray, where did you tell them J.J. was at?

23 A. At the top of the ramp over there by the door.

24 Q. Okay. And do you recall telling the police that Black
25 was the main hype?

1 A. Yes, sir.

2 Q. What did you mean by that?

3 A. The main person that's basically boosting -- boosting
4 everything up and wouldn't let nothing go.

5 Q. What do you mean by boosting? And I'm sorry, I'm...

6 A. As in he been wanting us -- basically he been wanting to
7 fight the whole time. He wanted -- I don't know if he was
8 waiting for one of us to swing on him or whatever the case
9 may be, but he just wanted -- you know what I'm saying? He
10 just wanted to fight.

11 Q. When was the first time you talked to me or anybody from
12 -- or any investigator for J.J.?

13 A. Oh, the investigator for J.J.?

14 Q. Yeah.

15 A. That was just yesterday.

16 Q. Okay. Was that -- was that J.J.'s investigator or was
17 that the State's investigator?

18 A. I don't know. I believe -- I don't know who he was. I
19 think he was J.J.'s or I believe... I don't know.

20 Q. Okay. And the statement you gave police, the
21 August 22nd statement, that was last year; right?

22 A. Yes, sir.

23 Q. So that was right after the shooting?

24 A. Yes, sir.

25 **Mr. Shaffer:** Okay. No further questions.

1 **The Court:** Any objection to the witness being excused?
2 From the State?

3 **Ms. Campbell:** None, Your Honor.

4 **The Court:** From the defense?

5 **Mr. Shaffer:** None, Your Honor.

6 **The Court:** Sir, you're excused. Defense may call its
7 next witness.

8 **Mr. Shaffer:** Oh, I apologize, Your Honor. The defense
9 calls Curtis Long, Your Honor.

10 Curtis Long, after being duly sworn, testified as
11 follows:

12 **The Clerk:** Have a seat in the witness box. State your
13 name for the record and spell it, please.

14 **The Witness:** My name is Curtis Long.

15 **The Court:** Spell your last name, please, sir.

16 **The Witness:** L-O-N-G.

17 **The Court:** Thank you. You may proceed.

18 Direct Examination

19 By Mr. Shaffer:

20 Q. Good afternoon, Mr. Long.

21 A. Good afternoon.

22 Q. Where are you from?

23 A. I'm from the Two Notch area.

24 Q. Okay. You were born and raised here?

25 A. Yeah.

1 Q. Okay. And you're friends with J.J.; right?

2 A. Yes, sir.

3 Q. How long have y'all been friends?

4 A. Since probably in 2003.

5 Q. Okay. Do you remember -- well, I'll point your
6 direction -- point your attention to the night of the
7 shooting. Were you with Curtis -- I mean, were you with J.J.
8 that night?

9 A. Yes, sir.

10 Q. Where were y'all at?

11 A. At Mr. Lucky's.

12 Q. And tell us about the evening. About what time did you
13 arrive?

14 A. I would probably say right around 12 midnight.

15 Q. Had you been drinking?

16 A. Yes, sir.

17 Q. Okay. Were you drunk?

18 A. No, sir.

19 Q. Okay. Did you get drunk that evening?

20 A. Yes, sir.

21 Q. Okay. Do you -- do you recall that evening though?

22 A. Yeah.

23 Q. Do you recall it clearly?

24 A. Yes, sir.

25 Q. Okay. Now, when y'all arrived there, did you -- you

1 went inside; right?

2 A. Correct.

3 Q. Okay. What were y'all doing that evening?

4 A. I mean, just we was in there having a good time. We
5 were throwing money and drinking liquor.

6 Q. Okay. And did -- who was paying for y'all that evening?

7 A. Well, James -- he paid for some of the stuff.

8 Q. Okay. Did James have a lot of money on him?

9 A. Yeah.

10 Q. Do you know how much?

11 A. No, I don't know how much.

12 Q. Okay. But he was paying for y'all?

13 A. Yeah.

14 Q. And during the course of that evening, do you recall how
15 y'all were getting along with the management there?

16 A. Oh, we was getting along with the management fine.

17 Q. Okay. What about the bouncers there?

18 A. I wouldn't say that. I could feel certain vibes from
19 them like...

20 Q. Okay.

21 A. It was like we wasn't wanted or whatever.

22 Q. Like you weren't wanted?

23 A. Yeah.

24 Q. And that was from which bouncers?

25 A. Pretty much all of them.

1 Q. Okay. I'm going to get you to identify yourself real
2 quick just so the jury knows where you are. Now, do you see
3 yourself in that picture?

4 A. Yes, sir.

5 Q. Can you describe who you are in that picture?

6 A. I'm looking down at my phone.

7 Q. Okay. So you're the guy looking down at your phone. Do
8 you recognize this person?

9 A. I can't -- honestly, I can't even see.

10 Q. Okay.

11 A. All right. Where? Who (verbatim) are you asking me?

12 Q. This person right here.

13 A. You've got the arrow out or something?

14 Q. Yeah, yeah. Is that J.J.?

15 A. Oh, yeah, right there.

16 Q. Okay. Now, during the course of that evening you said
17 that the bouncers were -- you were getting a vibe from them.

18 A. Yeah.

19 Q. That you weren't wanted. At any point did they ask you
20 to leave?

21 A. Not that -- no, sir, they didn't ask me to leave.

22 Q. Okay. They didn't ask you to leave? Who did they ask
23 to leave?

24 A. I wouldn't know.

25 Q. Okay. At some---

1 **Ms. Walker:** I'm sorry, Your Honor. I didn't hear.

2 **The Witness:** Ma'am?

3 **Ms. Walker:** I didn't hear.

4 **The Court:** Do you need him to repeat his answer?

5 **Ms. Walker:** Yes.

6 **The Court:** Sir, would you repeat your answer?

7 **The Witness:** No, I wouldn't know.

8 By Mr. Shaffer:

9 Q. You wouldn't know?

10 A. No.

11 Q. Okay. At some point you know that your group was not
12 welcome anymore; right?

13 A. Yeah.

14 Q. Okay. And do you recall what you were doing at that
15 point?

16 A. I was talking to the guy in the plaid shirt.

17 Q. Okay. And what happened -- what happened to make you
18 aware of the fact that you were not welcome?

19 A. Well, the other two other guys that we were there with,
20 they were getting like forced out or whatever towards us---

21 Q. And who all---

22 A. ---and they was coming out there in our direction.

23 Q. Okay. And what happened in that hallway whenever they
24 came through that door?

25 A. Just a loud -- like a loud commotion and we just went

1 outside after that.

2 Q. Okay. Do you recall the bouncers following them out?

3 A. Yeah, the bouncers followed all of us out.

4 Q. And do you recall the bouncers saying anything at that
5 point?

6 A. There was just a lot of loud cussing and carrying on, a
7 lot of commotion.

8 Q. And that was between who?

9 A. It was between us and them.

10 Q. What do you mean by us and them? All of y'all?

11 A. Yeah, everybody. There was just a lot of commotion.

12 Q. Okay. And the cussing and carrying on was -- was that
13 between primarily one of your group or all of your group?

14 A. I mean, really it wasn't me. James was trying to figure
15 out like -- we were trying to see what was really going on
16 and why were they getting kicked out of the club.

17 Q. Okay. And what happened -- when y'all went on the
18 porch, what were you and James doing?

19 A. Talking to -- trying to talk to the bouncers.

20 Q. Okay. And did they want to talk to you?

21 A. No, because like maybe halfway down the -- down the ramp
22 they started macing.

23 Q. Okay. So you were about halfway down the ramp?

24 A. We were close to the bottom.

25 Q. And you got maced?

1 A. Yes, sir.

2 Q. Where were you -- who was around you when you got maced?

3 A. I know for a fact that Troy was around me.

4 Q. Okay. Do you know where James was?

5 A. No, sir. I know that we were all together before the
6 mace was sprayed.

7 Q. Okay. Where was the person macing you from? Do you
8 know?

9 A. I know that -- like it was probably right directly in
10 front of me.

11 Q. Okay. He was directly in front of you macing you?

12 A. Yes, sir.

13 Q. How far away do you think?

14 A. I'd probably say maybe three feet, not even...

15 Q. Okay. And when you were -- when you were heading down
16 the ramp -- well, after you got maced, what did you do next?

17 A. I was reaching for somebody to -- because I couldn't see
18 or breathe. I was reaching for someone to, you know, guide
19 me.

20 Q. Were you able to see or breathe or were you able to see
21 anything? Were you able to see the shooting?

22 A. No, I couldn't see nothing after that point.

23 Q. Did you hear gunshots?

24 A. Yes, sir.

25 Q. How many gunshots?

1 A. There were several, maybe probably around five or six.

2 Q. Okay. Whenever you got maced, do you know where James
3 was at?

4 A. No, sir.

5 Q. Okay. Right before you got maced, do you know where
6 James was at?

7 A. He was beside me.

8 Q. Okay.

9 A. There was all four of us -- we were together.

10 Q. Okay. So all four of y'all were together when you got
11 maced?

12 A. Yes, sir.

13 Q. Okay. And then what did you do after -- did you ever
14 find anyone to get a hold of?

15 A. It was Troy.

16 Q. And where did y'all go after you got a hold of him?

17 A. I remember like I'm trying to see because he kept
18 leaving me like for a few times, so I'm calling his name
19 like, "Come get me. Come get me. I can't see." And like I
20 remember seeing an El Cheapo sign, so I know I was pretty
21 close to the El Cheapo.

22 Q. Okay. And---

23 A. And that's where we ended up before we got in the car.

24 Q. And you got picked up? Is that right?

25 A. Yes, sir. Yes, sir.

1 Q. What happened after you got picked up?

2 A. Well, whoever we got in the car with, they took us back
3 to the Motel 6 so we could pick up Troy's truck.

4 **Mr. Shaffer:** Court's indulgence.

5 **The Court:** Uh-huh.

6 **Mr. Shaffer:** No further questions.

7 **The Court:** Any questions of the witness?

8 **Ms. Walker:** Thank you, Your Honor.

9 **The Court:** You're welcome.

10 Cross-Examination

11 By Ms. Walker:

12 Q. You've been friends with J.J. a long time, haven't you?

13 A. Yes, ma'am.

14 Q. Ten years?

15 A. Around that time.

16 Q. And Ernest, how long have you been friends with Ernest?

17 A. Maybe a couple of months longer.

18 Q. So you met Ernest first and then you met J.J.

19 A. Yes, ma'am.

20 Q. Did y'all hang out a good bit?

21 A. No, not really. I mean, we played basketball outside of
22 school maybe a couple of times during the week. That's about
23 it.

24 Q. So y'all hung out a couple of times a week.

25 A. Yeah.

1 Q. And that night you said you were with Grip?

2 A. Yes, ma'am.

3 Q. Who is Grip?

4 A. That's another friend of ours.

5 Q. What's his name?

6 A. Troy.

7 Q. Troy Griffin's nickname is Grip.

8 A. Yes, ma'am.

9 Q. How did he get that nickname?

10 A. I don't know.

11 Q. That's just what you've always known him as?

12 A. Yeah.

13 Q. And the first thing that y'all did was Troy came to you
14 or Grip came to your house.

15 A. Yes, ma'am.

16 Q. And how long did y'all stay there?

17 A. We were probably there almost all day off and on at my
18 house.

19 Q. And then y'all went to the Harbison area?

20 A. Yes, ma'am.

21 Q. Y'all got a beer?

22 A. Yes, ma'am.

23 Q. From a gas station?

24 A. Yes, ma'am.

25 Q. Y'all drove around town with that?

1 A. We drunk it at the hotel room and then we---

2 Q. You drank it. You go back to a different hotel.

3 A. No, we went to the same hotel room.

4 Q. And drank the beer there.

5 A. Yes, ma'am.

6 Q. And then where did y'all go?

7 A. We went to Monticello area (verbatim).

8 Q. And at some point did y'all get up with J.J.?

9 A. Yes, ma'am.

10 Q. And where was that?

11 A. That was at the McDonald's on North Main.

12 Q. And at what point that night did y'all make the decision
13 to go to Mr. Lucky's?

14 A. It was maybe right then and there. Like we -- we was
15 first thinking about going to Crush, to a different club.

16 Q. Crush is a different strip club here?

17 A. Yes, ma'am.

18 Q. And that one has been shut down; right?

19 A. Yes, ma'am.

20 Q. So y'all went to Mr. Lucky's instead.

21 A. Yes, ma'am.

22 Q. And did you have Ernest's little sisters with you?

23 A. They -- well, we met up with them at the other room.

24 Q. How many hotels did y'all go to that night?

25 A. We went to -- me and Troy, we went to one by ourselves

1 before we met up with James and Ernest and his sisters. Then
2 when we met up with them, we followed them to the hotel---

3 Q. Did you know that one of the---

4 A. ---on Bush River.

5 Q. Did you know that one of the children you were taking to
6 the strip club was 16?

7 A. No, ma'am.

8 Q. And when y'all went in there -- how many times had you
9 been at Mr. Lucky's before?

10 A. That was my first time.

11 Q. That was your first time at Mr. Lucky's?

12 A. Yes, ma'am.

13 Q. And you felt a bad vibe.

14 A. Yes, ma'am.

15 Q. And you got uncomfortable.

16 A. I mean, I was feeling kind of good because like I really
17 wasn't worried about nothing. I was with friends, so...

18 Q. You had a bad vibe.

19 A. Yeah.

20 Q. It was clear that they didn't want you there.

21 A. Right.

22 Q. But you still felt comfortable.

23 A. Yeah.

24 Q. And y'all drank.

25 A. Yes, ma'am.

1 Q. A lot.

2 A. I mean, my "a lot" and your "a lot" might be different.

3 Q. Did you drink your "a lot"?

4 A. Yeah.

5 Q. Okay. So you drank a lot.

6 A. Yeah.

7 Q. And at some point -- where were you most of the night?

8 A. I was on -- okay. When you first walk in, there's like
9 a wall with some tables, and I was sitting at those tables
10 most of the night. And then there's some chairs in the
11 middle of the floor. I was back and forth right there
12 between them.

13 Q. And at some point they decided that they -- the bouncers
14 decided they wanted y'all to leave.

15 A. I assume so.

16 Q. Was that your first time in a strip club?

17 A. No, ma'am.

18 Q. Are you familiar with kind of, I guess for lack of a
19 better term, strip club ethic? The rules and regulations of
20 a strip club?

21 A. Right.

22 Q. And there are certain things you can do in a strip club
23 that get you kicked out.

24 A. Yeah.

25 Q. You can fight.

1 A. Okay.

2 Q. Would that get you kicked out of a strip club?

3 A. Yes, ma'am.

4 Q. If you're arguing with people, does that get you kicked
5 out of a strip club?

6 A. I guess so.

7 Q. If you inappropriately touch one of the strippers, does
8 that get you kicked out of a strip club?

9 A. Yes, ma'am.

10 Q. And y'all got kicked out that night.

11 A. Yes, ma'am.

12 Q. You said for awhile though everything was fine in the
13 strip club between all the different incidents y'all were
14 having.

15 A. Right.

16 Q. And is there a back area of that strip club?

17 A. Yes, ma'am.

18 Q. And did the defendant try to go---

19 **Mr. Shaffer:** Objection.

20 **Ms. Walker:** ---into the back area of the strip club?

21 **Mr. Shaffer:** Objection, Your Honor.

22 **The Court:** Basis?

23 **Mr. Shaffer:** May we approach?

24 **The Court:** Uh-huh.

25 (Whereupon, a bench conference was held.)

1 **The Court:** Overruled.

2 By Ms. Walker:

3 Q. And J.J. had tried to walk into the back of the strip
4 club.

5 A. Yes, ma'am.

6 Q. He'd already been kicked out of the back of the strip
7 club once that night; right?

8 A. I didn't know. I don't know.

9 Q. You didn't know that he'd been kicked out for having sex
10 with one of the strippers.

11 A. No, ma'am.

12 Q. But he -- once he tried to go back into the back of the
13 strip club, they told him he couldn't go back there.

14 A. Right, and that's when---

15 Q. And you said---

16 A. ---we went---

17 Q. I'm sorry. Go ahead.

18 A. Yeah, that's when we went out to talk to one of the guys
19 that told us that we could go back there.

20 Q. In fact, you said everything was fine in the club until
21 they would not let J.J. go back in the back of the club.

22 A. Right.

23 Q. So you knew he'd been in there before.

24 A. Okay. Right. Yes, ma'am.

25 Q. And y'all wanted to go talk to the manager.

1 A. I guess he was the manager.

2 Q. The guy in the plaid shirt?

3 A. Yes, ma'am.

4 Q. That's when you see -- is it Ernest and Troy that came
5 out?

6 A. Yes, ma'am.

7 Q. And who was escorting them out?

8 A. The bouncers.

9 Q. You said there was arguing back and forth?

10 A. Yes, ma'am.

11 Q. And then y'all get escorted out of the club and on to
12 the deck.

13 A. Yes, ma'am.

14 Q. Where were you again when the mace was sprayed?

15 A. I was almost down the ramp.

16 Q. And you got the majority of the mace.

17 A. Yes, ma'am.

18 Q. And who was -- you were at the -- you were at the
19 bottom. If this is the bottom of the ramp, you were where?

20 A. I was right in here.

21 Q. You were here?

22 A. Right in here.

23 Q. This is you..

24 A. Yes, ma'am.

25 Q. You weren't up here.

1 A. No, ma'am.

2 Q. Where was -- where was James?

3 A. He was around me.

4 Q. Tell me when to stop.

5 A. I mean, just around me, where us four was, yeah.

6 Q. All four of y'all were together.

7 A. Yeah.

8 Q. So you, James, Troy.

9 A. Yes, ma'am.

10 Q. Who else was with you?

11 A. And Ernest.

12 Q. Ernest.

13 A. Yes.

14 Q. And you're sure Ernest was here.

15 A. I'm not sure where Ernest was. I know we all was in
16 front of the bouncers.

17 Q. Y'all were in front of the bouncers.

18 A. Yes, ma'am.

19 Q. But y'all were all still on the ramp.

20 A. Yes, ma'am. I mean, I'm not sure -- we was all in front
21 of -- there's -- right here we're at the bottom and the
22 ground, as you go up -- and we was like right on the ramp.

23 Q. Y'all definitely weren't up here though.

24 A. Huh-uh. When the mace was sprayed?

25 Q. Right.

- 1 A. Right..
- 2 Q. Okay. And James is beside you or around you---
- 3 A. Yes, ma'am.
- 4 Q. ---at that point.
- 5 A. Yes, ma'am.
- 6 Q. You took the majority of the mace.
- 7 A. Yes, ma'am.
- 8 Q. Who else took the mace?
- 9 A. I'm assuming all of us.
- 10 Q. Do you remember saying Troy took the mace when you gave
- 11 a statement to police?
- 12 A. I'm not sure.
- 13 Q. How soon after you were maced did you hear the gunshots?
- 14 A. Maybe about five or six seconds.
- 15 Q. And y'all were all still right there together?
- 16 A. We was kind of -- we was on the ground by then.
- 17 Q. All four of you were on the ground but together.
- 18 A. Yes, ma'am.
- 19 Q. Are you sure about that?
- 20 A. When the mace was sprayed?
- 21 Q. When the gunshots were fired.
- 22 A. I don't know where we were when the gunshots were fired.
- 23 Q. Where were you?
- 24 A. I was finding my way to wherever Troy was.
- 25 Q. Where was Troy?

1 A. Pulling on my shirt or whatever. He was beside me. He
2 was close -- somewhere close to me.

3 Q. And at some point where did y'all end up by? El Cheapo?

4 A. Yes, ma'am.

5 Q. Where in connection with Mr. Lucky's is the El Cheapo?

6 A. That's behind -- okay. It's across -- across
7 .

8 Q. It's across the street?

9 A. Yes.

10 Q. So you -- you can't see.

11 A. Yes, ma'am.

12 Q. You can't breathe.

13 A. Yes, ma'am.

14 Q. And you cross

15 A. I didn't -- we didn't cross . I

16 remember being on (verbatim) a car.

17 Q. I'm confused.

18 A. And trying to wipe my eyes and the only thing I could
19 see was -- when I could, like I was blinking. The only thing
20 I could see was the El Cheapo sign.

21 Q. Where were you?

22 A. I was on (verbatim) a car.

23 Q. Where was the car?

24 A. In front of the El Cheapo. It's like a car lot up
25 there.

1 Q. Was it on the same side of as---

2 A. As Lucky's.

3 Q. ---as Mr. Lucky's. So y'all are still on the same side.

4 You're across the street and you see El Cheapo.

5 A. Yes, ma'am.

6 Q. Who picked you up?

7 A. I don't know.

8 Q. You got in the car with just some strangers?

9 A. I was with -- well, whoever -- Troy knew them.

10 Q. Troy. How did Troy know where -- Troy was with you.

11 You never left Troy's side.

12 A. Never left his side.

13 Q. But y'all were in a car -- near a car on the same side
14 of the road as Mr. Lucky's.

15 A. Right.

16 Q. Where was James?

17 A. I don't know.

18 Q. Were you worried to find out where he was?

19 A. Yes, ma'am.

20 Q. Did you call him?

21 A. Yes, ma'am.

22 Q. How many times did you call him?

23 A. I called him numerous times when I -- after I had got
24 home.

25 Q. So at this point in time you've been threatened by the

1 bouncers?

2 A. Was I threatened?

3 Q. Was anyone threatened?

4 A. I guess so; I don't know.

5 Q. You don't know. But at this point in time y'all have
6 been maced by bouncers.

7 A. Yes, ma'am.

8 Q. Your friend is missing.

9 A. Yes, ma'am.

10 Q. Did you call the police to let them know any of this?

11 A. There was police all around.

12 Q. Did you -- so you talked to the police and let them know
13 you had a friend missing.

14 A. No, ma'am.

15 Q. You didn't let them know about your missing friend who
16 had been maced.

17 A. No, ma'am.

18 Q. Before I forget, you have some convictions; right?

19 A. Yes, ma'am.

20 Q. 2010, a burglary in the third degree?

21 A. Right.

22 Q. A petit larceny?

23 A. Right.

24 Q. And in 2011 giving false information to police?

25 A. Right.

1 Q. And you didn't talk to them that night either on the
2 night of the -- that you got maced.

3 A. To the police---

4 Q. You didn't talk to the police officers that were all
5 around.

6 A. No, ma'am.

7 Q. And tell them about your missing friend.

8 A. No, ma'am.

9 Q. That you were worried about.

10 A. Right.

11 Q. That you were so worried about that you called multiple
12 times.

13 A. Yes, ma'am.

14 Q. The interactions that you saw between your friends and
15 the bouncers that night---

16 A. Uh-huh.

17 Q. ---they weren't problematic. They were just trying to
18 get you guys to leave the club; right?

19 A. No. They never tried to get me or James to leave the
20 club.

21 Q. The group of people that you came with---

22 A. The only time I seen them trying to get somebody to
23 leave the club was when I was in the lobby area and Troy and
24 Ernest was coming out.

25 Q. But the group of people that you came to the club with

1 that night---

2 A. Right.

3 Q. ---did they ever have any sort of fight or argument with
4 the bouncers in the club?

5 A. Not until the argument when we were -- when they were
6 leaving out -- outside of the club.

7 Q. Do you remember giving a statement to police?

8 A. Yes, ma'am.

9 Q. Do you remember them asking you before you're being
10 kicked out did you see any problems between Ernest, J.J., and
11 Troy or the bouncers?

12 A. Yes, ma'am.

13 Q. And what did you say to them? Do you remember?

14 A. Yes, ma'am.

15 Q. What did you say to them?

16 A. No, ma'am.

17 Q. Tell me exactly what you said to them.

18 A. I said I did not -- did not see anything, but I know
19 Ernest gets kind of crazy in clubs.

20 Q. Where did you get dropped off that night?

21 A. At home.

22 Q. At your mom's house?

23 A. Yes, ma'am.

24 Q. Did you tell her about what happened?

25 A. Yes, ma'am.

1 Q. What all -- what did she do for you?

2 A. Well, they were -- after getting me to calm down and
3 they were trying all kinds of stuff to get the mace out of my
4 eyes and stuff, she asked me if she -- if I wanted to go and
5 look and see if we could find J.J. or whatever.

6 Q. Did you go look for J.J.?

7 A. Yes, ma'am.

8 Q. Because he was your friend and he was missing.

9 A. Yes, ma'am.

10 Q. But you didn't get the police to help you look for him.

11 A. No, ma'am.

12 **Ms. Walker:** Beg the Court's indulgence.

13 **The Court:** Uh-huh.

14 **Ms. Walker:** Thank you, sir. I don't have any further
15 questions.

16 **Mr. Shaffer:** I have a couple of redirect questions.

17 Redirect Examination

18 By Mr. Shaffer:

19 Q. Now, that's a picture of the ramp; right?

20 A. Right.

21 **Mr. Shaffer:** Can I have the witness step down?

22 **The Court:** You may.

23 By Mr. Shaffer:

24 Q. I want you to show me approximately where the front door
25 is in relation to that.

1 A. Okay. You go up the ramp and it's probably like right
2 in here.

3 Q. Okay. Can you mark that? Maybe put door?

4 A. (The witness complies.)

5 Q. All right. And this area down here---

6 A. Uh-huh.

7 Q. ---what is this?

8 A. I want to say it was probably like a deck.

9 Q. Okay. It's a deck? Could you---

10 A. Write?

11 Q. Yeah. If you could, just mark where....

12 A. Right here?

13 Q. Yeah.

14 A. (The witness complies.)

15 Q. And does that deck have a railing?

16 A. Yeah, it's like here.

17 Q. Okay. So it does have a railing. Where is the railing
18 at? Toward the parking lot. Closer to the parking lot.

19 A. Like maybe down in here.

20 Q. Okay. Could you draw a line there?

21 A. (The witness complies.)

22 Q. Okay. Do you recall seeing the bouncer Black -- do you
23 know who I'm talking about when I say the bouncer Black?

24 A. Yes, sir.

25 Q. Okay. Do you recall seeing him jump over the rail?

1 A. No, sir.

2 Q. Okay. You didn't see him jump over the end of the rail?

3 A. No, sir.

4 Q. Do you recall him passing you going down the ramp?

5 A. No, sir.

6 Q. Okay. So he didn't pass you going down the ramp. Was
7 he at the bottom of the ramp before you or after you?

8 A. They were all before us.

9 Q. They were all before you?

10 A. Yeah.

11 Q. Okay. So he was at the bottom of the ramp before you;
12 right?

13 A. No, like they were in front of us.

14 Q. Okay. So he was in front of you?

15 A. If we were facing up this way, they were in front of us
16 facing this way.

17 Q. Okay. Including the bouncer?

18 A. Yeah.

19 Q. Okay. Hold on one second. You can sit down.

20 A. Okay.

21 **Mr. Shaffer:** Court's indulgence just a second. No
22 further questions.

23 **The Court:** Any objection to the witness being excused?
24 From the State?

25 **Ms. Walker:** None, Your Honor.

1 **The Court:** From the defense?

2 **Mr. Shaffer:** No, Your Honor.

3 **The Court:** Sir, you're excused. Madam Forelady, ladies
4 and gentlemen, we're going to take advantage of this break in
5 testimony to take our lunch recess. I apologize for us going
6 beyond 1:00. I know that you all are hungry, and if it's any
7 consolation, so am I.

8 We're going to break until 2:30 which gives you an hour
9 and ten minutes for lunch. Please return directly to your
10 jury room. At that time we'll resume testimony. I
11 anticipate that we will finish our testimony in this case
12 today and have closing argument and instruction in the
13 morning. I give you that for purposes of your planning.
14 Have a good lunch, and we'll see you at 2:30.

15 (Whereupon, the jury was excused from open court to go
16 to lunch at 1:18 p.m.)

17 **The Court:** Is there anything before we break for lunch?
18 From the State?

19 **Ms. Walker:** None, Your Honor.

20 **The Court:** From the defense?

21 **Mr. Shaffer:** Nothing, Your Honor.

22 **The Court:** Have a good lunch. See y'all at 2:30.

23 **Ms. Campbell:** Thank you.

24 (Whereupon, a lunch break was taken.)

25 **The Court:** You may be seated now. All of our jurors

1 have now arrived. Is the State ready to proceed?

2 **Ms. Walker:** The State is ready to proceed.

3 **The Court:** Is the defense ready to proceed?

4 **Mr. Shaffer:** Yes, Your Honor.

5 **The Court:** Who is your next witness?

6 **Mr. Shaffer:** Your Honor, I'm actually -- we're actually
7 going to call the defendant first.

8 **The Court:** Okay. You can go ahead and bring the jury.

9 **Mr. Shaffer:** Oh, Your Honor---

10 **The Court:** Yes.

11 **Mr. Shaffer:** ---before we do that---

12 **The Court:** Wait one second for me. Yes, sir?

13 **Mr. Shaffer:** He has leg irons on.

14 **The Court:** Well, then he can go ahead and take the
15 stand.

16 **Mr. Shaffer:** Your Honor, I might need him to
17 demonstrate at some point. Do you mind if they remove the
18 leg irons?

19 **The Court:** I generally don't interfere with security,
20 so you have to consult with the sheriff's department to see
21 if that is something that they can accommodate. What do you
22 need him to demonstrate?

23 **Mr. Shaffer:** I'm going to need him to demonstrate on
24 the board, but if you'll allow me some latitude, I can -- I
25 can draw---

1 **Ms. Campbell:** You can draw it like you did before.

2 **Mr. Shaffer:** Okay. That's fine.

3 **The Court:** Sir, if you would go ahead and stand inside
4 the witness box. All right. Sir, when the clerk asks for
5 you to be sworn, if you would just stand for us, please.

6 (Whereupon, the jury was brought into open court at
7 2:45 p.m.)

8 **The Court:** Ladies and gentlemen, I hope you had a
9 pleasant lunch. We'll now resume testimony. You may call
10 your next witness.

11 **Mr. Shaffer:** The defense calls James Bethel..

12 **The Court:** Sir, if you would stand to be sworn.

13 James K. Bethel, Jr., after being duly sworn,
14 testified as follows:

15 **The Clerk:** Have a seat. State your name for the
16 record. Spell your last name.

17 **The Witness:** James Bethel. B-E-T-H-E-L.

18 **The Court:** You may proceed.

19 **Court Reporter:** If you'll back off the microphone a
20 little, please, and just speak up, that will help.

21 **Mr. Shaffer:** My apologies.

22 Direct Examination

23 By Mr. Shaffer:

24 Q. Good afternoon, Mr. Bethel. Could you tell the jury:
25 Where are you from?

1 A. Richland County, South Carolina.

2 Q. What part of Richland County?

3 A. Over off of Decker.

4 Q. How old are you?

5 A. Twenty-three.

6 Q. Do you have any kids?

7 A. Yes.

8 Q. How many?

9 A. Four.

10 Q. Where did you go to school at?

11 A. Richland Northeast.

12 Q. Did you graduate?

13 A. Yes.

14 Q. When did you graduate?

15 A. 2009.

16 Q. Prior to this incident, were you working?

17 A. Yes.

18 Q. Where were you working at?

19 A. I was working at a tire place on Farrow Road, Tire Tech.

20 Q. Okay.

21 **Ms. Campbell:** I'm sorry. I couldn't understand.

22 **The Court:** Tire Tech on Farrow Road.

23 **Ms. Campbell:** Thank you.

24 By Mr. Shaffer:

25 Q. Did you have any other job?

1 A. I was working at Wal-Mart not too long before this
2 happened, but I had quit.

3 Q. Okay. Why did you quit Wal-Mart?

4 A. They were working me too hard.

5 Q. Okay. Now, I'm going to direct your attention to the
6 night of the incident. Okay? What time did y'all arrive at
7 Mr. Lucky's?

8 A. Around 1:00.

9 Q. Around 1:00?

10 **The Court:** Mr. Shaffer, I need you to speak up.

11 **Mr. Shaffer:** I apologize, Your Honor.

12 **The Court:** Uh-huh.

13 By Mr. Shaffer:

14 Q. And whenever you first came in the club, who were you
15 with?

16 A. My cousin Ernest, Troy, and Curt.

17 Q. Had you been to this club before?

18 A. This was my first time.

19 Q. This was your first time at Mr. Lucky's?

20 A. Yes.

21 Q. Did you know people from the club?

22 A. No, not really, not that I know of.

23 Q. Okay. Who is Shanae Bell?

24 A. My -- the mother of my son.

25 Q. Okay. And does Shanae Bell work at the club?

1 A. Yes.

2 Q. How is your relationship at this time?

3 A. We were like friends, you know, for my son.

4 Q. Y'all were friends?

5 A. Yes.

6 Q. How old is your son?

7 A. He's three.

8 Q. You have other kids; right?

9 A. Yes.

10 Q. Do your other kids live with you?

11 A. Yeah, off and on.

12 Q. Do you see them regularly?

13 A. Yes.

14 Q. How old are they?

15 A. I have a four-year-old, a three-year-old, and two
16 two-year-olds.

17 Q. Okay. And Shanae works at Mr. Lucky's; right?

18 A. Yes.

19 Q. She was working that night; right?

20 A. Yes.

21 Q. Did you know that before you came?

22 A. No, I didn't know that she was in there.

23 Q. Okay. Whenever you came in the club, what did you do
24 next?

25 A. I paid. Me and my cousin, Troy, and Curtis went in.

1 Q. Okay. You had a good bit of money on you at the time;
2 right?

3 A. Yes.

4 Q. And about how much money did you have on you when you
5 went in?

6 A. About 2,000.

7 Q. Okay.

8 A. Dollars.

9 Q. And whenever you went in the club, you -- what did you
10 do next?

11 A. I went and sat down by the first stage like as soon as
12 you walk in.

13 Q. Okay. And how long were you there?

14 A. The whole night.

15 Q. Okay. Did you ever go in the back---

16 A. Yes.

17 Q. ---or in one of the other rooms?

18 A. Yes. I went to the bar a couple of times. I went to
19 the private room, back room.

20 Q. What did you do in the private room in the back?

21 A. I got a private dance.

22 Q. Okay. Did you have sex with a stripper?

23 A. No.

24 Q. At some point -- well, tell us about this. When did you
25 first notice Black?

1 A. Well, like right before -- right after the manager had
2 came up to me and asked me did I need anything and that they
3 had bottles of Ciroc for a hundred dollars and I gave him a
4 hundred dollars and he brought it back to me and I had placed
5 it on the table and I had saw him -- I had saw him over
6 there. I saw him go towards my cousin Ernest and Troy who
7 were over there by the other stage and like said something to
8 them. I guess he was telling them to calm down or whatever.

9 Q. Okay. But you didn't hear what they were saying?

10 A. No, I didn't hear what they were saying.

11 Q. Were you far away from them?

12 A. Not too far.

13 Q. About how far?

14 A. I'd say probably ten feet.

15 Q. Okay. Was it loud?

16 A. Yeah, I couldn't hear it over the music.

17 Q. Okay. What happened after that?

18 A. The manager came to me and asked me could I tell them to
19 calm down a little bit. So I walked over there and told them
20 to calm down, and everybody just went back to what they were
21 doing.

22 Q. And after -- after you told them to calm down, did you
23 have any other run-ins with Black?

24 A. I didn't personally until the end of the club before we
25 left.

1 Q. Did anyone in your group have any conflicts with him?

2 A. Yeah. I kept seeing him get into it with my cousin
3 Ernest and Troy like he was following -- followed -- like we
4 couldn't go to the bathroom without him following us in the
5 bathroom.

6 Q. Okay. So he was following you around?

7 A. Yeah, he was -- yeah. Right.

8 Q. And were you armed whenever you came into Mr. Lucky's?

9 A. No, not when I first came in.

10 Q. Okay. Now, at some point in the evening you became
11 armed; right?

12 A. Yes.

13 Q. When was that?

14 A. It would be when we went to the bathroom and I had got
15 it from Curt, and that's when the guy Black came in.

16 Q. Okay. And is there supposed to be more than one person
17 in the bathroom at a time?

18 A. It's -- it's -- there's like two stalls in there. There
19 can be two people in there.

20 Q. Did you see any sign saying...

21 A. No, I didn't.

22 Q. And tell us why Curt had a gun.

23 A. I'm not sure. It was my gun, but I didn't tell him to
24 bring it in.

25 Q. Okay. Did -- why would he have your gun? Where was

1 your gun at?

2 A. It was in the car, the truck.

3 Q. Okay. Why would he have it on him?

4 A. I guess because he felt a bad vibe. I mean, they were
5 pretty much picking on us the whole night starting with us,
6 you know...

7 Q. Now, Curt gave you the gun. Why did you take it?

8 A. Because I didn't want him with my gun.

9 Q. What kind of gun was it?

10 A. It was a .380 L.C.P. Ruger.

11 Q. A Ruger L.C.P. .380?

12 A. Yes.

13 Q. Where did you get the gun from?

14 A. The Gun and Knife Show.

15 Q. How did Curt tell you about the gun?

16 A. He had walked up to me and he was like -- he had told me
17 that he had my gun, and that's when I told him come in the
18 bathroom and I took it from him and put it in my back pocket.

19 Q. Did Curt bring the gun in when y'all first came in?

20 A. I'm not sure. I didn't know until like probably an hour
21 after being in the club.

22 Q. Okay. Now, you had been drinking that night; right?

23 A. Yes.

24 Q. How much had you been drinking?

25 A. I had -- we had like a half a gallon of vodka earlier.

1 It was like five people was drinking. We didn't finish it,
2 and we had a bottle of Ciroc inside the club.

3 Q. Now, at some point you went to the car; right?

4 A. Yes.

5 Q. Why did you go to the car?

6 A. To get a bottle of vodka.

7 Q. Your Honor, if I may dim the lights? Do you know who
8 that is?

9 A. Yeah. That's me, I think. Yeah, that's me.

10 Q. Where is your right hand at this point?

11 A. On my money, like on my pocket to make sure my money
12 don't, you know...

13 Q. Now, tell me this: Did you have all your money in one
14 pocket?

15 A. Yes. No, I had some one's in my -- I think my left
16 pocket. I had like probably 60 to 50 one's in my left
17 pocket.

18 Q. Okay. Now, at strip clubs you generally tip dancers;
19 correct?

20 A. Yes.

21 Q. Do you tip them in \$20 bills?

22 A. No.

23 Q. How much do you tip them?

24 A. Dollar bills.

25 Q. Okay. Now, who is that in the picture? Is that you

1 again?

2 A. Yes.

3 Q. Where is your right hand?

4 A. On my pocket where my money is.

5 Q. Okay. Why are you worried about the money?

6 A. Because I didn't want to lose my money at first, and
7 then after I didn't want nothing to happen to my money.

8 Q. Okay. What were you carrying into the club?

9 A. A bottle of vodka.

10 Q. Do you have a gun at that point?

11 A. No.

12 Q. Now -- so the incident that occurred was after this;
13 right?

14 A. Yes.

15 Q. Now, you went back in; right?

16 A. Yes.

17 Q. Did they pat you down?

18 A. I don't think so, no.

19 Q. And---

20 A. They watched me go to the car and just grab the bottle,
21 so they didn't pat me down. They was watching me the whole
22 time.

23 Q. Could you see the car from the porch?

24 A. Yeah, you could see it from the ramp.

25 Q. Okay. From the bottom of the ramp?

1 A. Uh-huh.

2 Q. Okay. Now, whenever you went inside, what did you do?

3 A. I went towards the back with the manager, and he gave me
4 a couple of cups to pour it in.

5 Q. Now, prior to this -- I'm going to direct your attention
6 back a little bit on the video. I believe this says 1:04.

7 Is that about the time y'all arrived?

8 A. Yes, it is.

9 Q. And who is that man in the plaid shirt?

10 A. I think his name is Fred, the manager.

11 Q. And who is that?

12 A. One of the security -- the guy who pats down.

13 Q. Okay. Did you know him?

14 A. No. I seen him before; I'm not sure where.

15 Q. Okay.

16 A. He just came up to me and spoke, so I gave a handshake.

17 Q. Now, this is about 50 minutes later.

18 A. Uh-huh.

19 Q. Who is that that just came through the door?

20 A. That was me. I was telling him to calm down. He was
21 really hyped, and the manager kept telling me to calm him
22 down, and I took him outside to calm him down, to tell him to
23 chill out.

24 Q. And that's right before you went to the car; right?

25 A. Yeah, I pushed them outside to calm them down.

1 Q. Okay. And was the manager going to let you stay at that
2 point?

3 A. Yeah, he didn't kick me out. They were basically trying
4 to kick my cousin out, like they had a problem with him.

5 Q. But did they let your cousin stay?

6 A. Yes, they did.

7 Q. Why is that?

8 A. I guess because he was with me.

9 Q. Okay. I'm jumping ahead a little bit. What time is
10 this?

11 A. Around the time we left the club. It says 3:32, so I
12 guess 3:32.

13 Q. Now, at this point were you talking to the manager?

14 A. Yes, I was.

15 Q. Okay. What were y'all talking about?

16 A. Like having a party there and just basic stuff, you
17 know, and exchanging numbers.

18 Q. Had you been -- had you -- you were exchanging numbers
19 with the manager?

20 A. Yes.

21 Q. What do you mean by having a party there?

22 A. Like, you know, renting it out.

23 Q. Okay. And were you -- were you asked to leave prior to
24 coming out there?

25 A. No. I had -- I just had talked to one of the dancers

1 and she had -- and she had told me that they were talking
2 about, you know, plotting on robbing them.

3 **Court Reporter:** I'm sorry. They were talking about
4 what?

5 **The Witness:** They were plotting on robbing them, so...
6 By Mr. Shaffer:

7 Q. Okay. So you were -- prior to this, you were having a
8 dance; right?

9 A. Yeah.

10 Q. Okay. At some point you became concerned?

11 A. Yes.

12 Q. Is that right? Why did you become concerned?

13 A. A dancer said, "Be careful"---

14 **Ms. Campbell:** Objection, Your Honor.

15 **The Court:** Sustained. Hearsay.

16 **Mr. Shaffer:** Your Honor, may I---

17 **The Court:** You cannot say what someone else said. It
18 is being offered for its truth because you would like the
19 jury to believe it and then they would rely on it. Move on.
20 I sustain the objection.

21 **Mr. Shaffer:** I understand. Can I cite you a case or
22 can I approach?

23 **The Court:** Huh-uh. I've ruled. The rules provide once
24 the Court has ruled, there is to be no further argument.

25 **Mr. Shaffer:** There's also a due process argument that

1 I'd like to make as well, Your Honor.

2 **The Court:** Then you should have -- I asked the basis of
3 the objection; they provided it. If you have a basis -- the
4 Court doesn't have to take argument on the objection.

5 **Mr. Shaffer:** Yes, Your Honor.

6 **The Court:** And I've ruled that it's hearsay, that it's
7 being offered for its truth. Ask the next series of
8 questions.

9 By Mr. Shaffer:

10 Q. You had a conversation with a dancer; correct?

11 A. Yes.

12 Q. Did you become concerned after that?

13 A. Yes.

14 Q. What did you think was going to happen?

15 **Ms. Campbell:** Objection, Your Honor.

16 **The Court:** Basis?

17 **Ms. Campbell:** He's trying to get out and solicit---

18 **The Court:** No speaking objections. He can say what he
19 did as a result of the conversation; that's not hearsay.

20 **Ms. Campbell:** Okay.

21 **The Court:** But you need to quit leading. Ask him
22 questions.

23 **Mr. Shaffer:** Thank you.

24 By Mr. Shaffer:

25 Q. What did you do as a result of the conversation?

1 A. I went to go talk to Curt and let him know what happened
2 and that I was ready to go.

3 Q. Why were you ready to go?

4 A. Because I didn't feel comfortable.

5 Q. What did you think was going to happen to you?

6 A. I thought I was going to get robbed.

7 Q. Now, when you went to go find Curt, where was Curt at?

8 A. He was talking to the manager.

9 Q. And at that point what did you tell Curt?

10 A. I didn't get to finish the -- get to start the
11 conversation because the manager called me over.

12 Q. While you were talking to the manager, at some point you
13 saw your cousin; correct?

14 A. Yes.

15 Q. Could you describe that for us?

16 A. My cousin and them came out, and it was a loud -- like
17 loud. They was arguing and stuff like that; I didn't know
18 why though.

19 Q. And what was your cousin wearing at the time?

20 A. A yellow hat, yellow shirt.

21 Q. Okay. What did you do after that?

22 A. After I seen that, I tapped Curt on the side and told
23 him, "Let's go."

24 Q. And what happened after that?

25 A. Well, he kept talking to the manager, and I went to see

1 what was going on and I had asked one of the bouncers -- I
2 was like -- I asked him what was going on, to see what was
3 going on and whatever, and he was just like -- started
4 talking trash and it was basically all of y'all -- one of
5 y'all....

6 Q. Which bouncer did you talk to?

7 A. The big one with the dreads, Black.

8 Q. During that conversation with the bouncer, were you
9 threatened?

10 A. Yes, all of us were.

11 Q. What do you mean by that?

12 A. He said -- he was saying stuff like, "Y'all little
13 niggers are going to make me kill one of y'all," stuff like
14 that.

15 Q. Okay. Now, at that point what do you do?

16 A. I told him -- I was like, "Don't talk to me like that
17 because I just asked you a question," and that was basically
18 it, and then I walked outside and started trying to calm my
19 cousin and them down.

20 Q. Prior to doing that, did he tell you to leave?

21 A. No, they didn't tell me to leave. They was basically
22 trying to force my cousin and Grip out of the club.

23 Q. Okay.

24 A. Like bum-rushing them.

25 Q. What do you mean by bum-rushing them?

1 A. Like walking towards them, like talking trash, making
2 threats.

3 Q. Okay. Now, when you're on the deck---

4 A. Uh-huh.

5 Q. ---what were you telling people?

6 A. I was like, "Chill. Let's just go. I've got a pocket
7 full of money; we'll go to another club."

8 Q. Where was Black at this time?

9 A. I'm not sure.

10 Q. Okay.

11 A. Not at the time when I was calming them down. I'm
12 pretty sure he was probably right behind me or in front of
13 me.

14 Q. Did you want to stay or did you want to go?

15 A. I wanted to go.

16 Q. Okay. I'm going to draw an approximation of the deck,
17 as I understand it at least. Correct me if I'm wrong in
18 anything.

19 A. Okay.

20 Q. Is this the lobby?

21 A. Yes.

22 Q. Okay. All right. Would this be the deck area?

23 A. Yes, it would.

24 Q. Would this be the ramp area?

25 A. Yes.

1 Q. Would that be the trash can?

2 A. Yes, it would.

3 Q. All right. When you first came outside, where did you
4 go?

5 A. Like right in front of the door. My back was facing the
6 ramp.

7 Q. Okay. So around here or where?

8 A. Yeah, around like towards the ramp and a little further
9 down.

10 Q. Okay.

11 A. Further down to -- yeah. No.

12 Q. So further -- I apologize.

13 A. Right in here.

14 Q. Okay.

15 A. My back is facing right there.

16 Q. And it was facing the ramp.

17 A. Uh-huh.

18 Q. What were you doing at that point?

19 A. I was, you know, telling them to hush, like calm down.

20 Q. Okay. Did you want to leave at that point?

21 A. Yes, and then that's when I started walking down the
22 ramp---

23 Q. Okay.

24 A. ---and some other guards were coming up the ramp and
25 like stopped us.

1 Q. Okay. Where were you at whenever -- when you stopped
2 going up the ramp?

3 A. When I stopped going down?

4 Q. When you stopped going down the ramp. Sorry.

5 A. I was like where the M. -- 'between the M. and the A.

6 Q. Okay.

7 A. Like probably on the A., on the A.

8 Q. Okay. And who was around you?

9 A. Ernest was further down.

10 Q. Okay.

11 A. And I was like right beside Curt, and Troy was like
12 probably three steps ahead of -- ahead of us.

13 Q. So Troy was three steps ahead of you?

14 A. Yeah. He might have been probably not -- not even that.
15 Probably two steps. I could touch him; he was in arm's
16 reach.

17 Q. Okay. So going down the ramp at that point, from the
18 top to the bottom where were you -- where were you at?

19 A. When we got stopped?

20 Q. Yeah.

21 A. Between the A. and the M.

22 Q. Okay.

23 A. Uh-huh.

24 Q. Okay. I'm going to put you... Okay. And where was
25 Curtis at?

1 A. Like on the right side of me, like almost directly
2 beside me.

3 Q. Okay.

4 A. I'd say I was just probably a little bit behind him, but
5 we were basically side by side.

6 Q. Okay. And where was Troy at?

7 A. Troy? He was like almost two steps in front of Curt.

8 Q. Two steps down the ramp?

9 A. Uh-huh.

10 Q. So just tell me when...

11 A. Like at the bottom of the M.

12 Q. Okay. Okay. And at that point what happened there?

13 A. I seen two big guys going towards my cousin.

14 Q. Okay. Where -- I'm sorry. Where was Ernest at during
15 this?

16 A. Before we got maced, he was at the bottom of the -- the
17 bottom of the ramp and like two -- two big guys -- one of
18 them was a bouncer and one of them---

19 Q. Well, tell me this. Tell me where -- where Curtis was
20 at -- I mean Ernest was at. I'm going to...

21 A. I'd say where the K. is at.

22 Q. Okay. Ernest was down here.

23 A. Yeah. I don't know how he got ahead of us, but he was
24 right there, and my two female cousins, they was like behind
25 him.

1 Q. Okay. So the two girls were up here.

2 A. Uh-huh, standing at the ramp.

3 Q. Now, you said that you saw two big guys.

4 A. Yeah.

5 Q. Who were they?

6 A. One of them was Black, and one of them was a big guy
7 and---

8 Q. What was he wearing?

9 A. I'm not really sure, but I know he was big and I seen
10 somebody turn his hat around and pull his pants up---

11 Q. Okay. And where---

12 A. ---when we were---

13 Q. And where was he -- where was he at whenever you said
14 they saw -- they saw him come up?

15 A. They jumped -- they jumped further up to get around us
16 because we were trapped.

17 Q. Okay.

18 A. They jumped like from right here and went around or
19 either one of those sides. I just know I seen them jump.

20 Q. You saw them jump over a rail.

21 A. Yes.

22 Q. Okay. To get around you?

23 A. Uh-huh. They got around us. They was like going for my
24 cousin.

25 Q. Okay. Tell me where -- and I'm not exactly sure where

1 you were pointing, so I want you to tell me where they jumped
2 to.

3 A. It was before you -- before -- I'd say right there.

4 Q. Right -- right---

5 A. Yeah.

6 Q. ---where? Here?

7 A. Yeah, right there.

8 Q. Okay.

9 A. On the deck. At the end of the deck.

10 Q. So they go over there.

11 A. Yeah. First they jumped that ramp and went -- they
12 jumped that ramp to the deck, and then jumped from the
13 bottom.

14 Q. Okay.

15 A. They jumped over there.

16 Q. And were they lower on the ramp than you were when they
17 jumped?

18 A. Yes, they were.

19 Q. Okay. And you said they were coming towards your
20 cousin?

21 A. Yes.

22 Q. What was going on at that point?

23 A. I turned around to check on my female cousins to make
24 sure they was right behind me, but they was like scared to
25 come downstairs because of all that was going on.

1 Q. What do you mean "all that"?

2 A. There was a whole bunch of like cursing and threats.

3 Q. Okay.

4 A. Like, you know...

5 Q. Was it both sides or...

6 A. Yeah, it was mainly like they was -- they wanted to
7 fight, like they basically wanted to -- they wanted to fight.
8 They was trying to fight. That's what they were going to do.

9 Q. Okay. They were going to go fight.

10 A. Yeah.

11 Q. Okay. Why do you say they were going to go fight?

12 A. Because of what they was saying and what they was doing.
13 One of the guys put his hat on backwards, pulling his pants
14 up, like they were walking towards him, you know, and I seen
15 my cousin backing up and I turned around to see where my
16 female cousin was to make sure they was right behind me, but
17 they were scared to come and I like told them to come on and
18 I turned around and there was the mace.

19 Q. Okay.

20 A. That's when all the mace came.

21 Q. Okay. And you said that the mace came.

22 A. Uh-huh.

23 Q. What direction did the mace come from?

24 A. In front of us where the large (verbatim) was coming up
25 at.

1 Q. In front of you on the lower side of the ramp or upper
2 side of the ramp?

3 A. It was like probably where Ernest was earlier.

4 Q. Okay.

5 A. Like they was coming up towards us.

6 Q. Okay. So you got hit with the mace at that point.

7 A. Yes.

8 Q. What happened then?

9 A. I tried to rub my eyes and that's when -- I guess it was
10 on my hands and it got worse, and I kind of like, you know,
11 panicked. I couldn't see, and that's when I grabbed my gun
12 out of my back pocket.

13 Q. Why did you grab your gun?

14 A. I was scared. I couldn't see anything. I heard my
15 cousin and them yelling, and I didn't know what was going on.

16 Q. Okay. What did you do with your gun once you grabbed
17 it?

18 A. I just kept it in my hand. I kept it in my hand, and I
19 was like trying to regain my eyesight.

20 Q. Okay. What happened -- what happened while you were
21 doing that? Were you making your way down the ramp?

22 A. Yeah, I was going towards my cousin and them voices, all
23 the yelling and stuff. I was walking towards the voices.

24 And as soon as I -- I don't know where exactly I was, but I
25 heard a gunshot, and like it scared me. It caught me off

1 guard, and as soon as I heard that, that's when I tensed up
2 and I shot the gun.

3 Q. Okay. Did you intend on shooting the gun?

4 A. No, I didn't. It caught me off guard. I heard -- I
5 couldn't see, and then I heard the gunshot and my body tensed
6 up. I got -- I jumped.

7 Q. Where did you have the gun at?

8 A. I had it -- I had it on my side.

9 Q. You had it on your side?

10 A. Yes.

11 Q. Can you please stand up and -- just stay where you are
12 and just stand up and show where you had the gun at.

13 A. It was to my side and I was like this walking.

14 Q. Okay.

15 A. Trying to -- blinking, trying to get my eyes open.

16 Q. And at that point you said you had -- you heard a
17 gunshot.

18 A. I heard a gunshot, like as soon as after I got maced I
19 heard a gunshot.

20 Q. Okay.

21 A. Probably like five seconds after.

22 Q. Okay. About five seconds after you got maced?

23 A. Uh-huh.

24 Q. Had you made your way down the ramp or were you on the
25 ramp?

1 A. Yes, I was like on the bottom of the ramp with the mace
2 when I got -- we were like close to where Ernest is right
3 there---

4 Q. Okay.

5 A. ---when -- like after we got maced and we made our way
6 down the ramp.

7 Q. Okay. And so you were -- about five seconds later you
8 said you heard a gunshot.

9 A. I heard a gunshot.

10 Q. Where was your gun at whenever you heard a gunshot?

11 A. On my side.

12 Q. What happened after that?

13 A. I jumped like trying to block my face, and when I did
14 that, the gun went off and I was running from the gunshots.
15 I didn't know where I was running to. I was just running
16 away from the gunshots.

17 Q. Okay. How many times did your gun fire at that point?

18 A. Once.

19 Q. Okay. And while you were running away from the gunshot,
20 what happened to you?

21 A. I got shot.

22 Q. And what happened to the gun when you got shot?

23 A. It actually knocked me off my feet and... It knocked me
24 off my feet and I fell.

25 Q. Okay. Did you have the gun in your hand at that point?

1 A. Yes.

2 Q. And where did the gun go?

3 A. When I fell, I like slid, and it fell and I got up,
4 tried to run again. That's when I got shot again and it -- I
5 jerked my body, but I didn't -- I didn't fall this time and I
6 kept running. I just kept running.

7 Q. And the gun, whenever it fell, do you know if it went
8 off or not?

9 A. I'm pretty sure it did.

10 Q. Okay. And where did it go?

11 A. I don't know. I know that I just dropped it when I
12 fell. When I got shot the first time, it like knocked me off
13 my feet and I fell, and that's when the gun dropped. I slid
14 across the floor and I got up, and he was still shooting at
15 me and I kept running and I got shot again in my shoulder and
16 it made my body jerk.

17 Q. Okay. So you got up and you still ran. Were you
18 shooting back at the guard?

19 A. No, I wasn't.

20 Q. Okay. And at some point you ran around the building;
21 right?

22 A. Yes.

23 Q. Okay. Where were you going to?

24 A. I was just running. I was trying to get away from the
25 guy that was shooting me.

1 Q. When you ran around the building, did you have the gun?

2 A. No, I didn't.

3 Q. Was he still firing at you?

4 A. Yes.

5 Q. And when you went around, what did you do after you ran
6 around the building?

7 A. I ran and he like -- he trapped me and I had nowhere to
8 run, and he told me to take my pants off.

9 **Mr. Shaffer:** Your Honor, may we approach for a moment?

10 **The Court:** Uh-huh.

11 (Whereupon, a bench conference was held.)

12 **The Court:** Are you going to use this again, Mr.
13 Shaffer, or can we turn the lights on?

14 **Mr. Shaffer:** I don't think I'm going to use it. Well,
15 I might end up using it.

16 **The Court:** We'll turn them down if you need it. Just
17 let us know.

18 By Mr. Shaffer:

19 Q. Now, when you -- whenever you took your pants off, you
20 said you were trapped. Where were you trapped at?

21 A. It was a tall barbed wire fence and a building. I was
22 trapped between there.

23 Q. Are you real familiar with the area?

24 A. No, I'm not at all.

25 Q. Okay. Have you ever been to that church that's behind

1 there?

2 A. No, I haven't.

3 Q. Do you know exactly where you were at that church?

4 A. No, I was running. I couldn't even describe it if I had
5 to.

6 Q. And after -- after you took your pants off, what did you
7 do then?

8 A. I like -- I didn't really use my hands. I like kicked
9 it off. I used my feet to get it off, and I turned around
10 and ran and tried to jump the fence, but I fell and when I
11 fell, I looked up and I seen him running, and that's when I
12 climbed back over the fence and like I like slid on the
13 barbed wire. That's how I got all the cuts on my chest and
14 stomach.

15 Q. Whenever -- when you said you were trapped, what did the
16 -- where was the person chasing you?

17 A. He was like -- I seen him. He had a flashlight. He was
18 like -- like towards the building, like towards the building,
19 front -- towards the building.

20 Q. Did you take off your pants because you were trying to
21 hide and get away?

22 A. No, I wouldn't leave my money and my cell phone behind.

23 Q. When you took off your pants, did you take off your
24 shoes?

25 A. Yeah, I used -- I had kicked my shoes off. I was just

1 trying to get my pants off fast, and if I was trying to hide
2 my description, I would have at least kept my shoes to run
3 with.

4 Q. And what did you do after you jumped the fence?

5 A. I like kind of falled (verbatim) and picked myself up,
6 and I went to the first apartment building across. And I
7 lost a lot of blood, so I was kind of weak. I felt like I
8 had a lot of weight on my back, so I basically used the wall
9 and slid against the wall and started knocking on doors.

10 Q. Did anyone come to the door?

11 A. Not -- not -- like the first four or five doors nobody
12 came, and finally some young guys answered the door and I
13 asked them for help and I asked them could I lay in their
14 doorway.

15 Q. Okay. Do you remember the police getting there?

16 A. Yes.

17 Q. Do you remember the ambulance getting there?

18 A. Yes.

19 Q. Do you remember the ambulance ride?

20 A. No, I don't.

21 Q. And while you were in the ambulance -- do you remember
22 getting loaded in the ambulance?

23 A. No, I just remember being on the stretcher.

24 Q. And once you were in the hospital, do you remember
25 talking to the police?

1 A. Yes.

2 Q. What did you tell them happened?

3 A. They said they came twice, but I only remember them
4 coming once.

5 Q. Okay.

6 A. I talked to them once and I asked them what -- what they
7 was there for.

8 Q. Uh-huh. And then what did you tell them happened?

9 A. I'm not really sure. I know I told them that I got
10 robbed and shot.

11 Q. Okay. Now, are you familiar with where Apple Valley is?

12 A. Yes.

13 Q. Okay. Do you know if it's far away from the club?

14 A. Yeah, it's -- it's like probably a seven or eight-minute
15 ride to get to Apple Valley from Mr. Lucky's.

16 Q. Now, Mr. Bethel, is there anything that I left off?

17 A. No.

18 Q. I was just checking just because I wanted to make sure
19 you had a chance to fully testify.

20 A. Uh-huh.

21 **Mr. Shaffer:** No further questions at this time.

22 **The Court:** Cross-examination of the witness.

23 **Ms. Campbell:** Thank you, Your Honor.
24
25

Cross-Examination

By Ms. Campbell:

Q. Mr. Bethel, let me back up a minute. You said you worked at the time?

A. Yeah.

Q. And where did you say you worked?

A. There was a tire shop over there. I was at Tire Tech off of Farrow Road, almost by Prescott.

Q. We've called the tire shops over there, but you weren't really working at the time, were you?

A. Yeah, I was a tire tech. It was just me and...

Q. How much did you make an hour as a tire tech?

A. Not really a lot of money. Basically tips.

Q. Basically tips?

A. Yeah.

Q. And that night how much money did you have on your person?

A. I had about \$2,000.

Q. That night you first said that you didn't know anybody that was working there. That was your first time there; right?

A. Yeah, it was -- it was my first time there.

Q. But by coincidence, your baby's mama actually worked there.

A. Yeah.

1 Q. What did she do?

2 A. She danced.

3 Q. And at some point after you got there -- let me ask you
4 this. You mentioned Apple Valley. Are you familiar with
5 Apple Valley?

6 A. I'm not too familiar with it; I know where it's at.

7 Q. Okay. Well, did you know it's in a high-crime area?

8 A. No, I didn't.

9 Q. Okay. You didn't know that, but you'd been there that
10 night earlier, hadn't you?

11 A. No, I hadn't.

12 Q. You had not been to Apple Valley that night?

13 A. No.

14 Q. Do you know why your friend Curt would say that you and
15 he had---

16 **Mr. Shaffer:** Objection. Pitting.

17 **The Court:** Basis?

18 **Mr. Shaffer:** Pitting.

19 **The Court:** Please approach.

20 **Ms. Campbell:** I'm sorry.

21 (Whereupon, a bench conference was held.)

22 **The Court:** Please restate the question.

23 By Ms. Campbell:

24 Q. Do you know why your friend Curt would say y'all had
25 been there that night?

1 A. He didn't say that.

2 Q. Did y'all get discovery in this case?

3 A. He said when he testified that we met at McDonald's on
4 North Main. Then we went to Motel 6 on Saint Andrews, and
5 then from there we went to Mr. Lucky's.

6 Q. Okay. Did you have a chance to review his statement?

7 A. Yes.

8 **Mr. Shaffer:** Objection, Your Honor. May we approach?

9 **The Court:** Getting very close to pitting. Don't ask
10 him to comment on the veracity of the statement.

11 **Ms. Campbell:** Okay. I'll move on.

12 **The Court:** And I need you to speak up a little bit for
13 me because I'm having difficulty hearing you.

14 **Ms. Campbell:** I apologize, Your Honor.

15 **The Court:** That's okay.

16 By Ms. Campbell:

17 Q. But you knew enough about Apple Valley to tell this jury
18 exactly how long it would take to do a car ride there.

19 A. Yeah. That don't mean I know the area though.

20 Q. Had you been there before?

21 A. Yes, I had.

22 Q. And you also mentioned that when you were going through
23 that you didn't know where you were really in that
24 condo complex.

25 A. I didn't know where I was. I stated that I didn't know

1 where I was when I was running from the guy shooting me.

2 Q. Okay. The first door that you knocked on that night,
3 did you know who lived there?

4 A. Yes.

5 Q. Who was it?

6 A. It was Curt's mom's friend, but that was the door
7 exactly across from the fence. That was the first apartment
8 building and the first door when you come into the apartment
9 building.

10 Q. So you had been there before because you knew that's
11 where Curt's mother's best friend lived.

12 A. Yes.

13 Q. And that's whose house you were trying to get to.

14 A. I was trying to get to anybody who could help me. I
15 knocked on more than that door. That was just the first door.
16 I knocked on because it was the first door in my path.

17 Q. And it's just a coincidence that that's your friend's
18 mother's best friend.

19 A. Yeah.

20 Q. So you had been there before because you knew she lived
21 there.

22 A. Yes, I did.

23 Q. You mentioned at one point you worked at Wal-Mart, but
24 they worked you too hard?

25 A. Yeah. I was getting too many hours. They always called

1 me in for overtime, and the pay wasn't too good, so I just
2 quit.

3 Q. And then the only thing you were being paid at the tire
4 shop was tips?

5 A. No, I said basically tips.

6 Q. I'm sorry. Basically tips.

7 A. Commission.

8 Q. Commission is a tip?

9 A. Yeah.

10 Q. Okay.

11 A. Whatever we work on, we get a percentage.

12 Q. Were you bringing home a hundred dollars week?

13 A. Yeah, more or less.

14 Q. More or less?

15 A. Yeah.

16 Q. That night where had you been earlier?

17 A. The night earlier? I was riding with my cousin and
18 them.

19 Q. And your cousin's name is Ernest?

20 A. Yes.

21 Q. And you're also cousins with two girls that were with
22 him.

23 A. Yeah, S.B. and Precious.

24 Q. Did you know how old S.B. and Precious were?

25 A. I know how old Precious was. I think S.B. was

1 probably 17 or 18.

2 Q. She was really 16 though?

3 A. Yes.

4 Q. Whose idea was it for her to come to the strip club?

5 A. Her brother.

6 Q. Her brother's?

7 A. Yeah, her brother.

8 Q. Is he kind of a bad influence?

9 A. No. He just didn't want his sisters to tell on him, I
10 guess, so he went to get them.

11 Q. Where did he actually go to get them? Where did he have
12 them stashed?

13 A. The Motel 6.

14 Q. The Motel 6?

15 A. Yeah.

16 Q. Where were you staying that night?

17 A. Probably at my mom's house or...

18 Q. Or?

19 A. Where was I going to stay at?

20 Q. Uh-huh.

21 A. Probably my mom's house.

22 Q. Where did you usually stay at?

23 A. My mom's house or my dad's house.

24 Q. The guns that were in the car, whose guns were those?

25 A. Mine's.

1 Q. And why were they in the car that night?

2 A. Because I was at my mother's house, and when Ernest came
3 and picked me up like probably around 12:00, 1:00---

4 Q. In the morning?

5 A. No, not in the morning.

6 Q. I'm sorry?

7 A. No, not in the morning.

8 Q. Okay. 1:00 that afternoon?

9 A. Yeah.

10 Q. Okay. At 1:00 in the afternoon Ernest came to pick you
11 up at your mother's house.

12 A. Yeah, and my---

13 Q. Where were the guns at that point?

14 A. It was in my room. My nephews and my kids were there,
15 so I didn't want to leave it so they can get their hands on
16 it, so I took it with me.

17 Q. Okay. Because safety is important.

18 A. Yeah.

19 Q. So at that point you pack up both your handguns; right?

20 A. Yes.

21 Q. Did you have a concealed weapons permit?

22 A. No.

23 Q. Did you know it was illegal to carry a weapon concealed?

24 A. No. I thought if you buy a gun in your name you could
25 carry it.

1 Q. You could carry it anyway? Did you know it's illegal to
2 carry a gun into an establishment that sells liquor---

3 A. No, I don't.

4 Q. ---concealed weapon? If you didn't think it was a
5 problem, why did you hide the gun?

6 A. I didn't hide the gun.

7 Q. Where was the gun when you had it on your person as seen
8 in the video?

9 A. In my pocket, my back pocket.

10 Q. Which back pocket? The first pair of pants or your
11 second pair of pants?

12 A. My red -- my right back pocket on my jeans.

13 Q. On your jeans?

14 A. Yeah.

15 Q. And which was the bigger gun?

16 A. The -- the -- the Bersa.

17 Q. At some point when y'all are going to the club, do you
18 remember getting the guns out of the glove box?

19 A. Yeah, I was moving them so Ernest's little brother
20 wouldn't get light to them. He was...

21 Q. Ernest's little brother?

22 A. Yeah. They dropped Ernest's little brother off and they
23 dropped Precious' son off.

24 Q. So you removed the guns from the home where there were
25 children and then took them into a car where there were

1 children?

2 A. No, there wasn't children in the car. They picked the
3 children up and they dropped them off. I was already in the
4 car and so were the guns.

5 Q. So instead of leaving them safely locked in a lockbox,
6 you put them where?

7 A. They wasn't locked in a lock box. I wasn't sitting in
8 the front seat at that time. Her little brother was, so I
9 removed the gun from the front seat and put it in the back.

10 Q. Which gun?

11 A. Both of them.

12 Q. Where in the back did you put them?

13 A. In the back pocket.

14 Q. Who was back there?

15 A. Me.

16 Q. And it was just you and who at that point?

17 A. Me and Ernest -- me, Ernest, and S.B.

18 Q. And S.B.

19 A. Yeah.

20 Q. At some point do you go and pick up Curt?

21 A. Yeah. No, we meet them at -- we meet them at McDonald's
22 on North Main.

23 Q. Once you met Curt, who got in the car with you?

24 A. The same people. They just followed us to---

25 Q. They followed you?

1 A. Yeah, they followed us to the Motel 6.

2 Q. So who was in the car at that point?

3 A. Just me, Ernest, Precious and S.B.

4 Q. Who had rented the room at the Motel 6?

5 A. I'm not sure. One of them.

6 Q. Once you got to the Motel 6, what did y'all do?

7 A. We parked. Troy parked his truck, and we dropped

8 Precious and S.B. off and we went to Mr. Lucky's.

9 Q. And, again, did y'all take one car or two cars?

10 A. One car.

11 Q. So the four of you drove in that car at that point?

12 A. Yes.

13 Q. At what point did Curt just happen to pick up your gun?

14 A. I'm not sure. He was in the back seat. I was driving.

15 Q. And the Curt we're talking about, just to be sure, is

16 the same Curt that testified here earlier today; right?

17 A. Yes.

18 Q. Were y'all celebrating that night?

19 A. No.

20 Q. So you just happened to have \$2,000 to spend on a

21 regular Saturday night.

22 A. No. I sold my car.

23 **Mr. Shaffer:** Objection, Your Honor.

24 **The Court:** Basis of the objection?

25 **Mr. Shaffer:** The previous ruling.

1 **The Court:** Please approach.

2 (Whereupon, a bench conference was held.)

3 **The Court:** You may proceed.

4 By Ms. Campbell:

5 Q. I'm sorry. How did you say you got the money?

6 A. I sold -- just recently sold my car.

7 Q. So you had just recently sold your car?

8 A. Yeah.

9 Q. Or you just recently sold your car.

10 A. That's how I got the money.

11 Q. Do you know Ms. Sheila Atkinson?

12 A. Sheila Atkin? Who?

13 Q. Ms. Atkinson.

14 **The Court:** Please approach.

15 (Whereupon, a bench conference was held.)

16 By Ms. Campbell:

17 Q. Ms. Sophia Atkinson.

18 A. Yeah.

19 Q. And who is she?

20 A. Curtis' mom.

21 Q. So you had recently sold your car? What kind of car was
22 that?

23 A. A Chevy Caprice, '91.

24 Q. Who paid for everybody to get into the bar?

25 A. I did.

1 Q. Why were you paying for everybody else?

2 A. Because they were my friends. I was looking out for
3 them. If I got it, they got it.

4 Q. At some point you had a conversation with the manager?

5 A. Yes.

6 Q. What was your conversation with the manager about?

7 A. Him and Curt was already talking about -- we was kind --
8 we had like three or four different conversations.

9 Q. Pick them in whatever order you want.

10 A. The first conversation was he asked me -- he told me
11 that they had a hundred-dollar bottle of Pete Ciroc and did I
12 want one, and I gave him the money. That was the first
13 conversation. Then he came back, dropped it off, and said
14 let him know if I need anything, and I said, "I appreciate
15 it."

16 Q. And he was waiting on you because you were basically --
17 you had a big roll of money that night.

18 A. Yeah, I guess.

19 Q. Yeah. And at some point did y'all have a conversation
20 about you renting out the bar?

21 A. No. Curt and him was in it. He called me over there,
22 and I was talking to them about it.

23 Q. Okay. Y'all were going to rent out the bar or talking
24 about it.

25 A. That's what they were talking about. I wouldn't waste

1 my money.

2 Q. Well, you exchanged phone numbers. That was your phone
3 number you exchanged.

4 A. Yeah, it was.

5 Q. Okay. So you were talking to him about renting out the
6 bar.

7 A. No, it was nothing about getting his number that --
8 about renting the bar. I got his number for other reasons.

9 Q. Do you remember your testimony on direct evidence---

10 A. Yeah.

11 Q. ---or direct when you talk about renting out the bar?

12 A. Yeah. I said that's what the conversation was about.
13 That's what we were talking about. I didn't say anything
14 about me renting out a bar, a club, a strip club, none of
15 that.

16 Q. So why did you exchange your phone number with the
17 manager who would be---

18 A. Because we were cool. We made a little friendship, and
19 he had told me to take his number and I took his number and
20 gave him mine.

21 Q. That night everything was going good for you?

22 A. Yeah, it was.

23 Q. Do you know why they were trying to throw you out of the
24 bar if you weren't doing anything wrong?

25 A. They were not trying to throw me out of the bar; I never

1 said that. No one who testified said that they was trying to
2 throw me out of the club.

3 Q. Where is your cousin?

4 A. They were in the club.

5 Q. Where is your cousin today?

6 A. In jail.

7 Q. Where is your female cousins?

8 A. I'm not sure. I don't -- I've been locked up for
9 15 months.

10 Q. Do you know why they live in Charlotte right now?

11 A. No, I don't.

12 Q. Unavailable to testify?

13 A. I'm not sure. I don't associate with them. I don't
14 talk to them.

15 Q. But that night you went out with them.

16 A. Yeah.

17 Q. You mentioned that on numerous occasions you had to calm
18 down Ernest.

19 A. Yeah.

20 Q. So there was something going on with Ernest.

21 A. No, he was just doing regular stuff that people do in
22 the club. They were just taking it the wrong way because
23 they didn't want us in there.

24 Q. And---

25 A. He was dancing, bobbing his head, you know, bouncing

1 around, all the stuff that goes on in the club. They just
2 didn't want us there. They was picking with us all night.
3 They were -- kept picking with us all night and---

4 Q. So they were picking at you all night.

5 A. Yeah. No, they were picking at the group, like people
6 in the group. They didn't really come to me or pick on me,
7 but they were picking on Troy and Ernest all night, following
8 them around everywhere they go, behind them talking, saying
9 slick stuff the whole night.

10 Q. And when you say they, who is they?

11 A. The dude -- the guy Black and his friend.

12 Q. So Black and his friend were picking on your friends.

13 A. Yeah.

14 Q. So did that make you mad?

15 A. No.

16 Q. No.

17 A. I was having a good time drinking. There wasn't no
18 physical altercation. I had no reason to get mad. It takes
19 a lot to make me mad.

20 Q. Let me get something straight here. How many people
21 were at the club that night?

22 A. There was -- I don't -- I'm not sure.

23 Q. And the only people---

24 A. I didn't count.

25 Q. Excuse me. The only people that were getting picked on

1 were you and your friends? Or not you. Your friends.

2 A. Yeah. Exactly.

3 Q. And they weren't doing anything wrong.

4 A. No, they was doing regular stuff that people do in the
5 clubs. They just didn't want them doing it.

6 Q. You testified on direct you had to talk to Ernest to
7 calm him down. Why did you have to do that?

8 A. I just told him to chill because he kept trying to
9 explain himself to the bouncer that he was just having fun
10 and bouncing around, and I just told him, "Chill. Don't even
11 say nothing. Just calm down."

12 Q. And did this go on from pretty much the time y'all got
13 there?

14 A. It happened probably two or three times.

15 Q. Two or three times?

16 A. Yeah.

17 Q. And you all were getting picked on; right?

18 A. Yeah.

19 Q. And you're the one with the money.

20 A. Yeah.

21 Q. So at that point you're getting picked on in a bar where
22 you're paying the money. Did you leave?

23 A. I wasn't getting picked on.

24 Q. But you weren't angry about your friends getting picked
25 on?

1 A. No, because it wasn't that -- it wasn't -- it wasn't
2 even that serious. They was -- I know that they were mad,
3 you know, hating, and so I took it as that and left it at
4 that.

5 Q. And your testimony is they weren't trying to throw you
6 out because you had sex with one of the strippers.

7 A. No, not one time did I get asked to leave, none of that.
8 I didn't get thrown out, none of that. The management didn't
9 have to talk to me about anything but calming my cousin down.

10 Q. Do you know why the management had to tell Black to let
11 you back in?

12 A. He didn't tell Black to let me back in. He told Black
13 to let my cousin and them back in. I didn't get kicked out
14 of the club one time. They didn't have a problem with me one
15 time that night. I was basically keeping peace between
16 everybody.

17 Q. What were you doing in the back room, the champagne
18 room?

19 A. I got a private dance. And I didn't get kicked out of
20 the back room. One of the bouncers said something about that
21 I couldn't go back there, and the manager said it was fine
22 for me to go back there.

23 Q. Do you know why the bouncer said you couldn't go back
24 there again?

25 A. No, I really don't know.

1 Q. That's your testimony.

2 A. Yes.

3 Q. So these two or three times when your friends get picked
4 on, you were the -- you were the peacemaker.

5 A. Yes.

6 Q. So did you go to Black and talk to him and say, "Man,
7 what are you doing? Why are you---"

8 A. No, I didn't confront Black at all. I just told my
9 party, the ones that was with me, to just chill.

10 Q. To just chill even though they weren't doing anything
11 wrong.

12 A. Because they kept trying to talk to him and explain
13 theirselves (verbatim) and like I guess it aggravated him.

14 Q. Now, you mentioned you didn't bring that gun into the---

15 A. No, I didn't.

16 Q. Your friend Curt did?

17 A. Yeah.

18 Q. The one that testified here today?

19 A. Yes.

20 Q. And your testimony---

21 A. Yes.

22 Q. ---is that he's the one that brought the gun in.

23 A. Yeah.

24 Q. Did he say why he brought the gun in?

25 A. No, he didn't.

1 Q. And how did you know he had the gun?

2 A. Because he told me.

3 Q. And where were you when he told you that he had the gun?

4 A. I was in -- over there by the stage. It was probably
5 like 2:30, something like that.

6 Q. 2:30?

7 A. Yeah.

8 Q. Have you had an opportunity to view the video?

9 A. Huh?

10 Q. Have you had an opportunity to look at this video?

11 A. Yes, multiple times.

12 Q. And how many times have you watched this video before
13 testifying here today?

14 A. I don't know. Probably like ten times.

15 Q. Ten times?

16 A. Yeah.

17 Q. Is that a conservative estimate maybe?

18 A. Uh-huh.

19 Q. So at 2:30 is when---

20 A. I said around 2:30.

21 Q. Around 2:30 is---

22 A. Somewhere around there, after 2.

23 Q. I'm sorry?

24 A. After 2.

25 Q. After 2?

1 A. It was after I had got the bottle of liquor; it was
2 after that.

3 Q. And what time did you get the bottle of liquor on the
4 video? Do you remember?

5 A. No, I don't.

6 Q. Once you took the gun from him, did you think it was
7 okay to be in the club with a concealed weapon on you?

8 A. No.

9 Q. But you didn't take it back out to the car.

10 A. That was before all this happened.

11 Q. Well, according to you, that was an hour to an hour and
12 a half before.

13 A. That was right before I talked a little bit and that's
14 it, and then that's when we left.

15 Q. And how big was the gun?

16 A. It was small, like hand size.

17 Q. Like the size of the other gun?

18 A. No.

19 Q. Oh, this one was smaller.

20 A. Yeah.

21 Q. Once you put the gun in your pocket, did you continue to
22 have fun?

23 A. I talked a little bit. You know, I was drunk and...

24 Q. Let's get to that. You were drunk?

25 A. Yes.

1 Q. How drunk were you?

2 A. I was a good -- a good deal.

3 Q. Well, how many drinks did you have prior to getting to
4 the bar?

5 A. A couple.

6 Q. A couple?

7 A. Yeah.

8 Q. A couple out of the half gallon of vodka that y'all
9 drank that evening?

10 A. Yeah.

11 Q. So the rest of them drank the other 30 or so drinks in
12 that?

13 A. I'd say it was -- I'd say it was five -- like probably
14 five people on one bottle of liquor.

15 Q. Okay. And were y'all sharing it equally or they just
16 happened to drink more than you that night?

17 A. I didn't fin -- we didn't finish the bottle.

18 Q. And who were the five people that were drinking the
19 bottle?

20 A. Me, Curt, and Grip. We made a couple of stops, you
21 know.

22 Q. I haven't heard about the couple of stops.

23 A. We made a stop at the hotel. We drank some over there
24 and---

25 Q. Were the girls drinking?

1 A. No.

2 Q. Okay. So it was you, Curt -- and so it was four of you.

3 A. Me, Curt, Grip, Ernest.

4 Q. That's four?

5 A. Yeah.

6 Q. Okay. And y'all got that half gallon down and then
7 you---

8 A. And Precious. Precious. My cousin, Precious.

9 Q. Oh, your cousin, Precious.

10 A. Yeah.

11 Q. She's one of the girls.

12 A. Yeah.

13 Q. She drank now.

14 A. Yeah.

15 Q. Okay.

16 A. She's 21.

17 Q. And then at that point you also had a bottle of Ciroc
18 that was in the car.

19 A. Yes. No. No, it was not in the car.

20 Q. I'm sorry. A bottle of vodka in the car.

21 A. Yeah. That was the bottle that I brought in the club.

22 Q. Did y'all drink the whole bottle of Ciroc while you were
23 in the club?

24 A. No, because it had wasted. We wasted about probably a
25 little less than half of it.

1 Q. You only drank half of it?

2 A. I said I waste -- we waste at least about a little less
3 than half of it.

4 Q. How did you waste it?

5 A. It was on the table; the table is not sturdy.

6 Q. So now your testimony is is the vodka fell over?

7 A. I said the Ciroc. I didn't say nothing about the vodka.

8 Q. I'm sorry. Is Ciroc vodka?

9 A. No, it's not.

10 Q. Okay. The Ciroc fell over now, so y'all didn't drink
11 that.

12 A. Yeah, we did drink it. I said a little more than half
13 of it fell out, so we didn't get to drink the whole thing.

14 Q. So is that when you got you a bottle of vodka?

15 A. Yeah.

16 Q. And did y'all drink that?

17 A. Yes, we did.

18 Q. So how drunk were you?

19 A. I was -- I was drunk, but I knew what was going on
20 around me.

21 Q. Was Ernest out of control that night?

22 A. He was just hyped.

23 Q. Let's get to the point where y'all get thrown out of the
24 bar. Who is the one that actually tells y'all you have to
25 leave?

1 A. Nobody told me I had to leave. They was like pushing
2 them out the door, towards the door, talking like a fight.
3 Nobody said, "Get out of the club," or none of that.

4 Q. Okay.

5 A. That I heard.

6 Q. That you heard?

7 A. Yeah. I don't know what was said inside the club. I
8 wasn't inside when they got kicked -- well, when they
9 so-called got kicked out, when they got forced out.

10 Q. At some point you end up in the lobby. You've seen the
11 video ten times---

12 A. Yes. Yes.

13 Q. ---haven't you? And you've got to admit you were in the
14 lobby.

15 A. Yeah, I was in the lobby.

16 Q. And at some point there was an exchange.

17 A. Exchange?

18 Q. Uh-huh.

19 A. Of what?

20 Q. Words, in the lobby.

21 A. Yeah.

22 Q. And Black is right there.

23 A. Yes.

24 Q. And is he one of the ones throwing you out?

25 A. He didn't throw me out. He did not throw me out. He

1 didn't tell me to leave. He didn't throw me out. I walked
2 out on my own free will because I was ready to go. I been
3 was ready to go (verbatim).

4 Q. So your testimony here today is no one was throwing
5 anybody out; you were just ready to go.

6 A. I said me, me personally.

7 Q. Well, were they throwing your friends out?

8 A. Yeah, they was throwing -- they was throwing Troy and
9 Ernest out and I guess his sisters.

10 Q. Y'all had been together as a group all night; right?

11 A. Yes.

12 Q. And when y'all are leaving, when you're leaving
13 voluntarily, they're throwing at least two or three people in
14 your group out.

15 A. Yeah.

16 Q. And as they're escorting you out, are you happy about
17 them throwing your people out?

18 A. I was ready to go; I had been. That's why I went to get
19 Curt to go and I been telling them to come on. As soon as I
20 seen them coming out the door with a loud noise, I tapped
21 Curt on his side and told him to come out, but he kept
22 talking to the manager. They didn't have no problem with me
23 all night out there, none of that.

24 Q. Right before you're leaving is when you have that
25 conversation you testified on direct at 3:32. It's up on the

1 screen.

2 A. Yeah.

3 Q. You said you were talking to the manager about having a
4 party there and exchanged phone numbers.

5 A. Yes.

6 Q. About renting out the club.

7 A. No, we didn't exchange numbers about renting out the
8 club. Before I was leaving, when I told Curt to come on,
9 that's when -- that's when he said take his number and give
10 him mine's, and I gave him my number and I got his number.

11 Q. Did Curt give him his number?

12 A. I'm not sure; I'm pretty sure he did.

13 Q. And you were leaving of your own free will and volition.
14 There was nothing going on.

15 A. Yes, I was leaving on my own.

16 Q. Nobody was making you leave.

17 A. Yes, I was leaving on my own, making sure I had my
18 family with me.

19 Q. Your family with you.

20 A. Yeah.

21 Q. Family you aren't very close to?

22 A. My family. They're still family.

23 Q. Okay. And then you are going out of your own free will
24 and accord and there's nothing -- they haven't told you to
25 leave and there's nothing else that's forcing you to leave.

1 A. They didn't tell me to leave. They was focused on my
2 cousin Ernest. They wasn't -- me and Curtis, they was not
3 worried about us at all. We was good.

4 Q. You were good. So there was nothing in your mind at
5 that point when you were leaving that was concerning you
6 about them trying to throw you out or anything like that.

7 A. They didn't throw me out.

8 Q. Okay. And then you mentioned that everybody started
9 talking trash.

10 A. Yeah.

11 Q. Who talked trash?

12 A. It was Ernest, two bouncers and -- Ernest and two of the
13 bouncers.

14 Q. And were they in front of you or behind you or where?

15 A. They was like in front of me.

16 Q. And could you hear what was being said?

17 A. Yeah.

18 Q. And who was threatening who?

19 A. The guy -- the guy Black just kept saying, "What you
20 want to do? What you want to do?" And Ernest -- you know,
21 they're going back and forth. Ernest said, "Just whatever."

22 Q. What was Ernest saying?

23 A. He said, "Just whatever."

24 Q. All Ernest said was, "Whatever"?

25 A. Yeah, and he was getting hyped.

1 Q. He was getting hyped. When you say getting hyped, what
2 does that mean?

3 A. Like getting loud.

4 Q. Like acting out?

5 A. Getting loud.

6 Q. Getting loud.

7 A. Yeah.

8 Q. Well, what was he saying when he got loud? Can you say
9 that?

10 A. He said, "What do you want to do?" They was arguing
11 like -- like about to fight.

12 Q. Like about to fight?

13 A. Yeah.

14 Q. And have you seen Ernest get in that hyped mode where he
15 wants to fight before?

16 A. Yes, I did.

17 Q. And he was in that mode where he wanted to fight.

18 A. Yeah, both of them were. They were basically trying to
19 start a fight. They wanted to fight. They wanted a -- they
20 wanted a reason to fight.

21 Q. Who wanted a reason to fight?

22 A. The security.

23 Q. The security guards---

24 A. Yeah.

25 Q. ---are picking a fight with strangers that have never

1 been there before.

2 A. Yes, they were.

3 Q. And your testimony is the threats were coming from the
4 bouncers, not from your cousin who is hyped?

5 A. Yeah, they was like on the same fight like, "F. you.
6 What you want to do?" Stuff like that.

7 Q. Well, do you remember either you or one of the people in
8 your group yelling at him, "I know where you live; I'll find
9 you"?

10 A. I never heard that. I never heard that. And nobody in
11 my group knows him and knows where he live, so I really
12 highly doubt anyone said that.

13 Q. It doesn't matter if they knew where he lived. If they
14 said that.

15 A. No, I didn't hear that at all.

16 Q. You didn't say that.

17 A. No, I didn't.

18 Q. What happened when you got outside?

19 A. I was -- as you can see on the video, I was just telling
20 them to calm down. I wasn't arguing. I wasn't angry. I
21 wasn't upset, none of that.

22 Q. And you were calm, cool, collected, and you were ready
23 to leave and there were no other concerns on your mind at
24 that point.

25 A. No, just---

1 Q. So you're just trying to get out.

2 A. Just everybody to come on.

3 Q. Okay.

4 A. And...

5 Q. At that point are you telling Ernest to calm down
6 because you could tell he's hyped and he's about to get in a
7 fight?

8 A. Rephrase that.

9 Q. Are you telling Ernest to calm down?

10 A. Yeah.

11 Q. Are you trying to calm Ernest down?

12 A. Yeah. Yeah.

13 Q. Because he's hyped. He's wanting to fight; right?

14 A. Yes.

15 Q. And the other guy, the dead guy, is hyped and he wants
16 to fight.

17 A. Yeah, the guy and his friend, the one that---

18 Q. And his friend.

19 A. Yeah.

20 Q. Okay. And that's the friend that you see on the video
21 that you reviewed ten times.

22 A. Yes.

23 Q. And at that point do you grab Ernest up and calm him
24 down?

25 A. No, not at that moment.

1 Q. Why not?

2 A. Because, I mean, he's a grown man. Hey, I just got
3 tired of telling him to calm down, and I just left it alone,
4 left it at that.

5 Q. Was Ernest armed that night?

6 A. No, he wasn't.

7 Q. Was the bouncer armed that night?

8 A. I don't know. I don't know what he had in his pockets.
9 Bouncers -- inside bouncers have guns, too. Just because
10 they -- just because they're not allowed to don't mean they
11 don't. I know plenty of clubs that inside bouncers have
12 guns.

13 Q. You're familiar with inside bouncers at various clubs
14 around?

15 A. Yes, I am.

16 Q. At that point you're concerned the bouncer might have a
17 gun. You're sitting there right next to the manager. Do you
18 tell him what your concerns are?

19 A. No, I'm worried about me and my family and my friends
20 leaving, just going. I was ready to go.

21 Q. Did you tell Ernest, "Back off. He might have a gun.
22 He's an inside bouncer, and they always carry guns"?

23 A. No, I told him to chill out. I didn't say, "Back up,"
24 or none of that. He got a gun. I didn't -- I didn't know
25 what he had.

1 Q. And at that point you're minding your own business.
2 What are Curt and Troy doing? Are they doing anything wrong?

3 A. I don't know what they were doing at that moment
4 until---

5 Q. Well, your testimony is once you get outside that y'all
6 are walking down the ramp together.

7 A. Yeah, we---

8 Q. Y'all are all---

9 A. Yeah, I said up to the point where we're on the balcony,
10 where we're on the balcony. You asked about being on the
11 balcony. You said what were they doing on the balcony. I
12 don't -- I'm not sure what they were doing on the balcony.

13 Q. Well, have you reviewed the video?

14 A. Yes.

15 Q. Okay. So as you're on the balcony, walking down the
16 ramp, before you get halfway down - and we'll get to that -
17 were they doing anything wrong?

18 A. No. They were after Ernest. It was -- Ernest was
19 already at the bottom of the ramp and---

20 Q. So Ernest is separated at this point.

21 A. Yes, he is.

22 Q. He's at the bottom.

23 A. Yeah.

24 Q. And y'all are up near the top.

25 A. Yes.

1 Q. And y'all aren't doing anything wrong; you're peaceful.

2 A. We can't even leave. They're blocking us in. The ramp
3 is only so big. They're blocking us on the ramp with mace,
4 talking trash to us, and we wasn't even the ones doing
5 anything. They came---

6 Q. Again, the victim. Y'all are maced for no reason;
7 that's your testimony.

8 A. Yes, we were maced for no reason. We wasn't hyped about
9 to fight, nobody on the ramp, none of that. They was
10 basically mad because Ernest was on there arguing and Ernest
11 was hyped. That was the only hype. There wasn't no other---

12 Q. Well, the---

13 A. ---confrontation. There was no other confrontation
14 except for Ernest and the two bouncers---

15 Q. The two bouncers.

16 A. ---on the ground.

17 Q. The ones that are in the video there at the end.

18 A. Yeah, that's the only confrontation that is happening.

19 I don't know why they stopped us on the ramp and maced us.

20 We wasn't---

21 Q. Because Mr. Hope wasn't involved in that at all, was he?

22 A. I don't -- I don't know.

23 Q. Or was Mr. Hope in on this, too?

24 A. I don't know.

25 Q. Do you recognize Mr. Hope?

1 A. I noticed him when he testified. I didn't know how he
2 looked. I didn't know how the security guard who shot me
3 looked because---

4 Q. He was the one who maced you, according to your
5 testimony.

6 A. It was a couple of guards. I don't remember his face.

7 Q. So he had it in for you, too.

8 A. I didn't say he had it in for me. I said he maced us
9 for nothing. I don't know where his attention was.

10 Q. Once you got maced, what happened?

11 A. Once I got maced, I grabbed my face and I couldn't see,
12 so I panicked.

13 Q. Couldn't see at all.

14 A. No. I was trying to open my eyes, but I couldn't open
15 my eyes. My eyes was burning, and I grabbed my gun out of my
16 back pocket. As you can see on the video, I'm walking with
17 my head down like this, and when I hear a gunshot you see me
18 just flinch real fast which you can see that on the video. I
19 was not facing him when the gun had shot him in the head. I
20 wasn't facing him. My face was not on his head facing him.
21 You can see that on the video. I watched it in slow motion
22 plenty of times.

23 Q. Yeah. You watched the video many times.

24 A. Yes.

25 Q. Your testimony today is that you heard a gunshot?

1 A. Yeah. Everybody heard it.

2 Q. Where did it come from?

3 A. It sounded like it came toward -- from the right of me.

4 Q. From the right of you?

5 A. Yeah.

6 Q. And then your reaction when you heard a -- your
7 testimony is as you're walking up behind -- just happens to
8 be behind---

9 A. I walked with my head down like this.

10 Q. With your head down like this.

11 A. Yeah.

12 Q. You come up behind him.

13 A. I walked past him. As you can see on the video, I
14 almost walked past him. Then I flinched and turned around.
15 I walked past him. I came up from the right of him. Like
16 y'all said, the bullet hole was in the left side of his head;
17 right?

18 Q. You know more than I do.

19 A. It's my life.

20 Q. I understand.

21 **The Court:** No editorial comments. Just ask the
22 questions, please.

23 By Ms. Campbell:

24 Q. What -- and then you hear the gunshot, and you don't
25 know where this strange gunshot comes from?

1 A. No, it just scared me and made me jump.

2 Q. And then your reaction is to then pull your gun up and
3 shoot?

4 A. No, I flinched like basically trying to -- trying to
5 block.

6 Q. You don't go to the ground?

7 A. No, I run. I like flinch and run.

8 Q. And then unfortunately your gun happens to go off again.

9 A. No.

10 Q. It goes off.

11 A. No.

12 Q. You didn't shoot that night.

13 A. Yeah. I thought you was talking about after what
14 happened.

15 Q. Well, did you shoot right there behind Mr. Franklin?

16 A. Yes, I did.

17 Q. But you weren't acting in self-defense or anything like
18 that.

19 A. No, I wasn't. I didn't intend -- I didn't intend to
20 shoot nobody. I didn't try to shoot nobody. I was -- I
21 couldn't see. I'd just got maced, and I heard a gunshot and
22 I flinched. I didn't -- it wasn't no self-defense. I wasn't
23 trying to save myself or nobody.

24 Q. Was it your gun's bullet that entered his head?

25 A. Yes, it was.

1 Q. But you now claim -- you're the only that claimed that
2 there was some stray shot.

3 A. I didn't mean to. I was -- I was walking, trying to
4 open my eyes with my head down like this, trying to regain my
5 eyesight.

6 Q. And you only shot one time.

7 A. Yes.

8 Q. And then where did you go?

9 A. I just ran. I just ran away from the gunshot.

10 Q. Did you stop to see how Mr. Franklin was?

11 A. No, I was running. I was getting shot at. I fell. I
12 got shot. It knocked me off my feet. I dropped the gun, got
13 up, started running again and I got shot again.

14 Q. But your testimony is you didn't shoot at Mr. Hope?

15 A. No, I didn't, not one time.

16 Q. Not one time.

17 A. No, not any time I didn't shoot at him.

18 Q. And, again, unfortunately for you, your testimony was is
19 that when you dropped your gun it just happened to go off one
20 time.

21 A. I didn't say that.

22 Q. Okay. Tell me what you said.

23 A. I said I dropped my gun when I got shot.

24 Q. You never shot.

25 A. No, not at -- not at Hope. I shot one -- my gun went

1 off one time.

2 Q. Okay. That's what I'm trying to get to. Is it your
3 testimony your gun did go off one time after it accidentally
4 had gone off another time?

5 A. No, no---

6 Q. Just one time.

7 A. ---it went off one time. Yeah.

8 Q. That's your testimony.

9 A. Yeah, that's my testimony.

10 Q. Then you got shot once and then you got shot a second
11 time.

12 A. Yes, I did.

13 Q. And then at some point you say you were trapped.

14 A. Yes, I was.

15 Q. Where were you trapped?

16 A. I was trapped between the building and there was a fen
17 -- a tall fence with barbed wire.

18 Q. And at that point you mentioned that Mr. Hope had you at
19 gunpoint.

20 A. Yeah.

21 Q. There trapped against a fence.

22 A. No, I said by the fence.

23 Q. By the fence.

24 A. Yeah, trapped in between the fence and a building. They
25 said -- that they said was a church. So I was trapped in

1 between the fence and the church.

2 Q. And that's when he ordered you to take off your pants?

3 A. Yes.

4 Q. Was he holding you at gunpoint?

5 A. Yes.

6 Q. How close was he to you?

7 A. He wasn't -- he wasn't that close.

8 Q. When you say not that close, was he further away from
9 you than me?

10 A. He was like probably from here to that bench.

11 Q. And at that point he didn't order you to put your hands
12 up?

13 A. No.

14 Q. He didn't order you to stay on the ground?

15 A. No. Once I jumped the fence, I heard him yelling, "Get
16 down. Get down." Once I was over the fence, I heard him
17 yelling, "Get down. Get down."

18 Q. And at this point how is your eyesight?

19 A. My eyesight -- I mean, it's still -- my eyes is still
20 burning---

21 Q. Burning.

22 A. ---but I see where I'm going.

23 Q. And he makes you take off your pants.

24 A. Yes.

25 Q. Does he continue to get closer to you with a gun drawn?

1 Does he -- do you take off your pants?

2 A. No, he stayed in the same spot.

3 Q. He stayed back?

4 A. Yeah.

5 Q. And he's just saying take your pants off.

6 A. And I kicked -- like kicked my pants off and used my
7 feet to kick my pants off, and then as soon as I got out of
8 my pants I tried to run and jump the fence, but I fell.

9 Q. He didn't try to shoot at you then, did he?

10 A. No.

11 Q. So he shot at you multiple times up to then, but then
12 when he's got you trapped, you're able to get away.

13 A. He ran -- when I fell the first time -- when I fell
14 trying to jump the fence, he ran, and that's when I got over
15 -- jumped over the fence and then I heard him yelling. I
16 heard him yelling saying -- saying that I was shooting, that
17 I was shooting, and "Get down. Put your hands up. He's
18 shooting. He's shooting. Shots fired," or something like
19 that.

20 Q. Have you listened to the 9-1-1 tape?

21 A. I heard it once.

22 Q. So now your story is you then go and just happen to go
23 to an apartment where---

24 A. If you go to the crime scene, exactly where I jumped the
25 fence at, the first building is the building that I went to

1 first and knocked on the door.

2 Q. And it just happens to be Curt's mother's friend.

3 A. Yes.

4 Q. Then you end up at another building.

5 A. Yes. I went to like three different buildings trying to
6 get---

7 Q. And then---

8 A. ---somebody to answer the door.

9 Q. ---the police show up?

10 A. Yes.

11 Q. And do you tell the police anything at that point?

12 A. Yes, I do.

13 Q. What did you tell them?

14 A. They asked me where the gun is. I said, "I don't got no
15 gun. I'm about to die. Help me." And that's all I said to
16 them. Those are my only words to them.

17 Q. And who did you say that to? Do you know?

18 A. I'm not even sure. I was kind of out of it.

19 Q. Do you remember Deputy Pinckney?

20 A. No, not by name.

21 Q. Then you go to the hospital?

22 A. Yes, I lucked up---

23 Q. You get to the hospital -- well, EMS comes first; right?

24 A. Yes.

25 Q. And when EMS gets there, they put you on the stretcher?

1 A. After I got on the stretcher, I remember I was in a lot
2 of pain and it hurt me when they dropped me on the stretcher,
3 and after that I blacked out and woke up in the hospital.

4 Q. When you woke up in the hospital, how soon after -- how
5 long were you in the hospital before you woke up? Do you
6 know?

7 A. I don't know.

8 Q. And did you tell the doctors what had happened to you?

9 A. I don't know if I did.

10 Q. Did you tell them you had been maced?

11 A. I don't know if I did.

12 Q. What if I said that the medical records are there and
13 there's no indication of any macing?

14 A. Well, they---

15 **Mr. Shaffer:** Objection, Your Honor.

16 **The Witness:** They only have---

17 **The Court:** What's the objection?

18 **Mr. Shaffer:** May we approach?

19 **The Court:** Yes.

20 (Whereupon, a bench conference was held.)

21 **The Court:** Overruled.

22 **Ms. Campbell:** Thank you.

23 **The Court:** Rephrase.

24 **Ms. Campbell:** Here is a copy of the medical records.

25 **Mr. Shaffer:** Your Honor, may we approach one more time

1 just to...

2 **The Court:** Sure. Uh-huh.

3 (Whereupon, a bench conference was held.)

4 By Ms. Campbell:

5 Q. Have you seen that?

6 A. I am now.

7 Q. At any point do you talk about being maced?

8 A. I was out of there. That was the last thing on my mind,
9 being maced. The mace been (unintelligible words spoken)
10 until I took -- until the time they told me to wash up and I
11 washed my face with a rag, and then that's when the burning
12 came back.

13 Q. Oh. Tell me about that. What happened?

14 A. I had -- when I was in the hospital, they asked me did I
15 want to clean up and I told them, "Yeah," so she gave me a
16 wet rag and I wiped myself---

17 Q. The nurse?

18 A. Yes, the nurse, and I wiped myself and my eyes started
19 back burning.

20 Q. Did you tell her that?

21 A. No, I didn't.

22 Q. Could you tell your eyes were red and inflamed like they
23 would be if you had been maced?

24 A. Yes, I know it was.

25 Q. Once you got to the hospital that day, do you remember

1 speaking to this investigator?

2 A. I remember speaking to them I think the day I got -- the
3 day before I left the hospital or the day that I did leave
4 the hospital.

5 Q. How many days were you in the hospital total?

6 A. Three.

7 Q. The day you went in and then the next two?

8 A. Uh-huh.

9 Q. You are released---

10 A. Yes.

11 Q. ---on the 21st?

12 A. Yes, ma'am.

13 Q. And you don't remember talking to him?

14 A. I remember talking to 'em, but they said they came -- I
15 remember talking to 'em one time.

16 Q. When they came, did they advise you of your rights?

17 A. Yes, they did.

18 Q. Did you understand them?

19 A. Yes, I did.

20 Q. And what did you tell them?

21 A. I remember telling them that I got shot and robbed.

22 Q. Do you remember telling them where?

23 A. No, I don't.

24 Q. Do you remember changing your story?

25 A. No, I don't remember changing my story.

1 Q. Do you remember being adamant that you weren't at Mr.
2 Lucky's?

3 A. Adamant?

4 Q. Did you tell them you were not at Mr. Lucky's?

5 A. If I did, I didn't -- I didn't know. I was drowsy. I
6 was tired. I was in pain.

7 Q. Why did you lie?

8 A. I didn't lie. If I did, I didn't intend to. I didn't
9 even know what was going on. They kept beating around the
10 bush about why they was there.

11 Q. So they were beating around the bush about---

12 A. Yeah, I kept---

13 Q. ---why they were there?

14 A. I remember asking them about it, why they -- "Why are
15 y'all here?" And they kept asking different questions when I
16 asked that.

17 Q. Well, you had been a victim and had been shot. You
18 didn't want to tell them about what had happened to you? You
19 didn't think that was important?

20 A. I was out of it. I was in pain.

21 **Mr. Shaffer:** Objection, Your Honor.

22 **The Court:** Basis?

23 **Mr. Shaffer:** Burden shifting.

24 **The Court:** Please repeat the question.

25 **Ms. Campbell:** He didn't want to tell them when he was

1 talking to them in the hospital what had happened to him?

2 **The Court:** Are you talking about to the medical
3 providers?

4 **Ms. Campbell:** No, to the police when he gave them a---

5 **The Court:** Sustained. He has no burden of proof nor
6 does he have to cooperate. It's a constitutional right to
7 remain silent. You may proceed.

8 By Ms. Campbell:

9 Q. And you mentioned that you weren't trying to change your
10 appearance.

11 A. No, I wasn't. If I was, I would have kept my money and
12 my cell phone to call for help or at least my cell phone. I
13 was -- I didn't care, but I was just trying to get away. He
14 shot at me a lot of times. I was trying to get away from
15 him.

16 Q. So you're the victim.

17 A. No, I didn't say that. I said he was shooting me. He
18 shot at me. He was chasing me, shooting, and wouldn't stop.

19 Q. So you got shot by someone else.

20 A. Yes, I did.

21 Q. And you didn't deserve that.

22 A. I was running. I was running from him and he was
23 chasing me, shooting me. He said I shot at him. I did not
24 shoot at him.

25 Q. So he's wrong, too.

1 A. Yes.

2 **Ms. Campbell:** Beg the Court's indulgence.

3 **The Court:** Uh-huh.

4 **Ms. Campbell:** I don't have anything further, Your
5 Honor.

6 **The Court:** Any redirect?

7 **Mr. Shaffer:** Yes, Your Honor.

8 Redirect Examination

9 By Mr. Shaffer:

10 Q. Talking about the medical record---

11 A. Uh-huh.

12 Q. ---when you got admitted to the hospital, what were you
13 admitted to the hospital for?

14 A. For gunshots. I also had deep scratches in my chest and
15 stomach.

16 Q. Okay. How many gunshots did you have?

17 A. Two.

18 Q. So you had been shot twice.

19 A. Yes.

20 Q. Was your primary concern -- was your primary concern
21 burning in your eyes?

22 A. No. I was in pain when I woke up, and the mace had wore
23 off.

24 Q. Okay. And you said that you didn't tell the nurse that
25 your eyes were burning or red or anything?

1 A. I'm not sure, but I'm pretty sure my eyes were bloodshot
2 red.

3 Q. You were on painkillers in the hospital; right?

4 A. Yes. I'm not sure what it was, but it was hooked up to
5 an I.V.

6 Q. And do you remember everything that happened while you
7 were in the hospital?

8 A. Not everything. I basically was asleep most of the
9 time. I didn't even know that I was in the hospital for
10 three days until I got to jail.

11 Q. Okay. Now, when you were coming down the ramp---

12 A. Uh-huh.

13 Q. ---what happened to you?

14 A. We got trapped off by the other security and we got---

15 Q. What do you mean the other security?

16 A. I guess they were in the parking lot, and they was
17 coming up the stairs and they maced us.

18 Q. Okay. And when you got down to the bottom---

19 A. Uh-huh.

20 Q. ---where were you holding the gun?

21 A. On my side, the side of -- on my side.

22 Q. And did you -- was there a -- what happened while you
23 were holding on to yourself?

24 A. I was trying to regain my vision. I kept trying to open
25 my eyes, but I couldn't too much get it open. I'm still

1 getting little glimpses of things and trying to get to where
2 my cousin was. I heard them and I was walking towards them.

3 Q. And you heard a gunshot.

4 A. Yes, I did.

5 Q. What happened after you heard the gunshot?

6 A. As soon as I heard the gunshot, it -- I was already
7 maced. It kind of scared me and caught me off guard, and I
8 went like this and ran.

9 Q. Did you intend to kill Black?

10 A. I did not. I had no problem with him. I didn't even
11 know him. I didn't try to shoot anyone. I just had the gun
12 so nobody would bother me, to protect myself. I didn't have
13 any intention on using it, none at all.

14 Q. You said you didn't have a problem with him?

15 A. I didn't. I didn't even know him.

16 Q. You didn't try to kill him?

17 A. No, I didn't know him. I didn't have a problem with
18 anybody -- anybody at the club. If I would have been mad at
19 anybody, it would have been my cousin for keep getting into
20 it... I wasn't mad at nobody.

21 Q. Did you mean to pull the trigger?

22 A. No, I didn't. It was like a reflex, like I got scared
23 and my body tensed up. I had my hand on the trigger. I like
24 -- when I jumped, it caught me off guard. I couldn't see. I
25 didn't know -- I thought I was getting shot at.

1 **Mr. Shaffer:** No further questions.

2 **The Court:** Sir, you may step down.

3 **Mr. Shaffer:** Your Honor, this might be a good time...

4 May we approach?

5 **The Court:** Uh-huh.

6 (Whereupon, a bench conference was held.)

7 **The Court:** Madam Forelady, ladies and gentlemen, we're
8 going to take advantage of this break in testimony to take a
9 brief recess. During the break, please do not discuss the
10 case in any manner, whatsoever, and please leave your notepads
11 in your seats. If you would go with the bailiffs, please.

12 (Whereupon, the jury was excused from open court at
13 4:27 p.m.)

14 **The Court:** Sir, you may step down. Okay. Does the
15 defense have any further witnesses?

16 **Mr. Shaffer:** Your Honor, there's one.

17 **The Court:** Uh-huh.

18 **Mr. Shaffer:** The majority of her testimony involved the
19 reputation for violence, so...

20 **The Court:** Uh-huh.

21 **Mr. Shaffer:** Your Honor---

22 **The Court:** Who is that?

23 **Mr. Shaffer:** Shanae Bell.

24 **The Court:** Okay. It would have to be a reputation for
25 violence that your client was aware of; otherwise, it's not

1 relevant. Is the purpose for introducing reputation for
2 violence -- provides the foundation for a person acting or
3 reacting in a certain way. If you find out somebody is
4 violent after you've reacted, you certainly could not have
5 premised your actions on it.

6 **Mr. Shaffer:** Thank you, Your Honor. I understand that
7 ruling. The other issue---

8 **The Court:** I'm just giving you some guidance---

9 **Mr. Shaffer:** Yes, Your Honor.

10 **The Court:** ---if you go down that road. If he was
11 violent and your client knew nothing about it, then it
12 couldn't possibly have factored into his decision-making
13 process.

14 **Mr. Shaffer:** Thank you, Your Honor. There's also one
15 other issue that she would have talked about.

16 **The Court:** Uh-huh.

17 **Mr. Shaffer:** She mentioned that she overheard people at
18 the club, specifically the decedent, speak of a possible
19 robbery of the defendant which would go to the -- I guess the
20 objective prong of self-defense, Your Honor, or the defense
21 of others.

22 **The Court:** Who is she going to -- she should be able to
23 articulate who it is she heard saying it so that you could
24 call those individuals or the State can call those
25 individuals because, otherwise, it's hearsay being offered

1 for its truth. I can't think of any exception.

2 **Mr. Shaffer:** She actually heard the -- heard Black say
3 it to another party, Your Honor.

4 **The Court:** Deceased.

5 **Mr. Shaffer:** And that's why I asked the---

6 **The Court:** Who did she hear him say it to?

7 **Mr. Shaffer:** She heard him say it to Frederick.

8 **The Court:** Who is Frederick?

9 **Mr. Shaffer:** Frederick's the club owner.

10 **The Court:** Did you ask him that question on
11 cross-examination?

12 **Mr. Shaffer:** No, Your Honor. I was not ready to go
13 there at that point.

14 **The Court:** Pardon me?

15 **Mr. Shaffer:** I was not ready to go into that at that
16 point.

17 **The Court:** The only way you'd be able to get in her
18 statement would be as extrinsic proof if he denies it;
19 otherwise, it's hearsay. So take that for what it's worth.

20 **Mr. Shaffer:** Your Honor, regarding that matter, would
21 that be -- would that also exclude it from -- from being
22 admissible under Chambers, the case I had sent? Chambers v.
23 Mississippi.

24 **The Court:** I think you have to call her. You have to
25 call him and he needs to deny it. He may admit it; I don't

1 know. I'm a little perplexed as to why you didn't ask him
2 that question on direct because this has always been your
3 client's theory, that he was robbed, or that he acted because
4 he thought was being robbed. So I assume he's still
5 available. Do you plan to call Andrena Jenkins?

6 **Mr. Shaffer:** No, Your Honor.

7 **The Court:** Do you plan to call Glenda Jones?

8 **Mr. Shaffer:** No, Your Honor.

9 **The Court:** Steve Tackle?

10 **Mr. Shaffer:** No, Your Honor.

11 **The Court:** Edward Daniel?

12 **Mr. Shaffer:** No, Your Honor, but if Mr. Frederick is
13 still available, I would like to call him.

14 **The Court:** Is Mr. Frederick available?

15 **Ms. Walker:** Your Honor, he's not here, and I think both
16 parties agreed to release him.

17 **The Court:** Can we find him? I would assume he's still
18 in Columbia, isn't he?

19 **Ms. Walker:** Let me -- can I work on that?

20 **The Court:** Yeah. I would appreciate you accommodating
21 the court.

22 **Ms. Walker:** Yes, Your Honor. We're going to make a
23 phone call right now, Your Honor.

24 (Whereupon, a short break was taken.)

25 **Ms. Walker:** Your Honor, may I ask a question for

1 clarification? The witness I think that Mr. Shaffer is
2 trying to call isn't alleged to be the person who made the
3 statement. I think he is the person that would have heard
4 the statement?

5 **The Court:** Yeah.

6 **Ms. Walker:** So would it still be -- even if he -- I
7 guess he could call him to deny him making it because he
8 isn't even alleged to have made it. So I don't understand
9 how that then would then back-door that information in.

10 **The Court:** He can ask him, since he is the person who
11 it is alleged -- the person who made the statement is no
12 longer with us.

13 **Ms. Walker:** Right.

14 **The Court:** Alleged to have made the statement. He can
15 ask him if his employee made that statement or his agent
16 because that's really what he was; he was employed by him.
17 Whether he, in fact, made that statement, if he admits it or
18 denies it -- I don't know what he's going to say.

19 **Ms. Walker:** And then---

20 **The Court:** If he denies it, I'm not certain whether it
21 would be admissible through extrinsic proof through this
22 other lady. I really don't know.

23 **Ms. Walker:** And that was my question. That was my --
24 that was my only question, Your Honor.

25 **The Court:** Now, I don't know how much more mileage

1 you're going to get out of it. You've already pretty much --
2 you haven't implied -- your client told the jury that he felt
3 like he was going to be robbed and that he felt like the
4 victim was at the heart of this conspiracy to rob him and
5 that he was ready to leave. I just can't see any way you
6 would be able to get that in through extrinsic proof because
7 it's hearsay. The person who allegedly said it is no longer
8 alive. It's not an excited utterance or anything like that
9 that would come in, and it's clearly hearsay.

10 We have no way -- the reason you have exceptions to the
11 hearsay rule is because under evidentiary principles, there
12 are certain statements that are just inherently reliable and
13 not subject to fabrication. Where you have a young woman
14 making a statement that we have no way to corroborate
15 whether, in fact, it was said or not -- the proponent is
16 dead. I don't know how you get around the rules unless you
17 have some other -- generally, statements like that come in
18 because they're made in the heat of the situation, and they
19 come in as excited utterances. They don't just come in as
20 passing statements.

21 **Mr. Shaffer:** Well, Your Honor, I believe that my
22 exception being -- well, it's not really an exception to the
23 rule. It's more of a due process argument: Ability to
24 present a full and complete defense under Chambers v.
25 Mississippi, Your Honor.

1 **The Court:** I've never known that to circumvent -- that
2 that circumvents the rules. They're all different
3 principles. So I need to know if there's some exception that
4 that statement could come within.

5 **Mr. Shaffer:** There's not an exception under the --
6 under the South Carolina Rules of Evidence, Your Honor.

7 (Whereupon, a woman passes out in the courtroom.)

8 **The Court:** Do we need to call an ambulance?

9 **Ms. Walker:** Your Honor, may I be excused with them?

10 **The Court:** Yes.

11 **Ms. Walker:** Thank you.

12 **The Court:** I'm familiar with the case. I just haven't
13 read it in a long time, but it articulates what I just said
14 which is you can use extrinsic proof, but usually it's in a
15 situation that someone is the proponent that's made the
16 statement and then they deny it and then you can bring
17 somebody else in as extrinsic proof to basically impeach
18 them, and that's factually not what we have here.

19 We have an out-of-court statement by a third party who
20 claims a deceased person made the statement to them, and then
21 she said she repeated it to somebody else. Then he says he
22 acted on it. I just can't discern any rules of evidence that
23 would allow you to bring that in. I can't discern any
24 exception unless you've got one. I'll be glad to look it up
25 or to research whatever exception you claim it would come

1 within, but we have some real basic rules about extrinsic
2 proof and they're there for a reason because there are
3 certain things that are just inherently reliable. In other
4 words, there's just less a chance that people fabricate them.
5 Who is this person that you're -- Shanae Bell? Who is she?

6 **Mr. Shaffer:** She is one of the dancers in the club.

7 **The Court:** Is she one of the mothers of your client's
8 children?

9 **Mr. Shaffer:** Yes, Your Honor.

10 **The Court:** Which then adds another wrinkle regarding
11 her reliability.

12 **Mr. Shaffer:** And, Your Honor, regarding -- regarding
13 this, we would still ask if we could call Frederick---

14 **The Court:** You can call your witness for any reason you
15 want to. I'm not -- and I'm not an advocate; I don't object.
16 So you can ask for whatever you want to until they object.

17 **Mr. Shaffer:** Your Honor, Frederick Simpkins -- Your
18 Honor, is there any way that we could call him?

19 **The Court:** I guess you'd have to subpoena him.

20 **Ms. Walker:** Your Honor, he has been released from the
21 subpoena I think with the agreement of both sides. It's my
22 understanding that he's at work right now and is unavailable
23 to come here.

24 **The Court:** He works a job other than -- what is Mr. --
25 is Mr. Simpkins one of the managers at this establishment---

1 **Mr. Shaffer:** Yes, Your Honor.

2 **The Court:** ---as I recall?

3 **Ms. Walker:** He and his brother. Both Mr. Simpkins
4 are--

5 **The Court:** They work other jobs, don't they?

6 **Ms. Walker:** I think so because I know his brother is
7 here, but the Mr. Simpkins that Mr. Shaffer wants is at work
8 and unavailable.

9 **The Court:** Because I'm trying to figure out how you're
10 even going to elicit that question from him on direct because
11 he's your witness.

12 **Mr. Shaffer:** Your Honor---

13 **The Court:** ---without leading him unless he just
14 voluntarily says that he said it to him which I kind of doubt
15 that's going to happen.

16 **Mr. Shaffer:** Your Honor, he did testify previously that
17 they were attempting to remove them from the club.

18 **Court Reporter:** Could you speak up, please?

19 **Mr. Shaffer:** Oh, I apologize. He testified previously
20 that they were attempting to remove -- remove the defendant
21 from the club, Your Honor.

22 **The Court:** Uh-huh.

23 **Mr. Shaffer:** My contention is is that they were
24 attempting to rob the defendant while outside.

25 **The Court:** Well, you've already had your client

1 articulate that, but I guess I'm...

2 **Mr. Shaffer:** Well, I guess there's two different
3 reasons why they could have been outside. One is to remove
4 him from the club or escort him out. The other one is to
5 fight him and beat him up, Your Honor.

6 **The Court:** Well, your client already said that, so I
7 guess I'm -- I mean...

8 **Mr. Shaffer:** Yes, Your Honor. I guess it would be for
9 impeachment purposes of his previous testimony saying that
10 he -- he was -- the defendant -- I mean, the decedent was
11 going outside to remove him.

12 **The Court:** How are you going to impeach your own
13 witness? Because now you want to call him in your case in
14 chief, so you have to ask him direct questions.

15 **Mr. Shaffer:** Your Honor, I think that you can call a
16 witness for the sole purposes of impeachment, Your Honor.
17 I've argued the other side of that and lost plenty of times,
18 Your Honor.

19 **The Court:** I didn't say you couldn't call him. I'm
20 just trying to figure out how you're going to get in what
21 you're trying to get in. I'm again perplexed as to why you
22 just didn't ask him those questions initially. I don't have
23 a problem with you recalling him if you can get him under
24 subpoena and get him here, but I think -- I don't know that
25 he's going to tell you what you are trying to elicit from

1 him. So I don't know whether that's going to be an exercise
2 in futility or not.

3 **Mr. Shaffer:** Your Honor---

4 **The Court:** And then I don't know how you're going to
5 get in extrinsic proof because it's the use of extrinsic
6 proof to impeach the person, the proponent of the statement,
7 not -- you can't use extrinsic proof to impeach somebody else
8 that allegedly said something to somebody else. In other
9 words, you can use extrinsic -- if you ask him is the
10 paneling in here brown and he says, "No, it's red," you can
11 call a witness to impeach him extrinsically, but I don't know
12 that you can call somebody extrinsically to impeach something
13 somebody else allegedly said under the rules. I'm just not
14 aware of how you would do that.

15 **Mr. Shaffer:** Your Honor, could I -- could I take about
16 five minutes to step outside and speak with my client's
17 family?

18 **The Court:** Sure.

19 **Mr. Shaffer:** Thank you.

20 **The Court:** We'll be at ease for five minutes.

21 (Whereupon, a short break was taken.)

22 **The Court:** Be seated. Okay. Have you had sufficient
23 time to speak with your client, Mr. Shaffer?

24 **Mr. Shaffer:** Yes, Your Honor.

25 **The Court:** Okay. Are you ready to go forward?

1 **Mr. Shaffer:** Yes, Your Honor. I believe that based off
2 of where we're at right now I think we're going to go forward
3 where we're going to go ahead and rest.

4 **The Court:** Okay. I need the record to be clear that
5 the Court is not precluding you from calling Shanae Bell if
6 there's some testimony that you would like to elicit from
7 her. I'm familiar with the case that you've cited, the U.S.
8 Supreme Court case, and it is not -- it's consistent with our
9 evidentiary rules regarding extrinsic proof.

10 In that case, of course, the McDonald gentleman had made
11 certain confessions regarding his culpability in the crime,
12 and I agree with the facts of that case. I would have let
13 them call extrinsic proof to impeach him once he repudiated
14 his statement, and that's consistent with our rules of
15 evidence. But I don't think you get to call other people to
16 -- if it were Mr. Frederick -- I forget his last name; I
17 apologize.

18 **Ms. Campbell:** Simpkins.

19 **Mr. Shaffer:** It's Simpkins.

20 **The Court:** If it were his statement and he was denying
21 it, I think you could call Ms. Bell extrinsically to impeach
22 him, but I don't think you can call a witness to impeach a
23 hearsay statement allegedly made to another person. I just
24 am -- I can't find anything in the rules that support that
25 proposition.

1 **Mr. Shaffer:** I understand your ruling, Your Honor.

2 **The Court:** But you can -- but certainly feel free to
3 call her on any other issues that you would like to -- well,
4 I mean, you can call her for any purpose you want and
5 question her, if the State doesn't object. Like I said, it's
6 not my job to object, but please do not feel you're precluded
7 in any way from calling her as a witness because you
8 certainly are allowed to.

9 **Mr. Shaffer:** Yes, Your Honor. And one of the other
10 concerns there: There were a couple of small other things
11 that she could testify to outside of that, Your Honor, but I
12 did speak with my client about this.

13 **The Court:** So y'all made a strategic decision not to
14 call her is what you're telling me?

15 **Mr. Shaffer:** Yes, Your Honor.

16 **The Court:** Okay. All right. One other thing that we
17 need to deal with right quick and I meant to -- I made a note
18 to myself to deal with it this morning. Actually, we can
19 deal with it after we excuse the jury while we're doing a
20 charge conference. All right. So you just need to rest in
21 the presence of the jury?

22 **Mr. Shaffer:** Yes, Your Honor.

23 **The Court:** Okay. Please bring in the jury for me.

24 (Whereupon, the jury was brought into open court at
25 4:55 p.m.)

1 **The Court:** Ladies and gentlemen, we appreciate your
2 patience. You may proceed, Mr. Shaffer.

3 **Mr. Shaffer:** The defense rests.

4 **The Court:** We'll reserve motions. Is there any
5 rebuttal testimony from the State?

6 **Ms. Walker:** Your Honor -- Your Honor, may we approach?

7 **The Court:** Sure.

8 (Whereupon, a bench conference was held.)

9 **The Court:** Madam Forelady, ladies and gentlemen, both
10 the State and the defense have rested their cases in chief.
11 We may have a very brief rebuttal witness in the morning. We
12 may or may not; we're not certain at this time. But in any
13 event, after or without that witness, we will then have
14 closing argument and instruction regarding this case.

15 I'm going to excuse you for the afternoon. Please take
16 a strict attention to not expose yourselves to any media
17 accounts about this case. That includes anything that you
18 could read, watch, or listen to. Please don't do any
19 independent research of any type on the internet regarding
20 any issue or matter involved in this case.

21 Guard yourselves, when you return to the courthouse in
22 the morning, not to have any contact with anyone in or about
23 the courthouse. As you well imagine, during this week there
24 have been many witnesses and other participants in this
25 trial. I would not want an innocent conversation to be

1 observed and misconstrued especially at this late juncture of
2 the trial.

3 Please do not make any comments regarding your jury
4 service on any social networking sites. Again, I would not
5 want an innocent conversation to be -- an innocent comment to
6 be misinterpreted. We will resume in the morning at 9:30.
7 If you would leave your notepads in your seats and come
8 directly to your jury room in the morning, and at that time
9 we will resume and conclude this trial on tomorrow. Have a
10 good evening. We'll see you in the morning at 9:30. The
11 gallery needs to remain seated.

12 (Whereupon, the jury was excused from open court for the
13 day at 5:00 p.m.)

14 **The Court:** Okay. Are there any motions now that the
15 defense has rested their case?

16 **Mr. Shaffer:** Yes, Your Honor. We renew our motion for
17 a directed verdict.

18 **The Court:** I can't hear you.

19 **Mr. Shaffer:** We renew our motion for a directed
20 verdict, Your Honor.

21 **The Court:** Does the State have any response?

22 **Ms. Walker:** No, Your Honor.

23 **The Court:** The Court will stand by its previous ruling
24 and deny your motion. Okay. We'll move forward with the
25 charge conference because I don't think the rebuttal witness

1 would affect in any way the Court's instructions in this
2 case.

3 I guess I need to ask preliminarily: There has been a
4 request for lesser-included offenses. Is there any exception
5 to that request from the State?

6 **Ms. Walker:** Yes, Your Honor. I think---

7 **The Court:** Then I'll hear that later on. Yeah, I just
8 needed -- it was going to eliminate some talking if y'all
9 agreed, so I'll get back to that. I will give the jury a
10 general instruction regarding their responsibility and my
11 responsibility, how they're to judge witness credibility and
12 believability. I'll also give them a general instruction
13 regarding prior record of a witness, how that only affects
14 credibility.

15 I will also give an instruction, a limiting instruction,
16 on prior bad acts, that that can only be considered as to the
17 defendant's credibility, and that is in reference to the
18 questions of the defendant regarding having a gun without a
19 license because that would be a prior bad act that is not the
20 subject of a conviction and the jury, of course, cannot
21 convict him based on that prior bad act. I'll give a general
22 instruction regarding expert witness testimony as well as
23 direct and circumstantial evidence from State versus Grippon.

24 I will give general instruction on the charge, the
25 arrest, and the indictment not being evidence as well as on

1 the presumption of innocence. I'll charge Victor versus
2 Nebraska on reasonable doubt. I will give a general
3 instruction regarding how the jury is to judge the statement
4 of the alleged statement -- any alleged statements made by
5 the defendant which is the standard Jackson versus Denno
6 language and the fact that the State must prove that the
7 statement was made freely and voluntarily beyond a reasonable
8 doubt before the jury can consider it.

9 I will instruct on the elements of murder. I will not
10 be instructing malice pursuant to State versus Belcher
11 because the defendant has raised certain defenses, that being
12 self-defense and accident. I'll then instruct the elements
13 of attempted murder which is 16-3-29. Again, I will not be
14 instructing inferred malice because of the defendant raising
15 the defense of self-defense and accident.

16 I'll then instruct on the elements of self-defense which
17 is without fault, contemptuous language. I don't know that
18 really what has been described factually rises to the level
19 of mutual combat, but I probably will instruct it, the next
20 element being imminent danger, the right to act on
21 appearances. There has been no evidence that they had prior
22 difficulties. I may instruct words accompanied by hostile
23 acts based on the defendant's testimony, size and age as well
24 as threats by the victim.

25 **Ms. Walker:** Your Honor, may I ask a question?

1 **The Court:** Give me one second. As well as no other way
2 to avoid the danger as well as increased risk of harm in
3 retreating and the degree of force. I'll also instruct on
4 the elements of accident although technically I really don't
5 think it fits within the ambit of accident, and I'm going to
6 think about it overnight because in order for it to be an
7 accident, you have to be lawfully armed in self-defense which
8 is sort of an interesting way that our case law has
9 articulated that.

10 He has testified - and I'm referring to the defendant -
11 that his act was unintentional, that he had mace in his eyes.
12 He was trying to get his bearings. He was jittery basically
13 and inadvertently pulled the trigger of the gun. He has
14 testified that he was acting in self-defense.

15 I, in all likelihood, probably will instruct accident.
16 I will instruct -- I'll give general instruction regarding
17 there being multiple offenses of which he can be convicted or
18 put on all or none or some combination, and then I will
19 instruct on the form of the verdict.

20 Are there any exceptions to the charge proposed from the
21 State? And then we'll deal with the lesser-included request.

22 **Ms. Walker:** Yes, Your Honor, the self-defense charge.

23 **The Court:** Uh-huh.

24 **Ms. Walker:** I think the defendant testified that he was
25 not -- he heard a gunshot and his body tensed up and the

1 trigger pulled, and then he said on cross-examination, "I was
2 not acting in self-defense or nothing."

3 **The Court:** Well, I think his testimony is twofold:
4 First he testified he thought he was being robbed, so he
5 wanted to leave. So that colored how he behaved and how he
6 perceived things. Then he also testified that it was an
7 accident, that he tensed up and pulled the trigger of this
8 gun and accidentally discharged it.

9 **Ms. Walker:** Yes, Your Honor.

10 **The Court:** I think what you're talking about is the way
11 you argue the facts. I have to charge the jury based on what
12 has been presented factually. So even though -- I mean, you
13 can argue that, well, you know he says it, but he didn't say
14 it. I mean, it's not for me to parse those hairs. I mean,
15 he -- he -- basically his defense is self-defense and
16 accident. Correct?

17 **Mr. Shaffer:** Yes, Your Honor.

18 **The Court:** It's not for me to determine if it's a
19 viable defense.

20 **Ms. Walker:** I understand.

21 **The Court:** I'm not the fact finder.

22 **Ms. Walker:** I understand.

23 **The Court:** Yeah. Are there any other exceptions to the
24 instruction as proposed from the State?

25 **Ms. Walker:** I could have just missed it.. Did we talk

1 about voluntary intoxication?

2 **The Court:** You know what? I have it. Give me one
3 second because I skimmed over it. There was something else
4 that I was thinking about. Give me one moment because I
5 meant to include that, and I apologize.

6 I will include voluntary intoxication. I meant to do
7 that, and I apologize for my oversight.

8 **Ms. Walker:** Yes, Your Honor. And the other charge that
9 we submitted, Your Honor, was the Mouzon malice charge.

10 **The Court:** I have those marked. Well, I was going to
11 have them marked as a Court's exhibit. I thought I gave them
12 to the court reporter to mark as a Court's exhibit. That's
13 standard malice language. It's included in my standard
14 instruction.

15 **Ms. Walker:** Okay. I---

16 **The Court:** If I say it's in my standard instruction,
17 that means that I'm -- that I'm giving an instruction on what
18 the current and prevailing law is.

19 **Ms. Walker:** Okay. I'm sorry, Your Honor. I just
20 wasn't familiar with your standard instruction.

21 **The Court:** Yeah. Well, no, I'm not going to use malice
22 -- I will -- I'll tell you exactly what my malice instruction
23 says. Bear with me one moment.

24 **Ms. Walker:** Okay.

25 **The Court:** Malice is hatred, ill will, or hostility

1 towards another person. It is the intentional doing of a
2 wrongful act without just cause or excuse and with an intent
3 to inflict an injury or under circumstances the law will
4 infer an evil intent. Malice aforethought does not require
5 that malice exists for any particular time before the act is
6 committed, but malice must exist in the mind of the defendant
7 just before and at the time the act is committed. Therefore,
8 there must be a combination of the previous evil intent and
9 the act.

10 And I will instruct that malice may be express. I just
11 will leave out the inferred language which is that -- which
12 is speaking words of -- shown when a person speaks words
13 which express hatred or ill will for another or when the
14 person prepared beforehand to do the act which was later
15 accomplished, for example, lying in wait for a person or any
16 other acts of preparation going to show that the deed was
17 within the defendant's mind.

18 And I need to look back at State versus Belcher, but I
19 believe the inferred malice instruction is still appropriate,
20 that to which refers to the total disregard for human life
21 but not the malice that is implied from the use of a deadly
22 weapon.

23 **Ms. Walker:** Yes, Your Honor. We agree with that.

24 **The Court:** Okay. Are there any other exceptions to the
25 charge as proposed from the State?

1 **Ms. Walker:** One moment, Your Honor.

2 **The Court:** And the State's request can be marked as a
3 Court's exhibit.

4 (Court's Exhibit 5 was marked for identification only.)

5 **The Court:** Yes, ma'am.

6 **Ms. Walker:** Thank you, Your Honor. There was one more
7 -- there was testimony I think on cross-examination of
8 Investigator Holdorf, the lead investigator in this case,
9 about watching the video and seeing the two co-defendants,
10 Ernest and James Bethel, acting in concert with one another,
11 and they are both charged in this case, Your Honor. We'd ask
12 for a hand of one/hand of all.

13 **The Court:** I don't know. You know, I've thought about
14 that. I don't think there's any testimony -- the testimony
15 is that the defendant shot the victim in the head. I don't
16 know that -- I think that it would be appropriate if one of
17 the other co-defendants shot him and we were trying him and
18 not trying them, but in this instance accomplice liability
19 would be more applicable to the co-defendants than to -- I
20 don't know factually that it really is necessary. I'll think
21 about it overnight.

22 **Ms. Walker:** And on the other hand, Your Honor, if you
23 choose not to charge that, can we revisit the amendment of
24 the indictment that strikes "and/or another co-defendant"?

25 **The Court:** I thought we'd already decided that y'all

1 were just going to leave it like it was, but I mean, I'll
2 look. I'll think about it overnight because the testimony --
3 I listened very carefully as the testimony was being
4 elicited, and the testimony basically is that while they may
5 have discussed something, we really don't know whether they
6 were -- the testimony as it stands now from all the
7 eyewitnesses is that the defendant was fairly calm and then
8 out of the blue he put the gun to the back of the victim's
9 head and shot him.

10 **Ms. Walker:** Thank you, Your Honor.

11 **The Court:** Okay. I'll see... All right. Any
12 exceptions to the charge as proposed?

13 **Mr. Shaffer:** Your Honor, the---

14 **The Court:** I can't hear you.

15 **Mr. Shaffer:** I apologize. I had submitted two actual
16 requests to charge. One I didn't have; I apologize, Your
17 Honor. My printer had stopped working right as I was
18 leaving. It's an adverse inference, the last thing I
19 e-mailed you.

20 **The Court:** I got that. Uh-huh.

21 **Mr. Shaffer:** The adverse inference one involves Stokes
22 v. Spartanburg Regional Medical Center.

23 **The Court:** That's a spoliation charge. There has been
24 some debate as to whether spoliation charges are applicable
25 in criminal cases. In this -- and I guess I'm getting a

1 little ahead of the train, but I thought about whether
2 spoliation would be applicable in this case. There really is
3 no testimony that anything was destroyed or lost. There's
4 testimony about how a video was produced, but that's not the
5 same as the stuff...

6 That's -- normally I have contemplated a spoliation
7 charge, but it was in a case where the police destroyed all
8 the evidence before trial, and they basically took pictures
9 of everything and destroyed all the originals when they were
10 cleaning out a locker and couldn't explain why they had done
11 it, before the defense could do their independent tests on
12 the evidence. That's really like a spoliation kind of
13 situation or where something is completely lost and you can't
14 explain, like in a record where, you know, you have a
15 complete medical record but two or three pages are missing
16 and you can't explain why.

17 This is not a spoliation kind of situation. This is a
18 situation about the foundation and the extent of the police's
19 investigation of the matter. There is no testimony that the
20 videos are missing. There's no testimony they can't be
21 found. There's no testimony that it wasn't available to you
22 in discovery, and the testimony is that you got the entire
23 video and, in fact, the entire video has now been admitted
24 into evidence.

25 I think that does not preclude you, however, from

1 arguing that they weren't thorough in their investigation.
2 This is a -- spoliation is one argument. Thoroughness is a
3 -- completeness, thoroughness, whatever word you want to use,
4 but I don't think there's any testimony in the record that
5 rises to the level of a spoliation kind of thing or
6 spoliation (different pronunciation) - as some of my
7 colleagues say - kind of an argument because I haven't heard
8 anything that says it's missing or that they destroyed it.

9 Normally that's why you would have an adverse interest
10 because -- an adverse inference because somebody has
11 destroyed something they think would be adverse to them, but
12 I don't think your client is prejudiced in any way. I think
13 you can argue that, you know, they just weren't thorough in
14 their investigation and there are parts of this video -- the
15 way they picked and choosed (verbatim) how they were going to
16 splice it, but I don't think that's a spoliation kind of an
17 argument.

18 **Mr. Shaffer:** Thank you, Your Honor.

19 **The Court:** You're welcome. Now, your request -- you
20 had a self-defense request. I'm going to use my standard
21 self-request -- self-defense language, and we'll have your
22 instructions -- your requests marked as a court's exhibit,
23 and that included self-defense and accident.

24 **Mr. Shaffer:** Thank you, Your Honor.

25 **The Court:** You're welcome. Paperclip them together for

1 the court reporter.

2 **Mr. Shaffer:** I had requested a defense of others
3 charge.

4 **The Court:** There's no evidence in the record that he
5 was defending anyone.

6 **Mr. Shaffer:** Thank you, Your Honor.

7 **The Court:** Uh-huh.

8 **Mr. Shaffer:** I had requested six, seven, and eight.

9 **The Court:** There's testimony that they thought they
10 were going to get jumped, but there's no -- there's no
11 standard testimony where you are typically defending someone
12 else. His argument was that he was defending himself or that
13 he accidentally shot the gun.

14 **Mr. Shaffer:** Thank you, Your Honor. Six, seven, and
15 eight all involve -- all involve basically someone's right to
16 defend themselves and a -- from excessive force or even---

17 **The Court:** None of this is applicable to this case.
18 This is not an excessive force case. He was not a law
19 enforcement officer. He was someone licensed basically under
20 the S.L.E.D. P.I. security requirements, and the law on self-
21 defense more than adequately covers your client's ability to
22 defend himself. And he was not a law enforcement officer, so
23 this would -- that would not be applicable, and this is not a
24 resisting arrest case. So basically the law you've cited
25 deals with resisting arrest, and that's not what is

1 applicable. I'm referring to six, seven, and then eight also
2 deals with resisting arrest and there is no testimony that a
3 lawful arrest was being effectuated or that a law enforcement
4 officer was involved.

5 **Mr. Shaffer:** Thank you, Your Honor.

6 **The Court:** You're welcome.

7 **Mr. Shaffer:** I appreciate it. And this is a Court's
8 exhibit; right?

9 **The Court:** It sure is. All right. Let's deal with
10 lesser-included offenses. What lesser-included offenses are
11 you requesting, Mr. Shaffer?

12 **Mr. Shaffer:** Certainly involuntary, Your Honor. I
13 think that there might be some evidence -- involuntary under
14 State v. White. Your Honor, I believe that---

15 **The Court:** There is no evidence that he was involved
16 with handling a weapon and accidentally discharged it.
17 Involuntary manslaughter is negligence basically and you kill
18 somebody, but you have to be acting lawfully basically. I
19 just don't think there's any testimony to support involuntary
20 manslaughter in this case.

21 Arguably, there's some testimony to support voluntary
22 manslaughter simply because he claims liberally to your
23 client that he was acting out of heat of passion based on
24 some alleged interaction he had with these other individuals,
25 and I'm not certain it rises to that level either, but I'm

1 going to think about it a little bit.

2 **Mr. Shaffer:** Thank you, Your Honor. Regarding---

3 **The Court:** Give me one second. I apologize. Yeah,
4 they would have to -- and his testimony doesn't support that
5 he took a life in the sudden heat of passion based on
6 sufficient legal provocation. It's sort of a two-edged sword
7 because what he says was that they were -- he thought they
8 were going to rob him basically, that there were some threats
9 exchanged, and words generally do not rise to the level of
10 sufficient legal provocation. I have -- there really -- I
11 don't know that there's any testimony in the record that
12 there was some overt threatening act that produced heat of
13 passion, but again I'm going to think about it.

14 But involuntary manslaughter has to be proven by the
15 defendant unintentionally killing the victim without malice
16 but while engaged in an unlawful activity not naturally
17 tending to cause death or great bodily harm or that the
18 defendant unintentionally killed the victim without malice
19 while engaged in a lawful activity with reckless disregard
20 for the safety of others. I just don't think that the facts
21 in this case support involuntary manslaughter, but I think
22 arguably it could support voluntary manslaughter.

23 **Mr. Shaffer:** And, Your Honor---

24 **The Court:** Uh-huh.

25 **Mr. Shaffer:** Just so I'm protected, I believe that

1 lawfully armed in self-defense -- saying that that's not
2 sufficient negligent handling of a firearm and lawfully armed
3 in self-defense?

4 **The Court:** Lawfully armed in self-defense means you
5 have the license and you have the ability and the right to
6 have a weapon where you had it. I don't think having a gun
7 in a nightclub without a concealed weapon permit -- even if
8 he had one, he still shouldn't have had it in a club. You
9 keep it in your car in the glove box; right? You keep it in
10 your house. I don't think you can bring it into a club and
11 say that you were lawfully armed in self-defense.

12 It's a funny way the case law is written because it's a
13 -- it's a weird kind of a dichotomy the way it's written
14 because it's -- it almost implies that whenever you're acting
15 in self-defense you're lawfully doing it, but at the same
16 time we have a whole set of statutes that deal with firearms
17 and your ability to carry them. And so I don't know that you
18 can honestly in good faith say that you were lawfully armed
19 in a nightclub without a concealed weapon permit and you
20 weren't law enforcement.

21 I'd have to -- I have to roll that one over in my mind a
22 little bit, but I don't -- I don't think it would pass
23 muster. But involuntary manslaughter is really about
24 circumstances where there's negligence and there's an utter
25 lack of malice or a failure of proof of malice, and this case

1 is not -- certainly does not factually support it.

2 **Mr. Shaffer:** Thank you, Your Honor.

3 **The Court:** You're welcome. Are there any other
4 requests for lesser-included offenses other than the ones
5 we've just discussed?

6 **Mr. Shaffer:** And, Your Honor, and I apologize. On the
7 voluntary, are you letting us know tomorrow or are you --
8 have you decided that you are charging it?

9 **The Court:** I can't hear you.

10 **Mr. Shaffer:** With voluntary are you letting us know
11 tomorrow?

12 **The Court:** I'm inclined to instruct it, but I'm still
13 going to think about it a little bit tonight.

14 **Mr. Shaffer:** I understand, Your Honor. I'm doing sort
15 of a PowerPoint, I think. I might---

16 **The Court:** Include it just to be on the safe side.

17 **Mr. Shaffer:** I understand.

18 **The Court:** Because there's no harm, no foul if I change
19 my mind.

20 **Mr. Shaffer:** Thank you, Your Honor.

21 **The Court:** Okay. Is there any other request for
22 lesser-included offenses?

23 **Mr. Shaffer:** Your Honor, for -- regarding assault and
24 battery first degree or the attempted murder charge---

25 **Court Reporter:** I can't hear you.

1 **The Court:** I don't think first degree is considered a
2 lesser-included offense of murder, isn't it?

3 **Mr. Shaffer:** I haven't found a case---

4 **The Court:** Under the new---

5 **Mr. Shaffer:** I apologize, Your Honor.

6 **The Court:** I said under the new omnibus statute, what
7 does it say? Because the omnibus statute articulates what's
8 included and what's considered a lesser-included offense.

9 **Mr. Shaffer:** Your Honor, to be honest with you, I don't
10 think it's actually been ruled one way or another. I think
11 that there's---

12 **The Court:** It's been my experience with omnibus that
13 they say what they consider a lesser-included offense and I
14 -- the last time I read it, it seems that it says exactly
15 what the lesser includeds are within the context of that
16 statute. I'd have to look at it.

17 **Mr. Shaffer:** Thank you, Your Honor, and I'll look at it
18 as well. If I see something, I'll send it---

19 **The Court:** It normally says in omnibus -- it specifies
20 what the lesser includeds are and what's -- in most of them.

21 **Mr. Shaffer:** Thank you, Your Honor.

22 **The Court:** But I -- but since assault and battery --
23 I'm trying to remember what the elements of assault and
24 battery first are. I think clearly this is not an ABHAN
25 case, and I don't think ABHAN would be appropriately charged

1 as a lesser-included offense to murder---

2 **Mr. Shaffer:** And, Your Honor---

3 **The Court:** ---not under these facts.

4 **Mr. Shaffer:** ---I can hand up assault and battery first
5 if you don't have it.

6 **The Court:** No, I have it.

7 **Mr. Shaffer:** Okay. Thank you, Your Honor.

8 **Ms. Walker:** Your Honor, may I briefly? The defendant's
9 testimony was that he never even shot at the victim of the
10 attempted murder, that he was shot, that a gun---

11 **The Court:** I think he's asking for a lesser-included
12 ABHAN of assault. I thought he was asking---

13 **Ms. Walker:** You're asking for that on murder?

14 **Mr. Shaffer:** No. I'm asking---

15 **The Court:** Oh, you're asking for it under the attempted
16 murder.

17 **Mr. Shaffer:** On the attempted murder, yes, Your Honor.

18 **Ms. Walker:** He said he never shot---

19 **Mr. Shaffer:** Even though he -- I think he said that. I
20 think the video could possibly support that. There's
21 certainly -- there's certainly testimony that he did shoot at
22 him.

23 **The Court:** The statute does say that assault and
24 battery first is a lesser included of attempted murder, and
25 that's 16-3-600(c)(3). Now, so now that we've determined

1 that it was statutorily a lesser-included offense, what is
2 your -- he wants to include it. What's your argument against
3 it?

4 **Ms. Walker:** His client said he didn't shoot at him. He
5 said unequivocally no matter how many -- the only thing he
6 was actually consistent about is that he never shot at Kedron
7 Hope, so I guess I'm confused as to...

8 **The Court:** But Kedron Hope says he shot at him.

9 **Ms. Walker:** He does. Yes, Your Honor.

10 **The Court:** Yeah. You've got to look at both sides of
11 the facts and not just what he said. You all might want to
12 argue that he's not credible, that his stories are
13 inconsistent, which I'm sure you will.

14 **Ms. Walker:** That's what he claims.

15 **The Court:** Yeah. Mr. Shaffer, what about the State's
16 contention that your client says unequivocally he never shot
17 at Mr. Hope and, therefore, assault and battery first would
18 not be applicable in this case?

19 **Mr. Shaffer:** I think we need to look at any evidence,
20 and if there's some evidence mitigating malice and intent, I
21 think that there's some indication that that, put together
22 with the video or Mr. Hope's statement, could go down to --
23 to assault and battery first instead of attempted murder.

24 **The Court:** I'll think about it over the evening.

25 **Mr. Shaffer:** Thank you, Your Honor.

1 **Ms. Walker:** Thank you, Your Honor.

2 **The Court:** Go ahead and include it in your
3 presentations on the chance that I decide to instruct it.

4 **Mr. Shaffer:** Thank you, Your Honor.

5 **The Court:** But I'll let you know in advance of closing
6 argument. Okay. We'll resume at -- are there any exceptions
7 to the charge as proposed? From the State or defense?

8 **Mr. Shaffer:** No further, Your Honor...

9 **The Court:** Anything further from the defense -- I mean
10 from the State? I apologize.

11 **Ms. Walker:** Yes, Your Honor. If you are going to
12 include assault -- are considering including assault and
13 battery first degree, would you also consider ABHAN?

14 **The Court:** Isn't assault and battery first degree a
15 complication of ABHAN?

16 **Ms. Walker:** My understanding is that it's not, Your
17 Honor.

18 **The Court:** It's the same elements, isn't it? They're
19 not. I've got to look at it. I'm a little leery. We'll
20 see.

21 **Ms. Walker:** Okay.

22 **The Court:** It's been a long day.

23 **Ms. Walker:** Yes, Your Honor.

24 **The Court:** Why would we include ABHANS? If there are
25 any cell phones on, they need to be turned off, and this is

1 the last time I'm going to announce it. Tomorrow if any
2 cell phones go off, they will be taken and it will be an
3 expensive lesson because it will not be returned. It will
4 become the property of the sheriff's department.

5 **Ms. Walker:** Your Honor, may I give you the statute I'm
6 looking at real quick?

7 **The Court:** What? On ABHAN?

8 **Ms. Walker:** Yes, ma'am.

9 **The Court:** I'm just trying to figure out whether it's a
10 lesser-included offense because one carries a greater penalty
11 than the other. So I'm at a loss as to something would be a
12 lesser-included offense that carried a greater penalty. It
13 would seem to me to be the adverse, that assault and battery
14 of a high and aggravated -- that ABHAN -- that assault and
15 battery first would be a lesser-included of ABHAN but not the
16 other way around.

17 **Ms. Walker:** I'm sorry. I thought ABHAN was a lesser-
18 included of attempted murder.

19 **The Court:** It is, but the way you instruct it wouldn't
20 be that assault and battery third -- it would be attempted
21 murder and then ABHAN and then assault and battery first is
22 the way it would be instructed. Is there any exception to
23 that request by the State?

24 **Mr. Shaffer:** No, Your Honor. If you're going to do the
25 lesser-includeds, I think that we can do the intermediate---

1 **The Court:** So it would be attempted murder, ABHAN,
2 assault and battery first degree.

3 **Mr. Shaffer:** Yes, Your Honor.

4 **The Court:** All right. We'll show y'all the verdict
5 forms in the morning because we've got to work on them a
6 little bit. Is there anything else before we adjourn for the
7 evening? From the State?

8 **Ms. Walker:** Nothing, Your Honor.

9 **The Court:** From the defense?

10 **Mr. Shaffer:** Nothing, Your Honor.

11 **The Court:** Have a good evening. See y'all at 9:30.

12 (Court's Exhibit 6 was marked for identification.

13 Whereupon, the trial concluded for the day at 5:38 p.m. and
14 resumed the following day, November 8, 2013, as follows.)

15 **The Court:** You may be seated. As we discussed on the
16 last evening, the Court will be instructing voluntary
17 intoxication which, as we know, is not a defense to behavior.
18 In addition to that, I have thought over the evening
19 regarding the lesser-included offenses, and on the murder
20 charge I will instruct voluntary manslaughter as a
21 lesser-included offense. However, I will not be instructing
22 involuntary manslaughter as it is not supported by the facts
23 presented in this case.

24 In order to establish involuntary manslaughter, it would
25 have to be established that the defendant unintentionally

1 killed the victim without malice but while engaged in an
2 unlawful activity not naturally tending to cause death or
3 great bodily harm. Clearly the evidence in the record is
4 that malice did exist. There is evidence that he was engaged
5 in an unlawful activity. However, there is no evidence that
6 that unlawful activity would not naturally tend to cause
7 death or great bodily injury or that the defendant
8 unintentionally killed the victim without malice while
9 engaged in a lawful activity with reckless disregard for the
10 safety of others.

11 There is his testimony that he unintentionally killed
12 the victim. However, there is evidence of malice and there
13 is evidence that there is -- there is evidence that he was
14 engaged in an unlawful activity, that being the possession of
15 an unlicensed handgun in the parking lot of a -- of an
16 establishment.

17 On the attempted murder I will instruct the lesser-
18 included offense of assault and battery of a high and
19 aggravated nature and assault and battery first degree from
20 16-3-600(c). I think those were the only things that I told
21 you all I was going to think about over the evening, and I
22 instructed you all to include the lesser-included offenses so
23 that in the event I decided to instruct them, you would not
24 be in a disadvantageous position in preparing your closing
25 arguments.

1 Now, there was one other matter that I meant to deal
2 with on yesterday and neglected to, that being the photograph
3 that was marked for I.D. only of the victim, the color
4 photograph. In light of the testimony of the forensic
5 pathologist and in light of the fact that there really is no
6 evidence of stippling or soot in the picture, I believe that
7 it would be cumulative and that there's already an accurate
8 description from the forensic pathologist as to where the
9 bullet entered the victim's skull and where it lodged itself
10 and as to the mode and manner of death.

11 If there was evidence of stippling or some soot or
12 otherwise in the picture, I may have admitted it because it
13 could conceivably have gone to the element of malice, but
14 since the picture is devoid of that, I don't want to run the
15 risk of inciting the passions or prejudices of the jury and,
16 therefore, it will remain marked as I.D. as there's more than
17 adequate testimony in the record as to the mode and manner of
18 the deceased -- of the victim's death. Is there anything
19 else we need to cover before we get started with closing
20 argument and instruction? From the State?

21 **Ms. Walker:** Yes, Your Honor.

22 **The Court:** Yes, ma'am.

23 **Ms. Walker:** The other outlying matter was the hand of
24 one/hand of all---

25 **The Court:** Oh, I forgot about that.

1 **Ms. Walker:** ---charge.

2 **The Court:** Thank you for -- I guess the question
3 becomes: Does the defense have any objection to that
4 instruction?

5 **Mr. Shaffer:** Your Honor, I think -- honestly I don't
6 see how it's really relevant. I don't think that there's any
7 evidence that he was in any way an accessory.

8 **The Court:** Yeah. See, evidence in this case is that he
9 was the principal actor, not the accessory. So I really
10 don't -- factually, I just don't see what it would address in
11 this case. If the co-defendants were being tried, I think it
12 would be appropriate to instruct hand of one with them, but
13 the direct and circumstantial evidence in this case is that
14 he was the principal actor and that he acted alone in
15 shooting the victim. All the testimony is just out of the
16 blue he put the muzzle to his head and shot him.

17 **Ms. Walker:** Yes, Your Honor.

18 **The Court:** I have not heard any testimony that there
19 was either a tacit or overt agreement to kill him, but even
20 if there were, that tacit or overt agreement really would be
21 relevant to his co-defendants, not to him since he was the
22 principal actor in this case and he's the one that shot the
23 gun.

24 **Ms. Walker:** Can we revisit the amendment then or the
25 amended---

1 **The Court:** I don't think we amended the indictment, did
2 we? I thought we decided it was a moot issue early on.

3 **Ms. Walker:** I think we -- we did, Your Honor. I just
4 want to revisit that since the hand of one/hand of all charge
5 isn't going -- since the hand of one/hand of all charge isn't
6 going to be charged, the attempted murder indictment, Your
7 Honor, does mention a co-defendant.

8 **The Court:** Do you just want to scratch him out?

9 **Ms. Walker:** Yes, Your Honor.

10 **The Court:** Is there any exception?

11 **Mr. Shaffer:** No, Your Honor.

12 **The Court:** Do y'all want to...

13 **Ms. Walker:** We'll take care of that.

14 **The Court:** Okay.

15 **Ms. Walker:** And lastly, Your Honor, just in preparation
16 for my closing, I know, Your Honor, we've been playing the
17 video up here on this screen. There's a smaller screen that
18 I can put down here. Do you mind if I do that during my
19 closing so it will allow---

20 **The Court:** He needs to be able to see what you're doing
21 and I need to be able to see what you're doing.

22 **Ms. Walker:** Okay.

23 **The Court:** And when the lights are down, it's very
24 clear on this screen, I think.

25 **Ms. Walker:** Okay.

1 **The Court:** Yeah, and I also need to be able to see the
2 jury.

3 **Ms. Walker:** I understand. May I approach to get the
4 indictment?

5 **The Court:** Sure. Uh-huh. It's right here.

6 **Ms. Walker:** Thank you.

7 **The Court:** You're welcome. And then we're going to
8 print the -- try to see if you can get them all on one page.
9 We're going to print the verdict form so y'all can look at
10 it.

11 **Ms. Walker:** Thank you. Your Honor? We have a reply
12 witness.

13 **The Court:** Oh, did you find your witness?

14 **Ms. Walker:** Yes.

15 **The Court:** Okay. We'll do that as well.

16 **Ms. Walker:** Okay. Thank you, Your Honor.

17 **The Court:** You're welcome. I just wanted to make
18 sure---

19 **Ms. Walker:** I'm sorry. I forgot to mention that.

20 **The Court:** Because once we get started, we're not going
21 to -- you know, we'll -- well, you'll rest and then I'll
22 reserve motions.

23 **Ms. Walker:** Okay.

24 **The Court:** Well, I don't know; I'll play it by ear.
25 We'll see -- we'll see how it goes. Who is the rebuttal

1 witness?

2 **Ms. Walker:** The EMS...

3 **The Court:** I mean, what is her name?

4 **Ms. Walker:** I'm sorry. Ms. Curran, Esther Curran.

5 **The Court:** C-U-R-I-N or C-U-R-R-I-N?

6 **Ms. Walker:** Let me check.

7 **The Court:** I had it all wrong. I have -- on my list I
8 have C-U-R-R-I-N.

9 **Ms. Walker:** C-U-R-R-A-N. And that's probably my
10 mistake for giving you a misspelling.

11 **Ms. Campbell:** May I approach, Your Honor?

12 **The Court:** Uh-huh.

13 **Ms. Campbell:** The defense has seen it and is okay with
14 it.

15 **The Court:** Any exception to the redacted version?

16 **Mr. Shaffer:** No, Your Honor.

17 **The Court:** And then give us one moment to print those
18 verdict forms so that you all can review them and then we'll
19 move forward with the rebuttal witness.

20 (Pause in proceedings.)

21 **The Court:** Will counsel approach?

22 (Whereupon, a bench conference was held.)

23 **The Court:** Are there any exceptions to the form of the
24 verdict? From the State?

25 **Ms. Walker:** None from the State.

1 **The Court:** From the defense?

2 **Mr. Shaffer:** None, Your Honor.

3 **The Court:** All right. Are we ready to proceed with the
4 State?

5 **Ms. Walker:** Yes, Your Honor.

6 **The Court:** The defense?

7 **Mr. Shaffer:** Yes, Your Honor.

8 **The Court:** Please bring in the jury.

9 (Whereupon, the jury was brought into open court at
10 9:50 a.m.)

11 **The Court:** Ladies and gentlemen, I hope you all had a
12 pleasant and restful evening. We'll now resume with trial
13 testimony. You may -- the State may proceed.

14 **Ms. Campbell:** May it please the Court?

15 **The Court:** Yes, ma'am.

16 **Ms. Campbell:** The State calls Esther Curran.

17 **The Court:** Ma'am, if you would come to the stand to be
18 sworn.

19 Esther Curran, after being duly sworn, testified as
20 follows:

21 **The Clerk:** Have a seat in the witness stand, please.
22 State your name for the record.

23 **The Witness:** Esther Curran.

24 **Ms. Campbell:** Ms. Curran---

25 **The Court:** Please spell your last name for the court

1 reporter.

2 **The Witness:** C-U-R-R-A-N.

3 **The Court:** You may proceed.

4 **Ms. Campbell:** Thank you, Your Honor.

5 **The Court:** You're welcome.

6 Direct Examination

7 By Ms. Campbell:

8 Q. Ms. Curran, where are you employed?

9 A. Richland County EMS.

10 Q. What do you do there?

11 A. I work as a paramedic.

12 Q. And what are your -- what's your training as far as
13 being a paramedic?

14 A. It's approximately a two-year course, classroom as well
15 as technical skills.

16 Q. And are you actually certified as a paramedic here in
17 the State of South Carolina?

18 A. Yes, ma'am.

19 Q. And as a paramedic, what do your duties include?

20 A. I offer -- I provide care, first aid care to sick and
21 injured persons at an A-L-S level.

22 Q. At an A-L-S level?

23 A. Advanced Living Skills.

24 Q. So if I call 9-1-1, are you one of the people that would
25 respond?

1 A. Yes, ma'am.

2 Q. In the ambulance.

3 A. Yes.

4 **Ms. Campbell:** Your Honor, at this time we'd offer her
5 as an expert as a paramedic.

6 **Mr. Shaffer:** No objection and no questions.

7 **The Court:** Without objection?

8 **Mr. Shaffer:** Uh-huh.

9 **The Court:** You may proceed.

10 **Ms. Campbell:** Thank you, Your Honor.

11 By Ms. Campbell:

12 Q. I want to turn your attention back to April the 19th of
13 last year. Did you have -- did you respond to a condominium
14 here in Richland County that morning?

15 A. Yes.

16 Q. And where did you go that day?

17 A. We went towards the back of the apartment complex.

18 Q. Uh-huh.

19 A. And responded to a gentleman who was sitting on the
20 steps of the apartments.

21 Q. And did you later determine him to be a Mr. James
22 Bethel?

23 A. Yes.

24 Q. And had you responded -- had you been dispatched there
25 that morning?

1 A. Yes.

2 Q. And what time was it approximately when you got there?

3 You can refer to your report if you've got it.

4 A. Okay.

5 Q. Or I can provide you a copy.

6 A. We received the call at 4:01, and we arrived on the
7 scene at 4:15 a.m.

8 Q. And when you got there, what condition was the -- Mr.
9 Bethel in?

10 A. He had two wounds that were determined later to be
11 gunshot wounds to his upper back, one kind of to the left
12 shoulder and one more, you know, on the middle of his back.
13 He was in good condition, you know, healthy young adult.

14 Q. And was he conscious or unconscious when you got there?

15 A. Conscious.

16 Q. And, in fact, on your report how do you note his mental
17 state?

18 A. Conscious alert times four which means that he knew
19 where he was, you know, the date, what had happened, and he
20 was able to answer all questions appropriately.

21 Q. And with every patient do you determine what their
22 complaints are?

23 A. Yes.

24 Q. And what was his complaint that day that he needed
25 medical attention for?

1 A. Well, his chief complaint was for the wounds.

2 **The Court:** I'm sorry. Could you please repeat that?

3 **The Witness:** For the wounds on his back.

4 By Ms. Campbell:

5 Q. And did you notice any other wound? And as part of your
6 protocol, do you actually do an examination?

7 A. Yes. We treat the chief complaint, you know, whatever
8 is going to be the most life-threatening. We bandage or, you
9 know, apply pressure as needed, and then depending on the
10 patient's condition, we, you know, are able to do a more
11 complete exam, get vital signs, apply oxygen, and in the row
12 I noticed that he had some abrasions on his extremities.

13 Q. On his extremities?

14 A. Yes.

15 Q. When you say abrasions on his extremities, what do you
16 mean by that?

17 A. That would be small scrapes to hands, legs, arms.

18 Q. And was that consistent with what you understood he had
19 done right before you---

20 A. Yes.

21 Q. ---were called? Did you actually do an examination of
22 his eyes that day?

23 A. Yes.

24 Q. And what did you note about his eyes that day when you
25 did your examination?

1 A. We check for -- we check pupils for reaction to light
2 and to make sure that they're both the same size and equal to
3 rule out, you know, the possibility of head injury. So his
4 pupils at that time were, you know, normal size and reactive.

5 Q. How long have you been a paramedic?

6 A. Approximately three years.

7 Q. And during the course of that time, have you ever
8 treated anyone that's been maced?

9 A. Yes.

10 Q. And can you tell the jury what symptoms are exhibited
11 when someone's maced, in your experience?

12 A. It's been very irritating to the eyes and mucus
13 membranes. They'll have, you know, heavy discharge from the
14 eyes and nose. They're usually spitting a lot. It's very
15 irritating.

16 Q. And typically if someone's been maced, do they make a
17 complaint of that?

18 A. Yes.

19 Q. And in this case in your perusal of the defendant on
20 that morning, did you note any symptoms consistent with him
21 having been maced?

22 A. No.

23 Q. And in your examination of the defendant, did you notice
24 any red spray on his face or on his hands?

25 A. No.

1 Q. If you had noticed those, would you have noted it in the
2 report?

3 A. Yes.

4 Q. Did the defendant ever complain having been maced that
5 day?

6 A. No.

7 Q. What treatment did you render to him there at the scene?

8 A. We applied bandages to his wounds, placed him in a C.
9 collar to -- and put him on a spine board in order to
10 maintain spinal immobilization. We cut his clothes off to
11 expose the area prior to bandaging. We put him on the board,
12 on the stretcher, took him to Richland E.R. for treatments,
13 monitored his vital signs, gave him oxygen via a nasal
14 cannula. I looked to see if I could get an I.V. to give him
15 fluids, but he was -- he had his handcuffs in front and it,
16 you know, obstructed a good I.V. site.

17 Q. Was he able to be successfully transported to Richland
18 Memorial without any further incident?

19 A. Yes.

20 Q. And at any time did his vitals go down or anything of
21 that nature?

22 A. No.

23 Q. When you were able to turn him over to Richland Memorial
24 Hospital, was he still conscious and alert?

25 A. Yes.

1 Q. During the time that he was in the ambulance, were you
2 there with him?

3 A. Yes.

4 Q. And did he ever complain of having been maced or exhibit
5 any symptoms of having been maced?

6 A. No.

7 **Ms. Campbell:** Thank you. I don't have anything
8 further.

9 **The Court:** Any questions for the witness?

10 **Mr. Shaffer:** Yes, ma'am.

11 Cross-Examination

12 By Mr. Shaffer:

13 Q. Good morning, Ms. Curran.

14 A. Good morning.

15 Q. As we heard, you're a paramedic; correct?

16 A. Yes.

17 Q. How long have you been a paramedic?

18 A. Approximately three years..

19 Q. Okay. Are you full-time?

20 A. Yes.

21 Q. Okay. And I imagine you run a good many calls; right?

22 A. Yes.

23 Q. How many calls do you approximately run a day?

24 A. I would say average about five. A busy night would be
25 somewhere -- 13 calls and sometimes we have none.

1 Q. Okay.

2 A. It just depends on the area of the county that we're in.

3 Q. Okay. And during that time period or during your time
4 there at working for EMS, have you -- have you gone to any
5 scenes where people were -- exhibited eye injuries?

6 A. Yes.

7 Q. Okay. Anything from eye injuries related to aerosols?

8 A. Yes.

9 Q. And during that time period -- well, on some of those
10 cases, aerosol isn't always visible; correct? Do you always
11 see it?

12 A. The aerosol in the air?

13 Q. Oh, no. I'm sorry. The aerosol -- you've gone to
14 scenes where patients were -- and treated patients where they
15 had eye injuries due to aerosol sprays.

16 A. Yes.

17 Q. And sometimes it's not always visible; correct?

18 A. Yes.

19 Q. It doesn't have to be caked on; that's what I'm trying
20 to say.

21 A. Yes.

22 Q. Okay. You said something related to: Depending on a
23 patient's condition, you're able to do more of an exam or
24 less of an exam; right?

25 A. Yes.

1 Q. So if someone is having a heart attack and dying, you're
2 not going to sit there and check their eyes; right?

3 A. (Pause.)

4 Q. Are you going to do as full of an exam? I don't know
5 what you're going to do obviously, so...

6 A. It depends on the time that I have them---

7 Q. Okay.

8 A. ---and their condition, whether I'm trying to do rapid
9 things in order to save their life or whether they're more or
10 less in a stable condition with good vital signs; I can do a
11 more thorough exam.

12 Q. Okay. Now, James was shot twice in the back. Mr.
13 Bethel was shot twice in the back; right?

14 A. Yes.

15 Q. Would you characterize those as serious injuries or...

16 A. Potentially serious injuries but his vital signs were
17 good. From what I understand, he had run a ways from the
18 place where he had gotten shot to where we found him, so he
19 was in stable condition.

20 Q. Okay. And were you able to do a full exam on him?

21 A. We were -- I'm not sure what you mean by a full exam.
22 You know, I---

23 Q. Okay.

24 A. ---checked him out. We took off his clothes so that we
25 were able to see, you know, head to toe---

1 Q. That's fine.

2 A. ---any signs of injury. Took his, you know, blood
3 pressure, put on a pulse oximetry, listened for breath
4 sounds, you know, examined -- you know, a visual exam but...
5 So in -- for the purposes of my job, yes, we did a thorough
6 exam.

7 Q. Okay. And on his chest he had -- he had abrasions;
8 correct?

9 A. Extremities, so not -- the arms and legs.

10 Q. Arms and legs had cuts. He didn't have any on his
11 chest?

12 A. Not that I noted.

13 Q. You said the purpose of doing -- checking peoples' eyes
14 is to make sure they don't have a head injury; right?

15 A. Yes.

16 Q. Because people with head injuries, sometimes their
17 pupils are dilated; is that right?

18 A. Dilated. They'll be -- one will be larger than the
19 other. They won't react to light.

20 Q. Okay. And that was primarily why you were checking his
21 eyes; right?

22 A. Yes.

23 Q. Do you know if he had a sinus infection that day?

24 A. No.

25 Q. Okay. He didn't seem to have a runny nose at all?

1 A. No.

2 Q. He wasn't sniffing?

3 A. No.

4 Q. Okay. Do you remember everything about that day?

5 A. No.

6 Q. Okay. You're relying on your report; right?

7 A. Yes.

8 Q. If he was sniffing a lot, would you have -- would you
9 have noted that on your report? If his nose was running,
10 would you have noted that on your report?

11 A. If it was extreme.

12 Q. If it was extreme.

13 A. But if it was, you know, necessary to... But otherwise,
14 no.

15 Q. Okay. What was his chief complaint?

16 A. The wounds to his back.

17 Q. All right. The bullet wounds; right?

18 A. Yes.

19 Q. Was he complaining a whole lot about the scratches on
20 his arms and his legs?

21 A. No, sir.

22 Q. Okay. Did he tell you there were scratches on his arms
23 and legs or did you just see them?

24 A. Per my notes, it was just that I noted that there were.

25 Q. Okay. Did he tell you about a scratch on his hand?

1 A. No.

2 Q. Okay. He was mainly just talking about a -- the bullet
3 wounds on his back; right?

4 A. Yes.

5 Q. And what time did you arrive?

6 A. 4:15.

7 Q. Did you put him under any sort of U.V. light?

8 A. No.

9 **Mr. Shaffer:** No further questions.

10 **The Court:** Any redirect?

11 **Ms. Campbell:** No, ma'am.

12 **The Court:** Any objection to the witness being excused?
13 From the State?

14 **Ms. Campbell:** None from the State, Your Honor.

15 **The Court:** From the defense?

16 **Mr. Shaffer:** None, Your Honor.

17 **The Court:** Ma'am, you're excused.

18 **The Witness:** Thank you.

19 **The Court:** You're welcome. The State may proceed.

20 **Ms. Walker:** Your Honor, at this time the State rests or
21 has no further witnesses.

22 **The Court:** Madam Forelady, ladies and gentlemen, both
23 the State and the defense have rested their cases. The next
24 part of the process is closing argument and the Court's
25 instructions. We're going to take a very brief recess to

1 deal with some very brief matters of law and also give you
2 all an opportunity to use the rest room, as this next part of
3 the process may take a couple of hours, but what we will do
4 is I will gauge and give you breaks in between. I'm not
5 going to hold you hostage and make you sit for two straight
6 hours.

7 We've also arranged to have your lunch arrive
8 approximately by noon so that you will know that as well for
9 your planning purposes. So we'll be out about maybe five
10 minutes, and then we'll resume with closing argument and
11 instruction. Please do not discuss the case during this
12 break and please leave your notepads in your seats. You may
13 go with the bailiffs, please.

14 (Whereupon, the jury was excused from open court at
15 10:01 a.m.)

16 **The Court:** Are there any motions?

17 **Mr. Shaffer:** Your Honor, I just renew the directed
18 verdict motion.

19 **The Court:** Thank you. Any response from the State?

20 **Ms. Walker:** No, Your Honor.

21 **The Court:** The Court will stand by its previous ruling.
22 All right. Can y'all get with the -- have y'all already
23 gotten with the court reporter and made sure all the exhibits
24 are as they should be? Did y'all do that this morning?

25 **Ms. Walker:** We can do that right now.

1 **The Court:** If y'all could do that for me, please.

2 (Pause in proceedings. State's Exhibit 22 which was
3 previously received in evidence is now changed to an exhibit
4 that is marked for identification only.)

5 **The Court:** You may be seated. All right. Is the State
6 ready to proceed?

7 **Ms. Campbell:** The State's ready, Your Honor.

8 **The Court:** Defense ready to proceed?

9 **Mr. Shaffer:** Yes, Your Honor.

10 **The Court:** Are all the exhibits in order?

11 **Ms. Campbell:** Yes, Your Honor.

12 **Ms. Walker:** Yes, Your Honor.

13 **The Court:** All right. Bring in the jury, please.

14 (Whereupon, the jury was brought into open court at
15 10:18 a.m.)

16 **The Court:** Madam Forelady, ladies and gentlemen, both
17 the State and the defense have rested their cases. We have
18 now reached the stage of the trial where we will hear closing
19 argument and the Court's instructions. You will hear from
20 the State, followed by the defense, and then again you will
21 hear from the State.

22 Under our rules of procedure, the State has the right to
23 open and close since they have the burden of proof. So they
24 get the last say, so to speak. I would ask that you give the
25 attorneys your undivided attention. The State may proceed

1 when it's ready.

2 **Ms. Campbell:** May it please the Court?

3 **The Court:** Yes, ma'am.

4 **Ms. Campbell:** Thank you. Good morning. The first
5 thing I want to do on behalf of the State of South Carolina,
6 the citizens of Richland County, and the family and friends
7 of GaWayne Franklin is to thank you for your service in this
8 case. I know on Monday morning when you came to jury service
9 you may have wondered: Am I going to be on a wreck case or
10 what kind of case? And then over the course of this week
11 you've had to listen to some very graphic testimony,
12 unpleasant to say the least. You have paid attention, each
13 and every one of you, and on behalf of the State we want to
14 thank you for that.

15 Now, as the judge just told you, I'm going to have the
16 opportunity to get up here and talk to you a little bit about
17 the law in this case, and then the defense is going to get up
18 here and they are going to present their argument, and then
19 finally, because we have the burden of proof, you will hear
20 from Ms. Walker from our office and she will talk to you
21 about the evidence and what the evidence in this case shows.

22 Now, if I say anything about the law and it's different
23 from what the judge tells you the law is, because it's her
24 responsibility and she is the ultimate person on the law --
25 if I say anything different from her, it's not intentional.

1 You take the law as she gives it to you, after you've heard
2 from all of us, to apply to the facts as you must find them
3 ultimately when you go back to the jury room.

4 Now, you have heard all the evidence that you can
5 consider in this case, and you must base your verdict on the
6 evidence that's been presented to you. It's not on questions
7 by attorneys, fishing expeditions, not on any conjecture or
8 just plain sheer wishful thinking. You must base it on the
9 credible, believable evidence that has come before you. And
10 as the judge will tell you, what is the evidence? The
11 evidence is the testimony, the sworn testimony, from this
12 stand and the exhibits that will go back with you.

13 Now, the roles in this courtroom are defined, and that's
14 for a very important purpose: Because each entity has its
15 own role. The role of the State is to present for you all of
16 the admissible, relevant evidence that is allowed by law.
17 The defense's role is to defend his client. The judge's role
18 is to determine what evidence you are allowed to hear, to
19 rule, to follow the rules of court, and to ultimately
20 instruct you on what the law is, but, ladies and gentlemen,
21 make no exception. The most important role in this courtroom
22 is yours, each of you individually and ultimately
23 collectively, because you must determine what happened back
24 on August the 19th of last year. And luckily in this case we
25 do have a video which helps somewhat, helps a lot, in

1 determining what happened, and then you must apply the law
2 based on the credible, believable evidence.

3 Now, I want to take this opportunity to apologize for
4 anything we've done over the last week if it's offended
5 anyone. At times my questioning has been clumsy, inartful.
6 You have been sent out of the courtroom and then forced to
7 wait out there while we argued legal issues. So if we have
8 done anything to offend you, please don't hold it against the
9 State, against Mr. Franklin's family. It is not intentional.

10 Now, criminal cases are somewhat unique. The burden of
11 proof, as it should be, is on the State of South Carolina to
12 prove this defendant's guilt beyond a reasonable doubt. That
13 is the highest level of proof. In that same vein, because of
14 that, you have heard reference to statements that were taken,
15 to reports that were generated, say, with the D.N.A. and
16 things of that nature. Those are not admissible because the
17 defendant has, as he should, an absolute right to confront
18 each and every witness that comes before him so that you may
19 judge their credibility, whether they have a bias or
20 prejudice, something to gain or to lose. That's in our
21 constitution.

22 So you've heard -- there are no depositions that have
23 come before you. There are no things in that. The only
24 statements that have come before you are statements made by
25 the defendant. So that's the reason that each and every

1 person, be it a doctor, a paramedic, a D.N.A. expert -- they
2 all have to come before you so that you can judge their
3 credibility, and the State has brought before you the
4 admissible, relevant evidence as far as what happened that
5 night.

6 Now, as I stated, the burden of proof is on the State to
7 prove this defendant guilty beyond a reasonable doubt. What
8 does that mean? And our courts have held: Reasonable
9 doubt -- and a simple way to put it is it's the kind of doubt
10 that would make a reasonable person hesitate to act. But our
11 courts have gone a little bit further in defining what is a
12 reasonable doubt.

13 Ladies and gentlemen, very simply the judge will
14 instruct you: Proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced of the defendant's guilt. There
16 are very few things in this world that we know with absolute
17 certainty, and in criminal cases the law does not require
18 proof that overcomes every possible doubt. If, based on your
19 consideration of the evidence, you are firmly convinced,
20 again firmly convinced, of the defendant's guilt, you must
21 find him guilty of the crime charged. If, on the other hand,
22 you think there is a real possibility that he is not guilty,
23 you must give him the benefit of the doubt and find him not
24 guilty.

25 So proof that leaves you firmly convinced. The law

1 recognizes that anyone can doubt anything any time. We don't
2 have to overcome every possible doubt although I submit,
3 ladies and gentlemen, in this case with these facts, with
4 this testimony, we have, but we don't even have to get to
5 that point. The burden of proof is on the State, ladies and
6 gentlemen, and in this case, in this courtroom, with these
7 facts and his actions, that is a burden that we welcome
8 perhaps more than any other case.

9 Now, the judge is going to instruct you on a lot of
10 different areas of law. There are two different indictments
11 that are going to go back with you that you must render
12 verdicts on. You must consider each of those separately and
13 come to a determination, and the two charges very simply in
14 this case, because this is this Mr. Bethel's day in court, is
15 murder and attempted murder, and I want to talk to you a
16 little bit about the elements of those crimes.

17 Murder is perhaps the most heinous offense we have on
18 our law books, in our law, but ironically it has perhaps the
19 shortest definition of any of our statutes. Murder is
20 defined as the killing of any person with malice
21 aforethought, either express or inferred.

22 Now, as I go through this, listen carefully to the
23 judge's charge because she talks to you about some of these
24 terms, and listen carefully because in South Carolina there
25 is murder and she will also instruct you on a lesser-included

1 offense of manslaughter, as is done. Murder is the
2 intentional killing of another with malice aforethought.
3 Listen to the judge when she's talking about murder. She
4 will not say that it has to be premeditated. She will not
5 tell you there has to be a motive although, ladies and
6 gentlemen, in this case the motive is obvious.

7 He was mad. His friends got maced. Nobody was going to
8 do that to his friends. His cousin kept acting out. And
9 GaWayne Franklin, when he got threatened about his own home,
10 had had enough, so he took it to a whole 'nother level. It's
11 the oldest motive in the book. He's out drinking, angry. He
12 kills someone and then runs, as you see on the video.

13 What do these terms mean: The killing of another person
14 with malice? The judge will instruct you as to the
15 definition of malice, and, ladies and gentlemen, I submit
16 this case reeks of malice. The judge will tell you: Malice
17 can be hatred, ill will, or hostility towards another person.
18 It is actually the intentional doing of a wrongful act
19 without just cause or excuse and with an intent to inflict an
20 injury or under circumstances that the law will infer an evil
21 intent. For anyone to get up here and argue that his actions
22 that night were lawful and not evil is ludicrous.

23 **Mr. Shaffer:** Objection, Your Honor.

24 **The Court:** Basis?

25 **Mr. Shaffer:** Outside the scope of the opening.

1 **The Court:** Overruled, but be careful not to argue the
2 facts. Open on the law fully. You may proceed.

3 **Ms. Campbell:** Circumstances that the law will infer an
4 evil intent. It doesn't get any more evil than this.

5 **Mr. Shaffer:** Objection, Your Honor.

6 **The Court:** Basis?

7 **Mr. Shaffer:** The same basis, Your Honor.

8 **The Court:** Overruled. Proceed.

9 **Ms. Campbell:** Thank you, Your Honor. It's defined
10 further because you saw the terms express or implied or
11 inferred; they're used interchangeably. And what does that
12 mean? It doesn't mean two different types of malice. It
13 simply means the way in which malice may be conveyed.

14 Malice aforethought may be express or inferred. These
15 terms "express" and "inferred" do not mean different kinds of
16 malice but merely the manner in which malice may be shown to
17 exist, that is either by direct evidence or by inference from
18 the facts and circumstances which are proved:

19 Express malice is shown when a person speaks words which
20 express hatred or ill will for another or when the person
21 prepared beforehand to do the act which was later
22 accomplished. For example, lying in wait for a person or any
23 other acts of preparation going to show that the deed was
24 done within the defendant's mind would be express malice.

25 In this case, ladies and gentlemen, is there express

1 malice? Look at the actions of the defendant that night.
2 Was he armed? Did he pull the gun out before shooting?
3 Things of that nature are express malice. The law
4 recognizes, however, that typically in cases express malice
5 is most typically if I walk up to another person, look at
6 them and say, "I am going to kill you," and then pull out a
7 gun. That doesn't happen very often in murders, and the law
8 recognizes that.

9 So it goes further. Malice may be inferred from conduct
10 showing a total disregard for human life, and I submit,
11 ladies and gentlemen, as you review that video, this just
12 isn't a disregard for human life; it's an intentional taking.

13 Malice aforethought does not require that malice exist
14 for any particular time before the act is committed but that
15 malice must exist in the mind of the defendant just before
16 and at the time the act is committed. Therefore, there must
17 be a combination of the previous evil intent and the act.

18 Again, look at his actions that night. When he walked
19 over there, had he already pulled out the pistol? Things of
20 that... Malice doesn't have -- and listen carefully to the
21 judge. You will not hear her use the word premeditation. It
22 doesn't have to be a planned event. Malice can be conceived
23 and then, as in this case, executed within seconds. That is
24 our law in this state.

25 Now, the judge will also instruct you in cases that you

1 can consider a lesser included. If you find that this
2 defendant did not act with malice, then there is a lesser-
3 included offense of manslaughter. However, ladies and
4 gentlemen, if you find that this defendant -- we submit it
5 doesn't get any more malicious.

6 **Mr. Shaffer:** Objection, Your Honor.

7 **The Court:** Sustained. Proceed. Stick to the opening
8 on the law.

9 **Ms. Campbell:** Acted with malice. Then that would be
10 your verdict. There may be arguments for a lesser-included
11 offense of voluntary manslaughter. To find voluntary
12 manslaughter, the State must prove beyond a reasonable doubt
13 that the defendant took the life of another in sudden heat of
14 passion based on sufficient legal provocation. Both heat of
15 passion and sufficient legal provocation must be present at
16 the time of the killing to constitute voluntary manslaughter.
17 Both of those elements must be there to negate a murder to a
18 manslaughter: Heat of passion and legal provocation. And I
19 ask you -- I beg you: What legal provocation was there---

20 **Mr. Shaffer:** Objection, Your Honor.

21 **The Court:** Sustained. Proceed.

22 **Ms. Campbell:** Look at the facts. Sudden heat of
23 passion may for a time affect a person's self-control and
24 temporarily disturb a person's reason. The sudden heat of
25 passion must be the type that would make an ordinary person -

1 and we'll get back to intoxication - unable to coolly reflect
2 on his actions and would produce an uncontrollable impulse to
3 do violence. For this to be reduced to a manslaughter, you
4 must find that an uncontrollable impulse to do violence...
5 Sufficient legal provocation must be the type which would
6 make the person of ordinary reason and caution to become
7 enraged and lose control temporarily.

8 The provocation needed for voluntary manslaughter must
9 come from some act of or related to the victim.

10 **Mr. Shaffer:** Objection, Your Honor. May we approach?

11 **The Court:** Yes, you may.

12 (Whereupon, a bench conference was held.)

13 **The Court:** Overruled.

14 **Ms. Campbell:** Thank you. The provocation needed for
15 voluntary manslaughter must come from some act or related to
16 the victim. The law goes further than that in explaining
17 voluntary manslaughter. Even if the victim had -- words
18 alone, however vulgar or insulting, are not enough to be
19 legal provocation. Where death is caused by the use of a
20 deadly weapon, the words must be accompanied by some overt,
21 threatening act which could have produced the heat of
22 passion.

23 The exercise of a legal right, no matter how offensive
24 it is to another, is never sufficient legal provocation to
25 reduce it to voluntary manslaughter. If the heat of passion

1 had cooled or if there was enough time between the
2 provocation, if any, and the killing for the passion of a
3 reasonable person -- and listen carefully to the judge when
4 she instructs you on the law. The standard is of what a
5 reasonable person would do.

6 To cool the killing would not be voluntary manslaughter.
7 In deciding whether a reasonable person would have had enough
8 time to cool off, you should consider all the circumstances
9 surrounding the killing. You may consider the nature of the
10 provocation, if any, the defendant's mental and physical
11 state and the circumstances and relationship between the
12 parties.

13 Those are the two forms of the verdict, besides not
14 guilty, that you will have back there to consider. And all
15 we ask is that you look at the evidence and apply the law and
16 come up with a verdict that speaks the truth. Now, that's on
17 murder.

18 Attempted murder is exactly what it sounds like. The
19 defendant is charged with attempted murder. In order to
20 prove this crime, the State must prove the defendant
21 attempted to kill another person with malice aforethought,
22 either express or implied. So all the concepts I went
23 through with murder apply to attempted murder as far as the
24 definition of malice, as far as aforethought and things of
25 that nature.

1 An attempted murder, as in murder, the law recognizes -
2 and this is important - a specific intent to kill is not an
3 element of attempted murder. Let me repeat that. A specific
4 intent to kill is not an element of attempted murder. There
5 must be a general intent to commit serious bodily injury.
6 Intent means intending the result which actually occurs, not
7 accidentally or involuntarily.

8 Intent may be shown by acts and conduct of the defendant
9 and other circumstances from which you may naturally and
10 reasonably infer intent. Evidence of the character of the
11 act, the character of the instrument used, the manner in
12 which it was used, the purpose to be accomplished, the
13 resulting wounds or injuries may be considered in determining
14 the intent with which the act was committed. Intent may also
15 be inferred when it's demonstrated that the defendant
16 voluntarily and willfully commits an act, the natural
17 tendency of which is to destroy another's life. Kedron Hope
18 was a licensed security guard who had the absolute right to
19 act as he---

20 **Mr. Shaffer:** Objection, Your Honor.

21 **The Court:** Basis?

22 **Mr. Shaffer:** Arguing facts.

23 **The Court:** Overruled, but be very careful---

24 **Ms. Campbell:** Yes, ma'am.

25 **The Court:** ---as far as argument. Stick to the law.

1 **Ms. Campbell:** Look at the actions. The issue in this
2 case are his actions in shooting at Kedron Hope, the victim
3 in this case.

4 Now, again, as in all cases, the charges have lesser
5 includeds that you may consider, and there may be argument
6 that it is only an assault and battery of a high and
7 aggravated nature. So if you find that there was not malice,
8 you may consider the lesser included. A person commits the
9 offense of assault and battery of a high and aggravated
10 nature if the person unlawfully injures another person and
11 great bodily injury to another person results or the act is
12 accomplished by means likely to produce death or great bodily
13 injury.

14 I submit, ladies and gentlemen, shooting a gun is likely
15 to produce great bodily injury. Great bodily injury means
16 bodily injury which causes substantial risk of death or which
17 causes serious permanent disfigurement or protracted loss or
18 impairment of the function of a bodily member or organ. It
19 was the same gun that killed Mr. Franklin.

20 Another lesser included in the assault charge, the
21 attempted murder, is assault and battery first degree. The
22 judge will instruct you: If you do not find that it was
23 attempted murder, you may then consider assault and battery
24 of a high and aggravated nature. If you do not find that
25 those elements were met, you may then consider assault and

1 battery in the first degree.

2 The definition of this is a person commits an offense of
3 assault and battery in the first degree if the person
4 unlawfully offers or attempts to injure another person with
5 the present ability to do so and the act is accomplished by
6 means likely to produce death or great bodily injury. And,
7 again, the great bodily injury is the same definition. I
8 submit, ladies and gentlemen, when you judge his actions that
9 night, this defendant is guilty of attempted murder.

10 Now, the judge will also instruct you that there are
11 various defenses that may or may not have been raised in this
12 case, and the first of those that I want to address is self-
13 defense. Self-defense has elements that the judge will
14 explain to you. The following elements are required to
15 establish self-defense: That he is without fault, in
16 imminent danger, and he had no other way to avoid the danger
17 commonly referred to as the duty to retreat. It's not that
18 he just has to prove one of these to be entitled to a verdict
19 on self-defense.

20 **Mr. Shaffer:** Objection, Your Honor. Burden-shifting.

21 **The Court:** Sustained. He has no burden of proof. It's
22 the State's burden to prove -- to disprove self-defense
23 beyond a reasonable doubt.

24 **Ms. Campbell:** In order---

25 **The Court:** You may proceed.

1 **Ms. Campbell:** Thank you. In order---

2 **The Court:** Ladies and gentlemen, you are to disregard
3 the solicitor's last statement and give it absolutely no
4 consideration in your deliberations. You may proceed.

5 **Ms. Campbell:** Let me restate it. In order to find that
6 the defendant -- his actions must meet all three of these
7 elements. The State must disprove -- and it's the burden on
8 the State to disprove he acted in self-defense, which I
9 submit we have.

10 First, you must find that he was without fault. The
11 defendant must be without fault in bringing on the
12 difficulty. If the defendant's conduct was the type which
13 was reasonably calculated to and did provoke a deadly
14 assault, the defendant would be at fault in bringing on the
15 difficulty and would not be entitled to an acquittal based on
16 self-defense. Let me repeat that. The defendant must be
17 without fault in bringing on the difficulty. If the
18 defendant's conduct was the type which was reasonably
19 calculated to and did provoke a deadly assault, the defendant
20 would be at fault in bringing on the difficulty and would not
21 be entitled to an acquittal based on self-defense.

22 The law goes further. That is just one element in order
23 to find self-defense. Two, imminent danger. The second
24 element of self-defense is that the defendant was actually in
25 imminent danger of death or serious bodily injury or that the

1 defendant actually believed he was in imminent danger of
2 death or serious bodily injury. If the defendant was
3 actually in imminent danger, which I submit he was not, it
4 must be shown that the circumstances would have warranted a
5 person of ordinary firmness and courage to strike the fatal
6 blow, to prevent his death, his own death, or his own serious
7 bodily injury.

8 If the defendant believed he was in imminent danger of
9 death or serious bodily injury - and again this must be from
10 the victim - it must be shown that a reasonable prudent
11 person of ordinary firmness and courage would have had the
12 same belief. In deciding whether the defendant actually was
13 or believed he was in imminent danger of death or serious
14 bodily injury, you should consider all the facts and
15 circumstances surrounding the crime, including the physical
16 condition and characteristics of the defendant and the
17 victim.

18 The defendant has a right to act on appearances, even
19 though his beliefs may have been mistaken. It is for you to
20 decide whether the defendant's fear, if any, of imminent
21 danger or death was reasonable and would have been felt by an
22 ordinary person in the same situation. Words accompanied by
23 hostile acts may, depending on the circumstances, establish
24 self-defense.

25 You can consider the sizes, ages, weights, who is armed,

1 the actual need for force in self-defense and the amount of
2 force needed. Threats by the victim may be considered in
3 considering whether he was or believed he was in imminent
4 danger and, again, threats made by the victim to the
5 defendant.

6 And, finally, that he had no other way to avoid in this
7 case the shooting. Duty to retreat. The final element of
8 self-defense is the defendant had no other probable way to
9 avoid the danger of death or serious bodily injury than to
10 act as the defendant did in this particular instance. Let me
11 repeat that. The defendant had no other probable way to
12 avoid the danger of death or serious bodily injury than to
13 act as the defendant did in this particular instance.

14 The defendant has a duty to retreat. The defendant had
15 no duty to retreat if by doing so the danger of being killed
16 or suffering serious bodily injury to him would increase. A
17 person cannot be required to make an exact calculation as to
18 the degree or amount of force. The defendant has a right to
19 use force needed to avoid death, his death, or serious bodily
20 injury. He has a right to use as much force as appeared to
21 be necessary for complete self-protection and which a person
22 - and, again, remember in all these - a person of ordinary
23 reason and firmness would have believed to be needed to
24 prevent death or serious bodily injury.

25 In considering whether it's self-defense, there's

1 another part of the law which says mutual combat. If the
2 defendant voluntarily participated in mutual combat for
3 purposes other than protection, the killing of the victim
4 would not be self-defense. This is true even if during the
5 combat the defendant feared death or serious bodily injury.
6 However, if, before the killing is committed, the defendant
7 withdraws and tried in good faith to avoid further conflict -
8 remember the facts - then he would be without fault in
9 bringing on the difficulty.

10 For mutual combat, there must be a mutual intent and
11 willingness to fight. The intent is shown by the acts and
12 conduct of the parties and the circumstances surrounding the
13 conduct. In addition, it must be shown that both parties
14 were armed. Remember the facts.

15 The judge will also instruct you and you may consider as
16 far as accident. The defendant has raised the defense of
17 accident. An act may be excused on the ground of accidents
18 if it is shown that the act was unintentional - and, again,
19 look at the victim - that the defendant was acting lawfully
20 and that reasonable care was used by the defendant in the
21 handling of the weapon. And note between each of these
22 there's an "and." Accident -- if it's shown that it was
23 unintentional and that the defendant was acting lawfully and
24 that reasonable care was used by the defendant.

25 The burden is on the State to prove beyond a reasonable

1 doubt that the act was not an accident but was caused by the
2 negligence and carelessness on the part of the defendant in
3 the handling of an dangerous instrumentality. We must prove
4 it was negligent or careless on the part of the defendant in
5 the handling of the dangerous instrument or by unlawful
6 activity by the defendant, that's if you believe that's true.

7 Now, in considering all this - and I'm finishing up -
8 the judge will also instruct you as far as in this case about
9 voluntary intoxication on the part of the defendant, Mr.
10 Bethel. Voluntary intoxication is never an excuse for a
11 defense to a crime. A person who voluntarily renders himself
12 intoxicated is no less responsible for his acts while in such
13 condition.

14 If a person voluntarily drinks intoxicating liquors or
15 takes drugs and becomes intoxicated and if while in that
16 condition commits an act which would be a crime if it had
17 been committed by a sober person, the fact of drunkenness or
18 intoxication does not relieve the intoxicated person from
19 responsibility.

20 Very carefully: When a person becomes intoxicated and
21 then commits a crime, they are just as responsible. That is
22 not a defense. It is not an excuse. It does not mitigate
23 the crime.

24 Now, the judge is going to tell you there are different
25 types of evidence you can consider when reaching your

1 verdict, and basically there is circumstantial evidence and
2 direct evidence. What is direct evidence? Very simply,
3 ladies and gentlemen, direct evidence is the testimony of a
4 person who asserts or claims to have actual knowledge of a
5 fact such as an eyewitness. You've heard from many
6 eyewitnesses in this case.

7 Circumstantial evidence, however, is proof of a chain of
8 facts and circumstances indicating the existence of a fact.
9 In this case we've had D.N.A. testimony. The law makes
10 absolutely no distinction between the weight or value to be
11 given either direct or circumstantial evidence nor is a
12 greater degree of certainty required of circumstantial
13 evidence or direct evidence.

14 You should weigh all the evidence in the case. After
15 weighing all the evidence, if you are not convinced of the
16 guilt of the defendant beyond a reasonable doubt, you must
17 find him not guilty. If, on the other hand, you are
18 convinced of the defendant's guilt beyond a reasonable doubt,
19 then you must find him guilty. Look at all the facts---

20 **Mr. Shaffer:** Objection, Your Honor.

21 **Ms. Campbell:** ---and all the circumstances.

22 **The Court:** Basis?

23 **Mr. Shaffer:** May we approach?

24 **The Court:** Yes.

25 (Whereupon, a bench conference was held.)

1 **Ms. Campbell:** Consider all the facts and circumstances.
2 Now, you have also heard from a series of witnesses who claim
3 to be experts, and the judge -- you heard them qualified as
4 experts. Certain people who have certain training or
5 education in fields are then allowed to come before you, and
6 then they're qualified by the Court. They are allowed to
7 give an opinion.

8 You consider their credibility the same way you do any
9 other witness. Do they have a basis for knowing what they
10 know? Are they consistent with the evidence? Do they have a
11 bias or a prejudice? They are allowed to give opinions only
12 because they have special training. You heard from the
13 D.N.A. expert, from the paramedic, things of that nature, and
14 that's why they were allowed to give opinions.

15 Finally, ladies and gentlemen, the last thing I want to
16 talk to you about is credibility. This case boils down to
17 credibility because you have heard two very different
18 versions of events. Believability. Credibility. Listen
19 carefully to the judge. Does the witness have a bias or a
20 prejudice? What is their demeanor like? Are they forthright
21 or hesitant? Does their testimony change while they're
22 testifying? Does their testimony change from prior
23 statements? Is their testimony consistent with the physical
24 evidence that's found at the scene? Is their testimony
25 corroborated by other witnesses? Those are all factors.

1 The judge will tell you you can believe one witness
2 against many. Many against one. You can believe part of
3 what a witness says, some of what a witness says, none of
4 what a witness says or all of it; it's totally yours.

5 The defendant has no burden in this case. The burden is
6 on the State of South Carolina. He chose to put up a case.
7 Once he puts up a case, you judge the credibility of his
8 witnesses the same way you do the State's. That's all we ask
9 for.

10 After you have heard from us, after the judge has
11 instructed you on the law, you will be asked to go back there
12 and individually, each of you, and ultimately collectively
13 the 12 of you, must reach a verdict, a unanimous verdict.
14 All 12 of you must agree. Verdict comes from the Latin
15 phrase veredicto, and very simply it means to speak the
16 truth.

17 All the State asks on behalf of this victim is to hold
18 Mr. Bethel responsible for his choices, his decisions, and
19 reach a verdict that speaks the truth. Hold him responsible
20 for his choice to murder, for his choice to attempt a murder
21 on that night. Thank you.

22 **The Court:** Does anyone need to go to the rest room? Is
23 everyone comfortable? The defense may proceed.

24 **Mr. Shaffer:** Thank you, Your Honor.

25 **The Court:** You're welcome.

1 **Mr. Shaffer:** If I can just have a second to set up.

2 **The Court:** Certainly.

3 **Ms. Campbell:** Your Honor, may I move these boards while
4 he's getting ready?

5 **The Court:** Certainly.

6 **Mr. Shaffer:** Good morning, everyone. I want to
7 apologize a little bit for the way I hadn't set up. You
8 notice I've been using their computer the whole time, so it
9 took me a second.

10 I'm going to talk to y'all a little bit more than I've
11 talked to y'all all week, and I'm going to try to make it
12 short because I've been trying to make things quick for you,
13 but it's sort of important that I get a chance to go ahead
14 and tell y'all everything I was going to say.

15 When I originally planned on doing in this opening
16 (verbatim) statement, I had planned on going through all the
17 State's evidence that they put up. I actually considered
18 getting my big, old binder over there, getting a trash can,
19 going through it and throwing away the stuff that doesn't
20 matter. I didn't do that because it's a little overly
21 dramatic and this case isn't about how long we've been here
22 or what the State presented or what they didn't present.

23 I mean, it really is about what they did or did not
24 present, but it's not about, you know, whether they
25 overkilled the case. A lot of times I hear -- hear

1 solicitors say things like: "Well, the defense attorney is
2 just trying to muddy the water." Well, the opposite side of
3 that is bombarding you with so much evidence that it's almost
4 hiding the parts that don't have evidence to support it.
5 Okay? And I'm talking about evidence; I'm not talking about
6 theory. Okay?

7 And that's sort of what I don't want to happen in this
8 case because it is Friday afternoon or it is Friday and I
9 don't want y'all being here Friday afternoon thinking, "It's
10 Friday afternoon. We want to go home. Let's just quickly
11 make a decision without looking at everything." And that's
12 part of the reason that I didn't object a whole lot all week
13 long because I said, "Hey, I'm not going to slow things down
14 because I really don't want y'all here Friday afternoon and
15 Friday evening," because juries -- Friday afternoon juries
16 tend to think that they need to go ahead and make a decision
17 real quick and move on.

18 What I want you to do -- and I've never done a
19 PowerPoint presentation before a jury before. In fact, they
20 tell you not to do it. They tell you it's a bad idea in all
21 the little schools they go to to teach us how to do closing
22 arguments. They say it's an awful idea because generally you
23 end up, you know, not connecting with the jury and not --
24 just not doing a very good job. You end up stumbling around,
25 and I'm a little bit of a bumbler anyway, so I apologize if I

1 sound like I'm repeating myself.

2 But in this case I'm going against traditional wisdom
3 and I'm going to do a PowerPoint presentation because really
4 this case is about the evidence that's presented, inferences
5 from that evidence, reasonable inferences from that evidence,
6 and, you know, what is -- what has not been presented. And I
7 told y'all originally that what hasn't been presented is
8 evidence of malice, and I'm going to explain that a little
9 more in a second, but there's a whole bunch of evidence
10 that's presented that James Bethel killed GaWayne Franklin, a
11 whole bunch of evidence of that.

12 That's why, you know, obviously we said in opening
13 statement that we don't object. That's why I didn't really
14 cross-examine a whole bunch of the forensic people because of
15 the fact that we're not disputing the fact that he killed
16 him, but like I told y'all in my opening statement, not every
17 killing is a murder. Okay? Murder: You have to have
18 malice. And I told y'all that's what y'all were here to look
19 for is the malice.

20 Now, I'll go ahead and get to my PowerPoint presentation
21 because apparently I've already gone through a couple of
22 slides, and it's probably why they tell you not to do
23 PowerPoint presentations because you skip over stuff. I just
24 bought this today, and apparently it doesn't work.

25 Like I said, you're here to look for malice. This is

1 one of the slides that I probably could have skipped over,
2 but what y'all didn't hear about is voluntary manslaughter.
3 Y'all didn't hear about that in the opening statement because
4 lesser-included offenses, generally you can't talk about them
5 until later on once the evidence has been presented on point.

6 Lesser -- voluntary manslaughter is sort of an
7 interesting thing because what it does: It says the law
8 recognizes that in certain situations there are certain
9 things that can happen that people just get mad, beyond mad,
10 really, really, really angry, and it says that if you act on
11 those angers based off of some provocation -- if you're
12 provoked in some way and you act on that that is not murder.
13 It negates malice. It takes away malice.

14 So even if there's evidence that you would think was
15 malice, in that situation the law says that takes away the
16 malice. Okay? Ms. Campbell had mentioned that it negates
17 malice in her statement because that's exactly what it does
18 because it's not that you're out looking for evil. It's not
19 like you're out trying to be evil. What you're doing is you
20 were provoked in some way and you got really, really angry,
21 and it was reasonable because a person in a similar situation
22 would have gotten really, really angry.

23 That's what voluntary manslaughter is. There's two
24 things: Heat of passion and legal provocation. And in this
25 situation voluntary manslaughter might be a pretty attractive

1 -- an attractive option for the jury. I don't think -- I'll
2 tell y'all later why I don't believe he's guilty of voluntary
3 manslaughter, but it certainly does seem to fit a lot of the
4 facts in this case. Okay?

5 And the reason I say that is that something happened.
6 Something happened that turned James at 3:35:08 from the man
7 sitting there in the picture saying, "Calm down" -- something
8 happened in less than a minute and then he shot someone.
9 Something happened to him whenever he was off camera and then
10 he shot someone. I don't know what it was, but he doesn't
11 look very malicious there. He seems pretty calm there. He
12 seems like he's a peacemaker.

13 The club manager testified he was the peacemaker that
14 night. He was helping him keep them calm. He wasn't trying
15 to start something, but something happened to him that caused
16 him to go from that to really, really angry, and someone got
17 shot later.

18 Legal provocation. Now, Ms. Campbell showed y'all one
19 of her signs, and it said, "Words alone are not enough to
20 produce legal provocation." She's right. Words alone are
21 not, and in that case or a lot of cases that say that, the
22 next line is, "Words accompanied by a hostile act are enough
23 for legal provocation."

24 As you see in this picture -- and I know that y'all
25 couldn't see the video. It didn't come off that good. Y'all

1 get to see it more clearly whenever y'all are back there.
2 You'll get to see the full copy of the video, not the one
3 that was shown. There's also another copy. Well, I say it's
4 full, but really there's an hour missing out of it, but it's
5 more full than the hylon (phonetic) reel as I refer to it.

6 But you see there in this picture GaWayne Franklin doing
7 what? He's in James Bethel's face. James testified he said,
8 "Y'all little N's are going to make me have to kill you."
9 That would make me mad. That would make me mad.

10 **Ms. Walker:** Objection, Your Honor.

11 **The Court:** Basis?

12 **Ms. Walker:** Opinion.

13 **The Court:** I'm going to give him a little latitude.

14 Overruled, but stay within the lines, Mr. Shaffer.

15 **Mr. Shaffer:** Thank you, Your Honor.

16 **The Court:** You're welcome.

17 **Mr. Shaffer:** This is the club. Do you see over there?
18 That's the entrance door. That's where you see the camera
19 over it, and that's where they're entering and exiting the
20 building. Okay? Down here is the ramp that we've been
21 talking about this entire time.

22 Remember what Mr. Richardson said. When they came
23 outside on the balcony, GaWayne Franklin went this way down
24 the ramp -- I mean, not down the ramp. Down the porch. He
25 leaped over the porch rail, excuse me - climbed over it, to

1 fight them.

2 Now, in the opening statement the State said he was just
3 doing his job. That was the theme of the opening statement
4 from the State, but he wasn't just doing his job. He was
5 trying to fight somebody; his own friend testified to that.
6 The guy had known him for I think eight years who was there
7 beside him ready to fight these guys with him. They
8 testified he was going to go fight somebody.

9 This right here is inside the lobby right before they
10 left. Notice what James does whenever he gets in his face.
11 And hold on a second; I'll point that out in a second.

12 James goes down the ramp. GaWayne just went on the
13 porch to the right; so did Mr. Richardson. But notice what
14 James did whenever he got in his face. Did y'all see it? He
15 turned to the manager and started asking the manager. He
16 testified why -- I was asking him why are we getting kicked
17 out? He was just trying to figure out what's going on. Some
18 guy got in his face, yelling, and put his finger in his face,
19 and that's only part of it.

20 After doing that, after leaving and going down the ramp,
21 where did Mr. Franklin jump? At the end of the ramp. He
22 jumped down there looking for a fight at the end of the ramp.
23 That is a hostile act. For someone who is saying, "Calm
24 down; let's leave," that is a hostile act. That, along with
25 the threat, along with the other threats that they said were

1 going back and forth, that is legal provocation.

2 Now, I wanted to show y'all this. Notice this. They
3 look like they're about to fight. Mr. Richardson testified
4 that they were about to fight. There's pepper spray on the
5 ramp, so why would the bouncers go try to fight them in the
6 ramp? They're going to go fight in the parking lot. They're
7 not escorting them to their car because they're inside
8 security and they don't do that. They're not supposed to.

9 And y'all saw on the video where -- where the manager,
10 Frederick Simpkins, said that he didn't see it even though
11 before he was standing outside until seconds before the
12 shooting. Literally three or four seconds before the
13 shooting he was standing outside, but he didn't see anything.
14 I wonder why. Could it be because he doesn't want his
15 employees out there fighting or doesn't want to admit that
16 his employees were out there fighting?

17 I'm going to take this a little bit out of order just
18 based off of something that came up. So I'm going to skip
19 ahead a couple of slides and then I might come back. Okay?

20 Okay. What I want to do is talk to y'all again about
21 heat of passion. That's circumstantial evidence of heat of
22 passion. Y'all heard about circumstantial evidence. The
23 State just indicated that the law draws no distinction
24 between the two.

25 You didn't hear James Bethel testify that he was mad,

1 but I think there's circumstantial evidence of it because
2 something happened. James, who was calm and the peacemaker
3 that night, the guy who was keeping the other guys in line,
4 went from that to that. I think there is a whole bunch of
5 circumstantial evidence that he was acting under the heat of
6 passion based off of that provocation.

7 Once again, voluntary manslaughter is something that
8 under certain circumstances -- the law says under those
9 circumstances, acting under heat of passion with legal
10 provocation -- legal provocation meaning -- can mean words
11 associated with hostile acts. Under those circumstances, it
12 negates malice; it takes it away. It's a situation where
13 people get very, very angry. A reasonable person would get
14 angry in that situation.

15 I submit to you that if you were minding your own
16 business, trying to be sort of the leader of the group and
17 making sure everyone else stayed in line, and someone gets in
18 your face, threatens you and whenever you say, "Calm down,"
19 and you try to leave and they block your path---

20 **Ms. Walker:** Objection, Your Honor. May we approach?

21 **The Court:** You may.

22 (Whereupon, a bench conference was held.)

23 **The Court:** The objection is sustained. You may
24 proceed.

25 **Mr. Shaffer:** I like to think I'm a reasonable person.

1 If someone did that to me---

2 **Ms. Walker:** Objection, Your Honor.

3 **The Court:** Sustained. Ladies and gentlemen, you are to
4 disregard counsel's last comment and give it absolutely no
5 consideration in your deliberations. Be careful not to ask
6 the jury to put themselves in someone else's shoes, Mr.
7 Shaffer.

8 **Mr. Shaffer:** Thank you, Your Honor.

9 **The Court:** Stick to the facts.

10 **Mr. Shaffer:** I believe that that situation is
11 sufficient legal provocation and would cause a reasonable
12 person to act under the heat of passion which negates malice.
13 That's probably why they told me not to do closing statements
14 through PowerPoint because I have a hard time transitioning
15 and then I jump ahead. So I apologize once again. If I seem
16 like I'm repeating myself or the slides are repeating, that's
17 probably why.

18 Whenever you're back there, please just ask yourself
19 what -- ask yourself this: Did the man you see at 3:35:08
20 appear to have malice in his heart? Now, the State also
21 talked about on the attempted murder charge -- I apologize.
22 There's a lesser-included offense. There's two. One I think
23 is completely inapplicable: The ABHAN charge. I think it's
24 completely inapplicable in this situation, but there's
25 another one called assault and battery first degree. I guess

1 this is sort of -- these lesser-includes of attempted murder
2 are basically where you don't have malice but you have an
3 assault or someone was in fear. Okay? So it's similar to
4 that.

5 If you find that James shot Mr. Hope without malice and
6 acting under heat of passion without malice basically, if you
7 find that, then y'all can consider assault and battery in the
8 first degree. Why would he do that? Maybe -- maybe he was
9 provoked; maybe he got pepper-sprayed. And I know there's
10 been a lot of back and forth about pepper spray. There's
11 been a whole lot back and forth about pepper spray. Who
12 peppered spray who? Did more than one person have pepper
13 spray out there? Y'all heard a whole bunch about pepper
14 spray.

15 It doesn't really matter who sprayed who. James said
16 that he got sprayed. Pepper spray is an aerosol; it's a
17 mist. Y'all heard people say that.

18 And I doubt very seriously that it was as contained as
19 Mr. Hope said. Mr. Hope said, oh, I spray them from the
20 chest and then move up to their eyes. I don't know -- I
21 don't know about what happened that night, but common sense
22 says that somebody is going to be moving around. Common
23 sense says if you're getting pepper-sprayed, you're not going
24 to be standing still. People move. It's in the air. It's a
25 mist. People get second-hand pepper spray.

1 I assure you that the Court would not have allowed me to
2 have sprayed this in here because people would have felt it;
3 people would have tasted it. Even if it didn't get on their
4 face, even if the U.V. dye didn't cover their face, people
5 would have felt it. If you're five feet away from somebody
6 getting pepper-sprayed on a five-foot-wide ramp, at the most
7 five feet wide -- two people can walk down it. If you're --
8 if you're right there behind him---

9 **Ms. Walker:** Objection, Your Honor.

10 **The Court:** Basis?

11 **Ms. Walker:** Golden Rule.

12 **The Court:** Sustained.

13 **Mr. Shaffer:** What's that?

14 **The Court:** Sustained.

15 **Mr. Shaffer:** Okay.

16 **The Court:** Do not ask the jury to put themselves in
17 someone else's shoes.

18 **Mr. Shaffer:** If James Bethel is on a ramp and they're
19 pepper-spraying on that ramp, the other people who are five
20 feet away from him, he's at least going to get a taste of it.
21 He's at least going to feel it. Why does that matter? It
22 might not, but it might go to negate the attempted murder
23 claim.

24 Now, I know that the -- you just heard a witness this
25 morning -- the rebuttal witness was saying that he never

1 mentioned anything about mace and he didn't have, you know,
2 seepage from his eyes or anything like that. If you look at
3 the video, she also said that he wasn't sniffing or anything
4 like that throughout the night. If you look at the video, he
5 definitely had something going on because he keeps -- he
6 keeps wiping his nose constantly throughout the night. You
7 can see it clearly in the lobby.

8 This clip -- the clip that I showed you didn't show it
9 very well, but if you back up, which you can do because
10 you're going to have the full copy of the video, you'll be
11 able to back it up. Look at it and see that and see that he
12 is sniffing. She didn't note that. She didn't note the
13 scratches on his chest, you know, and furthermore, if I have
14 two gunshot wounds to the back, I don't think I would be
15 complaining about my eyes burning.

16 So I don't really see where it's that strong of an
17 argument that, oh, yeah, he would have -- he would have said
18 his eyes were burning. He could have gotten it on his hands.
19 He could have wiped his face with it which is basically what
20 he said happened. But I certainly don't think that if I was
21 -- had two gunshot wounds to the back that my primary
22 complaint would be the pepper spray.

23 Now, I know what you're saying: He didn't say he was
24 mad. There's circumstantial evidence that he was mad. Y'all
25 might find that it was more likely that he was mad, but my

1 client testified that he was not mad. Okay? I had a long
2 talk about that and I thought about that a lot, and I saw the
3 two pictures and I said something must have happened, but he
4 testified that he wasn't mad but, instead, it was an
5 accident. And accident is something that the State -- well,
6 the State must disprove beyond a reasonable doubt... They
7 have to say that that was not an accident.

8 There's two charges here, and as the judge will charge
9 you later, he's entitled to verdicts of both from you
10 individually which means both of -- you have to look at the
11 evidence individually and say whether he met the burden of
12 each of those charges. And while I'm on that topic, you
13 know, he's entitled to each and every one of your opinions on
14 each one of those topics, you know.

15 And like I said, accident is a complete defense which
16 means if you find that accident applied to one of the
17 charges, you have to find him not guilty of that charge. If
18 you think it applied to another charge, you have to find him
19 not guilty of that charge. The same with self-defense. You
20 have to apply them to either charge. Okay?

21 As y'all all know, we freely admit -- James freely
22 admits he shot him but said that it was an accident. And I
23 want y'all to say -- you know, the State's going to have
24 their theory. The State's going to have their theories about
25 the evidence, intent, and all this other stuff, but I want

1 y'all to look at this evidence and we'll look at it -- we'll
2 first look at it for the murder charge. Then we'll look at
3 it secondly for the attempted murder charge. Okay?

4 One thing that I thought was important -- Your Honor,
5 could we dim...

6 **The Court:** Uh-huh.

7 **Mr. Shaffer:** One thing that I thought that was
8 important about Investigator Holdorf's testimony is that
9 he -- he said if you slow down the video and you look at it,
10 you see details that you wouldn't have seen otherwise.
11 That's one thing that I ask all of y'all to do is really look
12 at the video. Look at it slowed down. Look at the details
13 and look at what it actually shows. And this is probably the
14 full-speed version. I have a full-speed version and a slower
15 version for y'all in the slide to view.

16 Now, James almost walks past Black. That's what he
17 testified to, which is supported by the video. He testified
18 that he heard a shot and that he flinched and accidentally
19 fired the weapon. Now, it's up to y'all to determine whether
20 or not that's correct but -- or whether or not that that
21 raises a reasonable doubt, but I want y'all to see the video
22 again in a slower fashion.

23 (Mr. Shaffer plays the video in a slowed-down manner.)

24 That's a question for y'all. Did James fire twice at
25 Black? To be honest with you, I'm not sure. I wasn't there.

1 I'm looking at a video the same as y'all are. Kedron Hope
2 said that he fired at least two -- that he fired between two
3 and three shoots at Black and I think shots at him and
4 something like seven shots all in all.

5 I want y'all to look for those shots while you're on the
6 video, when y'all are watching the video. And I'm going to
7 show this to you again in a second and let you tell me or,
8 you know -- well, of course, y'all get to think about whether
9 or not he actually fired two shots at Black.

10 If he only fired once, look at what everyone is doing
11 when you see the second shot. Everyone is starting to duck.
12 If he fired twice, why can't we visibly see the first shot as
13 well as the second one? These are questions.

14 Now, like I said, you have to look at these offenses on
15 each charge, and there are separate facts for each charge
16 obviously. You're going off of the statement of Mr. Hope who
17 said that he fired seven times in all, two to three times --
18 or six to seven times in all, two to three times at Black and
19 then a whole bunch of times at him. He said that the camera
20 indicates that he also said that as soon as he shot back, he
21 was bounding backwards for like ten feet firing at him. I'm
22 going to let y'all see whether y'all think that is the
23 correct version of the facts.

24 (Mr. Shaffer plays the video again.)

25 I want you to keep your eyes on James. Now, some of

1 y'all might have seen a flash as he was running. I'll show
2 you a little bit closer view of it. Some of y'all might have
3 seen that. There's a flash there and it's dark shadows, so
4 it's hard to see, but if you keep your eyes on James, are you
5 sure that's where he is right there? I'll let y'all watch it
6 again.

7 (Mr. Shaffer plays the video again.)

8 Now, a little bit later I'm sure the State is going to
9 point out that later on in the video there's more flashes up
10 this way, but if you listened to Mr. Hope's testimony and if
11 you look at the physical evidence, Mr. Hope fired a lot of
12 times. He had a ten-round clip that he had to empty, pick --
13 get another magazine, reload and start firing some more.
14 They found a ton of shell casings out there. Two .380's.
15 One was found later by Mr. Hope. The police didn't find one
16 of them at the scene. One was found at the scene. One was
17 found there and a whole bunch of .40 calibers from Mr. Hope's
18 gun.

19 Now, if you listened to his testimony, listen --
20 remember back and don't take my word for it. Remember back
21 at his testimony. When did he say he was firing all those
22 shots at him? He said they would be visible on the camera.

23 Now, there's shots up here later on, but he was saying
24 that he was shooting them before then. He said that he went
25 around Food World and that he kept firing at him, and

1 honestly those shots later on were probably from Mr. Hope's
2 gun. Watch him. Watch Mr. Hope. You can individually do
3 it. If you look at the larger C.D., the larger video - I
4 guess it's Court's (sic) Exhibit 157 - you can -- you can see
5 the entire thing.

6 There's over an hour of video on there, on each camera,
7 and you can look, and I haven't viewed that particular copy.
8 I know my copy was available for playing. You can go frame
9 by frame by frame and watch what happened, and if that's
10 available in that copy, I would highly suggest you do that.

11 What does that have to do with accident or the attempted
12 murder charge, the flash? What does James being there and
13 the flash being over there have to do with the attempted
14 murder charge and the accident? That doesn't appear close
15 enough for him to be shooting the gun. But y'all have the
16 video; y'all can judge for yourself.

17 These are the questions you should probably ask
18 yourself. How many -- how many shots did you see James fire
19 versus Kedron? How many shell casings were found at each
20 gun? I think you'd be hard pressed to say that there were
21 seven shots that you can say were fired or six shots or
22 anywhere close to that that you can say were fired from that
23 .380

24 And the ultimate question regarding this, regarding the
25 attempted murder charge and everything else underneath it,

1 the ultimate question of the attempted murder is: Are you
2 firmly convinced that James Bethel intentionally shot at Mr.
3 Hope?

4 Now, self-defense. Self-defense. You're going to hear
5 about self-defense. They must disprove self-defense beyond a
6 reasonable doubt. We have no burden of proving it. We have
7 no burden of putting up evidence to say it was self-defense
8 as long as they dis -- I mean, but they have to disprove it
9 essentially. Okay?

10 And I will be real quick on this. James did say that he
11 wasn't acting in self-defense, but there's a legal definition
12 of self-defense. And y'all do -- as part of your charge, the
13 judge is going to instruct you that you can consider whether
14 there's evidence of self-defense and whether the State has
15 disproved those elements.

16 The thing you need to ask yourself first is: Did James
17 cause the problem or cause the difficulty? I don't believe
18 he did. Then: Was he in danger or did he believe he was in
19 danger? If I was on that ramp---

20 **Ms. Walker:** Objection, Your Honor.

21 **The Court:** Sustained. Preponderance of the evidence.

22 **Mr. Shaffer:** James was on a ramp; he was trying to
23 leave. And GaWayne Franklin jumped over that ramp, jumped
24 over that deck to the bottom of that ramp, ready to fight.
25 For y'all to decide whether or not he was either in danger or

1 believed he was in danger, then it's also for y'all to decide
2 whether a reasonable person would have believed that.

3 Finally, of course, whether he could have avoided the
4 difficulty without getting hurt basically or without
5 incurring greater injury because the duty to retreat is a
6 duty as long as you're not going to incur greater injury by
7 doing it. The judge will tell you you have no duty to
8 retreat if you're going to incur greater injury, and that's
9 the law you have to consider because there is evidence in the
10 record and the judge is going to charge you to consider it.

11 Now, I didn't take up too much of y'all's time this
12 week; I tried my best not to. I'm normally the person who
13 objects all the time. Most judges who I try cases in front
14 of---

15 **Ms. Walker:** Objection, Your Honor.

16 **The Court:** Basis?

17 **Ms. Walker:** Outside of the facts of this case.

18 **The Court:** I'm going to give him a little latitude.
19 It's anecdotal. You may proceed.

20 **Mr. Shaffer:** Thank you, Your Honor.

21 **The Court:** Uh-huh.

22 **Mr. Shaffer:** Normally, I'm the person who is objecting,
23 but I didn't because I wanted to maximize the amount of time
24 that y'all had to look at this evidence - there's a lot of
25 evidence here - to look at the video, to look at frame by

1 frame of the video. I want you to look at the evidence and
2 not the theory. That's why I'm not up here, you know --
3 that's why I'm using the PowerPoint versus just talking to
4 y'all and trying to sway y'all, not that I think that I
5 could, but, I mean, that's why I'm using the PowerPoint is so
6 y'all can see the evidence and not my theory of it, just what
7 I see in the evidence.

8 Ask yourself: Did they actually prove to you that he
9 acted in malice? It's the primary concern with both of the
10 highest charges that he's charged with. Are y'all firmly
11 convinced that with both of them he acted with malice?

12 Finally, it's your job to look at the evidence and make
13 decisions only if you're firmly convinced, only if you don't
14 have a reasonable doubt. Your job isn't to feel sympathetic.
15 It's not to rule with your heart; it's to rule with your
16 head. So look at the evidence and not theories and make a
17 determination. Thank you.

18 **The Court:** Madam Forelady, ladies and gentlemen, I'm
19 going to give you a very brief rest room break. During the
20 break, please do not discuss the case, and please leave your
21 notepads in your seats. As soon as you're done using the
22 rest room, knock on the door and let the bailiffs know and at
23 that time we'll resume argument.

24 (Whereupon, the jury was excused from open court at
25 11:51 a.m.)

1 **The Court:** We'll be at ease for about five minutes,
2 after which we'll resume argument.

3 **Mr. Shaffer:** Thank you, Your Honor.

4 (Whereupon, a short break was taken.)

5 **The Court:** Make sure that anyone that plans to be in
6 the courtroom is in the courtroom. The jury has sent me a
7 note saying that all the movement is distracting to them, so
8 we're going to lock the doors because anybody that's not in
9 here when we start, they're not going to be able to come in
10 or leave.

11 (Pause in proceedings.)

12 **The Court:** The jury is finding all the movement in and
13 out of the courtroom distracting to them. So there will be
14 no more movement in and out of the courtroom. If anybody
15 needs to excuse themselves, you need to excuse yourself at
16 this time. You will not be allowed to return. Of course, if
17 someone has an emergency and needs to go to the rest room,
18 you'll be allowed to do that, but there will not be this
19 constant movement in and out of the gallery.

20 **Mr. Shaffer:** Your Honor?

21 **The Court:** Yes.

22 **Mr. Shaffer:** If necessary, can I go back over there?

23 **The Court:** Oh, yeah. That doesn't apply to you.

24 **Mr. Shaffer:** Okay.

25 (Court's Exhibit 7 was marked for identification only.)

1 Whereupon, the jury was brought into open court at
2 12:04 p.m.)

3 **The Court:** Ladies and gentlemen, we'll now resume
4 argument. You may proceed when you're ready.

5 **Ms. Walker:** May it please the Court, Your Honor?

6 **The Court:** Yes, ma'am.

7 **Ms. Walker:** Good afternoon. Ms. Campbell talked about
8 jurors anticipating their jury service and what type of cases
9 they may be called to serve on. And as y'all are
10 anticipating jury service, we are anticipating the types of
11 defenses that can be used in a case like this.

12 How do you defend executing a man on videotape? How do
13 you defend being the murderer when everybody points you out
14 as the man who walked behind the victim in the case and shot
15 him in the back of the head? How do you defend that when
16 it's on videotape and there are multiple defenses? How do
17 you defend executing a man who is at work providing for his
18 family, trying to do his job? How do you defend the
19 indefensible?

20 And over the course of this week, it became clear that
21 the defense utilized in this case is the defense of
22 evolution: I wasn't there. I don't know what you're talking
23 about. I was never at Mr. Lucky's. And when caught on tape
24 at Mr. Lucky's where this defendant says he wasn't, oh, it
25 was an accident, and if it wasn't an accident, it was self-

1 defense. And if it wasn't either one of those things, then
2 maybe it was voluntary manslaughter or maybe it was something
3 else. I'm still not certain on where the final maybe is.
4 It's the defense of evolution, evolving his story to fit the
5 facts as they came out before you.

6 **Mr. Shaffer:** Objection, Your Honor. Burden-shifting.
7 I don't have any burden.

8 **The Court:** Please approach.

9 **Mr. Shaffer:** Thank you.

10 (Whereupon, a bench conference was held.)

11 **The Court:** As long as she argues the facts. You may
12 proceed.

13 **Ms. Walker:** Thank you, Your Honor.

14 **The Court:** You're welcome.

15 **Ms. Walker:** Evolving his story to fit the facts.

16 Before I go any further, there was something that Mr. Shaffer
17 said during his closing argument that stuck out to me. He
18 said that during that minute where you don't see the
19 defendant, something had to have happened to him but that he
20 didn't know what it was.

21 The defendant took the stand; he testified. All Mr.
22 Shaffer had to do was ask him: What happened to you during
23 that missing minute? That question was never asked I submit,
24 ladies and gentlemen, because there was nothing that happened
25 to him when you don't see him on the video camera. And the

1 very last question that Mr. Shaffer asked his client was: Is
2 there anything else you need to add? Is there anything else
3 you need to tell this jury because I want to make sure you
4 have a complete opportunity to tell your side of the story.
5 The answer that that defendant gave when asked that question
6 was no. There was nothing that happened on that missing
7 minute because if there was, he would have said so at that
8 point in time. He's evolving his story to try to fit the
9 facts of this case.

10 But as his story evolved, it changed from minute to
11 minute, from question to question in an instant. Well,
12 that's the funny thing about the truth is that the truth
13 doesn't change. The truth doesn't evolve. The truth doesn't
14 morph itself from: "I wasn't there" to "If I was there, I
15 acted in self-defense, and if you don't believe that because
16 I snuck up behind a man and shot him in the back of the head,
17 then it was an accident," and I'll get to all of those
18 momentarily to tell you how those are ridiculous and don't
19 apply to the facts of this case.

20 But if that was the truth, the truth in November of 2013
21 should be the same truth in August of 2012. The truth simply
22 doesn't change that much.

23 I have an opportunity, as Ms. Campbell talked to you
24 about the law of this case, to talk to you about the facts of
25 this case, not different theories thrown into a PowerPoint,

1 not snippets of a video or a still picture of James Bethel,
2 but the facts as they came from that witness stand and
3 through this evidence that you will have an opportunity to
4 take back in the courtroom (sic) with you. We called
5 witnesses to the stand who were there that night, who had
6 something to add to the presentation of the facts of this
7 case, and I want to talk to you about those witnesses and
8 what they said.

9 The first witness I want to talk to you about is Trevor
10 Holt. He was on the stand for awhile, and he was the crime
11 scene investigator that went to the different areas and found
12 the jeans and the money and the shell casings and tracked the
13 defendant's path from where he murdered the victim in this
14 case, GaWayne Franklin, all the way to the

15 . And what he told you was that he found that
16 there were two shell casings found at the scene that matched
17 the .380, the gun the defendant was using, two shell casings,
18 not one as the defendant would lead you to believe that he
19 fired in an accident but two shell casings: One found
20 immediately almost after the murder and one found by Kedron
21 Hope in a puddle of water after it dried up.

22 One of the shell casings was secured by this yellow
23 sign. The other one Kedron Hope told you was found in this
24 puddle once the water dried up and it could be visible. Two
25 shell casings which corroborates -- and corroboration is key

1 in this. Did the witnesses corroborate each other? The
2 witnesses who were there that night that said that the
3 defendant fired two, maybe three times, that's corroborated
4 by the two shell casings that are found right there where the
5 defendant fired the gun.

6 Two shell casings were found, and after canine went on a
7 track, he was led to a place where clothes were, those jeans
8 and the shoes that the defendant was wearing that night that
9 he left in a ditch but not because he was trying to change
10 his appearance because he had just committed a murder in
11 front of a club full of people but because Kedron Hope chased
12 him into some bushes and told him to take his pants off?
13 Does that make sense or does that fly in the face of reason
14 and sensibility?

15 And I want you to listen to the 9-1-1 tape because you
16 can hear the things that Kedron is saying to the defendant.
17 He's telling him to stop running, to get down, to show
18 himself. At no point does he ever say anything about taking
19 his clothes off. Why would he? That doesn't make sense, but
20 when your story is evolving so that you can make what you've
21 done fit the facts of the case, you have to come up with a
22 reason, no matter how ridiculous and absurd it is. Listen to
23 the 9-1-1 tape. At no point does Kedron Hope ever tell James
24 Bethel to take off his clothes.

25 Trevor Holt also found the money, the over a thousand

1 dollars that was found in the defendant's pockets that he got
2 from selling his car. Those things were all there together
3 in the ditch that the defendant left his clothes in as he was
4 trying to change his appearance so that law enforcement
5 wouldn't be able to tie him to the murder.

6 You heard from other crime scene experts like Shawn
7 Schroder who went and got the projectile from the autopsy and
8 Timothy Lee who processed the car and found the defendant's
9 other gun which is State's Exhibit 76 and Franklyn Rainsford
10 who, along with some of these other crime scene
11 investigators, went back over the crime scene to look for
12 additional shell casings.

13 Do you remember the testimony that they -- on gravel and
14 pavement they bounce around and it's hard to see them so they
15 went back over again to go see if they could find them? And
16 they were unsuccessful in that. They were also unsuccessful
17 in finding the gun that the defendant hid while he was
18 running away.

19 **Mr. Shaffer:** Objection. Facts not in evidence.

20 **The Court:** Please approach.

21 (Whereupon, a bench conference was held.)

22 **The Court:** The objection is withdrawn. You may
23 continue with your argument.

24 **Ms. Walker:** Thank you, Your Honor.

25 **The Court:** You're welcome.

1 **Ms. Walker:** That the defendant hid while he was running
2 away, another way to try to distance himself from this
3 execution that he just committed. Neither that gun was found
4 -- and they told you they did that repeatedly because they
5 didn't want a random gun floating around the community.

6 You heard from a crime scene investigator, Anna
7 Cavanaugh, and she told you that she went and she
8 photographed the defendant while he was in the hospital and
9 that she removed the bags from his hand so she could do a
10 G.S.R. kit on him. And for the first time today we heard
11 something about a sinus infection and how his nose was
12 running and that he was wiping his nose the entire time he
13 was in the club and that's on video. But, ladies and
14 gentlemen, I submit that there are multiple reasons someone
15 could be wiping their nose while they were in that club, the
16 least of which is a sinus infection. But on State's Exhibits
17 17 and 20 he talked about his runny nose, how his nose was
18 constantly running. Where? It's not there.

19 She talked about putting -- it being the standard
20 procedure to put bags on the hands of defendants so that any
21 evidence that may be on their hands is preserved as they're
22 being transported. If you remember when Kedron Hope
23 testified, he talked about the dye that comes out of the mace
24 can being red in color. When it gets on you, it's red. When
25 you wipe it off your face, it gets red and it's on your

1 hands. And his hands were bagged, both his left and right
2 hand.

3 There's no red in this here that would have been wiped
4 off from his hands in the bags that were used to preserve
5 evidence because he wasn't maced. His own friends that he
6 called to the stand -- and bless their hearts; they tried.
7 They couldn't even get them on the same side of the deck
8 where the mace came from. His friends were maced - they
9 admitted that - but they couldn't tie him to the mace, as
10 much as they tried, and I'll get to the credibility of his
11 friends in a little bit.

12 Mr. Shaffer said we spent a lot of time in proving that
13 the defendant was the person who shot Kedron Hope -- shot at
14 Kedron Hope and shot and killed GaWayne Franklin and we did.
15 We spent a lot of time doing that because we have to identify
16 this defendant as the killer because, remember, he originally
17 wasn't even there. So that's why we brought in experts like
18 Dr. Gray Amick, the D.N.A. expert, who could tie those
19 clothes that were being shed as the defendant was running to
20 the defendant through his D.N.A.

21 We brought in Dr. Durso to talk about the cause of
22 death: A gunshot wound to the back of the head. That kind
23 of flies in the face of self-defense, doesn't it? You are so
24 afraid of someone -- you are so scared that they are about to
25 hurt you that you sneak up behind them. And I'll -- we'll go

1 over the video again, but they never see you coming and shoot
2 them in the back of the head? That's not self-defense. That
3 is sneaking up on a man and killing him in cold murder, cold,
4 hard murder.

5 Malice? It doesn't get more malicious than walking up
6 to a man, putting a gun a foot from his head and pulling the
7 trigger. That's not self-defense. That's murder.

8 And the ballistics expert talked to you as well. She
9 talked about the projectile from the brain of GaWayne
10 Franklin being consistent with the shell casings that were
11 found on the crime scene, those .380 shell casings.

12 In addition to those witnesses, you heard from
13 investigators with the sheriff's department, Steven (sic)
14 Faust and Travis Holdorf. Steven (sic) Faust is the one that
15 testified that he made contact with the defendant at the
16 hospital, read him his rights, and after doing so the
17 defendant said he was robbed in Apple Valley.

18 When it was pointed out to him that he wasn't found in
19 Apple Valley, he evolved his story to match where he was
20 found. I was robbed by the condominiums. And when it was --
21 I think he was confronted with the fact that he was on video
22 at Mr. Lucky's that night, and the thing that made it
23 interesting to me is that he's not familiar with that area of
24 town. He doesn't know anything about Apple Valley. It was
25 the first time he was at Mr. Lucky's, despite the mother of

1 his child working there. It was the first time that he had
2 been in the condominium complex but that he could tell you it
3 was exactly seven minutes to get from Mr. Lucky's to Apple
4 Valley and that he could, in all of the haste of that night,
5 find his way around a church into that condominium complex
6 where his best friend's mother's friend just happened to live
7 and knock on that door. But he's not familiar with that side
8 of town because he doesn't go over there. It was the first
9 time he'd been there.

10 One of the last witnesses we put up was Investigator
11 Holdorf, and he was the lead investigator in the case and he
12 talked about all the avenues and angles that they took in
13 order to try to investigate what happened at Mr. Lucky's that
14 night. And when he got in there, this defendant's
15 co-defendant and cousin was on the scene and told him that
16 his name was Ernest Belton. He gave him a fake name, that it
17 was only after other people arrived on the scene that he was
18 able to make the connection between this defendant and his
19 co-defendant, Ernest Bethel, that the cousins that were with
20 the defendant, the female cousins as well as his male cousin,
21 Ernest, were not cooperative. They denied knowing anything
22 about what happened. That through the course of his
23 investigation he was able to understand the connection
24 between J.J. and Ernest Bethel and that he watched that video
25 over and over and over again. That he also talked to the

1 defendant in this case and the defendant told him, too, that
2 he wasn't at Mr. Lucky's, that he didn't know what they were
3 talking about, that he was robbed and shot in either Apple
4 Valley or by the condominiums.

5 This case really is going to boil down to credibility.
6 Who do you believe? Do you believe the witnesses who were
7 there that night, the experts who came before you and
8 testified, the video that you've seen over and over again and
9 I'm only going to play it one more time or do you believe
10 James Bethel and whichever version of events he decides to
11 come up with at whatever point in time he decides to come up
12 with them? What's corroborated? What makes sense?

13 And when you're looking at credibility, look at the
14 witnesses. Look at Edward and Fred Simpkins who were the
15 managers that night who said that they were trying to calm
16 things down. They didn't want James Bethel to be kicked out
17 at first, that they gave him and his friends opportunity
18 after opportunity after opportunity to comply with the rules
19 of the strip club. How reckless and out of control do you
20 have to be to get kicked out of a strip club? They gave them
21 opportunity after opportunity after opportunity to comply,
22 and finally everyone in there had had enough of their
23 behavior and they were asked to leave.

24 Fred Simpkins identified this defendant out of a line-up
25 as one of the people who was with the crowd causing all of

1 the trouble, but he didn't see the shooting. He didn't come
2 in here and identify he was the shooter. What reason do Fred
3 and Edward Simpkins have to lie and make that up?

4 There were bouncers and security guards there that
5 night. There's armed security guards that are outside who go
6 through S.L.E.D. training and a S.L.E.D. background check to
7 be able to carry the weapons and provide security for Mr.
8 Lucky's through Black Ops Security Service.

9 I beg you to judge their credibility. Is what they're
10 saying corroborated by the other evidence? And I submit to
11 you it is by the forensic evidence with the shell casings
12 that were found, where they were found, and with the video
13 that's on the desk that you've seen.

14 William Ingram. He said he personally gave the crowd
15 two warnings to calm down, to settle down, to quit being
16 rowdy, that he saw GaWayne Franklin kicking them out in the
17 lobby and he said that he saw Black jump over the rail and he
18 saw the defendant jump behind him over the rail. He said he
19 shot -- he saw the guy in the black shirt, the defendant,
20 walk up behind GaWayne Franklin and shoot him twice which is
21 corroborated by the two shell casings.

22 He didn't mention a shot before then nor did any other
23 witness mention a shot before then. The defendant's friends
24 didn't mention a shot before this defendant started shooting.

25 Clinton Brown testified. He said that he saw the

1 defendant walk up behind Black with his hand extended towards
2 Black's head and he heard two shots. David Richardson I
3 think was one of the first security guards or bouncers who
4 testified. He picked this defendant out of a line-up as the
5 shooter, pointed him out in this courtroom as the shooter,
6 said that it was Ernest Bethel who said, "I know where you
7 live," and at that point Black is like, "I'm right here. You
8 don't have to go to where I live." Threaten the man's
9 family? I know where you live? I'm right here. You don't
10 have to go to where I live. And then you see on this video
11 Ernest Bethel walk in front of Black as he's turned around to
12 face them and this defendant in an act of cowardice as much
13 as malice walks up behind him and shoots him in the back of
14 the head while his cousin has his attention.

15 Judge David Richardson's credibility. One of the last
16 security guards that we had on the stand was Rodney White who
17 testified yesterday. He said that he saw the defendant walk
18 up behind Black and shoot him. That's all very consistent.
19 They can't get away from that. It's on video, that Black
20 never saw it coming, that the defendant then shot at Kedron
21 Hope and Kedron returned fire.

22 And finally Kedron Hope who testified, who you heard on
23 the 9-1-1 call, that he sprayed mace at two of the guys that
24 were being kicked out because they wouldn't leave, but you
25 see them kind of refuse to leave when they're walked out of

1 the lobby and on to the deck and they all congregate there
2 and look back into the lobby when they're refusing to leave,
3 that at that point he sprayed mace on two of them, mace that
4 he's been trained to spray starting from the chest and
5 working his way up to the face, trained to do that by the
6 South Carolina Law Enforcement Division, and that's what he
7 did that night. And he was very adamant that he sprayed two
8 of them, neither of whom was the defendant.

9 And then as he was walking down, he saw GaWayne Franklin
10 get shot in the back of the head, and instead of doing what
11 everybody else did and running for cover, trying to hide, he
12 chased after the murderer. There should be a Kedron Hope on
13 every street corner in America. And when he was doing that,
14 shots were fired back at him and Kedron returned fire.

15 He returned to the scene to tell the police officers
16 what he did that night, and he gave them his gun so that they
17 could do any testing that they wanted to do to corroborate
18 his story and they did, and his story was corroborated by the
19 video and by the shell casings that were found.

20 And as Ms. Campbell said, the defendant had no burden to
21 produce witnesses in this case, but when he did, you judge
22 their credibility the same way you judged the witnesses
23 called on by the State. Curtis Long. And I don't know that
24 if Curtis knew after he got finished testifying that he was
25 about to get thrown under the bus, because they called Curtis

1 Long to the stand and asked him several questions, but the
2 one question that they never asked and that quite frankly we
3 didn't see coming was: When did you give the gun to J.J.?

4 Now, James got on the stand and testified that Curtis
5 gave him the gun at some point in the nightclub, but they
6 never asked Curtis that question. I submit to you, ladies
7 and gentlemen, because it never happened. But he got on the
8 stand and he said that they were at the bottom of the ramp,
9 which completely contradicts Troy Griffin's story that they
10 were at the top of the ramp, and that J.J. was with him the
11 entire time; that when the shots were fired J.J. was beside
12 him on the ramp.

13 This is when it comes into believing nothing that a
14 witness says. He's on a video. He admits to being the
15 shooter. He wasn't with Curtis when the shots were fired no
16 matter how many times Curtis wants to say that. It's just
17 simply not true.

18 And then there was Troy Griffin. I think the nickname
19 is Grip. He was J.J.'s friend from prison. He came in here.
20 He testified that they weren't doing anything wrong, that
21 they were just having fun in the strip club like everybody
22 else, and that when the shots fired they all ran away. They
23 all got into the same car which coincidentally happened to be
24 his baby's mother's car who was coming from the Carriage
25 House and just happened to drive by and pick them up.

1 But that they were all so worried -- Curtis and Troy
2 were both so worried about J.J., about James Bethel, that
3 they called people. They went out to look for him again that
4 night, but the people that they never called were the police.
5 They didn't call the police and say, "Our friend is missing.
6 Shots were fired, and we haven't seen him since." They
7 didn't call the police because they didn't want to implicate
8 their friend in a murder.

9 If they're so worried that they spend all night
10 searching the streets, as Curtis Long said he did, why not
11 get the people who can really help you find somebody
12 involved? That's because they knew what happened that night.
13 They saw their friend walk up behind an unarmed man and shoot
14 him in the back of the head.

15 And then there was J.J., James Bethel, Jr., who
16 testified and, quite frankly, his testimony was all over the
17 place. He left his four children at his mother's house so
18 that he could take his \$2,000 to drive around town from hotel
19 to hotel drinking but that when he left, because the children
20 were at his mother's house, he took his two guns with him and
21 put them in a car where there were more children. Does that
22 make sense?

23 He is so concerned about the safety of the children at
24 his mother's house that instead of leaving them in the locked
25 box that's there, he takes them and puts them in the back

1 seat of a car? Is that reasonable or is this an evolution of
2 his story?

3 Then he testified that he works -- he quit working at
4 Wal-Mart because that was too taxing. So he was working at
5 the tire place on commission or tips and that was where the
6 \$2,000 came from until he said later that he sold his car.

7 And on direct examination when they start talking about
8 the shots that were fired at Kedron Hope, he said that the
9 gun fell and then shot at Kedron, but then on cross-
10 examination when Ms. Campbell was asking him about that, he
11 said: I never said that the gun shot when it fell. This is
12 a man so intent on misleading you that he won't even admit
13 that Ciroc is vodka. He won't even tell the truth about
14 that.

15 And then, as Mr. Shaffer said, we were in for a big
16 surprise. As he told you in the opening that there was
17 something you were going to hear that was going to be a
18 surprise and that you would know it when you heard it, that
19 he wasn't trying to change his appearance, that Kedron Hope
20 for some reason, while they were exchanging gunfire, thought
21 it was a bad -- thought it would be a good idea to have the
22 defendant take his clothes off. That was surprising to us
23 because it doesn't make sense.

24 There were a lot of decisions made by a lot of different
25 people that night. Kedron Hope and GaWayne Franklin made the

1 decision to go to work to provide money for their families.
2 J.J. Bethel made decisions. He made the decision to arm
3 himself. He made the decision to ride around town drinking,
4 with guns in the car, with children in the car. He made the
5 decision to go to Mr. Lucky's. He made the decision to go
6 walking in and out of the club once -- once to go get a
7 bottle of vodka when he already had a bottle of vodka inside
8 of the club.

9 And as you notice, after he goes to the car, he starts
10 walking around with his hand on his pocket because he'd
11 gotten a gun out of the car and taken it illegally into the
12 strip club. He made the decision that night to go into that
13 strip club with that gun. He made the decision that night
14 that he wasn't going to allow himself and his friends to get
15 kicked out of a place where he was spending money, that he
16 wasn't going to be disrespected like that.

17 He made the decision after, according to all of the
18 witnesses, GaWayne Franklin jumped over the rail, to jump
19 over the rail and follow him and to shoot him in the back of
20 the head. Those were his decisions and no one else's, and if
21 that wasn't enough, he made the decision then to shoot at
22 Kedron Hope. James Bethel's decisions.

23 But James Bethel wants you to believe that he is the
24 victim in this case, that he was bullied, that he was being
25 picked on for no reason, that people were - and to quote him

1 - hating on him. Why? Out of all of the 75 people that were
2 in the strip club that night, everybody decided to have a
3 beef with him for no reason?

4 He wants you to believe that he was the victim of an
5 unwarranted macing attack, that he had no other choice but to
6 walk behind the victim in this case and shoot him in the back
7 of the head in what was either, depending upon which one is
8 going to get him off of this, an accident or self-defense.
9 And the things Mr. Shaffer said -- Your Honor, may we turn
10 the lights down?

11 **The Court:** Uh-huh.

12 **Ms. Walker:** He said that there was no malice, that
13 there was no malice, that J.J. wasn't angry.

14 (Ms. Walker plays the surveillance video from the strip
15 club.)

16 **Ms. Walker:** I want you to watch this video because at
17 this point he's having a conversation with Mr. Simpkins and
18 Curtis. He's in the lobby. He'd already been told that he
19 couldn't go back to the private room again, and he said he
20 went out to ask the manager why.

21 He's having a conversation with Mr. Simpkins, and his
22 friends - his cousin and co-defendant - Ernest Bethel is
23 inside of the strip club as is Grip, and at some point inside
24 of the strip club -- and Investigator Holdorf testified that
25 where the dancers are, there are no cameras. So that's not

1 captured on video.

2 Inside of the strip club, it becomes apparent that it is
3 time for his friends to leave, and that's Ernest in the
4 yellow, the one that just jumped up and clapped his hands,
5 and his 16-year-old cousin whom he took to the strip club
6 with him that night. And here comes Black and he's talking
7 to Grip. They're being exited out the door, but who gets in
8 whose face? Don't look at the still video; look at the
9 moving picture. It's -- and they're pulling him away.
10 That's not anger? That's not ill will? That's not malice?
11 Watch that when you go back there.

12 The victim in this case is talking to someone else and
13 it's the defendant. Don't look at the still picture because
14 that's misleading. That video where you see the defendant
15 get between James Bethel - I'm sorry - get between GaWayne
16 Franklin and Grip -- and it's the defendant who is pointing
17 his finger in James Bethel's -- in GaWayne Franklin's face.
18 That's malice. That's anger. That's ill will. That's what
19 leads to murder.

20 And then Mr. Shaffer is right: There is a portion where
21 you don't see the defendant on tape, and he says he doesn't
22 know what happened. When his client took the stand, all he
23 had to do was ask him. I'm sorry. Beg the Court's
24 indulgence while I get to the right point. And as the
25 bouncer is leading this crowd, who have been told repeatedly

1 to calm down, off of the balcony, look. There's GaWayne,
2 there's Grip, and here comes Ernest in the yellow shirt. And
3 you see how many people surround him, and the defendant or,
4 I'm sorry, the victim moves his body to face them.

5 James Bethel walks up behind him and kills him. The
6 question that Mr. Shaffer asked you is: Why do you only see
7 one flash? That's a good question. You see one flash
8 because Mr. Franklin was standing. You couldn't see the
9 flash. The first shot was behind his head; you couldn't see
10 that. But to show you how much of a -- how much malice there
11 was and how much this wasn't an accident, he shoots him again
12 as he's going down to the ground. That flash you see is the
13 second shot. That's when people start running.

14 And when J.J. testified, he testified that he's maced,
15 so he gets his gun out and he's walking with it beside his
16 side. And then he hears a gunshot which instinctively causes
17 him to raise the gun at Mr. Franklin's head and pull the
18 trigger in either an accident or self-defense, depending upon
19 whichever one you guys want to work (verbatim) for, and pull
20 the trigger.

21 Notice when people start running though. No one starts
22 running until he starts shooting. If there was a phantom
23 gunshot that no one else testified to, not even his friends,
24 don't you think they would have been running before those
25 shots were fired by the defendant? There was no gunshot.

1 That is the evolution of his defense.

2 I have to explain how I ended up shooting the man in the
3 back of the head, so I'm going to say I raised the gun and
4 then I heard something and it made me jerk and I shot him in
5 the back of the head, the unluckiest man in the world, if
6 that's true, but I submit to you it's not. His own friends
7 didn't even testify about a gunshot before he started
8 shooting.

9 This is going to be a case in which you believe one of
10 two things. You believe it happened the way you see it
11 happening, the way the witnesses testified that it happened,
12 the way the forensic evidence corroborates that it happened,
13 or you believe J.J. Bethel, because both can't be true.
14 You're either going to believe William Ingram and Fred and
15 Edward Simpkins and Kedron Hope or you're going to believe
16 J.J. Bethel.

17 But if you get back there in that jury room and you
18 believe your own eyes and you believe the witnesses that
19 testified before you, then hold him accountable. Hold him
20 accountable for his actions that night and find him guilty.

21 If, on the other hand, you believe one of the five, six,
22 seven or eight versions of the story that he testified to in
23 about an hour and a half, find him not guilty. Let him go.
24 Give him his money back. Give him his shoes back. Give him
25 back all of his belongings and let him go.

1 The only thing that we want you to do is look at the
2 evidence, judge his credibility, judge whether or not it's
3 corroborated, and if you are firmly convinced of this
4 defendant's guilt that he shot and killed GaWayne Franklin
5 and that he shot at Kedron Hope, find him guilty. And,
6 ladies and gentlemen, I submit that the evidence in this case
7 is overwhelming.

8 Trust what you've heard, after judging its credibility.
9 Trust your eyes after you get back there and watch the tape.
10 Hold James Kevin Bethel, Jr., accountable for his actions on
11 August 19th of 2012. Return two guilty verdicts: One for
12 the murder of GaWayne Franklin and one for the attempted
13 murder of Kedron Hope. Thank you very much.

14 **The Court:** I need you to take that down, please.

15 **Ms. Walker:** I'm sorry, Your Honor.

16 **The Court:** During this trial, ladies and gentlemen, you
17 and I have certain duties to perform. As the trial judge, it
18 is my responsibility to preside over the trial of this case,
19 and I also have the duty to rule upon or pass upon the
20 admissibility of evidence that has been offered during this
21 trial. You are to consider only the competent evidence
22 before you, and you are to disregard and disabuse from your
23 mind any testimony or otherwise that I've ordered stricken
24 from the record in this case during the progress of this
25 trial, if there has been any. You are to consider only the

1 testimony which has been presented from the witness stand,
2 together with any exhibits which have been made a part of the
3 record in this case and any stipulations there may have been
4 made into the record by counsel.

5 I have the additional duty to charge or to instruct you
6 on the law applicable to this case. As the presiding judge,
7 I'm the sole judge of the law of this case, and it is your
8 duty as jurors to accept and apply the law as I now state it
9 to you. If you have a preconceived idea as to what the law
10 is or what the law ought to be in a case or in this case and
11 it should not agree with what I now tell you the law is, you
12 are obligated under the oath which you have taken to abandon
13 this preconception on your part because you are sworn to
14 accept the law and apply the law precisely as I now state it
15 to you.

16 In every case in this court tried before a jury, the
17 jury becomes the sole and exclusive judges of the facts in
18 the case. You, the jury, are the judges of the facts in this
19 case. The Court is the judge of the law. The Constitution
20 of our state has declared that a trial judge shall not
21 intimate, state, comment upon or make any statement to a
22 trial jury about the facts in a case.

23 Since you, the jury, are the sole judges of the facts in
24 this case, you are not to infer anything from what I have
25 said during the progress of this trial in ruling upon the

1 admissibility of evidence or otherwise or anything that I say
2 now to you during the course of this instruction that I have
3 any opinion about the facts. The law does not allow me to
4 have an opinion about the facts.

5 This is a matter solely for you, the jury, to determine.

6 As jurors then, it is your duty, as I have instructed you, to
7 determine the effect, the value, the weight, and the truth of
8 the evidence offered during this trial. Necessarily, you
9 must assess the credibility of the witnesses who have
10 testified. Credibility is simply a legalistic term meaning
11 believability. It becomes your duty as jurors to analyze and
12 to evaluate the evidence and determine that evidence which
13 convinces you of its truth.

14 Some of the things you may consider as you decide
15 whether or not to believe a witness's testimony about a
16 particular matter include: What was the manner and
17 appearance of the witness who testified? Was he or she
18 straightforward or hesitant in answering? Was the testimony
19 of a witness consistent or inconsistent? How did the witness
20 come to know the facts that he or she testified to or what
21 was his or her ability to know these facts? Is there some
22 reason a witness would want to give testimony which would
23 help or hurt one side or the other? In other words, was the
24 witness biased or prejudiced? And was the testimony of a
25 witness strengthened or weakened by other testimony or

1 evidence?

2 You can believe as much or as little of each witness's
3 testimony as you think proper. You may believe the testimony
4 of a single witness against that of many witnesses or just
5 the opposite. I further instruct you that in determining the
6 question of believability or credibility of witnesses who
7 have testified, you may believe a part of the testimony of a
8 witness and reject the remaining part of the testimony of
9 that same witness. If you have a good and sound reason, you
10 may believe the testimony of a witness in its entirety or
11 reject the testimony of a witness in its entirety.

12 You may consider the demeanor of a witness, that is, the
13 manner and appearance of the witness from the witness stand.
14 You can believe as much or as little of each witness's
15 testimony as you think appropriate. Of course, you do not
16 determine the truth merely by counting the number of
17 witnesses. Throughout this process, ladies and gentlemen,
18 you have but one objective: To seek the truth, regardless of
19 its source.

20 I further instruct you that a person who has a past
21 criminal record is competent to testify at a trial. A past
22 record does not affect the ability of that witness to
23 testify. The past record may only be considered by you, if
24 at all, in determining the witness's believability.
25 Remember, ladies and gentlemen, you are the sole judges of

1 the facts in this case and of the believability of any and
2 all of the witnesses.

3 You've also heard evidence that the defendant committed
4 a bad act not the subject of a conviction, other than the one
5 for which the defendant is now on trial. This evidence may
6 be considered by you, if you conclude it is true, only in
7 deciding whether the defendant's testimony is believable and
8 for no other purpose. You must not consider this alleged bad
9 act as any evidence of the defendant's guilt of the charges
10 we are trying today.

11 Our rules of evidence ordinarily do not permit witnesses
12 to testify to opinions or conclusions. An exception to this
13 rule exists for witnesses we call expert witnesses. A
14 witness who by their education, training, and experience has
15 become an expert in some art, science, profession or calling
16 may state an opinion as to relevant and material matters in
17 which the witness claims to be an expert and may also state
18 the reasons for that opinion. You should consider any expert
19 opinion received in evidence in this case like any other
20 evidence. Give it the weight you think it deserves.

21 If you decide that the opinion of an expert witness is
22 not based on sufficient education and experience or if you
23 conclude that the reasons given in support of the opinion are
24 not sound or that the opinion is outweighed by other
25 evidence, you may disregard the opinion entirely. An expert

1 witness's testimony is to be given no greater weight than
2 that of other witnesses simply because the witness is an
3 expert. Further, you are not required to accept an expert's
4 opinion even though it is not contradicted.

5 Ladies and gentlemen, there are two types of evidence
6 which are presented during a trial: Direct evidence and
7 circumstantial evidence. Direct evidence is the testimony of
8 a person who asserts or claims to have actual knowledge of a
9 fact such as an eyewitness. Circumstantial evidence is proof
10 of a chain of facts and circumstances indicating the
11 existence of a fact. The law makes absolutely no distinction
12 between the weight or value to be given to either direct or
13 circumstantial evidence nor is a greater degree of certainty
14 required of circumstantial evidence than of direct evidence.
15 You should weigh all of the evidence in this case. After
16 weighing all of the evidence, if you're not convinced of the
17 guilt of the defendant beyond a reasonable doubt, you must
18 find the defendant not guilty. Conversely, if you're
19 convinced of the guilt of the defendant beyond a reasonable
20 doubt, then you must find him guilty.

21 I instruct you, ladies and gentlemen, that the fact that
22 the defendant was arrested, charged, and indicted is not
23 evidence in this case and cannot be considered by you as
24 evidence of guilt in this case nor does it create any
25 presumption or inference of guilt. This documentation,

1 ladies and gentlemen, is -- are simply the formal written
2 instruments which contain the charge or charges made against
3 a defendant. They simply serve as the formal documents by
4 which this case is processed or brought into this court.

5 The defendant has pled not guilty to the indictments,
6 and that plea casts the burden on the State to prove the
7 defendant guilty because a person charged with committing a
8 criminal offense in South Carolina is never required to prove
9 himself innocent. I charge you, Madam Forelady, ladies and
10 gentlemen of the jury, that it is a cardinal and important
11 rule of the law of evidence that the defendant in a criminal
12 trial, no matter what the seriousness of the charge or
13 charges made against him may be, will always be presumed to
14 be innocent of the crime for which he is indicted unless his
15 guilt has been proven by evidence satisfying you of that
16 guilt beyond a reasonable doubt. The presumption of
17 innocence does not cease when you retire to deliberate, but
18 it accompanies the defendant from the time of his appearance,
19 throughout the trial, until you reach a verdict in this case.

20 Our Supreme Court has said that the presumption of
21 innocence is like a robe of righteousness placed about the
22 shoulders of the defendant, and it remains with him and
23 assigns him to that class, the innocent, until that
24 presumptive robe of righteousnessG98.

25 Has been stripped from his person by evidence

1 satisfying you of that guilt beyond a reasonable doubt.

2 Madam Forelady, ladies and gentlemen, the presumption of
3 innocence is not a mere legal theory. It is not just a legal
4 phrase. It is a substantial right to which every defendant
5 is entitled unless you, the jury, are satisfied from the
6 evidence of his guilt beyond a reasonable doubt.

7 The State has the burden of proving the defendant guilty
8 beyond a reasonable doubt. Some of you have may have served
9 as jurors in civil cases where you were told that it is only
10 necessary to prove that a fact is more likely true than not
11 true, such as by the greater weight or preponderance of the
12 evidence. In criminal cases the State's proof must be more
13 powerful than that. It must be beyond a reasonable doubt.

14 Proof beyond a reasonable doubt is proof that leaves you
15 firmly convinced of the defendant's guilt. There are very
16 few things in this world that we know with absolute
17 certainty, and in criminal cases the law does not require
18 proof that overcomes every possible doubt. If, based on your
19 consideration of the evidence, you are firmly convinced that
20 the defendant is guilty of the crime charged, you must find
21 the defendant guilty. If, on the other hand, you think
22 there's a real possibility that the defendant is not guilty,
23 you must give the defendant the benefit of that doubt and
24 find him not guilty.

25 A statement is alleged to have been made by the

1 defendant which has been admitted into evidence in this case.
2 While the Court has determined that the statement is
3 admissible, I instruct you that you make the ultimate
4 decision of whether or not the defendant made the statement
5 or statements. If the defendant did make the statement, you
6 must determine whether the statement was made by the
7 defendant voluntarily and of his free will. This means that
8 the statement was not caused by pressure, force, fear,
9 threats, coercion or intimidation or by hope or a promise of
10 leniency or a reward of any kind.

11 In determining whether the statement was voluntary, you
12 should consider both the characteristics of the defendant and
13 the details of the questioning. Some of the factors you must
14 consider are: The age of the defendant, the defendant's
15 education or lack of education, the defendant's mental
16 ability or capacity, the defendant's I.Q. or intelligence,
17 the defendant's background and environment, the place and
18 length of detention, the nature of the questioning, and the
19 advice or lack thereof to the defendant of his constitutional
20 rights including, but not limited to, the right to remain
21 silent, that any statement could be used against him in a
22 court of law, the right to have a lawyer present, that if he
23 could not afford a lawyer that a lawyer would be appointed to
24 represent him without any cost, and that he could stop making
25 a statement at any time. You must carefully consider all of

1 the surrounding circumstances before you give any weight to
2 an alleged statement.

3 The State has the burden of proving beyond a reasonable
4 doubt that the alleged statement was voluntary. If you
5 determine it was, you may give the statement any further
6 consideration that you deem proper. You must decide what
7 weight, if any, should be given to the alleged statement. If
8 you determine the alleged statement was not the free and
9 voluntary statement of the defendant, you should not consider
10 the statement at all.

11 Ladies and gentlemen, the defendant is charged with
12 murder. The State must prove beyond a reasonable doubt that
13 the defendant killed another person with malice aforethought.
14 Malice is hatred, ill will or hostility towards another
15 person. It is the intentional doing of a wrongful act
16 without just cause or excuse and with an intent to inflict an
17 injury or under circumstances that the law will infer an evil
18 intent.

19 Malice aforethought does not require that malice exist
20 for any particular time before the act is committed, but
21 malice must exist in the mind of the defendant just before
22 and at the time the act is committed. Therefore, there must
23 be a combination of the previous evil intent and the act.

24 Malice aforethought may be express or inferred. These
25 terms express and inferred do not mean different types of

1 malice but merely the manner in which malice may be shown to
2 exist, that is, either by direct evidence or by inference
3 from the facts and circumstances which are proven. Express
4 malice is shown when a person speaks words which express
5 hatred or ill will for another or when the person prepared
6 beforehand to do the act which was later accomplished. For
7 example, lying in wait for a person or any other acts of
8 preparation going to show that the deed was within the
9 defendant's mind would be express malice. Malice may be
10 inferred from conduct showing a total disregard for human
11 life.

12 Ladies and gentlemen, if you find that the State has
13 failed to prove beyond a reasonable doubt that the defendant
14 committed murder, you may consider whether the State has
15 proven beyond a reasonable doubt that the defendant committed
16 voluntary manslaughter. To prove voluntary manslaughter, the
17 State must prove beyond a reasonable doubt that the defendant
18 took the life of another in the sudden heat of passion based
19 on sufficient legal provocation. Both heat of passion and
20 sufficient legal provocation must be present at the time of
21 the killing to constitute voluntary manslaughter.

22 Sudden heat of passion may for a time affect a person's
23 self-control and temporarily disturb a person's reason. The
24 sudden heat of passion must be the type that would make an
25 ordinary person unable to coolly reflect on his actions and

1 would produce an uncontrollable impulse to do violence.

2 Sufficient legal provocation must be the type that would
3 make a person of ordinary reason and caution become enraged
4 and to lose control temporarily. The provocation needed for
5 voluntary manslaughter must come from some act of or related
6 to the victim. Words alone, however vulgar or insulting, are
7 not enough to be legal provocation. Where death is caused by
8 the use of a deadly weapon, the words must be accompanied by
9 some overt, threatening act which could have produced the
10 heat of passion. The exercise of a legal right, no matter
11 how offensive it is to another, is never sufficient legal
12 provocation for voluntary manslaughter. If the heat of
13 passion had cooled or if there was enough time between the
14 provocation, if any, and the killing for the passion of a
15 reasonable person to cool, the killing would not be voluntary
16 manslaughter.

17 In deciding whether a reasonable person would have had
18 enough time to cool off, you should consider all the
19 circumstances surrounding the killing. You may consider the
20 nature of the provocation, if any, the defendant's mental and
21 physical state, and the circumstances and relationships
22 between the parties.

23 Ladies and gentlemen, the defendant is charged with
24 attempted murder. In order to prove the crime, the State
25 must prove the defendant attempted to kill another person

1 with malice aforethought either express or implied. Malice
2 is hatred, ill will or hostility towards another person. It
3 is the intentional doing of a wrongful act without just cause
4 or excuse and with an intent to inflict an injury or under
5 circumstances the law will infer an evil intent.

6 Malice aforethought does not require that malice exist
7 for any particular time before the act is committed, but
8 malice must exist in the mind of the defendant just before
9 and at the time the act is committed. Therefore, there must
10 be a combination of the previous evil intent and the act.

11 Malice aforethought may be express or inferred. These
12 terms express and inferred do not mean different kinds of
13 malice but merely the manner in which malice may be shown to
14 exist, that is, either by direct evidence or by inference
15 from the facts and circumstances which are proven. Express
16 malice is shown when a person speaks words which express
17 hatred or ill will for another or when the person prepared
18 beforehand to do the act which was later accomplished. For
19 example, lying in wait for a person or any other acts of
20 preparation going to show that the deed was within the
21 defendant's mind would be express malice. Malice may be
22 inferred from conduct showing a total disregard for human
23 life.

24 A specific intent to kill is not an element of attempted
25 murder, but there must be a general intent to commit serious

1 bodily injury. Intent means intending the result which
2 actually occurs, not accidentally or involuntarily. Intent
3 may be shown by acts and conduct of the defendant and other
4 circumstances from which you may naturally and reasonably
5 infer intent.

6 Evidence of the character of the act, the character of
7 the instrument used, the manner in which it was used, the
8 purpose to be accomplished, and the resulting wounds or
9 injuries may be considered in determining the intent with
10 which the act was committed. Intent may also be inferred
11 when it is demonstrated that the defendant voluntarily and
12 willfully commits an act, the natural tendency of which is to
13 destroy another's life.

14 Included within the offense of attempted murder is the
15 lesser offense of assault and battery of a high and
16 aggravated nature. Assault and battery of a high and
17 aggravated nature includes all of the elements of attempted
18 murder except malice aforethought. In addition, the State
19 must prove beyond a reasonable doubt an aggravating
20 circumstance.

21 Assault and battery of a high and aggravated nature is
22 an unlawful act of violent injury to the person of another
23 accompanied by circumstances of aggravation. An assault
24 occurs when a person unlawfully attempts or offers to commit
25 a violent injury upon another person and had the present

1 ability to complete the attempted injury. An assault is the
2 intentional creation of a reasonable fear of immediate bodily
3 harm. It is not necessary that the attempted injury or harm
4 actually take place. For example, if I walk up to you and
5 when we are within arm's reach I draw back to hit you, that
6 is an assault.

7 A battery is the unlawful touching of another person by
8 a person who has committed the assault. An unlawful touching
9 can be caused by part of the accused's body or by any object
10 the accused puts in motion. A battery is the completion of
11 the assault by using or applying force to another person,
12 however slight, in a rude, angry or resentful manner without
13 legal justification for doing so. Using my earlier example,
14 if I carry through with the assault by hitting you, then that
15 is a battery.

16 The State must also prove the circumstance of
17 aggravation. Circumstances of aggravation include the use of
18 a deadly weapon, the intent to commit a felony, the
19 infliction of serious bodily injury, a great disparity
20 between the ages or physical conditions of the parties, a
21 difference in the genders of the parties, the taking of
22 indecent liberties or familiarities with a female through the
23 use of force, the purposeful infliction of shame and
24 disgrace, and the resistance of lawful authorities. These
25 are only examples of circumstances of aggravation, and they

1 are simply evidentiary facts to be considered by you, the
2 jury, along with all the other evidence in the case, and you
3 may give it the weight, value, and effect you decide it
4 should receive.

5 Included within the offense of assault and battery of a
6 high and aggravated nature is the offense of assault and
7 battery first degree. In order to prove assault and battery
8 first degree, the State must prove beyond a reasonable doubt
9 the following elements: A person commits the offense of
10 assault and battery in the first degree if the person
11 injures -- if the person unlawfully injures another person
12 and the act either involves nonconsensual touching of the
13 private parts of an adult, either under or above clothing,
14 with lewd and lascivious intent or occurred during the
15 commission of a robbery, burglary, kidnapping or theft.
16 Private parts means the genital area or buttocks of a male or
17 female or the breasts of a female or a person may also commit
18 the offense of assault and battery in the first degree if the
19 person unlawfully offers or attempts to injure another person
20 with the present ability to do so and the act either is
21 accomplished by means likely to produce death or great bodily
22 injury or occurred during the commission of a robbery,
23 burglary, kidnapping or theft. Great bodily injury means
24 bodily injury which causes a substantial risk of death or
25 which causes serious permanent disfigurement or protracted

1 loss or impairment of the function of a bodily member or
2 organ.

3 The defendant has raised the defense of self-defense.
4 Self-defense is a complete defense, and if it is established,
5 you must find the defendant not guilty. The State has the
6 burden of disproving self-defense by proof beyond a
7 reasonable doubt. If you have a reasonable doubt of the
8 defendant's guilt after considering all the evidence,
9 including the evidence of self-defense, then you must find
10 the defendant not guilty. On the other hand, if you have no
11 reasonable doubt of the defendant's guilt after considering
12 all the evidence, including the evidence of self-defense,
13 then you must find the defendant guilty.

14 The following elements are required to establish
15 self-defense: First, the defendant must be without fault in
16 bringing on the difficulty. If the defendant's conduct was
17 the type which was reasonably calculated and did provoke a
18 deadly assault, the defendant would be at fault in bringing
19 on the difficulty and would not be entitled to an acquittal
20 based on self-defense.

21 Self-defense is not available to a person who uses
22 language which is so contemptuous that a reasonable person
23 would expect it to bring on a physical encounter and which
24 did actually contribute to the physical encounter. If the
25 defendant voluntarily participated in mutual combat for

1 purposes other than protection, the killing of the victim
2 would not be self-defense. This is true if during the combat
3 the defendant feared death or serious bodily injury.

4 However, if before the killing is committed the
5 defendant withdraws and tried in good faith to avoid further
6 contact and either by word or act makes that fact known to
7 the victim, he would be without fault in bringing on the
8 difficulty. For mutual combat, there must be mutual intent
9 and willingness to fight. This intent may be shown by the
10 acts and conduct of the parties and the circumstances
11 surrounding the combat. In addition, it must be shown that
12 both parties were armed with a deadly weapon.

13 The second element of self-defense is that the defendant
14 was actually in imminent danger of death or serious bodily
15 injury or that the defendant actually believed he was in
16 imminent danger of death or serious bodily injury. If the
17 defendant was actually in imminent danger, it must be shown
18 that the circumstances would have warranted a person of
19 ordinary firmness and courage to strike the fatal blow to
20 prevent death or serious bodily injury. If the defendant
21 believed he was in imminent danger of death or serious bodily
22 injury, it must be shown that a reasonably prudent person of
23 ordinary firmness and courage would have had the same belief.

24 In deciding whether the defendant actually was or
25 believed he was in imminent danger of death or serious bodily

1 injury, you should consider all of the facts and
2 circumstances surrounding the crime including the physical
3 condition and characteristics of the defendant and the
4 victim. The defendant does not have to show that he was
5 actually in danger. It is enough if the defendant believed
6 he was in imminent danger and a reasonably prudent person of
7 ordinary firmness and courage would have had the same belief.

8 The defendant has the right to act on appearances, even
9 though the defendant's beliefs may have been mistaken. It is
10 for you to decide whether the defendant's fear of immediate
11 danger of death or serious bodily injury was reasonable and
12 would have been felt by an ordinary person in the same
13 situation once the right to act in self-defense arises.

14 A defendant is not required to wait until his adversary
15 is on equal terms or until he has fired or aims his weapon in
16 order to act. Similarly, the defendant does not have to wait
17 until his assailant gets the drop on him. He has the right
18 to act under the law of self-preservation and prevent his
19 assailant from getting the drop on him.

20 I further instruct you that words accompanied by hostile
21 acts may, depending on the circumstances, establish self-
22 defense. I further instruct you that evidence of prior
23 difficulties between the defendant and the victim may be
24 considered in deciding whether a threat existed, whether the
25 defendant had a reason to believe a threat existed, and how

1 serious that threat was. The relative sizes, ages, and
2 weights of the defendant and the victim may be considered by
3 you in deciding the apparent or actual need for force in
4 self-defense and the amount of force used.

5 Prior instances of violence by the victim may be
6 considered in deciding whether the defendant actually
7 believed he was in imminent danger of death or serious bodily
8 injury or was actually in imminent danger, and threats made
9 by the victim may be considered in determining whether the
10 defendant actually was or believed he was in imminent danger.

11 The final element of self-defense is that the defendant
12 had no other probable way to avoid the danger of death or
13 serious bodily injury than to act as the defendant did in
14 this particular instance. The defendant has no duty to
15 retreat, if by doing so the danger of being killed or
16 suffering serious bodily injury would increase.

17 A person cannot be required to make an exact calculation
18 as to the degree or amount of force which may be needed to
19 avoid death or serious bodily harm. Therefore, in self-
20 defense the defendant has the right to use the force needed
21 to avoid death or serious bodily harm. The force used in
22 self-defense does not have to be limited to the degree or
23 amount of force used by the victim. The defendant has the
24 right to use so much force as appeared to be necessary for
25 complete self-protection and which a person of ordinary

1 reason and firmness would have believed to be needed to
2 prevent death or serious bodily harm. If the defendant is
3 justified in defending himself and in firing the first shot,
4 then the defendant is also justified in continuing to shoot
5 until it is apparent that the danger of death or serious
6 bodily injury has completely ended.

7 Ladies and gentlemen, the defendant has also raised the
8 defense of accident. An act may be excused on the ground of
9 accident if it is shown that the act was unintentional, that
10 the defendant was acting lawfully, and that reasonable care
11 was used by the defendant in handling the weapon. For
12 example, if a person is lawfully armed in self-defense and
13 the gun accidentally discharges, the defense of accident
14 would apply. The burden is on the State to prove beyond a
15 reasonable doubt that the act was not an accident but was
16 caused by the negligence or carelessness on the part of the
17 defendant in the handling of a dangerous instrumentality or
18 by unlawful activity by the defendant.

19 Ladies and gentlemen, I instruct you that insanity
20 caused by the use of drugs or alcohol may be a defense if the
21 insanity is permanent and destroys the defendant's ability to
22 know right from wrong. However, when voluntary intoxication
23 has not produced permanent insanity, it is not a defense to a
24 crime. A person who voluntarily becomes intoxicated is just
25 as responsible for the acts committed while intoxicated as

1 when the person is not intoxicated.

2 Ladies and gentlemen, the indictments in this case
3 allege several different -- two different offenses against
4 the defendant, and they are indictments 2012-GS-40-4975, the
5 offense of murder, and indictment 2012-GS-40-5302, the
6 offense of attempted murder. Each indictment charges a
7 separate and distinct offense. You must decide each
8 indictment separately on the evidence and the law applicable
9 to it, uninfluenced by your decision as to any other
10 indictment. The defendant may be convicted or acquitted on
11 any or all of the offenses charged, and you'll be asked to
12 write a separate verdict of guilty or not guilty for each
13 indictment.

14 Ladies and gentlemen, there are on the murder indictment
15 two possible choices and on the attempted murder three
16 possible choices -- four actually; I apologize. Four
17 different choices as to the verdict that you may come to in
18 this case. I emphasize that there's no significance
19 whatsoever to the order in which I state these potential
20 verdicts. It is simply that one must be stated first, and
21 these will go into the jury room with you, so please don't
22 try to write this down. Again, there's no significance
23 whatsoever to the order in which I have stated these
24 verdicts.

25 As to the murder indictment: We, the jury, by unanimous

1 consent find the defendant guilty of murder or as to the
2 lesser-included offense guilty of voluntary manslaughter or
3 not guilty.

4 And as to the indictment on attempted murder: We, the
5 jury, by unanimous consent, find the defendant guilty of
6 attempted murder or as to the lesser-included offense guilty
7 of assault and battery of a high and aggravated nature or as
8 to the lesser-included offense guilty of assault and battery
9 first degree or not guilty. Again, there's absolutely no
10 significance whatsoever to the order in which I have stated
11 these potential verdicts.

12 Ladies and gentlemen, you have been selected as fair and
13 impartial jurors, sworn to impartially try the facts of this
14 case, and when you comply with your oath to do so, then no
15 one will have the right to criticize your verdict and you
16 will have fully discharged your duty as jurors in this case.
17 You should not be influenced by opinions or expressions of
18 opinions which you may have heard outside of the evidence in
19 this case, but you are to decide this case according to the
20 evidence that you have heard from the lips of the sworn
21 witnesses and the other evidence that has been introduced in
22 this case.

23 Ladies and gentlemen, your verdict must be a unanimous
24 verdict one which means that all 12 of you must agree in
25 order to reach a verdict. Madam Forelady, it is your

1 responsibility to fill out the verdict forms once the jury
2 has reached a unanimous verdict. It is also your
3 responsibility to sign and date the forms and knock on the
4 door and advise the bailiffs that the jury has reached a
5 verdict.

6 It is also your responsibility, in the event that the
7 jury has any questions during deliberations, to write those
8 questions out, to follow the same procedure by knocking on
9 the jury room door and advising the bailiffs that the jury
10 has a question. Ladies and gentlemen, if you have any
11 questions during the deliberations, please know that there
12 will be a delay because there's a procedure that we have to
13 follow in answering your questions. So know that if there is
14 a question, there will be a delay because we are following
15 that procedure. Again, ladies and gentlemen, your verdict
16 must be a unanimous verdict one which means that all 12 of
17 you must agree in order to reach a verdict.

18 I'm going to ask that you return your jury room, but do
19 not yet begin your deliberations. I have some very brief
20 matters of law that I need to take up with the attorneys that
21 may require further instruction or clarification of an
22 instruction. However, if there's no further instruction, we
23 will send in the evidence and your notebooks and the verdict
24 forms, and at that time you'll be allowed to begin your
25 deliberations. If you would go with the bailiffs, please,

1 and leave your notepads in your seats.

2 (Whereupon, the jury was excused from open court at
3 1:23 p.m.)

4 **The Court:** Madam clerk, I assume their lunch is here?

5 **The Clerk:** Yes, ma'am.

6 **The Court:** Okay. They already have it in the jury room
7 for them?

8 **The Clerk:** I think so. I think so.

9 **The Court:** Are there any exceptions to the charge from
10 the State?

11 **Ms. Campbell:** No, Your Honor.

12 **The Court:** From the defense other than what we've
13 already gone through in the charge conference?

14 **Mr. Shaffer:** Yes, Your Honor.

15 **The Court:** Okay.

16 **Mr. Shaffer:** Other than renewing my previous
17 objections, there's two things.

18 **The Court:** Uh-huh.

19 **Mr. Shaffer:** One is that -- one is that I was looking
20 at -- I noticed you used the "seek the truth" language. I
21 think there's some cases saying that's burden shifting to
22 some degree.

23 **The Court:** No. I made it very clear that it's their
24 job to judge the facts, and there's no way reading this
25 instruction as a whole that there's any burden-shifting. I

1 say over 20 times it's the State's burden to prove his guilt
2 beyond a reasonable doubt. That's just merely language to
3 make them understand that they're to be fair and impartial
4 and they don't have anybody to reward in this process and
5 they're the fact finders and they're to judge the credibility
6 and believable of witnesses. It's not burden-shifting.

7 **Mr. Shaffer:** Thank you, Your Honor.

8 **The Court:** Uh-huh.

9 **Mr. Shaffer:** The second thing is involving the ABHAN
10 charge. I talked to -- yesterday whenever I -- I did consent
11 to it yesterday. The only issue is is that I think you have
12 to be injured in order for it to be ABHAN.

13 **The Court:** Well, I wish you would have told me that
14 beforehand---

15 **Mr. Shaffer:** Yes, Your Honor.

16 **The Court:** ---because it's easier to correct an
17 instruction before but not after, but you consented to it.
18 You made no exception to it. We dealt with the charges this
19 morning, and actually you consented to it being instructed.

20 **Mr. Shaffer:** Yes, ma'am. Can we -- can we approach on
21 that as well on another matter? There's -- I think that you
22 also charged---

23 **The Court:** I think I was liberal in charging lesser-
24 included offenses on the attempted murder charge at all
25 because really the facts don't support it, but I did it out

1 of an abundance of caution because I figure no harm/no foul
2 and your client isn't prejudiced by it.

3 **Mr. Shaffer:** Thank you, Your Honor. There is -- I
4 think the State was moving for -- the charge you read -- and
5 I understand that you take it from, you know---

6 **The Court:** Straight from case law.

7 **Mr. Shaffer:** Yes, Your Honor. It's -- I think it was
8 at the old common law statute -- I mean, the old common law
9 act, was it not? Okay.

10 **Ms. Campbell:** We're fine.

11 **Mr. Shaffer:** I apologize. I might not have heard it
12 correctly and I apologize if so.

13 **The Court:** Let's make sure.

14 (Pause in proceedings.)

15 **The Court:** Mr. Shaffer, how did what I instruct differ
16 from 16-3-600(b)(1) which is that great bodily injury to
17 another person or the act is accomplished by means likely to
18 produce death or great bodily injury? Actually I think it
19 was the lesser standard that I instructed. Well, I mean --
20 well, let me look at it right quick. I don't want to
21 misquote. If you want, I'll instruct it straight from the
22 statute. Is there any exception from the State?

23 **Ms. Campbell:** No, Your Honor.

24 **The Court:** From the defense?

25 **Mr. Shaffer:** None, Your Honor.

1 **The Court:** Okay. Please bring in the jury. Oh, is
2 there anything else you want to raise before I bring them
3 back?

4 **Mr. Shaffer:** No, just renew my previous objections.
5 Thank you.

6 **The Court:** You're welcome.

7 (Whereupon, the jury was brought into open court at
8 1:29 p.m.)

9 **The Court:** Ladies and gentlemen, I am going to re-
10 instruct you as follows: As regards the elements of assault
11 and battery of a high and aggravated nature as a lesser-
12 included offense of attempted murder, you are to disregard
13 and disabuse from your mind the Court's previous instruction
14 and only consider the law as I now instruct you on that
15 offense. Included within the offense of attempted murder is
16 the lesser offense -- lesser offense of assault and battery
17 of a high and aggravated nature. Assault and battery of a
18 high and aggravated nature includes all of the elements of
19 attempted murder with the exception of malice aforethought.

20 In order to establish assault and battery of a high and
21 aggravated nature, the State must prove beyond a reasonable
22 doubt that the defendant committed an assault of a high -- I
23 apologize. Must prove beyond a reasonable doubt that the
24 defendant unlawfully injured another person and great bodily
25 injury to another person resulted or the act is accomplished

1 by means likely to produce death or great bodily injury.

2 I instruct you that great bodily injury means bodily
3 injury which causes a substantial risk of death or which
4 causes serious permanent disfigurement or protracted loss or
5 impairment of the function of a bodily member or organ.

6 That would complete the additional instruction. If you
7 would go with the bailiffs, please, and leave your notepads.
8 I still have a very brief matter of law to take up with the
9 attorneys. If there be -- if there is not any, we will leave
10 you to your lunch and your deliberations and send in your
11 notepads, the evidence, and the other -- the evidence and
12 your notepads to you as well as the verdict forms. If you
13 would go with the bailiffs, please.

14 (Whereupon, the jury was excused from open court at
15 1:32 p.m.)

16 **The Court:** Are there any exceptions from the State?

17 **Ms. Campbell:** No, Your Honor.

18 **The Court:** From the defense?

19 **Mr. Shaffer:** Nothing other than my additional---

20 **The Court:** Well, I'm only---

21 **Mr. Shaffer:** I understand.

22 **The Court:** I don't think we need to beat a dead horse.

23 You put it on the record---

24 **Mr. Shaffer:** Oh, I understand.

25 **The Court:** I just need to know what -- if there's an

1 exception to the re-instruction.

2 **Mr. Shaffer:** No, Your Honor.

3 **The Court:** All right. Please get the evidence and the
4 jury's notebooks and take in their verdict forms to them, and
5 the record should reflect they have begun their deliberations
6 at 1:32. Their lunch is in there. I would suggest that you
7 all grab yourself something, maybe take about 20 or 30
8 minutes to do that, but leave your cell phones with us
9 because if there are any questions I'm going to need to be
10 able to get in touch with you immediately.

11 **Mr. Shaffer:** Thank you, Your Honor.

12 **The Court:** You're welcome.

13 (Whereupon, the jury began deliberating at 1:32 p.m.)

14 **The Court:** You may be seated. The jury has sent the
15 following note: "Juror requests copy of transcript of
16 defendant's testimony." My response would be as follows:
17 "Madam Forelady, ladies and gentlemen of the jury, our
18 technology does not allow us to immediately produce the
19 transcript of the proceedings. However, we can replay the
20 testimony for you. If you desire to have the testimony
21 replayed, please advise the bailiff and we will accommodate
22 your request." Is there any exception from the State?

23 **Ms. Walker:** None from the State, Your Honor.

24 **The Court:** From the defense?

25 **Mr. Shaffer:** None, Your Honor.

1 **The Court:** Okay. The note, as well as the response,
2 will be marked as a Court's exhibit and it will be taken into
3 the panel, and we will await further instructions from them.

4 **Ms. Walker:** Thank you, Your Honor.

5 **The Court:** You're welcome.

6 (Court's Exhibit 8 was marked for identification only.
7 State's Exhibit 27 was moved to I.D. only status by consent
8 of the parties.)

9 **The Court:** The jury wants to rehear the defendant's
10 testimony.

11 (Court's Exhibit 9 was marked for identification. The
12 forelady is brought into open court at 2:27 p.m.)

13 **The Court:** Madam Forelady, we got your note
14 requiring -- regarding replaying the testimony of the
15 defendant, and we are going -- the court reporter is going to
16 bring those digital files and then replay that for you. I
17 need you to -- I'm instructing you for the benefit of the
18 jury: There's to be no deliberations while this testimony is
19 being replayed.

20 **Forelady:** Okay.

21 **The Court:** Okay? And if you all need anything further
22 from us, just let us know, but as soon as she queues up the
23 testimony, she and the bailiff will sit in the jury room with
24 you and replay that testimony.

25 **Forelady:** Thank you.

1 **The Court:** Okay? Thank you.

2 (The forelady leaves the courtroom at 2:27 p.m.)

3 **The Court:** Any exceptions from the State?

4 **Ms. Walker:** No, Your Honor.

5 **The Court:** From the defense?

6 **Mr. Shaffer:** No, Your Honor.

7 (Whereupon, a bailiff and the court reporter enter the
8 jury room, and James Bethel's testimony is played back for
9 the jury. The playing back of the testimony concluded at
10 4:03 p.m.)

11 **The Court:** You may be seated. Did we find Mr. Shaffer?

12 **Ms. Walker:** He's right there, Your Honor.

13 **The Court:** He's right there. Are we going to get the
14 defendant?

15 **Ms. Walker:** My understanding is he's on his way
16 upstairs.

17 (Pause in proceedings.)

18 **The Court:** Okay. We have a note from the jury and it
19 reads as follows: "The jury requests the definition of
20 attempted murder and guilty of assault and battery of a high
21 and aggravated nature." In response to that note, I'm going
22 to re-instruct them on the elements of attempted murder which
23 is 16-3-29 and assault and battery of a high and aggravated
24 nature which is 16-3-600, Subsection (b)(1)(a) and (b). Is
25 there any exception from the State?

1 **Ms. Walker:** None from the State, Your Honor.

2 **The Court:** Any exception from the defense?

3 **Mr. Shaffer:** None, Your Honor.

4 **The Court:** And I'll have their note marked as a Court's
5 exhibit as soon as I'm done instructing them. If you'd get
6 the jury for me.

7 (Whereupon, the jury was brought into open court at
8 5:00 p.m.)

9 **The Court:** Madam Forelady, ladies and gentlemen of the
10 jury, we received your note: "The jury requests the
11 definition of attempted murder and guilty of assault and
12 battery of a high and aggravated nature." And in response to
13 that note I re-instruct you as follows: The defendant is
14 charged with attempted murder. In order to prove this crime,
15 the State must prove the defendant attempted to kill another
16 person with malice aforethought, either express or implied.
17 Malice is hatred, ill will, or hostility towards another
18 person. It is the intentional doing of a wrongful act
19 without just cause or excuse and with an intent to inflict an
20 injury or under circumstances that the law will infer an evil
21 intent.

22 Malice aforethought does not require that malice exist
23 for any particular time before the act is committed, but
24 malice must exist in the mind of the defendant just before
25 and at the time the act is committed. Therefore, there must

1 be a combination of the previous evil intent and the act.

2 Malice aforethought may be express or inferred. These
3 terms "express" and "inferred" do not mean different kinds of
4 malice but merely the manner in which malice may be shown to
5 exist, that is, either by direct evidence or by an inference
6 from the facts and circumstances which are proven. Express
7 malice is shown when a person speaks words which express
8 hatred or ill will for another or when the person prepared
9 beforehand to do the act which was later accomplished. For
10 example, lying in wait for a person or any other acts of
11 preparation going to show that the deed was within the
12 defendant's mind would be express malice. Malice may be
13 inferred from conduct showing a total disregard for human
14 life.

15 A specific intent to kill is not an element of attempted
16 murder, but there must be a general intent to commit serious
17 bodily injury. Intent means intending the result which
18 actually occurs, not accidentally or involuntarily. Intent
19 may be shown by acts and conduct of the defendant and other
20 circumstances from which you may naturally and reasonably
21 infer intent.

22 Evidence of the character of the act, the character of
23 the instrument used, the manner in which it was used, the
24 purpose to be accomplished, and the resulting wounds or
25 injuries may be considered in determining the intent with

1 which the act was committed. Intent may also be inferred
2 when it is demonstrated that the defendant voluntarily and
3 willfully commits an act, the natural tendency of which is to
4 destroy another's life.

5 Included within the offense of attempted murder is the
6 lesser offense of assault and battery of a high and
7 aggravated nature. Assault and battery of a high and
8 aggravated nature includes all the elements of attempted
9 murder except malice aforethought.

10 In order to prove assault and battery of a high and
11 aggravated nature, the State must prove beyond a reasonable
12 doubt that the defendant unlawfully injured another person
13 and great bodily injury to another person results or the act
14 is accomplished by means likely to produce death or great
15 bodily injury. Great bodily injury means bodily injury which
16 causes a substantial risk of death or which causes serious
17 permanent disfigurement or protracted loss or impairment of
18 the function of a bodily member or organ.

19 That will conclude the additional instruction. If you
20 need anything further, please do not hesitate to let us know.
21 You may resume your deliberations.

22 (Whereupon, the jury was excused from open court at
23 5:04 p.m.)

24 **The Court:** Are there any exceptions from the State?

25 **Ms. Walker:** None from the State, Your Honor.

1 **The Court:** From the defense?

2 **Mr. Shaffer:** None, Your Honor.

3 **The Court:** Okay. We'll await further instructions from
4 the jury, and we'll have the note marked as a Court's
5 exhibit.

6 (Court's Exhibit 10 was marked for identification only.)

7 **The Court:** You may be seated. Okay. The jury has
8 reached a verdict, and I understand that we have a gallery
9 full of people which is understandable, people interested on
10 both sides. However, I'm admonishing the gallery that while
11 I know this has been highly charged for both the victim's
12 family and the defense family, I do not expect there to be
13 any audible reactions to the verdict nor anything that would
14 affect the jury.

15 In terms of the verdict, I expect there to be a
16 dignified atmosphere and that decorum will be maintained. I
17 understand there's some underage children in the courtroom?
18 I'm a little troubled by that. How old are they?

19 **Woman:** Eight.

20 **The Court:** Is he with -- are you his mother?

21 **Woman:** Yes.

22 **The Court:** Okay. And you're okay with him being in
23 here?

24 **Woman:** Yes.

25 **The Court:** Okay. All right. Ready to proceed? From

1 the State?

2 **Ms. Walker:** Yes, Your Honor.

3 **The Court:** From the defense?

4 **Mr. Shaffer:** Yes, ma'am.

5 **The Court:** All right. Bring in the jury.

6 (Whereupon, the jury returned to open court with a
7 verdict at 5:16 p.m.)

8 **The Court:** Madam Forelady, is it correct that the jury
9 has reached a verdict?

10 **Forelady:** Yes, Your Honor.

11 **The Court:** If you could give the verdict forms to the
12 bailiff for me, please. Thank you, ma'am. Sir, if you would
13 stand for publication of the verdicts.

14 **The Clerk:** The State of South Carolina, County of
15 Richland, versus James K. Bethel, Jr. As to indictment
16 number 2012-GS-40-05302: We, the jury, by unanimous consent
17 find the defendant guilty of attempted murder, signed by the
18 foreperson on November 8, 2013. That would be Juror Number
19 221.

20 The State of South Carolina, County of Richland, versus
21 James K. Bethel, Jr. As to the indictment number 2012-GS-40-
22 04975: We, the jury, by unanimous consent find the defendant
23 guilty of murder, signed by the foreperson, number 221, on
24 November 8, 2013. Madam Forelady, is this the verdict of the
25 entire jury?

1 **Forelady:** Yes, it is.

2 **The Clerk:** Thank you.

3 **The Court:** Ladies and gentlemen, if this is your
4 verdict, please signify by raising your right hand. You may
5 put your right hand down. Is there any request to poll the
6 jury? From the State?

7 **Ms. Walker:** None from the State, Your Honor.

8 **The Court:** From the defense?

9 **Mr. Shaffer:** No, Your Honor.

10 **The Court:** Okay. You may take your seat, sir. Ladies
11 and gentlemen, on behalf of the State and the defendant we
12 thank you for your time and your attention to this case. We
13 know that jury service is thankless. At the minimal amount
14 of money we pay you, it is really no indication of how very
15 valuable you are to us.

16 (Whereupon, the jury was excused from the trial at 5:20
17 p.m.)

18 **The Court:** I will hear post-trial motions and
19 sentencing shortly. Please prepare the sentence sheets for
20 the Court.

21 (Pause in proceedings.)

22 **The Court:** Are there any post-trial motions from the
23 State?

24 **Ms. Walker:** None, Your Honor.

25 **The Court:** From the defense?

1 **Mr. Shaffer:** I renew my directed verdict motion.

2 **The Court:** I can't hear you, Mr. Shaffer.

3 **Mr. Shaffer:** I apologize.

4 **The Court:** That's okay.

5 **Mr. Shaffer:** The motion to set aside the verdict, Your
6 Honor -- the verdicts.

7 **The Court:** Any response from the State?

8 **Ms. Walker:** Beg the Court's indulgence, Your Honor.

9 **The Court:** Uh-huh.

10 **Ms. Walker:** Your Honor, we'd just ask that you stick by
11 your previous rulings.

12 **The Court:** As regards the renewed motions for directed
13 verdict, the Court will stand by its previous rulings which
14 is there is direct and substantial circumstantial evidence
15 reasonably tending to prove the defendant's guilt as well as
16 incorporating any other findings the Court made regarding
17 those motions.

18 As regards the motion to set aside the verdicts, where
19 there is any evidence to support a jury's verdict, the
20 verdict should stand, and in this case there is ample
21 evidence to support the elements of murder as well as
22 attempted murder and, therefore, the verdicts will stand.
23 Okay. Is there anything else we need to do? Do we have
24 sentence sheets?

25 **Ms. Walker:** Your Honor, we're getting the sentencing

1 sheets now.

2 **The Court:** Okay. Well, I'll hear argument on
3 sentencing while y'all are getting that together.

4 **Ms. Walker:** Yes, Your Honor.

5 **The Court:** Is the State ready to proceed?

6 **Ms. Walker:** Yes, Your Honor.

7 **The Court:** Be glad to hear from you.

8 **Ms. Walker:** Thank you, Your Honor. There are a number
9 of---

10 **The Court:** Sir, you can take your seat. Uh-huh?

11 **Ms. Walker:** There are a number of people who want to
12 speak to Your Honor. I'm sorry---

13 **The Court:** Certainly. If they would just tell us their
14 name and say that loudly and clearly so that the court
15 reporter can take that down and any relationship they are to
16 I would assume the victim or victims in this case. And the
17 Court will be glad to entertain anything they would like to
18 say for the record. Yes, ma'am.

19 **Ms. Franklin:** Thank you, Your Honor.

20 **The Court:** You're welcome, ma'am.

21 **Ms. Franklin:** My name is Ingrid Franklin. Excuse me.
22 My sister is Brenda Gantt.

23 **The Court:** Your sister is Brenda?

24 **Ms. Franklin:** Brenda Gantt.

25 **The Court:** Okay. G-A-N-T?

1 **Ms. Franklin:** G-A-N-T-T.

2 **The Court:** Yes, ma'am.

3 **Ms. Franklin:** Two t's. We just want to say thank you
4 very much on behalf of our family. This is the second loss
5 that my sister have experienced. Her daughter was taken away
6 from her back in 2002 with no justice served. To this day,
7 it's still a cold case. Her only son was taken away from
8 her, and we just want to say thank You, Jesus, for the
9 justice today.

10 GaWayne's children are here. Those kids will grow up
11 without a father. The last time I saw my nephew was at my
12 sister-in-law's funeral. Little did I know a week later we
13 would be burying my nephew. I just want to say thank you
14 very much, and thank You, Jesus, that justice was served.

15 I feel sorry for your family. I feel sorry for your
16 mother, but you still have a chance to receive the Lord in
17 your life because he can forgive you and he's a forgiving
18 God. We grew up in a religious family. We are a forgiving
19 family, and I just want to say may God have mercy on you.
20 Thank you very much.

21 **The Court:** You're welcome, ma'am.

22 **Ms. Martin:** My name is Shontae Martin.

23 **The Court:** I'm sorry, ma'am. Could you say that for me
24 again?

25 **Ms. Martin:** My name is Shontae Martin.

1 **The Court:** Yes, ma'am.

2 **Ms. Martin:** And I'm the mother of GaWayne's two kids.
3 These are my other babies' mama. They have his other three
4 kids. Her kids will now grow up without a father. Today is
5 actually my oldest daughter birthday. This is her second
6 year without her father. My daughter and her father were
7 very close, and she doesn't have -- she goes through -- she
8 is now in therapy because she has behavior issues because she
9 miss her daddy. She can't sleep at night.

10 My son asks where his daddy is. No child should have to
11 go through that. We got three boys that will have to grow up
12 without a father. It's hard enough in this world to try to
13 raise a child with having a father around.

14 Her brother is also in therapy. He just had to go back.
15 He's been having trouble at school, almost about to get
16 expelled. These kids are having a hard time.

17 Paris, which is the oldest, she's having trouble in
18 school. Her son is next to the baby. He don't -- he can't
19 handle where his father is at. He ask for him all the time.
20 That's not fair that we have to answer this when it was
21 senseless that it happened. It should never have happened,
22 and I know he has kids and his kids have to go through the
23 same thing and that's not fair. People have to think about
24 their actions. It doesn't just affect one person. It
25 affects a whole -- it affects everyone.

1 **Ms. Walker:** And I think finally, Your Honor...

2 **Mr. Hope:** Kedron Hope is my name.

3 **The Court:** Yes, sir.

4 **Mr. Hope:** I'm a victim. I'm still alive. I forgive
5 you, man, for trying to kill me that night, but the family of
6 GaWayne doesn't forgive you. That's all I got to say to you,
7 man.

8 **Ms. Walker:** Your Honor?

9 **The Court:** Yes, ma'am.

10 **Ms. Walker:** Just our position, Your Honor -- you've
11 heard the testimony and you were able to see the video. I
12 think the facts in this case and the manner in which this
13 murder was executed, Your Honor, speaks for itself, and that
14 concludes the State's presentation of things.

15 **The Court:** Mr. Shaffer, I'll be glad to hear from you.

16 **Mr. Shaffer:** Yes, Your Honor. I have been in contact
17 throughout this process since I've been retained with the
18 family's attorney, and we want to thank them because they are
19 good people, the victim's family.

20 This is a sad situation. It's the action of a kid. He
21 went out, he got drunk, and he had a gun. And it's a
22 horrible situation. We have two families that are ruined
23 because of it. Your Honor, he decided to exercise his right
24 to a trial which I believe it was -- I had advised him
25 strongly against that.

1 **The Court:** Uh-huh.

2 **Mr. Shaffer:** I think that the reason that he did that
3 is that's another action of a kid, Your Honor, that he wasn't
4 willing to accept -- he wasn't willing to accept 40 years,
5 Your Honor, which is the action of a kid and, Your Honor,
6 we'd just ask that you not impose -- not impose a sentence
7 that would put him away for the rest of his life because
8 James is a good guy.

9 I mean, he -- I'm not saying that his actions were good;
10 his actions were not. But James is not a bad person. He's
11 from a good family, Your Honor, and he has a chance of
12 becoming someone good whenever he gets out. And, Your Honor,
13 we'd just ask that you give him a sentence that would allow
14 him the possibility of getting out.

15 And, Your Honor, James -- we had talked about this and I
16 think right now he's a little overwhelmed. Are you okay? Do
17 you want...

18 **The Court:** Sir, is there anything you'd like to state
19 for the record on your own behalf?

20 **Mr. Bethel:** Yes. I want to apologize to the family.
21 It's -- it was truly an accident. I didn't mean for it to
22 happen, and things just got out of control. But I'm sorry
23 for y'all's loss. There's not one day that I don't think
24 about that and regret what happened, but it was truly an
25 accident. I didn't mean to take his life from him.

1 **The Court:** Is there anything further, Mr. Shaffer?

2 **Mr. Shaffer:** No, Your Honor, I don't believe so. Well,
3 Your Honor, may I -- may I get his grandfather to speak?

4 **The Court:** Sure. I'll be glad to hear from him.

5 **Mr. Charlie Bethel:** I'm his grandfather, Your Honor.

6 **The Court:** Tell me your name, sir.

7 **Mr. Charlie Bethel:** Charlie Bethel.

8 **The Court:** Yes, sir.

9 **Mr. Charlie Bethel:** And I'm sorry for the family, too,
10 but, you know, we all make mistakes and I'm sorry for him
11 because a lot of time you be out in places and you be in the
12 wrong place at the wrong time and a lot of things happen, but
13 I'm very sorry for him. He is a good -- he is a good young
14 man. I've been knowing him all my life and his mother and
15 his family. He's a very good young man. We're all church
16 people and we all know the Lord.

17 I love the Lord myself and I'm telling you, too, that I
18 pray for him every night. And I'm sorry that happened, but I
19 pray and I pray to heaven -- I pray that God will speak to
20 your heart because things do happen, and we can't change what
21 happened and none of us can change what happened. Things
22 happen and I'm sorry, and I pray that you would have mercy on
23 him. Thank you, Your Honor.

24 **The Court:** You're welcome, sir. Anything further, Mr.
25 Shaffer?

1 **Mr. Shaffer:** Nothing, Your Honor.

2 **The Court:** You all can take your seats for a moment.

3 Mr. Shaffer, how old is your client?

4 **Mr. Shaffer:** He just turned 23 a couple of months ago,
5 about three months ago. He was 22.

6 **The Court:** At the time.

7 **Mr. Shaffer:** Yes, Your Honor.

8 **The Court:** And how old was the victim?

9 **Mr. Shaffer:** The victim was 26.

10 **The Court:** 26. Correct? 26.

11 **Ms. Walker:** Your Honor, he was 25.

12 **The Court:** He was 25 at the time of the incident?

13 **Ms. Walker:** Yes, Your Honor.

14 **The Court:** There have been many sentiments echoed in
15 this courtroom today, all of which are accurate and I think
16 profound in their essence which is you now have two families
17 who in effect have -- you have the family of the victim who
18 has suffered a significant loss, and I was quite moved and I
19 appreciate the candor of the children's mothers and what
20 they're experiencing and I -- it's the Court's profound
21 desire that your children grow up to be healthy and
22 well-adjusted and that they will, with the grace of God, be
23 able to get through this circumstance and become -- fulfill
24 their full potential in life which is what I'm certain their
25 father would have wanted and I'm certain their family wants.

1 It seems to me you have a very strong family structure
2 and that you will be able to love your children through these
3 events, and so certainly -- and I appreciate the family's
4 candor in the loss of your son in such a senseless way. And,
5 quite frankly, I'm always -- the more -- I've been doing this
6 now 17 years and I'm never -- it always -- it doesn't
7 surprise me, but I guess it always renews my faith in the
8 compassion of individuals when you have people like Mr. Hope
9 who are able to say, "I forgive you," and also for the family
10 of the victim to offer compassion to the person who took
11 their loved one in such a senseless manner.

12 So I want to tell you all that I appreciate the
13 profundity of your sentiments that you shared with the Court
14 on today and the compassion that you're willing to extend to
15 Mr. Bethel because, in doing that, you not only free -- you
16 free yourselves and it also though tells me just of the level
17 of compassion that you're capable of, and it renews my faith
18 every day in the capacity of human beings to forgive.

19 There are many things that the Court takes into
20 consideration in sentencing a person and, of course,
21 sentencing theories evolve as you do this job more and more.
22 There are many things that Mr. Shaffer said that were really
23 quite accurate. One is that his client is very young, that
24 he's immature, and the one thing that I've also learned about
25 young men -- I read an article recently that I found

1 incredibly troubling that said that most men are not capable
2 of making a reasoned decision until their 30th birthday which
3 tells you just how much more mature women are than men
4 because it said we are capable of making an informed and
5 well-reasoned decision around 17 or 18 which is really even
6 more disconcerting. Good for us, not so good for them. But,
7 nevertheless, it tells you though of the mentality and
8 maturity of the male psyche, the male brain.

9 And it's even interesting again, the more that I sit in
10 this position, that I see when men get together in groups the
11 group dynamic that develops and the aberrant behavior that
12 often happens as a result of it. Things they would not
13 normally have done alone they tend to do in groups when they
14 develop this group sort of mentality and do things really
15 that are quite aberrant.

16 And what happened on that evening, whether alcohol-
17 induced or not -- but I'm a great believer that you do what
18 you're capable of doing. The only thing alcohol does is it
19 removes inhibitions. So what is in you, you will do. You
20 don't do things that are against your character just because
21 you have alcohol. It just means that your inhibitions are
22 removed, and in your impulses you are more quick to do that
23 which you may not have done had you not been impaired.

24 So I'm not particularly swayed by this whole, you know,
25 that you were impaired and I was drunk and I did it. It was

1 an aberrant act. It really was in effect almost an execution
2 of the victim in this case, and it was fueled by a group
3 dynamic and alcohol over something so petty as being put out
4 of a club, and unfortunately that's the dynamic we live with
5 in our society. I see it over and over and over, and it's
6 sad that I've become so jaded that I'm now used to it and it
7 has become a part of my reality. And so even though it is
8 aberrant, it doesn't seem that aberrant to me because I see
9 it all the time and younger and younger -- young men going to
10 jail really for what is in effect the balance of their
11 lifetimes.

12 There are many things that the Court takes into
13 consideration as mitigation because even when someone does
14 something aberrant, when they do something wrong, courts
15 should still weigh certain things and take certain things in
16 mitigation. One would be the age and lack of experience and
17 lack of maturity of Mr. Bethel. Again, I've indicated and
18 stand by my observation that alcohol would not be a
19 mitigating factor. But I think Mr. Shaffer was quite
20 profound in his remarks to the Court and I think quite
21 candid, and I appreciate his candor with the Court because I
22 often more and more deal with lawyers who are not
23 particularly candid, and I appreciate your candor---

24 **Mr. Shaffer:** Thank you, Your Honor.

25 **The Court:** ---and your honesty and your observations of

1 your client. So the Court is faced with now the loss of two
2 lives and unfortunately but nevertheless it is the
3 responsibility of this Court to mete out the appropriate
4 punishment under the facts and circumstances as they've been
5 presented through this trial. And Mr. Shaffer is accurate:
6 A person should never -- he didn't say it completely, but I
7 knew the gist of what he meant which is a person should never
8 be punished for exercising their right to a jury trial. I'm
9 a great believer in jury trials and I think that people
10 should exercise that right that is afforded to them.

11 The only difference with a jury trial is in a guilty
12 plea the Court hears a snapshot of events. It doesn't hear
13 everything. But in a jury trial the Court has the
14 opportunity to hear all the witnesses and really get the full
15 aspect of the case, and so sometimes it may come across that
16 punishments are more significant or severe after a jury trial
17 and it may even almost come across as punishment when that's
18 not, in fact, the case. It's just that the Court has had the
19 opportunity to hear the case fully developed and has a
20 greater understanding of what has taken place in a case in
21 greater detail than they would in a guilty plea.

22 Sir, if you would stand, please, for the pronouncement
23 of sentence. On the charge of indictment 2012-GS-40-5302,
24 sir, you are sentenced to the State department of corrections
25 for a period of 30 years.

1 On the charge of murder which is indictment 2012-GS-40-
2 4975, you are sentenced to the State department of
3 corrections for a period of 50 years.

4 These sentences are concurrent with one another. You'll
5 get credit for any time that you've served, and that is to be
6 calculated and applied by the department of corrections for
7 pursuant to 24-13-40.

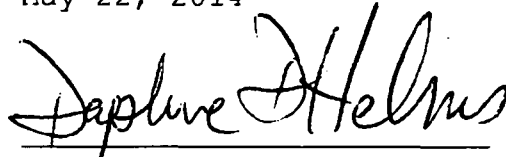
8 I thank you all for your time and attention to this
9 case. You've been zealous advocates. The Court has
10 appreciated your professionalism in the trial of this case.
11 Thank y'all very much.

12 (Whereupon, the proceedings were concluded.)
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I, the undersigned Daphne D. Helms, official court reporter for the Fifth 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 trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 6th through the 8th of November, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 22, 2014

A handwritten signature in cursive script that reads "Daphne Helms". The signature is written in dark ink and is positioned above a horizontal line.

Daphne D. Helms, court reporter

WITNESSES

(S) Travis Holdorf - Richland County
Sheriff

B. Rast

ARREST WARRANT NUMBER

2012A4010200544

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

JUN 12 2013

VERDICT

Guilty

Foreperson of Petit Jury
Date:

11-06-13
#221

DOCKET NO. 2012GS4004975

AMENDED
The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2012

THE STATE

vs.

James Kevin Bethel Jr

Indictment for
MURDER

SC Code: 16-03-0010

CDR Code: 0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JUN 12 2013
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT
AMENDED

At a Court of General Sessions, convened on OCTOBER 10, 2012,
the Grand Jurors of Richland County present upon their oath:

MURDER

That James Kevin Bethel Jr did in Richland County, on or about August 19, 2012, willfully, feloniously, and intentionally kill the victim, Gawayne Franklin, with malice aforethought, either express or implied, by means of gunshot wound to the head, and the victim did die as a proximate result thereof on or about in Richland 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.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Travis Holdorf - Richland County
Sheriff

ARREST WARRANT NUMBER

2012A4010200545

ACTION OF GRAND JURY

TRUE BILL

Jeil R. Koenigs
Foreperson of Grand Jury
Date: **OCT 10 2012**

VERDICT

Guilty

Foreperson of Petit Jury

Date: *11-22-11*
11-08-2013

DOCKET NO. 2012GS4005302

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2012

42

THE STATE

vs.

James Kevin Bethel Jr.

**Indictment for
ATTEMPTED MURDER**

SC Code: 16-03-0029

CDR Code: 3410

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

DETERMINED TO BE COPY
OF ORIGINAL FILED
11-22-11
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 10, 2012,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That James Kevin Bethel Jr [REDACTED]
[REDACTED] did in Richland County on or about August 19, 2012, did with
the intent to kill, attempt to kill KENDRON HOPE with malice aforethought,
either expressed or implied. All in violation of SC Code of Laws § 16-3-29
(1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.

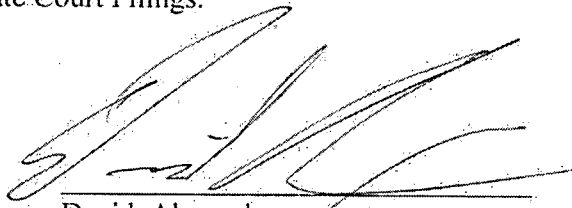


DAN JOHNSON, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 12th, 2015


David Alexander
Appellate Defender

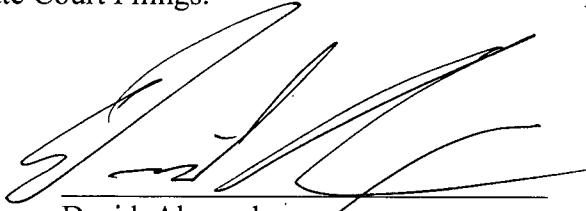
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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 12th, 2015


David Alexander
Appellate Defender**RECEIVED**

OCT 12 2015

SC Court of Appeals

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

ATTORNEY FOR APPELLANT