

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Colleton County
Perry M. Buckner, Circuit Court Judge

Opinion No. 2001-UP-205 (S.C. Ct. App. filed 5/4/2011)

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

DESMOND J. SAMS,

PETITIONER

APPENDIX

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Desmond Javon Sams, Appellant.

Appeal From Colleton County
Perry M. Buckner, Circuit Court Judge

Unpublished Opinion No. 2011-UP-205
Submitted February 8, 2011 – Filed May 4, 2011

AFFIRMED

Senior Appellate Defender Joseph L. Savitz, and
Appellate Defender Tristan M. Shaffer, both of
Columbia, for Appellant.

Assistant Attorney General Mark R. Farthing, for
Respondent.

PER CURIAM: Desmond Javon Sams appeals his conviction and sentence for voluntary manslaughter. Sams contends the trial court committed reversible error by refusing to instruct the jury on involuntary manslaughter when the evidence arguably supported a factual finding that Sams unintentionally killed Jake Frazier (Victim) while acting in self-defense. We affirm.

[1]

The trial court charged murder, voluntary manslaughter, and self-defense, but declined to charge involuntary manslaughter. The jury returned with a guilty verdict on the voluntary manslaughter charge. Limited to the facts of this case, we hold the trial court did not err. Sams's appellate brief does not articulate which definition of involuntary manslaughter he believes applies to the facts of his case.[2] Therefore, we will proceed to analyze the facts of this case under both definitions.

"Involuntary manslaughter is (1) the unintentional killing of another without malice, but while

engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others." State v. Wharton, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009). "If there is any evidence warranting a charge on involuntary manslaughter, then the charge must be given." Id.

Sams did not qualify for an involuntary manslaughter instruction under the first definition because his conduct in placing his arms around Victim's neck and holding Victim down for over eight minutes was of the type naturally tending to cause death or great bodily harm. See Wharton, 381 S.C. at 216, 672 S.E.2d at 789 (defining involuntary manslaughter as "the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm").

This case can be factually distinguished from State v. Chatman, 336 S.C. 149, 519 S.E.2d 100 (1999). Chatman accidentally strangled the victim by pressing his shoulder into the victim's neck while engaged in a fight with the victim on the ground. Id. at 153, 519 S.E.2d at 101-02. The supreme court noted Chatman's conduct was not such that naturally tended to cause death or great bodily harm because it was not a traditional strangulation-type situation involving the accused's hands placed around a victim's neck. Id. at 153, 519 S.E.2d at 102. Thus, Chatman was entitled to an involuntary manslaughter charge under the first definition. Id.

In contrast to Chatman, the present case is a traditional strangulation-type situation. Sams wrapped both arms around Victim's neck and applied pressure for over eight minutes. Sams continued to hold Victim face down in a choke hold even after Victim became "lifeless." When the police arrived and asked Sams to release his hold on Victim, Sams was reluctant to do so. Furthermore, Sams did not expressly argue below, nor does he suggest on appeal, that his actions were not of the type naturally tending to cause death or great bodily harm. Even if Sams had raised this argument, this contention is manifestly without merit. See Rule 220(b)(2) ("The Court of Appeals need not address a point which is manifestly without merit.").

Sams was likewise not entitled to an involuntary manslaughter charge under the second definition. See Wharton, 381 S.C. at 216, 672 S.E.2d at 789 (further defining involuntary manslaughter as "the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others"). Sams could only qualify for an involuntary manslaughter instruction under the second definition if he were acting lawfully in self-defense and unintentionally killed Victim.[3]

Sams stated, "I wasn't choking him like hard to try to kill him" and "I wasn't trying to kill him." Even assuming Sams was acting lawfully in defending himself, he admitted to intentionally choking Victim. In addition, Sams exerted more force than was reasonably necessary to defend himself by wrapping his arms around Victim's neck for over eight minutes while Victim lay face down on the floor and begged for his life. See State v. Campbell, 111 S.C. 112, 113, 96 S.E. 543, 543-44 (1918) ("A person assaulted, being without fault in bringing on the difficulty, has the right to use such force as is necessary for his complete self-protection, or which in the mind of a person of ordinary reason and firmness would reasonably prevent the assailant from taking his life or inflicting serious bodily harm.").

State v. Pickens, in which the defendant argued he shot a gun at his victim in self-defense, is analogous to the present case. 320 S.C. 528, 531-32, 466 S.E.2d 364, 366-67 (1996). In

Pickens, refusal to charge involuntary manslaughter was proper because the defendant admitted he intentionally shot the gun at the victim. Id. Like Pickens, Sams was either not guilty by reason of self-defense, or guilty of voluntary manslaughter. Id. However, no evidence exists indicating Sams's actions were unintentional for purposes of an involuntary manslaughter charge.

This case is distinguishable from accidental trigger-pull gun cases where an involuntary manslaughter instruction is often deemed appropriate. See, e.g., State v. Mekler, 379 S.C. 12, 15-16, 664 S.E.2d 477, 479 (2008) (explaining an involuntary manslaughter instruction was warranted when testimony supported defendant's assertion that she unintentionally shot victim while acting in reckless disregard for the safety of others by negligently handling a loaded shotgun); State v. Light, 378 S.C. 641, 648-49, 664 S.E.2d 465, 468-69 (2008) (holding an involuntary manslaughter instruction was warranted when defendant testified he was struggling with his girlfriend to take possession of a loaded shotgun when the gun unintentionally discharged); State v. Crosby, 355 S.C. 47, 53, 584 S.E.2d 110, 112-13 (2003) (finding defendant's contradictory statements that he pulled the trigger and did not intend to pull the trigger were sufficient to warrant a jury instruction on involuntary manslaughter).

Here, Sams admitted he intentionally choked Victim but suggested he did not choke him hard enough to kill him. The intentional act of choking someone is evidence of malice, not reckless disregard for the safety of others, and a malicious-killing is not an unintentional killing. See Wharton, 381 S.C. at 216, 672 S.E.2d at 789 (defining involuntary manslaughter as "the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others") (emphasis added); see also Tate v. State, 351 S.C. 418, 426, 570 S.E.2d 522, 527 (2002) ("Malice is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong."). Indeed, two eye-witnesses to the incident testified Sams told Victim "I'm going to . . . kill you" while engaged in the act of choking Victim.

Because no evidence exists demonstrating that this was an unintentional killing under either definition of involuntary manslaughter, the decision of the trial court not to charge involuntary manslaughter is

AFFIRMED.

WILLIAMS, GEATHERS, and LOCKEMY, JJ., concur.

[1] We affirm without oral argument pursuant to Rule 215, SCACR.

[2] We are disturbed by the brevity of the legal argument in Sams's appellate brief, which consists of less than a page.

[3] The trial court agreed to charge the jury on the law of self-defense, and the State did not object to this charge.

4

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

DESMOND SAMS,

APPELLANT

Appeal from Colleton County

Honorable Perry M. Buckner, Circuit Court Judge

Opinion No. 2011-UP-205

PETITION FOR REHEARING

Appellant respectfully petitions this Court for a rehearing pursuant to *Rule 221(a)* SCAR. Appellant submits that the Court improperly held that he was not entitled to a jury instruction of involuntary manslaughter.

Review of the Facts

Jake Fraizer and Appellant were best friends, but after a night of heavy drinking, Jake believed that his friend had inappropriately touched his girlfriend. Feeling betrayed, Jake hit Appellant, and Jake grabbed Appellant around his neck. R. 96, ll. 17-20. Jake repeatedly punched Appellant and attempted to rip out Appellant's windpipe. R. 97, ll. 10-13. The two men struggled.

Eventually, Appellant was able to *restrain* Jake by getting him in what the State would later describe as a “choke hold.” R. 2, ll. 20-22. This hold was designed to restrain Jake *not to kill him*. R. 98, ll. 6-9; R. 99, ll. 1-2; R. 99, ll. 19-21; R. 102, ll. 7-8; R. 105, ll. 24-25.

In hopes of restraining Jake, Appellant wrapped his arms around Jake’s neck, but Appellant unwittingly was compressing the veins allowing oxygen depleted blood from leaving Jake’s head. R. 58, ll. 21-24; R. 75, ll. 15-20; R. 78, ll. 19-25; R. 79, ll. 9-12. Unfortunately, the method used to restrain Jake increased arterial pressure and eventually prevented oxygen rich blood from getting to his brain. R. 79, ll. 1-12.

When police arrive Jake was face down on the floor. R. 57, ll. 7-8. Appellant was still on top of him also facing downward. R. 57, ll. 7-8. Out of fear for his own life, Appellant was still using the trying restrain Appellant. When police ordered Appellant to let Jake go, Appellant responded by saying, “No, he’ll want to fight.” R. 57, ll. 23-24. Upon a second request by the officer, Appellant released his hold on Jake. Unfortunately, Jake died due to asphyxia¹. R. 76, ll. 4-5.

Appellant never intended to kill Jake. R. 98, ll. 6-9; R. 100, ll. 22-23; R. 101, ll. 8; R. 104, ll. 3-4.

The First Definition of Involuntary Manslaughter

Involuntary manslaughter can be “the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm.” *State v. Chatman*, 336 S.C. 149, 152, 519 S.E.2d 100, 101 (1999). A trial court should instruct the jury on the law of involuntary manslaughter unless there is *no evidence whatsoever* tending

¹ It is important to note that the petechial hemorrhages found on Jake’s neck indicate that the asphyxia was *not* caused by constriction of Jake’s airway. R. 75, ll. 1-5; R. 79, ll. 1-12.

to reduce the crime from murder. *See Casey v. State*, 305 S.C. 445, 447 409 S.E.2d 391, 392 (1991).

In *Chatman*, the Supreme Court found that a “face-to-face ‘choke hold’” was not an action that would naturally tend to cause death or serious bodily harm. *Id.* The Supreme Court noted that the choke hold used by *Chatman*, “[was] not the traditional strangulation type situation. [Chatman] was not attempting to strangle [the victim] by placing his *hands* around [the victim’s] neck.” *Id.*, 336 S.C. at 153, 519 S.E.2d at 102.

This Court distinguished Appellant’s case from *Chatman* in stating “[Appellant] wrapped both *arms* around [Jake’s] neck and applied pressure for over eight minute. [Appellant] continued to hold [Jake] face down in a choke hold even after the victim became ‘lifeless’²” 2011-UP-205 (emphasis added). However, Appellant’s restraint of Jake was not “the traditional strangulation type situation” that was described in *Chatman*. R. 58, ll. 21-24; *See Chatman*, 336 S.C. at 153, 519 S.E.2d at 102. Similar to the “face-to-face choke hold” used by *Chatman*, Appellant wrapping his *arms* around Jake’s neck to restrain him was not the type of activity naturally tending to cause death or serious bodily harm.

Preservation of the First Definition

Although this Court commented that Appellant had not raised an argument that Appellant’s behavior was not “naturally tending to cause death or serious bodily harm”, this argument is still preserved for appellate review. To preserve an argument it must be made on specific grounds “if the specific ground was not apparent from the context” *See State v. Byers*, ---

² Appellant testified that he believed Jake was breathing when he released him. Tr. 101, l. 6. This statement is disputed by the defense and which should not have been considered under this Court’s review. *See State v. Byrd*, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996) (“In determining whether the evidence required a charge of voluntary manslaughter, we view the facts in the light most favorable to the defendant.”)

S.C. ---, --- S.E.2d --- (May 23, 2011) (Opinion # 26976) (*citing* Rule 103(a)(1), SCRE) (emphasis added).

Appellate asked for an involuntary manslaughter instruction. R. 107, ll. 6-7. Inherent in the first definition of involuntary manslaughter is that the actions of Appellant are not naturally tending to cause death or serious bodily injury. Therefore, it was apparent from Appellant's request that he was arguing that his actions could have been viewed by the jury as not naturally tend to cause death or serious bodily harm.

The Second Definition of Involuntary Manslaughter

Involuntary manslaughter can be "the unintentional killing of another without malice, while engaged in a lawful activity³ with reckless disregard for the safety of others." *Chatman*, 336 S.C. at 152, 519 S.E.2d at 101. Appellant told the jury that while he meant to restrain Jake he did not mean to kill him. Also Appellant told the jury that he did not think he was restraining him hard enough to kill him.

In its opinion this Court held that Appellant's restraint of Jake was not reckless because of the following:

"Here, [Appellant] admitted he intentionally⁴ choked [Jake] but suggested he did not choke him hard enough to kill him. The intentional act of choking someone is evidence of malice⁵, not reckless disregard for the safety of others, and a malicious killing is not an unintentional killing." 2011-UP-205.

³ This Court assumed that Appellant was acting lawfully in its opinion.

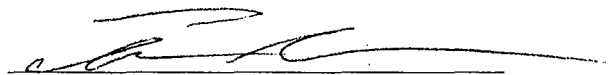
⁴ Appellant stated, "I wasn't trying to choke him." R. 100, l. 22. This statement is disputed by the defense and which should not have been considered under this Court's review. *See Byrd*, *supra*.

⁵ Appellant was acquitted of murder and found guilty of voluntary manslaughter. Manslaughter is the unlawful killing of another *without* malice. S.C. Code § 16-3-50. Therefore the jury necessarily found that Appellant was not acting maliciously.

Appellant respectfully argues that this holding inverts the standard for charging a lesser included offenses. Under this holding, any evidence of malice would *preclude* a charge of involuntary manslaughter. This is not a correct statement of the law. *See Casey*, 305 S.C. at 447 409 S.E.2d at 392 (“It has long been the law in this State that ‘to warrant the court in eliminating the offense of manslaughter it should very clearly appear that there is *no evidence whatever* tending to reduce the crime from murder to manslaughter.’”).

For the foregoing, reasons Appellant, respectfully request that this Court rehear his case.

Respectfully submitted,



Tristan M. Shaffer
Appellate Defender

This 3rd day of June, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County
Honorable Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

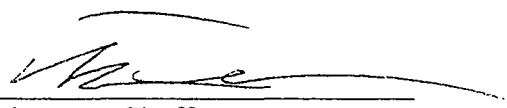
V.

DESMOND SAMS,

APPELLANT

CERTIFICATE OF SERVICE

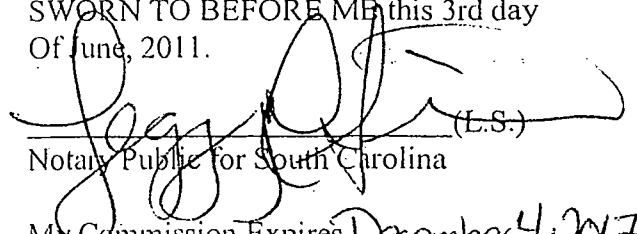
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mark Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 3rd day of June, 2011.



Tristan M. Shaffer
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 3rd day
Of June, 2011.



(L.S.)
Notary Public for South Carolina

My Commission Expires December 4, 2017

The South Carolina Court of Appeals

The State,

Respondent,

v.

Desmond J. Sams,

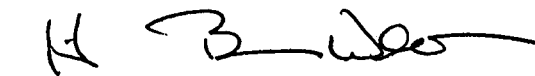
Appellant.

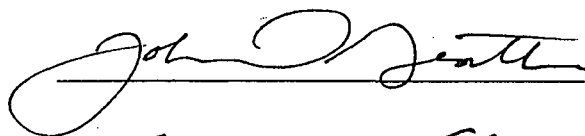
The Honorable Perry M. Buckner
Colleton County
Trial Court Case No. 2008-GS-15-00370

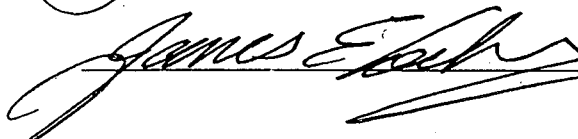
ORDER DENYING PETITION FOR REHEARING

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

It is, therefore, ordered that the Petition for Rehearing be denied.

 J. Williams

 J. Geathers

 J. Lockemy

cc: Senior Appellate Defender Joseph L. Savitz, III
Appellate Defender Tristan M. Shaffer
Assistant Attorney General Mark Farthing

FILED

June 23, 2011

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM COLLETON COUNTY

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DESMOND SAMS,

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RECORD ON APPEAL

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1 give the parties any opportunities to object to anything
2 that I have said to the jury if they have any exceptions or
3 objections.

4 Any exceptions or objections from the State?

5 **DEP. SOL. THORNTON:** No, Your Honor.

6 **THE COURT:** From the defendant?

7 **MR. MATHEWS:** No, sir.

8 **THE COURT:** Very well. Ladies and gentlemen, please
9 give the attorneys your careful consideration. We will now
10 begin the trial of this case. Solicitor?

11 **MS. STILLEY:** Thank you, Your Honor. May it please the
12 court?

13 **THE COURT:** Yes, ma'am.

14 **OPENING STATEMENT**

15 **BY ASST. SOL. STILLEY:**

16 Good morning, ladies and gentlemen. My name is Amanda
17 Stilley, and along with Deputy Solicitor Sean Thornton, I'm
18 going to be prosecuting the case before you today and
19 possibly into tomorrow.

20 We're here in the matter of the State v Desmond Sams.
21 He's charges with two offenses that the judge has discussed
22 with you: murder and assault and battery of a high and
23 aggravated nature; we sometimes will refer to that as Abhan.
24 I just want you to know that's assault and battery of a high
25 and aggravated nature.

1 Both of these charges stem from the night of April
2 12th, 2008, here in Colleton County, at
3 That was the house of a Lisa Michelle Strickland. Now Lisa,
4 a friend of hers, Stephanie, the defendant, Desmond Sams,
5 and our victim, Jake Frazier, III, had been around drinking,
6 and about 4:00 in the morning, roughly, had a little too
7 much to drink and he got ill. He went to the restroom.

8 Stephanie got a little concerned so she went in to
9 check on him a little bit later and Desmond came with her.
10 A fight broke out between those two men. During this fight,
11 Desmond choked Jake down into the tub. Lisa got a little
12 concerned. She went outside to try and call 9-1-1, and
13 Desmond found out she was trying to call 9-1-1, and he came
14 after her.

15 He choked her and then he started slapping her in the
16 face. Finally, he let her go, though, and he went back
17 inside where Jake was now laying on a bed in the back
18 bedroom of this house. They started fighting again, except
19 this time, the fight was in the bedroom and it went from the
20 bed to the floor. Jake was laying in the floor face down,
21 prone position, and Desmond was on top of him and had him in
22 a choke hold, which all of you have seen before. Had his
23 arm wrapped around his neck and was choking him. Well, this
24 was getting a little out of hand. Stephanie begged with
25 Desmond to let him go. While Jake could still breathe, he

1 begged with him, "Come on, man. I've got three kids. Let
2 me go." No, he kept choking him.

3 Stephanie tried to physically get Desmond off and he
4 hit her, too. Kept choking him. Lisa was finally able to
5 call
6 9-1-1, but it was too late because when Stephen Dunn, with
7 the Colleton County Sheriff's Office, got there some 8 1/2
8 minutes later after the call came in about Desmond choking
9 him and wouldn't let him go, he was still choking him.
10 Stephen Dunn walked in and said, "Man, get off him."
11 Wouldn't do it. "Get off of him, now." He had to draw his
12 taser. Finally, he got off of him and it was then that he
13 finally released Jake Frazier but it was too late. Jake
14 Frazier was unconscious. EMS arrived and tried to revive
15 him at the scene but was unable to, so he was transported to
16 the Colleton County Medical Center where he was later
17 pronounced deceased.

18 Now, in order to prove to you that Desmond Sams is
19 guilty of murder, I, and the Deputy Solicitor, have a burden
20 beyond a reasonable doubt, I'm sure you've all heard this
21 before, to prove to you that Desmond Sams killed Jake
22 Frazier with malice aforethought. And I'm not going to go
23 into malice aforethought, because like the judge has already
24 mentioned to you, he's going to go through all of these
25 points of law in intricate detail and tell you what that

1 means, but keep in mind that Desmond Sams killed Jake
2 Frazier. That's not the only charge, though, we're here for
3 today. We're also here on an Abhan charge I told you about,
4 and in that I have to prove to you that Desmond Sams
5 physically attacked Lisa Strickland, that he inflicted some
6 form of violence upon her person, upon her body.

7 Now, during this trial, the judge has already told
8 you're going to hear a bunch of different forms of evidence.
9 You're going to hear from multiple witnesses. You're going
10 to hear from the two girls that were there that night, Lisa,
11 and you're going to hear from Stephanie. You're going to
12 hear from Stephen Dunn who came in and saw him still choking
13 the victim. You're going to hear from other law
14 enforcement. You're going to hear from EMS that showed up
15 and tried to revive him, and then you're going to hear from
16 a Dr. Erin Presnell at MUSC and you're going to hear her
17 medical findings.

18 I'm not going to remind you again to please pay close
19 attention because there are going to be a lot of details,
20 and I know the judge has already talked to you about that.
21 I don't want to waste your time. But I do beg you again,
22 after reviewing all of the evidence and these witnesses, I
23 just ask you to return a true verdict. Thank you.

24 MR. MATHEWS: May it please the Court?

25 THE COURT: Mr. Mathews.

1
2 **OPENING STATEMENT**

3 **MR. MATHEWS:** Madam Foreperson, ladies and gentlemen of the
4 jury, I'm David Mathews, and I think I told you that at the
5 beginning, too. Some of what you've heard Ms. Stilley talk
6 about will come out on that stand and some of it won't.

7 I believe what the evidence will show in this case is
8 that these four people were drinking -- drinking a lot; and
9 that they got into a fight. Mr. Frazier and Mr. Sams who
10 were best friends. They were like brothers. They were
11 cousins and they loved each other. They got into a fight
12 because of an allegation that Desmond made a pass at Jake's
13 girlfriend, that Jake attacked Desmond first, that he threw
14 the first punch and that they started fighting and they
15 couldn't be separated at some point, and then the evidence
16 gets a little bleary.

17 I think you'll see that the testimony come from that
18 stand will be inconsistent in some very serious ways.
19 That's why it's important to listen carefully because the
20 State has the burden of proving this. The defendant doesn't
21 have to prove anything. I think that the evidence that comes
22 from that stand will show that in the end, Mr. Sams killed
23 his best friend. I believe that's what the evidence will
24 show.

25 But one thing the State will not be able to show based
on that evidence, is that there was anything like malice

1 aforethought. In fact, it may have been self-defense, was
2 probably self-defense and that as Officer Dunn approached,
3 in addition to seeing Mr. Sams still on top of Mr. Frazier,
4 that Officer Dunn will have said, "Get off of him." And he
5 said, "No, he will want to fight me." I believe that's what
6 the evidence will be and I believe that will be the evidence
7 that he believed him to be in reasonable fear for his
8 safety.

9 This was not an intentional killing. It was certainly
10 not a killing with malice aforethought. But listen
11 carefully to all of the evidence that comes from that stand,
12 because that's what counts. As to the Abhan, I believe that
13 you'll find that the testimony is inconsistent to the point
14 where I believe that you will find that it just didn't
15 happen. But in any event, please listen carefully -- listen
16 carefully to all of the testimony. Slow it down and look at
17 the statements, the testimony, any exhibits you get, very
18 closely. Obviously, this is a very important case. I
19 believe after you've heard of all of the testimony that you
20 will find Mr. Sams not guilty of anything.

21 **THE COURT:** Call your first witness, Solicitor.

22 **DEP. SOL. THORNTON:** The State calls Stephanie Lee
23 Ballard to the stand.

24 **MADAM CLERK:** Ms. Ballard, please come forward and be
25 sworn.

Direct Examination of Stephanie Ballard by Dep. Sol. Thornton

1 **WHEREUPON, MS. STEPHANIE BALLARD** was duly sworn to tell
2 the truth, the whole truth, and nothing but the truth, and
3 testified as follows.

4 **MADAM CLERK:** Please have a seat on the witness stand
5 and state your full name for the record.

6 **THE COURT:** Pull that microphone over. It's going to
7 amplify your voice. Begin by stating your full name and
8 spell your last name for the court reporter. Speak up so
9 the jury -- the last gentleman down there on the end can
10 hear you.

11 **MS. STRICKLAND:** My name is Stephanie Lee Ballard, B-A-
12 L-L-A-R-D.

13 **THE COURT:** Can you hear down there, alright?

14 **MR. MATHEWS:** If she could speak a little louder.

15 **THE COURT:** Madam Clerk, would you turn it up for me
16 just a little bit.

17 **MADAM CLERK:** Sure.

18 **THE COURT:** Try it again for me, please, ma'am.

19 **MADAM CLERK:** Stephanie Lee Ballard, B-A-L-L-A-R-D.

20 **THE COURT:** Can you hear? (JURY NODS IN AFFIRMATION.)
21 Your witness, counsel.

22 **DEP. SOL. THORNTON:** Thank you, Judge.

23 **DIRECT EXAMINATION**

24 **DEP. SOL. THORNTON:**

25 **Q** Ms. Ballard, where do you live?

Direct Examination of Stephanie Ballard by Dep. Sol. Thornton

1 A

2 Q Is that here in Colleton County?

3 A Walterboro.

4 Q Did you live in Walterboro on or about April 12th of
5 this year -- or excuse me, now we're in January. April 12th
6 of 2008?

7 A Same residence.

8 Q All right. At that time in April of 2008, did you know
9 someone named Jake Lamont Frazier, the third?

10 A Yes.

11 Q And how did you know Mr. Frazier?

12 A Him and I had a son together.

13 Q And did y'all have a relationship at that time?

14 A Yes.

15 Q Now on April the 12th of 2008 do you remember where you
16 were?

17 A Yeah. At Lisa Strickland's house.

18 Q All right. And is that at

19 A Yes.

20 Q And is that here in Colleton County?

21 A Yes.

22 Q And on April the 12th, 2008, in the early morning
23 hours, who else was at Lisa Strickland's house with you?

24 A It was Lisa, myself, Desmond and Jake.

25 Q All right. When you say "Desmond", do you see

1 "Desmond" in the courtroom?

2 A Yes.

3 Q Can you point him out for me?

4 A (Deponent complies.)

5 Q Are you pointing to Desmond Sams, the defendant in this
6 case, charged with murder?

7 A Yes.

8 Q What were y'all doing at Lisa's that night or that
9 morning; I guess I should say early morning?

10 A We were drinking.

11 Q All right. And was Jake drinking?

12 A Yes.

13 Q Did at some point Jake have too much to drink?

14 A Yes.

15 Q Did he feel okay, or did he feel sick, or how was he
16 feeling?

17 A He had gotten sick.

18 Q All right. And what happened when he got sick?

19 A He went to the bathroom and Desmond followed him down
20 to the bathroom and I went down there and he was getting
21 sick and they started arguing.

22 Q Do you remember what they were arguing about?

23 A Myself.

24 Q All right. When you say "yourself", they were having
25 an argument about you?

Direct Examination of Stephanie Ballard by Dep. Sol. Thornton

1 A Yes.

2 Q All right. And do you remember specifically what the
3 argument was?

4 A Desmond had grabbed me.

5 Q All right. And did Mr. -- did Jake say anything about
6 that?

7 A He asked Desmond why he was feeling on me, and that's
8 when they started arguing, and Desmond pushed him into the
9 bathtub and was choking him.

10 Q All right. So at the start of the fight, Desmond
11 started choking him right off the bat?

12 A He pushed him into the bathtub and he had his hands
13 around his neck.

14 Q All right. What happened then?

15 A Lisa pulled Desmond off of Jake.

16 Q All right. What happened after that? Was there a
17 separation? Did they leave?

18 A Yes. Lisa took Desmond into the living room and then I
19 took Jake into the bedroom.

20 Q What happened after that?

21 A Desmond came back to the bedroom and then they started
22 fighting again.

23 Q All right. So you and Jake were in a bedroom by
24 yourselves?

25 A Uh-huh (affirmative). I had taken his shoes off, laid

Direct Examination of Stephanie Ballard by Dep. Sol. Thornton

1 him in the bed, and he was about to go to sleep.

2 Q And that's when Desmond came back in the room and they
3 started fighting again?

4 A Yes.

5 Q And this is after, from what you testified, Desmond had
6 already shoved him into the bathtub and was choking him?

7 A Yes.

8 MR. MATHEWS: Your Honor, I'd object to the leading.

9 THE COURT: Sustained.

10 DEP. SOL. THORNTON: I apologize, Your Honor. I
11 thought she had already testified to that. I was
12 clarifying.

13 Q Did you testify earlier as to what had happened in the
14 bathroom?

15 A Yes.

16 Q All right. Would you go over that again, please?

17 A They had started arguing and Desmond pushed Jake into
18 the bathtub, and he had his hands around his neck and was
19 choking him, like choking down into the bathtub.

20 Q All right. And after you had testified that you took
21 him into the bedroom, Jake into the bedroom, you had his
22 shoes off, he was laid down, you said Desmond came back in
23 and they started fighting again; then what happened?

24 A They just started fighting and then Lisa told Desmond
25 that she was gonna call the cops, and then Lisa went down

Direct Examination of Stephanie Ballard by Dep. Sol. Thornton

1 the hallway, and Desmond went after Lisa down the hallway,
2 and that's when he pushed her onto the couch and he was
3 choking her.

4 Q All right. Hang on just a second. Now, you testified
5 that Lisa said she was gonna call the cops, so he chased
6 after her? "He" being Desmond Sams?

7 A Desmond, yes.

8 Q All right. Then what happened?

9 A I got Desmond off of Lisa and then he went back to the
10 bedroom and they started fighting again.

11 Q All right. Now, let me get this straight. So
12 according to what you've testified to, Desmond choked him in
13 the bathroom, "him" being Jake.

14 A Right.

15 Q The victim in this case. They got separated and he
16 came back into the bedroom and started fighting with him
17 again.

18 A Right.

19 Q Then they got separated again when he went to chase
20 after Lisa to keep her from calling 9-1-1?

21 A Right.

22 Q Then he came back in the room and started fighting him
23 again?

24 A Right.

25 Q All right. What happened next?

Direct Examination of Stephanie Ballard by Dep. Sol. Thornton

1 **A** That's when it just -- they were fighting. Desmond was
2 on top of Jake the whole time, just choking him. Then Jake
3 kept telling him he couldn't breathe. He'd say, "Please let
4 me go. Let me live for my kids." Desmond said, "I love
5 your kids, but I'm going to fucking kill you." and that's
6 what he did.

7 **Q** All right. Did you ask, at any time, did you tell
8 Desmond to stop?

9 **A** Uh-huh (affirmative). I hit Desmond. I pushed him. I
10 did all that I could and he would not let him go.

11 **Q** And who was on top?

12 **A** Desmond.

13 **Q** And what was he doing?

14 **A** He was choking him, just telling, "I'm gonna kill you.
15 You hit me. You tried to kill me. I'm gonna fucking kill
16 you."

17 **Q** And I believe you had testified, he did this even after
18 Jake asked him not to do it because Jake had three kids?

19 **A** Yeah.

20 **Q** After all this happened, what happened next? Did law
21 enforcement, anybody, ever get there?

22 **A** Yes. And as soon as they told Desmond to let him go,
23 he let him go, and I was thinking to myself, as many times
24 that we told him to let him go, why didn't he do it then?

25 **Q** Was Jake moving around or getting up after he let him

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 go?

2 **A** Unh-unh, no.

3 **Q** Did you see anybody try to do CPR?

4 **A** I did. I tried.

5 **Q** And did any medical people show up?

6 **A** They were there. They told me to leave out of the room
7 and then that's when they took over.

8 **Q** And did you ever see Jake again after that?

9 **A** I seen him at the hospital.

10 **Q** All right. And when you saw him, what was his
11 condition?

12 **A** He -- they had already pronounced him dead.

13 **DEP. SOL. THORNTON:** Your Honor, court's indulgence for
14 one moment.

15 **Q** I have no further questions at this time, Stephanie.
16 Please answer any questions that Mr. Mathews may have.

17 **CROSS-EXAMINATION**

18 **BY MR. MATHEWS:**

19 **Q** Ms. Ballard, do you need a moment? Do you need to get
20 some tissues?

21 **A** I'll try.

22 **Q** Ms. Ballard, obviously, this is very important. Have
23 you told the jury everything that you can recall about that
24 evening?

25 **A** Yes.

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 Q Okay. Did you at any point, what had you been drinking
2 that evening? What all had you had to drink?

3 A I

4 THE COURT: Speak up. Counsel, come up to the
5 microphone.

6 MR. MATHEWS: Okay.

7 Q Ms. Ballard, what all did you have to drink that night?

8 A We had a couple of drinks of Crown and Coke.

9 Q Okay. Did y'all also do shots of Vodka?

10 A Yeah, with lemon.

11 Q Lemondrops?

12 A Lemondrops, yeah.

13 Q Okay. And all four of y'all had had those?

14 A Right.

15 Q Okay. And shots of Crown or Crown and Cokes?

16 A I drank Crown and Coke.

17 Q Okay. Had Jake also tipped over or tipped up a bottle
18 of Tequila?

19 A Yes. Him and Desmond drank that together.

20 Q And so Vodka -- were you, also, drinking Gin?

21 A No.

22 Q Was anyone there drinking Gin?

23 A It was there at the house, but I'm not sure.

24 Q Okay. And you have given a couple statements, I think,
25 also, to law enforcement?

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 **A** That one statement.

2 **Q** Just one? You didn't do -- when was that? Was that in
3 the morning or was it in the afternoon?

4 **A** It was in the morning.

5 **Q** Do you have a cell phone, Ms. Ballard?

6 **A** I do.

7 **Q** And did you call law enforcement at any point that
8 evening?

9 **A** I didn't. I know Lisa had my phone and she called a
10 lot of people, but I'm not sure who exactly she called.

11 **Q** Okay. So the only -- the only phone that was in the
12 house was Lisa -- well, yours, but you gave it to Lisa?

13 **A** Right. Well, Jake had a phone, too, but I'm not sure
14 if she mighta used his.

15 **Q** Okay. Did you make any -- you made no calls to law
16 enforcement then?

17 **A** No.

18 **Q** Did you call anybody that evening?

19 **A** I called his sister.

20 **Q** Okay. Sharron Glover?

21 **A** Uh-huh (affirmative).

22 **Q** And she's sitting right there? (Indicating) That's Ms.
23 Glover?

24 **A** (Deponent nods head affirmatively.)

25 **Q** Okay. So your testimony today was there was three

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 separate altercations between Jake and Desmond?

2 A Right.

3 Q Now, were Jake and Desmond close; do you know?

4 A I don't know.

5 Q Had Desmond been in your presence before?

6 A Three times.

7 Q Okay. Was Lisa also there any of those times?

8 A Yes.

9 Q Had Lisa and Desmond had a physical relationship at
10 some point?

11 A I'm not sure.

12 Q Could have been?

13 A What do you mean by "physical"?

14 Q Did they have any oral sex or anything like that at any
15 time?

16 A I wasn't there. I mean, I hadn't seen it, but I've
17 been told.

18 Q Now when did the first instance I think you indicated,
19 you testified that Jake called Desmond out because he
20 accused Desmond of feeling on you?

21 A He did feel on me.

22 Q Okay. But that's what the fight was about?

23 A Right.

24 Q Okay. Explain, what did they say to each other?

25 A I can't remember exactly.

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 Q Okay. What's the first -- and you say the first person
2 doing the shoving was Desmond or was Jake?

3 A It was -- Jake was coming out of the bathroom and
4 that's when he seen it, and then they started an argument,
5 and then Desmond pushed him into the bathtub.

6 Q Okay. So let me understand this. At one point where
7 Jake, I think, was -- he was in the bathroom. He had thrown
8 up in the bathroom?

9 A Right.

10 Q I think, initially, how big is the bathroom?

11 A Not very big.

12 Q And at one point, were all four of you in the bathroom?

13 A Right.

14 Q Okay. And then at some point, did just Desmond go in
15 there and talk to Jake?

16 A Right.

17 Q Okay. Try to make him feel better or whatever?

18 A Right.

19 Q Okay. So there weren't any problems at that point?
20 They were -- you knew them to be good friends, extremely
21 good friends and relatives of each other?

22 A I didn't know Desmond very well, but, I don't know.

23 Q All right. Now, but, who broke -- and you say that
24 Lisa broke up the first fight?

25 A Right.

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 Q Okay. And you walked back. How did Lisa and Desmond
2 leave together? You said they left together?

3 A She grabbed him off the bed and then took him into the
4 living room.

5 Q Okay. I mean, was she physically able to pull him
6 there or did she say, "Come on with me" and they went
7 together voluntarily?

8 A She pushed him down the hallway.

9 Q Okay. So she was -- she was able to physically remove
10 him from Jake or "Red"?

11 A Right.

12 Q Okay. And was she restraining him the whole time or
13 were they sitting and talking? What happened when they were
14 together in the living room?

15 A I don't know. I was in the bedroom.

16 Q Did you hear anything?

17 A No.

18 Q Okay. You were able at that point, to peacefully talk
19 with Jake in the bedroom, take off his shoes, say
20 everything's gonna be okay, and all that sort of stuff, in
21 the bedroom?

22 A Right.

23 Q Okay. So if there was a bunch of stuff going on in the
24 other room, you wouldn't have been able to do that, would
25 you?

Cross-Examination of Stephanie Ballard by Mr. Mathews

- 1 **A** (Witness shakes head.)
- 2 **Q** That's "no"?
- 3 **A** No.
- 4 **Q** Okay. So everything -- there's this first fight, and
- 5 then everything had settled down, correct?
- 6 **A** Correct.
- 7 **Q** All right. And then you said that Desmond walked into
- 8 the bedroom where the two of y'all were?
- 9 **A** Right.
- 10 **Q** Okay. And what happened at that point? You have to
- 11 slow that down for me. First of all, why is Desmond there?
- 12 Did he say?
- 13 **A** I just assumed he had just came to see Lisa; I'm not
- 14 sure.
- 15 **Q** No, I mean back in the bedroom where the two of y'all
- 16 were?
- 17 **A** Oh, I don't know.
- 18 **Q** Okay. He didn't say anything? He didn't come running,
- 19 clenching his fists, or anything like that?
- 20 **A** No.
- 21 **Q** But when Jake saw Desmond, Jake freaked out; is that
- 22 true?
- 23 **A** He got angry.
- 24 **Q** Okay. And at that point, Jake attacked Desmond?
- 25 **A** He stood up off of the bed and then Desmond hit him.

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 Q Okay. He stood up off of the bed. Did he say
2 anything?

3 Q And you say at that point they were fighting. Where
4 did the fight go at that point?

5 A It started on the bed and then they ended up on the
6 floor.

7 Q Okay. They ended up on the floor. Did they end up on
8 the floor -- is that, did they ever leave from the floor
9 once they ended up on the floor?

10 A No.

11 Q Okay. So there were two fights and in the second fight
12 they ended up on the floor, they were together, and that was
13 the end of it?

14 A Excuse me?

15 Q Were there any other altercations, other than those
16 two?

17 A When he left down the hallway, when he choked Lisa.

18 Q Okay. So you're saying he left Red on the floor in the
19 bedroom?

20 A Right.

21 Q Okay. At that point, was "Red", or Jake, saying
22 anything?

23 A No.

24 Q Was he still alive?

25 A I'm not sure.

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 Q You don't know? But he was still? He was still on the
2 floor?

3 A Laying on the floor.

4 Q Okay. So whatever had been done, had been done at that
5 point?

6 A I don't know.

7 Q This is very important because you are asking the jury
8 to believe that he left from there and went back and had an
9 altercation with Lisa and then came back to a still body; is
10 that what you want the jury to believe?

11 A I don't know if he was alive or what. I just know that
12 that's how it happened.

13 Q In fact, you indicate you recall making one statement
14 in the morning when that happened; is that correct?

15 A Right.

16 Q All right. Now, you also indicate -- when did you call
17 Jake's sister?

18 A I'm not sure.

19 Q Was it before the fight? Was it after the fight? Was
20 it during the fight, or fights, or which one of the fights?

21 A It was during it, right before police got there.

22 Q Okay. At that point, were they still struggling with
23 each other?

24 A Desmond was still on top of him.

25 Q Okay. As you were making the call, or just before it,

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 were they still struggling with each other?

2 A Desmond was yelling.

3 Q Okay.

4 A Jake was just laying there.

5 Q Jake wasn't still fighting him?

6 A No.

7 Q And you indicate that when the police arrived, when
8 Officer Dunn arrived and told him to get off, he immediately
9 got off?

10 A (Witness nods head.)

11 THE COURT: Just a moment, counsel. You have to say
12 "yes" or "no", and don't nod your head.

13 Q And you're sure of that?

14 A Yes.

15 Q Okay. And you say that you left out of there and you
16 saw Desmond attacking Lisa?

17 A He had his hands around her neck.

18 Q Okay. That's after he left the second time?

19 A Right.

20 Q Okay. Did you make a statement at 5:00 in the morning,
21 a written statement at 5:00 in the morning, that morning,
22 about a half an hour after EMS and all arrived?

23 A I started it at Lisa's house and then I finished it at,
24 I think, it was the Annex Building.

25 Q Okay. So when I asked you if you made two statements,

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 you said you made one, you made a part of a statement and
2 then you finished it in the Annex?

3 **A** Right.

4 **Q** Okay. Did you -- would it be fair to say that you
5 started the -- you started the statement at 5:00 in the
6 morning; is that fair?

7 **A** I don't remember what time it was.

8 **Q** Maybe if ---

9 **DEP. SOL. THORNTON:** I was gonna say, Judge, if he
10 wants to show her the statement he's referring to, maybe she
11 can identify them.

12 **THE COURT:** Counsel?

13 **MR. MATHEWS:** If they -- if Mr. Thornton ---

14 **THE COURT:** Counsel, I don't want anymore argument.
15 You proceed as cross-examination. If you want to ask her
16 about the statement, give her a copy.

17 **MR. MATHEWS:** I was going to give her a copy of Mr.
18 Thornton's, but I'll just make a copy, Your Honor, if we can
19 do that.

20 **DEP. SOL. THORNTON:** I'll be happy to just give her my
21 copy, Judge, rather than ---

22 **MR. MATHEWS:** That's all I was asking, Your Honor.

23 Okay. Let's mark that as an exhibit. Oh, have these
24 been pre-marked?

25 **DEP. SOL. THORNTON:** I have a clean copy if you prefer.

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 **MR. MATHEWS:** I don't mind having the ---

2 **THE COURT:** Solicitor, y'all come on up here.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
4 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE
5 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

6 **THE COURT:** Step back.

7 **MR. MATHEWS:** Okay. Could I make my objection, Your
8 Honor, on the record for that?

9 **THE COURT:** At the appropriate time, but not now, Mr.
10 Mathews. It's cross-examination. Proceed.

11 **MR. MATHEWS:** Thank you, Your Honor.

12 **Q** Ms. Ballard, I'm handing you what's been pre-marked as
13 State's Exhibit Number Two, comprised of four pages, and ask
14 you if you can identify that?

15 **A** This is mine.

16 **Q** Okay. That's the statement that you wrote?

17 **A** Yes.

18 **Q** And I would ask you to turn to Page Four, the fourth
19 page of those four pages.

20 **THE COURT:** Step back, counsel, so the jury can see the
21 witness. You have a copy.

22 **MR. MATHEWS:** Thank you, Your Honor.

23 **THE COURT:** Ask the question.

24 **MR. MATHEWS:** Okay.

25 **Q** Page Four, Ms. Ballard, that's the statement that you

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 wrote out or began at 5:00 in the morning?

2 **A** Yes.

3 **Q** Okay. Now go to the front page. When did you make
4 that second part to the statement?

5 **A** That was the next day.

6 **Q** Okay. At least 12 hours later?

7 **A** Right.

8 **Q** Okay. Would you look through that and tell me where in
9 there you indicate that Lisa was ever attacked?

10 **A** (Witness Complies.) I didn't.

11 **Q** Okay. So you made two separate statements to the
12 police. Two separate, written statements to the police, and
13 at no time did you indicate that Lisa was attacked; is that
14 correct?

15 **A** (Witness nods head.)

16 **Q** Okay. And during the course of this, you called Sharon
17 Glover on your cell phone; is that correct?

18 **A** Right.

19 **Q** Okay. After the course of time that you called there,
20 would you indicate in the report where you told the police
21 you had called someone other than law enforcement?

22 **A** I didn't.

23 **Q** Okay. Why did you call the -- why did you call someone
24 other than law enforcement? Why didn't you call the police?

25 **A** Because we had already called the police.

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 Q "We"?

2 A Lisa and myself.

3 Q You both had called?

4 A Well, she called.

5 Q Okay. You were present when that call -- when she made
6 that call?

7 A I was in the house. I wasn't around her.

8 Q Okay. All right. How many times did she call law
9 enforcement?

10 A I don't know.

11 Q You know of one?

12 A Right.

13 Q Did anybody call you to your cell phone? Do you have a
14 land line, or did Lisa have a land line?

15 A No.

16 Q Okay. So any calls that would have been made, would
17 have been made to the one cell phone that you say is there?

18 A Right.

19 Q Okay. Did anybody call to that phone during the time
20 you were there?

21 A Not that I know of.

22 Q Okay. Now isn't it true that you told law enforcement
23 the first time that you made a statement, that the reason
24 the second fight broke out is because you had tried to break
25 up the fight and that -- you said that Desmond had hit you

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 during the break; not Lisa, but you tried to break up the
2 first fight?

3 A I don't remember.

4 Q Okay. Well, take a look at the fourth page there.

5 A (Witness Complies.)

6 Q Okay. Anywhere in that one paragraph of the first
7 page, the first page, did you indicate that Lisa attempted
8 to break up the first fight?

9 A No.

10 Q Okay. And in the first statement, you say that Jake
11 got off of Desmond the first time because -- Desmond got off
12 of Jake the first time because he had said that they were
13 cool?

14 A Right.

15 Q Okay. So in your first statement to the police, you
16 say that Desmond had voluntarily gotten off of Jake because
17 Jake said, "We're cool", right?

18 A Right.

19 Q Okay. But then later when Desmond walked into the
20 bedroom, you said that Jake became -- that Jake realized
21 that Desmond had hit you at some point and that he freaked
22 out and they started fighting again.

23 A I was hit several times during the whole ---

24 Q I understand. But isn't that why the second fight
25 broke out -- if there is a second fight, isn't that why you

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 said the second fight broke out?

2 **A** I'm not sure.

3 **Q** Okay. Well, did you say, did you write there midway
4 through there that "Jake then realized that he hit me and
5 they started fighting again."?

6 **A** Yeah.

7 **Q** Okay. You wrote that. All right.

8 **MR. MATHEWS:** Your Honor, I would seek to admit this
9 into evidence at this time.

10 **THE COURT:** Is there an objection?

11 **DEP. SOL. THORNTON:** There is, Your Honor. She
12 specified the contents. Mr. Mathews ---

13 **THE COURT:** Counsel approach.

14 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD,
15 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE
16 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

17 **THE COURT:** Proceed. The objection is sustained.

18 **MR. MATHEWS:** I understand, Your Honor.

19 **Q** Ms. Ballard, in your second statement, did you say, "My
20 name is Stephanie Ballard, and I was at the residence of
21 Lisa Strickland when the incident happened around 4:25 p.m.
22 Myself, Lisa Strickland, Jake Frazier, and Desmond Sams were
23 all sitting around the living room having some drinks. Jake
24 stated that he did not feel well and he went to the
25 bathroom. He was taking a while to come out and Desmond

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 went to check on him." So, initially, Desmond went to check
2 on him because he was concerned about him; is that correct?

3 **A** Right.

4 **Q** "Desmond came back to the living room and told myself
5 and Stephanie that Jake was vomiting. I then went back to
6 check on Jake and Lisa and Desmond followed me in there. We
7 all, myself, Lisa and Desmond, stayed in the bathroom with
8 Jake to make sure he was okay. Desmond and Lisa left
9 shortly after and I remained in the bathroom with Jake. He
10 told me that he was okay and he would be out in a minute. I
11 then went back to the living room, but it seemed he was
12 taking forever, so I went back to check on him and Desmond
13 followed me down the hallway. As Jake was coming out of the
14 bathroom, he said to Desmond, 'You feeling on my old lady.'
15 They exchanged words and Desmond put his hands around Jake's
16 neck and pushed him backwards into the bathroom, and he fell
17 into the bathtub. Lisa got Desmond off of Jake and took him
18 to the living room." Obviously, you don't mean he carried
19 him. They walked out together; is that correct?

20 **A** Right.

21 **Q** "I, Stephanie, then helped Jake out of the tub and took
22 him to the bathroom where the altercation took place. I
23 laid him on the bed and took his shoes off. He, Jake,
24 stated that he was going to be okay and was sorry for
25 getting drunk. I told him that he was going to be fine.

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 Desmond then came into the bedroom and when Jake saw him, he
2 flipped out." And by "he flipped out", you mean Jake
3 flipped out?

4 A Right. He got mad.

5 Q "Jake and Desmond started fighting, which started out
6 of -- started out of the bed." Okay. Now isn't it true,
7 Ms. Ballard, that you indicated you don't know who threw the
8 first punch? Didn't you make that statement?

9 A Right.

10 Q Okay. So today you said that Desmond threw the first
11 punch, but really you don't know who threw the first punch?

12 A I mean, this was written right after everything
13 happened. I mean, the time has gone by and then ---

14 Q So your memory has gotten better over time?

15 A Right.

16 Q Okay. This statement that you're reading from right
17 now, that was at 4:30 p.m. on the 12th; is that correct?

18 A Right.

19 Q So that's about 12 hours after this happened, right?

20 A Right.

21 Q And you and Lisa had had a chance to talk, correct?

22 A No, we went our separate ways.

23 Q Oh, okay. So at that point, today, between then, you
24 and Lisa have had a chance to talk; is that correct?

25 A Correct.

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 Q Okay. And in fact, after I called you at some point,
2 did I not?

3 A Right.

4 Q And after I talked to you, you talked to Lisa?

5 A Right.

6 Q Okay. But at this point, at the time you made these
7 statements, y'all had not had a chance to talk to each
8 other?

9 A We talked, but I mean, it wasn't anything detailed
10 about anything.

11 Q Okay. All right. Jake and Desmond started fighting,
12 which started on the bed. I was trying to break them up,
13 but Jake told me to get out of the way. Okay, in your
14 statement, you said that Jake initially said to get out of
15 the way?

16 A Right.

17 Q Okay. You didn't testify to that, why not?

18 A I don't know.

19 Q Okay. So at that point, clearly, Jake wanted to be
20 involved in a fight? He told you to get out of the way. He
21 didn't tell you to call law enforcement?

22 **DEP. SOL. THORNTON:** Your Honor, that's all in her
23 conclusion as to Mr. Frazier's state of mind. She wouldn't
24 know that, couldn't know that for any number of reasons.

25 **THE COURT:** Sustained. Rephrase the question for me,

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 counsel. Let me hear it.

2 Q Do you have -- were you wanting to break up the fight?
3 You tried to break up the fight?

4 A I tried.

5 THE COURT: One question at a time. I'll allow that.
6 One at a time.

7 MR. MATHEWS: Okay.

8 A I did.

9 Q And Jake wouldn't let you?

10 A I mean, I couldn't even if I tried.

11 Q Okay. All right. "They then ended up on the floor
12 still fighting. Desmond's lip was busted." Okay, you
13 didn't testify to that today; why not?

14 A I don't know.

15 Q Okay. Was Desmond bleeding?

16 A Well, yes.

17 Q Okay. "And he kept yelling to Jake, 'You tried to kill
18 me.' I told Desmond several times that it was only his lip
19 bleeding. He wasn't trying to hear me. Desmond pinned Jake
20 to the floor, facedown. I kept trying to pull Desmond off
21 of Jake, but he told me to get off of him. Desmond had one
22 hand under Jake's stomach and the other wrapped around his
23 neck. Jake kept yelling that he couldn't breathe, for
24 Desmond to get off of him. Desmond said, 'You tried to kill
25 me.' and would not get off of him or not let him go. I

1 straddled over Jake's head, facing Desmond, and tried to
2 push him off of Jake. He hit me in the right jaw. Jake
3 repeatedly told Desmond he couldn't breathe, let him go.
4 Desmond would not. Jake said, 'I have kids, son, let me
5 go.' Desmond said, 'I love your kids, but you tried to kill
6 me.' And he continued to choke Jake and Jake's last words
7 were 'Let me live for my kids.' Desmond continued to choke
8 him. The police arrived and told Desmond to get off of him
9 and he did." Okay, that's your testimony again today that
10 as soon as law enforcement told him to get off, at that very
11 second, he did so; is that correct?

12 **A** Correct.

13 **Q** Okay. "The police officer then told Lisa and myself to
14 roll Jake over, we did, but he was unresponsive. I started
15 to give out CPR until EMS arrived. He gurgled a few times,
16 but he could never catch his breath. EMS arrived and made
17 Lisa and myself leave the room and they continued to work on
18 Jake." Now ---

19 **THE COURT:** Ask your question, counsel.

20 **MR. MATHEWS:** I was trying to, Your Honor.

21 **Q** Ms. Ballard, do you need a moment?

22 **A** (Witness shakes head.)

23 **Q** Ms. Ballard, when you called Sharron Glover, in fact
24 there were two cell phones in the room weren't there? Lisa
25 had her cell phone and you had yours, and while ---

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 **A** Lisa doesn't have a cell phone.

2 **Q** Okay. So Lisa called EMS from your phone?

3 **A** Correct.

4 **Q** Okay. And you called Sharon; and at that point, in
5 fact, Jake said, "Desmond said he still wants to fight me"
6 when he was talking to Sharon; is that true?

7 **A** I don't remember.

8 **Q** Could have been, just don't remember?

9 **A** I don't remember.

10 **Q** Okay.

11 **MR. MATHEWS:** I don't have any further questions. I
12 would renew my request to ---

13 **THE COURT:** I've ruled on the objection.

14 **MR. MATHEWS:** I understand, Your Honor.

15 **THE COURT:** Redirect?

16 **DEP. SOL. THORNTON:** None, Your Honor. I'd ask that
17 she be allowed to return to the jury room. I do want her
18 subject to recall, Your Honor, so I'm not excusing her at
19 this point.

20 **THE COURT:** Has she been instructed by you, Mr.
21 Thornton?

22 **DEP. SOL. THORNTON:** She has, Judge, but I will renew
23 that at this point if the Court would like.

24 **THE COURT:** I'll give you the moment when she steps
25 down to instruct her concerning conversation.

Direct Examination of Lisa Strickland by Dep. Sol. Thornton

1 **DEP. SOL. THORNTON:** Yes, sir.

2 **THE COURT:** Ma'am, you may step down from the witness
3 stand and you are to return to the room in which you came
4 from. Call your next witness.

5 **DEP. SOL. THORNTON:** Lisa Strickland, Your Honor, the
6 State calls for the next witness.

7 **MADAM CLERK:** Please come forward and raise your right
8 hand.

9 **WHEREUPON, LISA STRICKLAND WAS DULY SWORN TO TELL THE**
10 **TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, AND**
11 **TESTIFIED AS FOLLOWS.**

12 **THE COURT:** State your full name for the record and
13 spell your last name for the court reporter.

14 **MS. STRICKLAND:** My name is Lisa Michelle Strickland.
15 My last name, S-T-R-I-C-K-L-A-N-D.

16 **THE COURT:** Your witness, counsel.

17 **MR. THORNTON:** Thank you, Judge.

18 **DIRECT EXAMINATION**

19 **BY DEP. SOL. THORNTON:**

20 **Q** Ms. Strickland, where do you live?

21 **A** Well, I'm staying in Cottageville for
22 right now.

23 **Q** Well, let me ask another question. In April -- April
24 the 12th, I believe, of 2008, where did you live then?

25 **A** 396 Glen Street in Walterboro.

Direct Examination of Lisa Strickland by Dep. Sol. Thornton

1 Q All right, is that here in Colleton County?

2 A Yes, sir.

3 Q Do you know someone named Desmond Sams?

4 A Yes, sir.

5 Q All right. Do you see him anywhere in the courtroom?

6 A Yes, sir.

7 Q Would you point him out for me?

8 A He's right there. (Indicating)

9 Q All right. The defendant charged with murder, Desmond
10 Sams, seated here next to his attorney, Mr. Mathews?

11 A Yes, sir.

12 Q How do you know Desmond?

13 A I was seeing him at the time. Well, we were kind of
14 talking at the time.

15 Q Is that in April of 2008?

16 A Yes, sir.

17 Q And on April the 12th of 2008, were you at your house
18 in the early morning?

19 A Yes, sir.

20 Q Was anybody there with you?

21 A Stephanie Ballard, Jake Frazier, which we call "Red",
22 and Desmond Sams.

23 Q All right. What were y'all doing?

24 A We were over there -- we were at my house. We were all
25 drinking, listening to the music.

Direct Examination of Lisa Strickland by Dep. Sol. Thornton

1 Q Okay. And did anything -- did anybody get sick that
2 night?

3 A Red, he got sick.

4 Q Okay, and by "Red", you've already ---

5 A I mean Jake -- Jake.

6 Q And what happened when Jake got sick?

7 A He was in the bathroom and we, you know, took him
8 crackers and everything, and then Stephanie stayed in there
9 with him, but he told us all to just go out. We all went
10 back in the living room and Desmond went to go check on
11 Jake, and then he came back out and Stephanie went again,
12 and Desmond followed Stephanie back there to the bathroom.

13 Q All right. And as I'm asking you these questions, I
14 want you to only testify to what you, yourself, saw. Okay?
15 Not what you think or what someone else may have told you,
16 but this is just about what you saw. So what happened after
17 Stephanie went back to the bathroom and Desmond followed?

18 A I heard Jake saying, "Why are you feeling up on my old
19 lady?" and I saw Desmond, like, go into the bathroom, and
20 then I ran back there.

21 Q All right.

22 A Once I, you know, heard that they were going to start
23 arguing.

24 Q Okay.

25 A I ran back there and I saw Desmond. He kind of, like,

1 choked Red down into the bathtub.

2 Q When you say "choked him down into the bathtub", can
3 you describe what he was doing?

4 A He like, grabbed his neck, and Jake, kind of, like,
5 fell out, like, I guess he just really lost his breath when
6 Desmond did it because he fell into the bathtub.

7 Q All right. What happened after that? Do you need
8 some water?

9 A (Witness shakes head.)

10 Q Okay, take your time.

11 A They just kind of split up for a minute and quit
12 fighting, and then they went back to the bedroom and started
13 fighting again.

14 Q All right. When you said they kind of split up, where
15 did everybody go when they split up?

16 A Desmond and I went in my living room and Stephanie took
17 Jake into the bedroom, that's right by the bathroom.

18 Q Okay.

19 A And he was laying on the bed.

20 Q All right. And then -- I'm sorry to interrupt you, but
21 then what happened?

22 A Desmond went back there to Red and they started
23 fighting again and I -- we couldn't split them up.

24 Q When you say "we couldn't split them up", who's "we"?

25 A Me and Stephanie.

1 Q All right. Y'all were trying to break up Desmond who
2 had come back in the bedroom?

3 A Yes, sir.

4 Q What was Desmond doing?

5 A When he was in the bedroom?

6 Q Yeah.

7 A At that time, him and Red were kinda fighting. You
8 know, they were fighting. They were kinda on the bed.

9 Q Okay. Then what happened?

10 A I told Desmond I was going to call the cops.

11 Q All right. What did he do, if anything?

12 A He chased me into the living room and started choking
13 me on the loveseat that I have in my living room, and he
14 was, like, pulling my hair at the same time. Then,
15 Stephanie got him to stop choking me, and then he was like,
16 "I'm sorry, I'm sorry, Shorty, you know, I'm sorry.

17 Q So you told him you were going to call the police and
18 he chased after you and started choking you?

19 A Yes, sir.

20 Q Do you have a home phone, like a land line, I think
21 they call it, or do you use cell phones?

22 A I believe at that time I had the land line. I can't
23 recall. I know I was using cell phones.

24 Q You were using a cell phone, though?

25 A Yes, sir.

Direct Examination of Lisa Strickland by Dep. Sol. Thornton

1 Q All right. Were you using your cell phone or someone
2 else's?

3 A I had Desmond's cell phone and Red's cell phone.

4 Q Okay. Now, after you told him you were going to call
5 the cops and he started to chase you and choke you, what
6 happened after that?

7 A The 9-1-1, they called back, I believe.

8 Q All right. So let's step back for a second. Did you,
9 at some point, did you call 9-1-1?

10 A Yes.

11 Q All right. And was that before or after Desmond chased
12 you out of the room choking you?

13 A That was while he was -- I know while I was on the
14 phone with the dispatcher at one time, his hands were around
15 my neck.

16 Q All right. Did you hang up from 9-1-1?

17 A Yes, sir.

18 Q Why?

19 A I was scared.

20 Q All right. And who were you scared of?

21 A Desmond.

22 Q All right. Why were you scared of him?

23 A He had just got finished fighting Red and choking Red,
24 and he choked me.

25 Q All right, I understand. Did you call 9-1-1 back?

Direct Examination of Lisa Strickland by Dep. Sol. Thornton

- 1 **A** Yes, sir.
- 2 **Q** All right. What happened then -- or did they call you
- 3 back? I'm sorry, I don't want to misstate it.
- 4 **A** Oh, they -- I believe they called me back after the
- 5 first time I called them.
- 6 **Q** All right. Then what happened?
- 7 **A** I told them everything was okay.
- 8 **Q** All right. Why did you tell them that?
- 9 **A** Because I was scared.
- 10 **Q** All right. Who were you scared of?
- 11 **A** Desmond.
- 12 **Q** Did you call them back at some point?
- 13 **A** Yes, sir.
- 14 **Q** What happened then?
- 15 **A** I -- because I went back in the room one more time
- 16 after I made that first 9-1-1 call.
- 17 **Q** Okay. What did you see?
- 18 **A** Desmond was choking Red and he wouldn't get off of him.
- 19 Red was, like, "Cuz, I can't breathe."
- 20 **Q** Now, was this after he chased you out of the room and
- 21 was choking you?
- 22 **A** Yes, sir.
- 23 **Q** So Desmond, then, he went back to the bedroom?
- 24 **A** Yes, sir.
- 25 **Q** And what did you see?

Direct Examination of Lisa Strickland by Dep. Sol. Thornton

1 A Desmond was on top of Red. He had Red in the corner of
2 my room. Red was laying down and he was on top of Red and
3 he was choking him and Red said he couldn't breathe.

4 Desmond said, "I love you, cuz, but I'm gonna f'in kill
5 you." We couldn't stop him. So I went and I called 9-1-1
6 again, and I waited outside until the officer came.

7 Q And what happened then?

8 A I told him he might need to take his taser out or
9 something, because Desmond wouldn't stop. He went back in
10 there and he told Desmond to get off.

11 Q And did you see, at some point, them get Desmond off of
12 Jake and stop choking him?

13 A Eventually; the first time the officer asked, he said
14 no, but then the second time he got right up.

15 Q All right. After Desmond got off of him and stopped
16 choking him, did Jake move around? Was Jake ---

17 A --- I ---

18 Q I'm sorry, go ahead.

19 A He couldn't breathe. He was ---

20 Q Did you see any signs ---

21 A -- lifeless.

22 Q So my question was gonna be, did you see any signs of
23 life from Jake Frazier at that time?

24 A No.

25 Q Did EMS get there at some point?

Cross-Examination of Lisa Strickland by Mr. Mathews

1 **A** Yes, sir. We were on the porch and I saw them bring
2 him out with the tube down his throat.

3 **Q** Was he moving at all then?

4 **A** I didn't see -- I was -- I looked at him, but I really
5 don't think he was moving. I don't see how he could have
6 been. He wasn't breathing before the ambulance got there.

7 **Q** Go ahead and get yourself a tissue.

8 **MR. THORNTON:** Your Honor, the Court's indulgence for
9 one moment, please.

10 **Q** Lisa, I don't have any further questions. Please
11 answer any questions Mr. Mathews has for you.

12 **MR. MATHEWS:** May it please the Court?

13 **THE COURT:** Cross-examination.

14 **CROSS-EXAMINATION**

15 **BY MR. MATHEWS:**

16 **Q** Ms. Strickland, so your testimony is that there were
17 three different fights or two different fights?

18 **A** The one with Red was in the bathroom. Red wasn't
19 fighting him then, but Desmond choked him; and then, in the
20 bedroom, and I told Desmond I was going to call the cops,
21 and after he left, he went back again.

22 **Q** Okay. Now, you say the last time, the last time you
23 saw him, when you said that Jake was saying, "I can't
24 breathe, cuz", at that point, was that in the last fight?

25 **A** Yes, sir.

Cross-Examination of Lisa Strickland by Mr. Mathews

- 1 Q Okay.
- 2 A Jake had said it when he was on the bed, also.
- 3 Q Okay. So he said it a couple of times?
- 4 A Yes, sir.
- 5 Q Okay. In each of the last two fights?
- 6 A Yes, sir.
- 7 Q Okay. So there's no question that in the last fight,
- 8 when you told the officer, "You might need your taser
- 9 because he's not going to get off of him." At that point,
- 10 Jake was telling him to get off of him?
- 11 A He was not telling him. Jake was not able to breathe.
- 12 I mean, he had told him right before I walked, you know, he
- 13 told him -- the last thing I heard Jake say was, "Cuz, I
- 14 can't breathe. Please get off me."
- 15 Q And that was on the last altercation?
- 16 A Yes, sir.
- 17 Q Okay. And you said that between the second and third
- 18 ones was that Desmond followed you out. Now how long had
- 19 you and Desmond been seeing each other?
- 20 A I met Desmond February 26th.
- 21 Q Okay. So y'all had seen each other over the course of
- 22 a couple of months? A few times, anyway?
- 23 A A few times.
- 24 Q How did you feel about him grabbing Stephanie's butt?
- 25 A I didn't even see him do that.

Cross-Examination of Lisa Strickland by Mr. Mathews

1 Q Okay.

2 A So I mean, I don't know -- I mean, that's not -- we
3 weren't, like, serious or anything.

4 Q You and Desmond weren't? Not really boyfriend and
5 girlfriend, y'all were just seeing each other?

6 A Yes, sir.

7 Q When you called 9-1-1, at some point during that call,
8 were you aware of whether Lisa had made -- Stephanie had
9 made any calls during that time?

10 A I know I was trying to call on the phone to get help.
11 I don't recall if Stephanie made any or not.

12 Q Okay. Did Stephanie have her own cell phone?

13 A I believe so. She's always had a cell phone, so.

14 Q So y'all weren't sharing a cell phone? You had yours
15 and she had hers?

16 A I had Desmond's cell phone and Red's cell phone.

17 Q Okay. So you had two cell phones, but Lisa -- I mean,
18 Stephanie, also, had a cell phone?

19 A I don't recall. I mean, really, I'm not -- I can't say
20 for sure, but probably.

21 Q And your testimony is that you had three separate
22 conversations with 9-1-1?

23 A As I recall.

24 Q And during one of the conversations ---

25 A Well, I don't know if I hung up the first time, I mean,

1 when I just called them, but I do remember telling 9-1-1
2 everything was okay; and then, the other 9-1-1 call where I
3 told them they needed to come out there.

4 Q Okay. Now, is the first time you talked to them -- so
5 they called you back, you say, and you told them everything
6 was okay?

7 A As I recall, that's how it . . .

8 Q Okay. And the first time that you talked to them,
9 obviously, if they called you back, you had to have given
10 them your address, right, and phone number?

11 A I don't remember.

12 Q Okay. How long was it before they called you back?

13 A I don't remember that either.

14 Q Was it a couple of minutes or was it a half an hour?

15 A I don't believe it was long. Everything was happening
16 really fast. It's hard to, you know.

17 Q And was everybody drinking a lot?

18 A Everybody was drinking. I don't know how much
19 everybody did drink.

20 Q Were Red and Desmond pretty tight?

21 A Yes, sir.

22 Q Were they like brothers?

23 A Red was helping Desmond out because he didn't, I guess,
24 he didn't have a place to stay and he would let him go to
25 work with him and everything.

Cross-Examination of Lisa Strickland by Mr. Mathews

- 1 Q Who is Sharon Glover? Do you know?
- 2 A Is that his sister, Sharron?
- 3 Q Yeah.
- 4 A I call her Sharron.
- 5 Q Pardon me?
- 6 A I call her Sharron.
- 7 Q Oh, Sharron, okay. All right. Now, when y'all left
- 8 from the bathroom, everything had calmed down that first
- 9 time; is that correct?
- 10 A Yes, sir, as I remember.
- 11 Q Okay. And y'all -- you and Desmond walked back ---
- 12 A Yeah, cause Desmond he was going to let Red lay on the
- 13 bed for a while because he had just been sick.
- 14 Q Okay. How long were you and Desmond sitting on the
- 15 couch, or wherever you were? Where were you in the living
- 16 room?
- 17 A On the blue loveseat.
- 18 Q Okay. How long were y'all there?
- 19 A I don't know. It could have been anywhere from like
- 20 three to five minutes.
- 21 Q Okay. At some point, were you aware that Stephanie was
- 22 on the phone with Ms. Glover?
- 23 A I do remember her calling Sharron.
- 24 Q She did? Okay. Was it during the same time you were
- 25 on the phone with 9-1-1?

Cross-Examination of Lisa Strickland by Mr. Mathews

1 **A** No, I don't believe so. I'm not sure.

2 **Q** When you called 9-1-1, isn't it true that you told them
3 that they didn't want you to call; is that true?

4 **A** I don't remember. I know when Desmond choked me, I
5 just was scared. I mean, I don't really remember exactly
6 what I told 9-1-1. All I know is I was trying to get help.

7 **Q** When you called 9-1-1, when you talked to them the
8 third time, had you mentioned to them that you had called
9 before?

10 **A** I don't remember.

11 **Q** In fact, you didn't, did you? In fact, you didn't
12 call. You called one time?

13 **A** I called 9-1-1 two times. I don't know if they
14 couldn't read it because I had to hang up or I don't know.
15 I really don't remember exactly how it was.

16 **Q** Ms. Strickland, you have a prior conviction for second
17 degree burglary, do you not?

18 **A** Yes, sir.

19 **MR. MATHEWS:** I don't have anything further, Your
20 Honor.

21 **THE COURT:** Redirect?

22 **MR. THORNTON:** None, Your Honor.

23 **THE COURT:** As to this witness?

24 **MR. THORNTON:** Ask that she be put back into our
25 waiting area, Judge. I'll explain to her the reasons for

Direct Examination of Sharron Glover by Dep. Sol. Thornton

1 sequestration again.

2 **THE COURT:** Very well. Ma'am, you may step down.

3 **MS. STRICKLAND:** Thank you.

4 **THE COURT:** Call your next witness.

5 **MR. THORNTON:** The State calls Sharron Glover to the
6 stand.

7 **MADAM CLERK:** Please come forward and be sworn. Place
8 your left hand on the Bible and raise your right hand.

9 **WHEREUPON, SHARRON GLOVER** was duly sworn to tell the
10 truth, the whole truth, and nothing but the truth, and
11 testified to the following.

12 **MADAM CLERK:** Please have a seat on the witness stand
13 and state your full name for the record.

14 **MS. GLOVER:** Sharron Glover, G-L-O-V-E-R.

15 **THE COURT:** Speak up and use that microphone so they
16 can hear you down there, if you would. You can adjust it.
17 Make yourself comfortable. Proceed.

18 **MR. THORNTON:** Thank you, Judge.

19 **DIRECT EXAMINATION**

20 **BY DEP. SOL. THORNTON:**

21 **Q** Ms. Glover, on April the 12th of 2008, do you recall
22 getting a phone call in the early morning hours?

23 **A** Yes.

24 **Q** All right. Who called you?

25 **A** Stephanie Ballard.

- 1 Q And how do you know Ms. Ballard?
- 2 A She was dating my brother at the time.
- 3 Q Who was your brother, ma'am?
- 4 A Jake Frazier.
- 5 Q All right. And is he the person we've heard about here
- 6 today that was killed?
- 7 A Yes.
- 8 Q And do you know Desmond Sams?
- 9 A Yes.
- 10 Q And can you point him out for me?
- 11 A He's right there. (Witness indicating.)
- 12 Q All right. She's pointing at the defendant in this
- 13 case; is that right?
- 14 A Yes.
- 15 Q And I don't want you to tell me anything about what
- 16 Stephanie told you, but as a result of what she told you,
- 17 did you get put on what they call "speakerphone"?
- 18 A Yes.
- 19 Q Did you say anything?
- 20 A I -- I told Desmond to let him go.
- 21 Q All right.
- 22 A To get off of Red.
- 23 Q Okay. Did he make any response to you ?
- 24 A He said "No", and I could barely -- I could barely hear
- 25 him. He wasn't audible because he was slurring his words.

Cross-Examination of Sharron Glover by Mr. Mathews

1 Q Did you say anything else after that?

2 A I told him to get the hell off of him.

3 Q All right. And after that, did you say anything else
4 or was the phone call ended at some point after that?

5 A Stephanie came back and said the police ---

6 Q Don't -- don't testify to anything that Stephanie said,
7 but as a result of what you heard, did you end the phone
8 call?

9 A Yes.

10 Q Other than that brief phone call, did you see or
11 witness anything during this incident?

12 A No.

13 Q All right.

14 MR. THORNTON: Thank you, Your Honor. I have nothing
15 further.

16 THE COURT: Cross-examination?

17 MR. MATHEWS: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. MATHEWS:

20 Q Ms. Glover, were Jake and Desmond close?

21 A Yes.

22 Q Were they like best friends, almost like brothers?

23 A Yes.

24 Q How long have they been? Were they since they were
25 little kids together?

Cross-Examination of Sharron Glover by Mr. Mathews

1 A Yes.

2 Q When you were on speakerphone at that point, did
3 Desmond also say, "He will fight me."

4 A No.

5 Q Okay. Now, do you not remember that or you couldn't
6 understand it or it didn't happen as far as you know?

7 A I heard him say "No.".

8 Q Now, Ms. Glover, I know this is difficult, but I want
9 you to consider whether or not, you also know Olympia Sams?

10 A Yes.

11 Q Okay. And I put you -- I want to ask you again, I want
12 to put you on notice that I may call a witness to impeach
13 you, or discredit you, on that statement. Are you sure that
14 Desmond didn't say, "He will want to fight me"?

15 A I'm absolutely positive.

16 Q Okay. Did you ever discuss this matter with Olympia
17 Sams?

18 A I don't recall discussing anything with her, as far as
19 that.

20 Q As far as that?

21 A Uh-huh (affirmative).

22 Q How frequently do you and Ms. Sams talk?

23 A Rarely. We saw each other at the setting up.

24 Q I'm sorry?

25 A At my brother's setting up.

Cross-Examination of Sharron Glover by Mr. Mathews

1 Q Okay. All right. And your testimony today is that you
2 did not discuss this matter with her?

3 A Not that I recall.

4 Q Could have been?

5 A Not that I recall.

6 Q Okay. Well, there's a difference between saying, "I
7 don't remember if it happened or I know that it did not
8 happen." What I'm asking you is ---

9 A Well, I'm telling you that I do remember him saying no,
10 but I don't recall talking with her in reference to what
11 happened that night.

12 Q Okay. Well, I'm just trying to make it clear.

13 A Yes.

14 Q Okay. So you say you don't recall, not that it didn't
15 happen, but that you don't recall it happening?

16 A I -- I don't recall it happening.

17 Q All right.

18 MR. MATHEWS: Thank you, Your Honor. I have nothing
19 further.

20 THE COURT: Redirect?

21 MR. THORNTON: None, Your Honor. I'd ask that she be
22 allowed to sit back and resume her seat with the rest of the
23 victim's family, Judge.

24 MR. MATHEWS: I don't have any objections. Under the
25 Court's prior ruling, I have no objection.

Direct Examination of Stephen Dunn by Asst. Sol. Stilley

1 **THE COURT:** You may step down and remain in the
2 courtroom.

3 Call your next witness.

4 **MR. THORNTON:** Your Honor, may we approach?

5 **THE COURT:** Counsel approach

6 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
7 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE
8 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

9 **ASST. SOL. STILLEY:** The State calls Steve Dunn.

10 **THE COURT:** Counsel approach.

11 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
12 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE
13 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

14 (OFFICER DUNN ENTERS THE COURTROOM.)

15 **MADAM CLERK:** Please come forward and be sworn.

16 **WHEREUPON, STEVE DUNN** was duly sworn to tell the truth,
17 the whole truth, and nothing but the truth.

18 **MADAM CLERK:** Please have a seat on the witness stand
19 and state your full name for the record.

20 **THE COURT:** Adjust that microphone for me so you can
21 use this. It's gonna amplify your voice. State your full
22 name and spell your last name for the court reporter.

23 **SSGT. DUNN:** Stephen A. Dunn, D-U-N-N.

24 **THE COURT:** Your witness, counsel.

25 **MS. STILLEY:** Thank you.

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Direct Examination of Stephen Dunn by Asst. Sol. Stilley

1 Q Did Ms. Strickland say anything to you as you were
2 either approaching or coming up on the porch or going to the
3 bedroom?

4 A Something like "They're in here."

5 Q Okay. And when you got to that bedroom, what did you
6 see?

7 A I saw two black males prone, face down on the floor in
8 the bedroom, one on top of the other.

9 Q And were you able to see the face of the individual on
10 top?

11 A Not at that time. They were heading into, more or
12 less, the far wall in the bedroom and I could not identify
13 either party at that time.

14 Q That's fine. What did you do next?

15 A I drew my taser and I had it in my hand and I said the
16 words, "Get off of him."

17 Q And did he get off?

18 A No, he did not. The first time I told him get off of
19 him and I gave the command again a second time and he
20 finally released his hold the third time.

21 Q Did that individual say anything to you, other than
22 "no"?

23 A I think the second time that I said get off of him, he
24 said, "No, he'll want to fight."

25 Q And you had your taser out, but did not deploy it?

Direct Examination of Stephen Dunn by Asst. Sol. Stilley

1 **A** Yes, ma'am.

2 **Q** And when the individual on top finally got up, did you
3 get a look at the face then?

4 **A** Yes, ma'am.

5 **Q** And do you recognize that person in the courtroom here
6 today?

7 **A** Yes, ma'am. He's the defendant over there.

8 **Q** Are you pointing to the defendant, Desmond Sams, seated
9 here next to David Mathews?

10 **A** Yes, ma'am.

11 **Q** And did the other individual get up?

12 **A** No, he did not.

13 **Q** What did you do next?

14 **A** I got Ms. Strickland and the other young lady that was
15 there to take and pull the victim away from the wall and
16 roll him over to his back. This was after handcuffing Mr.
17 Sams.

18 **Q** Now, what did you see Mr. Sams doing that made you
19 handcuff him?

20 **A** He had his arms wrapped around the neck of the victim.

21 **Q** Was he choking with both hands or was it a chokehold
22 and an arm? Can you describe it?

23 **A** No, it was an arm lock type where he had his -
24 basically, I could not see because he was on top of the, you
25 know, on top of the individual, but it appeared that his

Direct Examination of Stephen Dunn by Asst. Sol. Stilley

1 arms were wrapped around the neck area of the victim.

2 Q And you saw this when he got up?

3 A Yes, ma'am.

4 Q And you placed -- I beg your pardon. After you placed
5 Mr. Sams in handcuffs and they rolled -- Lisa and Stephanie
6 rolled the victim over, what happened?

7 A I was able to get on the radio and request that my
8 backup officers step it up and I went ahead and told
9 dispatch to go ahead and send the medic unit in.

10 Q Why did you do that?

11 A Because it appeared that the victim, Jake Frazier, was
12 not breathing. He had a blue cast to his skin.

13 Q And what did you do after that?

14 A I got Mr. Sams onto the porch, you know, out of the
15 room and onto the porch, and at that time, the medic unit
16 came up and my backup officer started arriving. And I
17 turned, yeah, I told the medic crew where to go and I turned
18 Mr. Sams over to one of my backup officers and told him to
19 put him in the vehicle.

20 Q What backup officer was that?

21 A That was Deputy Eubanks.

22 MS. STILLEY: A moment's indulgence, Your Honor.

23 Q Just a couple more questions, Officer Dunn.

24 What time did you receive the call, the dispatch call?

25 A You have to bear with me. The call came in to central

Direct Examination of Stephen Dunn by Asst. Sol. Stilley

1 dispatch at 4:36.

2 Q Do you remember -- and that was A.M.?

3 A Yes, ma'am.

4 Q Do you remember about how long it took you to get
5 there?

6 A To be truthful about it, I'm not sure exactly what my
7 response time was. I had a distance to come. That is a
8 matter of -- it is part of our Sheriff's Office Dispatch
9 Records.

10 Q Okay.

11 MS. STILLEY: Your Honor, may I approach the witness?

12 Q Mr. Dunn, I'm gonna hand you something. Please just
13 review it silently.

14 A (Witness Complies.)

15 Q Mr. Dunn -- Officer Dunn, I beg your pardon.

16 A Yes, ma'am.

17 Q Do you recognize what was handed to you?

18 A Yes, ma'am, I do.

19 Q Can you please tell me what that is?

20 A This is a CAD Information Report from the dispatch
21 records, from our dispatch center.

22 Q And what is "CAD"?

23 A Computer Aided Dispatch where everything is recorded
24 and time-stamped as far as when calls are dispatched, who
25 they're dispatched to, and the times associated with them.

Direct Examination of Stephen Dunn by Asst. Sol. Stilley

1 Q Could you please tell me what the first time up there
2 is?

3 A The first time is when the call is dispatched, which
4 was 4:38 and four seconds.

5 Q And does that remind you of the amount of time it took
6 you to get there?

7 A No, ma'am, this does not, because this is the one for
8 Deputy Eubanks.

9 Q I beg your pardon, Officer Dunn. Just a moment.

10 MS. STILLEY: May I approach the witness again?

11 THE COURT: You may.

12 Q I apologize, SSGT. Dunn. Does the form now remind you,
13 Officer Dunn?

14 A Yes, ma'am, the top portion is my times.

15 Q Okay. Could you please relay to the court how long it
16 took you to get there?

17 A Yes, ma'am, according to these times, four minutes and
18 thirty seconds, from the time that the call was received by
19 dispatch -- well, from the time I was actually dispatched at
20 4:38:04 until the time I arrived at 4:46:34.

21 Q So, is that four minutes?

22 A No, that's eight minutes and thirty seconds.

23 Q Okay. Thank you. So after the dispatch call came out,
24 you got to the house, it was eight and a half minutes?

25 A Yes, ma'am.

Cross-Examination of Stephen Dunn by Mr. Mathews

1 **MS. STILLEY:** I have no further questions at this time.
2 If you would please respond to any questions Mr. Mathews has
3 for you, I would appreciate it.

4 **THE COURT:** Cross-examination?

5 **MR. MATHEWS:** Yes, sir.

6 **CROSS-EXAMINATION**

7 **BY MR. MATHEWS:**

8 **Q** And the CAD report shows you everything related to a
9 case, but just broken down by names; is that correct?

10 **A** It shows -- the CAD report shows the times involved as
11 far as officers on the scene, what time, you know, basically
12 from the time that a call comes in and it gets dispatched,
13 you know, through the time that the officer is cleared.

14 **Q** So in a CAD report, you have a case number that any
15 call related to that case and everybody that responded would
16 be on the CAD Report?

17 **A** It should be.

18 **Q** So the time that a dispatch -- the time that EMS is
19 initially called, that would be in the CAD Report?

20 **A** It would be.

21 **Q** One of them, not yours.

22 **A** With the one that's assigned to that fire rescue unit.

23 **Q** And when dispatch gets a call, when 9-1-1 gets a call,
24 it's on the CAD report when they get the call?

25 **A** Yes, sir.

Redirect Examination of Stephen Dunn by Asst. Sol. Stilley

1 Q And if there are more than one call, that would be on
2 the CAD report, too?

3 A Yes, sir.

4 Q And when you arrived, you had to tell Mr. Sams three
5 times to get off of Mr. Frazier before he did?

6 A Yes, sir.

7 Q Was it clear that he thought there was still a fight
8 going on?

9 A The second time I ordered him off, he said no, he will
10 want to fight.

11 MR. MATHEWS: I don't have anything further, Your
12 Honor.

13 THE COURT: Redirect?

14 MS. STILLEY: Yes, briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY ASST. SOL. STILLEY:

17 Q Ssgt. Dunn?

18 A Yes, ma'am.

19 Q When you got into the back bedroom, did Jake Frazier
20 have any signs of life?

21 A No, ma'am.

22 Q Did he show any signs of fighting with the defendant,
23 Desmond Sams?

24 A No, ma'am.

25 Q No movement at all?

1

2 **A** No movement at all.3 **MS. STILLEY:** Nothing further. Thank you, Your Honor.4 **THE COURT:** Recross, limited to redirect?5 **MR. MATHEWS:** No, sir.6 **THE COURT:** As to this witness, Solicitor?7 **MR. THORNTON:** I'd ask that this witness be excused and
8 he can return to duty.9 **THE COURT:** Any objection, Mr. Mathews?10 **MR. MATHEWS:** No objection, Your Honor.11 **THE COURT:** You may step down, Officer Dunn, and you
12 are excused from the courtroom.13 **SSGT. DUNN:** Thank you.14 **THE COURT:** Madam Foreperson, ladies and gentlemen of
15 the jury, I'm going to stop at this point for our lunch
16 break. I've just received a note that your lunch has
17 arrived. We're going to serve you your, hopefully,
18 delicious lunch in your jury room. During the lunch break,
19 I ask that you do not discuss the case amongst yourselves or
20 with anybody else. You have not heard all the evidence in
21 the case. If I've got any smokers on the jury, if you'll
22 let the bailiff know. It can be taken during the lunch
23 break outside of the courthouse and I'll permit you to
24 smoke, but please don't discuss the case with anyone or with
25 anyone else. We're going to try to start back, ladies and

1 gentlemen, because I want to try to complete the case in a
2 timely fashion tomorrow, as I told you, keep my word. So I
3 want to keep the trial moving. We're going to probably take
4 around -- a shorter lunch break and I hope to start back at
5 least by 2:00, if not before. So please when you get to
6 your jury room, your lunch is here and they'll serve you
7 your lunch and let's move forward so we can complete our
8 lunch break and complete our work in a timely fashion.
9 Thank you for your cooperation. You may retire to your jury
10 room at this time.

11 (WEDNESDAY, JANUARY 28th, 2009, 1:10 P.M., WHEREUPON JURY
12 EXITS THE COURTROOM FOR LUNCH; THEREAFTER THE FOLLOWING
13 PROCEEDINGS WERE HELD ON THE RECORD:)

14 THE COURT: Anything on the record from the State of
15 South Carolina outside the presence of the jury before we
16 adjourn for lunch?

17 MR. THORNTON: No, sir.

18 THE COURT: From the defendant?

19 MR. MATHEWS: No, sir.

20 THE COURT: I'd like to put on the record, counsel,
21 because there wasn't a record of the bench conference,
22 during the cross-examination by Mr. Mathews, of the first
23 witness, Stephanie Ballard. Mr. Mathews attempted to
24 introduce some evidence to the objection of the State, the
25 statement of the witness. I allowed Mr. Mathews and told

1 him I would permit him to publish the entire statement,
2 which he did. And he was also permitted to bring out, in
3 cross-examination, any inconsistencies that he believed
4 existed between the testimony the witness gave today and the
5 statement, by virtue of his cross-examination. The State
6 objected to the introduction of the statement. I believe
7 your grounds were cumulative, and what was the other ground,
8 Solicitor?

9 **MR. THORNTON:** Your Honor, that you can't cross-examine
10 a document. That's the whole reason of having the witness
11 on the stand.

12 **THE COURT:** We discussed that at counsel table and I
13 sustained that objection, and I wanted to make sure there
14 was a record of our discussion on the basis that the
15 statement could not be cross-examined, and on the basis that
16 the statement was cumulative to the testimony, but I wanted
17 there to be a record that I advised defense counsel that he
18 could fully publish the statement, and of course, impeach
19 the witness, if he so desired, from any inconsistency that
20 he felt existed, and I just wanted a record of that bench
21 conference.

22 Counsel, I hope that we can complete our lunch in a
23 timely fashion. As I told the jury, it's now about 1:18,
24 1:19, I'd like to try to do it by 2:00, if we can, but if
25 you need more time, I understand that. I'd just like to try

1 to move in a timely fashion so we can complete the trial in
2 a timely fashion. We'll be adjourned at this time until at
3 least 2:00. Thank you very much.

4 (WEDNESDAY, JANUARY 28th, 2009, 1:18 P.M., WHEREUPON
5 COURT IS ADJOURNED FOR LUNCH. THEREAFTER, THE FOLLOWING
6 PROCEEDINGS WERE HELD ON THE RECORD AT 2:05 P.M.)

7 THE COURT: Anything on the record from the defendant
8 before I bring in the jury?

9 MR. MATHEWS: No, sir.

10 MR. THORNTON: No, sir.

11 THE COURT: Bring us the jury, Bill.

12 (JANUARY 28th, 2009, 2:06 P.M., WHEREUPON THE JURY
13 ENTERS THE COURTROOM, AND THEREFORE THE FOLLOWING
14 PROCEEDINGS WERE HELD ON THE RECORD:)

15 THE COURT: All right. Madam Foreperson, ladies and
16 gentlemen of the jury, I hope everybody had a delicious
17 lunch. We'll now continue with the testimony in the trial
18 of this case. Solicitor, call your next witness.

19 MR. THORNTON: Thank you, Judge. Jason Benton.

20 MADAM CLERK: Please come forward to be sworn.

21 WHEREUPON, JASON BENTON, was duly sworn to tell the
22 truth, the whole truth, and nothing but the truth, and
23 testified as follows.

24 MADAM CLERK: Please have a seat on the witness stand
25 and state your full name.

Direct Examination of Jason Benton by Dep. Sol. Thornton

1 **THE COURT:** How you doing? Make yourself comfortable.
2 Pull that microphone over. It's going to amplify your
3 voice. Speak into that for me and speak up for me so that
4 the last member of the jury on the end of the row down there
5 can hear you down there. If you'll begin by stating your
6 full name and spelling your last name for the court
7 reporter.

8 **MR. BENTON:** Jason Patrick Benton, B-E-N-T-O-N.

9 **THE COURT:** Your witness, Counsel.

10 **MR. THORNTON:** Thank you, Judge.

11 **DIRECT EXAMINATION**

12 **BY DEP. SOL. THORNTON:**

13 **Q** Mr. Benton, who do you work for?

14 **A** Colleton County Fire Rescue.

15 **Q** All right. Did you work for the Colleton County Fire
16 Rescue on April the 12th of 2008?

17 **A** Yes, sir.

18 **Q** What are some of your duties with the Fire and Rescue
19 Department here in Colleton County?

20 **A** Well, I'm a firefighter and an EMT Basic.

21 **Q** All right, sir. And did you respond on April the 12th
22 of 2008 to any calls that day?

23 **A** Yes, sir.

24 **Q** All right. Did you respond to a call that I believe
25 it's 396 Glen Street?

1 A Yes, sir.

2 Q So you did respond to

3 A Yes, sir.

4 Q All right. When you arrived, what did you find?

5 A I saw the deputy sheriff bringing a person out in
6 handcuffs and my partner and I proceeded into the residence
7 and went to the bedroom and found a patient laying on the
8 floor, supine, and he was apnic, which is pulse less and not
9 breathing.

10 Q All right. So would it be fair to say he had no signs
11 of life?

12 A Yes, sir, that's what it means.

13 Q And what did you do at that point?

14 A We attempted to work a full arrest, which is we do
15 everything to try to bring him back to life.

16 Q Is that a fancy way of saying CPR and some other stuff?

17 A Well, it's a cardiac arrest, so you would do everything
18 that you could to try to restart the person's heart and
19 bring them back.

20 Q And were your attempts successful to your knowledge?

21 A No, sir.

22 Q All right. Did you do anything with Mr. Frazier after
23 that?

24 A We transported him to the ER and continued doing our
25 resuscitation and we transferred him over to the ER.

Direct Examination of Jason Benton by Dep. Sol. Thornton

1 **Q** At any time from the time you arrived until the time
2 you transported him and dropped him off to the ER, did he
3 have any signs of life?

4 **A** Not to my knowledge.

5 **MR. THORNTON:** I have no further questions. Please
6 answer any questions Mr. Mathews has.

7 **MR. MATHEWS:** No questions, Your Honor.

8 **THE COURT:** As to this witness, Solicitor?

9 **MR. THORNTON:** Ask that he be excused so that he can go
10 to sleep, Judge.

11 **THE COURT:** Just a moment. As to this witness being
12 excused, Mr. Mathews?

13 **MR. MATHEWS:** No objection, Your Honor.

14 **THE COURT:** You may step down, Mr. Benton, and you are
15 excused from the courtroom. You may leave at this time.
16 Call your next witness, Solicitor.

17 **MR. THORNTON:** Dr. Erin Presnell.

18 **MADAM CLERK:** Please come forward and be sworn.

19 **WHEREUPON, DR. ERIN PRESNELL** was duly sworn to tell the
20 truth, the whole truth, and nothing but the truth, and
21 testified as follows.

22 **MADAM CLERK:** Please have a seat on the witness stand
23 and state your full name for the record.

24 **THE COURT:** Doctor, how are you?

25 **DR. PRESNELL:** Good, thanks.

Direct Examination of Dr. Presnell by Dep. Sol. Thornton

1 **THE COURT:** That's gonna amplify your voice. I need
2 for you to pull it closer to you. Just adjust it so you can
3 speak. You can turn toward the jury, but just speak into
4 the microphone. If you'd begin by stating your full name
5 and spelling your last name for the court reporter.

6 **DR. PRESNELL:** Yes, sir. My name is Susan Erin
7 Presnell, P-R-E-S-N-E-L-L.

8 **THE COURT:** Counsel, your witness.

9 **MR. THORNTON:** Thank you, Judge.

10 **DIRECT EXAMINATION**

11 **BY DEP. SOL. THORNTON:**

12 **Q** Dr. Presnell, although I probably gave it away by
13 calling you Dr. Presnell, do you have any specific
14 education?

15 **A** I'm a forensic pathologist. I work at the Medical
16 University of South Carolina.

17 **Q** And what sort of college degrees, if any, have you
18 gotten to have that job?

19 **A** Well, training for forensic pathology involves after
20 high school going to college and getting a four-year degree;
21 it doesn't matter in what. Going to medical school, which
22 is a four-year degree, and you get your M.D. after that.
23 Picking the specialty that you want to go into, which
24 medical specialty like surgery or pediatrics. I chose
25 Pathology, which at the time was a five-year training

1 program, and then I sub-specialized in forensic pathology,
2 which is just a branch of pathology, which was an additional
3 year. So I think that's about 14 years after high school.

4 Q More even than me, which is unusual, Dr. Presnell. Let
5 me ask you a couple of questions. What are your duties at
6 MUSC? What is it that you specifically do for them?

7 A I'm a forensic pathologist. Forensic, and most people
8 are becoming more familiar with what a forensic pathologist
9 does with all the stuff on TV and everything. Actually,
10 forensic pathology, I kind of referenced this earlier, is a
11 subspecialty of pathology. Pathology, in a broad
12 definition, is the study of disease, so a lot of
13 pathologists are what you call surgical pathologists that
14 receive biopsies, like, say somebody has a skin biopsy or
15 breast biopsy, that tissue goes to the pathologist and they
16 look at it and they look under the microscope and they
17 diagnose the disease. Well, forensic pathology is trained
18 through that, but you sub specialize where you're looking at
19 not just a tissue, but a whole body of a diseased person,
20 and not only trying to come up if there was a disease
21 process going on, and ultimately the cause of death, but you
22 also interpret traumatic injuries. They're not just
23 diseases, but traumas and what made them cause those things.
24 And, of course, the procedure that we do is called the
25 autopsy where we do the full external exam -- internal exam

Direct Examination of Dr. Presnell by Dep. Sol. Thornton

1 involving organs and tissues, and do a full toxicology
2 workup.

3 Q Dr. Presnell, how many autopsies have you performed?

4 A I would have to estimate around 2,000.

5 Q And have you ever been qualified as an expert witness
6 and testified in court before?

7 A Yes, sir.

8 Q How many times?

9 A I would have to estimate again, maybe, 50 or 60.

10 MR. THORNTON: Your Honor, at this time, I would move
11 that Dr. Presnell be recognized as an expert in forensic
12 pathology and allowed to give opinion testimony.

13 THE COURT: Any objection as to qualification?

14 MR. MATHEWS: No objection, Your Honor.

15 THE COURT: Ladies and gentlemen of the jury, normally,
16 the law does not allow a witness to get on a witness stand
17 and give opinion or conclusion testimony. An exception to
18 that rule is for those witnesses whom we call "expert
19 witnesses". You're about to hear the testimony of a witness
20 who claims to have special knowledge, skill, training,
21 experience or education in the field of pathology and
22 forensic pathology, and who will, if qualified by the Court,
23 and she has been found to be so qualified without objection,
24 be permitted to give her opinion as an expert in the matters
25 which she claims to be so skilled.

Direct Examination of Dr. Presnell by Dep. Sol. Thornton

1 In determining the weight to be given to such expert
2 opinion, you should consider the qualifications and the
3 believability, or credibility, of the expert, the reasons
4 given for her opinion. You are not bound by such opinions.
5 You give it the weight, if any, to which you deem it should
6 be entitled.

7 The witness is qualified without objection. You may
8 proceed, counsel.

9 **MR. THORNTON:** Thank you, Your Honor.

10 **Q** Dr. Presnell, did you perform an autopsy on April the
11 12th of 2008?

12 **A** Yes, we performed an autopsy on Mr. Jake Frazier.

13 **Q** All right. And I know -- did you prepare an extensive
14 report for that case?

15 **A** Yes. Part of the autopsy protocol is that after the
16 examination, you prepare an autopsy report.

17 **Q** Is part of that report evidence of injury?

18 **A** Yes, we document all the diseases and traumas, as well
19 as injuries.

20 **Q** Would you please share with the jury what you found
21 that would come under the heading of "evidence of injury"?

22 **A** All right. Well, first of all, to kind of explain some
23 of the medical terminology, which a lot of time is self-
24 explanatory, but abrasions, and Mr. Frazier had a number of
25 contusions, which are bruises; abrasions, which are

1 scratches, where the skin is scratched off, and what we call
2 petechiae, which are pin-point hemorrhages; like, little,
3 tiny dot-like hemorrhages. Mr. Frazier, kind of group them
4 together, he had most of his injuries centered around his
5 neck area. He had an abrasion on the right side of the
6 neck, or scratch, and an abrasion and contusion on the very
7 right side of the neck behind the ear. He had another
8 abrasion on the front of the neck. Three abrasions, one's
9 got kind of a curvy, linear mark on the left side of the
10 neck, and a bruise, or contusion, on the left, front of the
11 neck.

12 So multiple bruises and scratches around the neck.
13 Once we reflect the skin and look underneath, there's all
14 the neck muscles underneath, and he had a number of bruises
15 of the muscles that are in the neck. Along with that,
16 remember I also referenced he had petechiae, or pin-point
17 hemorrhages? He had a number of those around the lining of
18 his eye and around the lining of his eyelid. Those are --
19 these findings together, to us as forensic pathologist, are
20 indicative of strangulation. He had a couple of other minor
21 injuries, which include multiple abrasions, or scratches, on
22 his knees. He had one abrasion on his abdomen, and I think
23 he had a pin-point abrasion -- he did have a pin-point
24 abrasion on his wrist. Those together were his main
25 injuries.

Direct Examination of Dr. Presnell by Dep. Sol. Thornton

1 Q Dr. Presnell, to a -- were you able then to form an
2 opinion to a reasonable degree of medical certainty to as to
3 what the cause of death in this case was?

4 A Yes, we listed the cause of death as asphyxiation, or
5 lack of oxygen, due to strangulation.

6 Q Dr. Presnell, did you do a toxicology, or was a
7 toxicology done on Mr. Frazier?

8 A Yes, we got blood from Mr. Frazier and sent it to a
9 toxicology lab, who then processes the blood, and sends the
10 results back to us. Mr. Frazier's blood he had a
11 therapeutic level of methorphan, which is, like, a cough
12 medicine. He also had a blood alcohol of .148, and just to
13 put that in perspective, the limit for driving while under
14 the influence is .08, so his was .148, so almost -- almost
15 twice that.

16 Q So based on those findings, would it be fair to say he
17 had been consuming alcohol at some point that day or that
18 evening or that morning?

19 A Yes, he was under the influence of alcohol.

20 Q Were there any other drugs, other than the cough
21 medicine, found in his system?

22 A He just had nicotine, which is tobacco by-product,
23 like, from smoking cigarettes.

24 Q And one more time, Dr. Presnell, what was the cause of
25 death in this case?

Cross-Examination of Dr. Presnell by Mr. Mathews

1 A Asphyxiation, or lack of oxygen, due to strangulation.

2 Q I have no further questions, Dr. Presnell. Please
3 answer any questions that Mr. Mathews may have for you.

4 MR. MATHEWS: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MATHEWS:

7 Q Dr. Presnell, how was your trip?

8 A It was pretty quick.

9 Q You came from Charleston or Columbia?

10 A From Charleston.

11 Q Okay. Where did you go undergraduate?

12 A Clemson.

13 Q Go Tigers. They've got that quarterback. I don't know
14 if you read about that, but, anyway, is there anything
15 besides strangulation that can cause petechiae?

16 A There's a whole host of things that can cause
17 petechiae. Again, petechiae are pin-point hemorrhages.
18 They can be seen in natural causes of death, like heart
19 attacks. They can be seen in live people, like, for
20 instance, one time my husband had an upper endoscopy where
21 they stick a tube down your throat, and he coughed and
22 gagged so much that it caused those petechiae. Maybe it
23 would help to understand why somebody might develop
24 petechiae. They're basically, a rupture of the tiny
25 vessels, capillaries and veniles, and a lot of times they'll

1 rupture because of increased pressure in those vessels, for
2 whatever reason. Like I said, with cardiac disease, it may
3 just be that the blood is backing up and causing the
4 pressure to increase.

5 For instance, like my husband, he was gagging, that
6 increased gag causes the increased pressure and can cause
7 those vessels to rupture. And in cases of strangulation,
8 you have to consider what the anatomy is of the vessels that
9 go to and from the head. You have arteries which take your
10 oxygenated blood from your heart to all your organs. You
11 have like the carotid arteries going to the head, and that's
12 kind of a high pressure system. Your heart's got to pump
13 all that blood to all the parts of your body. Then you have
14 your veins bringing all of the unoxygenated blood back to
15 your heart so it can go to the lungs and get oxygenated.
16 That's relatively low pressure systems, so that isn't --
17 it's just relatively a low pressure system. So the arteries
18 are a lot thicker than the veins are just because of the
19 pressure difference. When there's compression around the
20 neck, what ends up happening is that -- and a lot of times
21 it's intermittent pressure, is that the veins will be
22 pressed closed, but the arteries aren't pressed closed. So
23 what's happening is that the blood can still get to the
24 head, but it can't get out, and therefore that increases the
25 pressure and causes these ruptures. One other thing, since

Cross-Examination of Dr. Presnell by Mr. Mathews

1 I kind of seem to be on a roll here, that I wanted to bring
2 up when I talked about asphyxia, or lack of oxygen, due to
3 strangulation. Most of the strangulations aren't due to
4 compression of the airway; it's compression of the blood
5 vessels. So the person can still be breathing, it's just
6 that the strangulation or the compression around the neck is
7 not allowing the oxygenated blood to get to the brain, and
8 that's what's causing the asphyxia, that actually, I mean,
9 you can occlude the airway as well, but most of the cases of
10 strangulation is the compression of the vessels, and the
11 petechiae in this case are a result of that difference in
12 the strength of the vessels going to and from the head.

13 Q Dr. Presnell, you mentioned that your husband had
14 gotten petechiae from coughing or gagging, can vomiting, if
15 you do that vigorously, can that also cause petechiae?

16 A Yes, it can, and so can seizures. There's a long list
17 of what may cause petechiae.

18 Q Were you aware -- was it given to you in the history
19 that was presented to you, was it given to you that the
20 victim had, Mr. Frazier, had thrown up before this?

21 A No, I don't have that history.

22 MR. MATHEWS: I don't have anything further, Your
23 Honor.

24 THE COURT: Redirect?

25 REDIRECT EXAMINATION

Redirect Examination of Dr. Presnell by Dep. Sol. Thornton

1 **BY DEP. SOL. THORNTON:**

2 **Q** Dr. Presnell, you testified just a minute ago on cross-
3 examination that petechiae can be caused by several
4 different things, vomiting, seizures and other things; is
5 that correct?

6 **A** Yes.

7 **Q** Well, but we're not here about a hypothetical today, so
8 in this case, with the death of Jake Frazier, what was the
9 cause of death?

10 **A** Well, in this case, we're not just looking at the
11 petechiae, we're looking at his neck injuries and all those
12 bruises and contusions with it, plus the lack of any other
13 cause of death. All that goes together to indicate he died
14 from asphyxia, due to strangulation.

15 **Q** Thank you, Doctor.

16 **MR. THORNTON:** No further questions, Judge.

17 **THE COURT:** Re-cross, limited to redirect?

18 **MR. MATHEWS:** No, sir.

19 **THE COURT:** As to this witness, Solicitor?

20 **MR. THORNTON:** We ask that she be allowed to be
21 excused.

22 **THE COURT:** Any objection, Mr. Mathews?

23 **MR. MATHEWS:** No objection.

24 **THE COURT:** Dr. Presnell, you may step down and you are
25 excused from the courtroom. Watch your step on there for

1 me, please.

2 DR. PRESNELL: Thank you.

3 THE COURT: Thank you. Call your next witness,
4 Solicitor.

5 MR. THORNTON: Court's indulgence a moment, Your Honor.

6 THE COURT: Counsel approach.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
8 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE
9 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

10 THE COURT: Madam Foreperson, ladies and gentlemen of
11 the jury, I need to take up a matter. This won't take long.
12 I'm going to have to take a short recess. I'll be right
13 back with you. Please don't discuss the case. I promise
14 you I'm going to keep the train moving down the track. I'll
15 be right back with you, just don't discuss the case and
16 please retire to your jury room.

17 (WEDNESDAY, JANUARY 28th, 2009, 2:35 P.M., WHEREUPON
18 JURY EXITS THE COURTROOM, THEREAFTER THE FOLLOWING
19 PROCEEDINGS WERE HELD OFF THE RECORD:)

20 THE COURT: Counsel approach.

21 (WEDNESDAY, JANUARY 28th, 2009, 2:55 P.M., WHEREUPON
22 THE JURY ENTERS THE COURTROOM AND THE FOLLOWING PROCEEDINGS
23 WERE HELD ON THE RECORD.)

24 THE COURT: Madam Foreperson, ladies and gentlemen of
25 the jury, we'll now continue with the testimony in the trial

Direct Examination of Det. Allen Inabinett by Mr. Mathews

1 **MADAM CLERK:** Place your left hand on the Bible and
2 raise your right.

3 **WHEREUPON, DETECTIVE INABINETT** was duly sworn to tell
4 the truth, the whole truth, and nothing but the truth, and
5 testified as follows:

6 **MADAM CLERK:** Please have a seat on the witness stand
7 and state your full name for the record.

8 **THE COURT:** Make yourself comfortable, pull the
9 microphone over for me. If you would, please, state your
10 full name, spell your last name.

11 **MS. BALLARD:** Yes, sir. Allen, last name, I-N-A-B-I-N-
12 E-T-T.

13 **THE COURT:** Your witness, counsel.

14 **MR. MATHEWS:** Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 **BY MR. MATHEWS:**

17 **Q** Detective Inabinett, you were the case officer on this
18 case?

19 **A** Yes, that is correct.

20 **Q** And you are here under my subpoena, as well as the
21 State's subpoena?

22 **A** Correct, yes, sir.

23 **Q** Detective Inabinett, were you present on the scene,
24 sometime shortly after this incident occurred?

25 **A** Yes, I was. I responded as the on-call detective.

Direct Examination of Det. Allen Inabinett by Mr. Mathews

1 Q Okay. And in the course of that investigation, did you
2 take measurements, look for samples, and things of that
3 nature?

4 A Yes, I did. During the course of the crime scene, I
5 did various measurements and took various photographs.

6 Q Did you -- did you look for and find any blood on the
7 scene?

8 A Yes, sir. I located a location in the back bedroom,
9 which is classified as the incident location. In corner
10 number one, there is a portion of blood which I collected,
11 actually the carpet sample was secured.

12 Q All right. Based on your investigation of the case,
13 did you believe that to be Desmond Sams' blood?

14 A At the time, it was believed to be blood of the
15 deceased victim.

16 Q Did you later determine that it was not?

17 A The sample was not sent to SLED to be analyzed, due to
18 the -- both individuals being found in the same location
19 where the blood sample was at. It's been secured in
20 evidence.

21 Q Did you ever see Mr. Sams that same day?

22 A Yes, sir. I met with Mr. Sams later on in the morning
23 of the 12th at The Annex, which is the Colleton County
24 Sheriff's Department Annex.

25 Q Was his eyes swollen shut?

Direct Examination of Det. Allen Inabinett by Mr. Mathews

1 **A** At least one of them was swollen.

2 **Q** And did he also have a cut on his lip?

3 **A** I can't recall.

4 **Q** Had he been bleeding?

5 **A** I'm assuming it's possible.

6 **Q** Okay. But he looked like he had been in a fight?

7 **A** Oh, yes, sir. No question he was in some type of
8 altercation.

9 **Q** Okay. And you say at least one of his eyes was closed
10 up?

11 **A** Yes, at least one. I can't recall whether it was left
12 or right, but at least one eye was swollen.

13 **Q** All right. Detective Inabinett, you've been here
14 through the entire case?

15 **A** That's correct.

16 **Q** Have you -- were there any videotaped statements taken
17 in this case?

18 **A** We interviewed and recorded the two young ladies, as
19 well as, I think, Mr. Sams, which did not give a total
20 interview.

21 **Q** So there are videotape statements from the -- from Ms.
22 Ballard and Ms. Strickland?

23 **A** Yes, sir.

24 **Q** And are those -- are those available, in evidence?

25 **A** Yes, sir. I have them present in the courtroom.

Direct Examination of Det. Allen Inabinett by Mr. Mathews

1 **MR. MATHEWS:** Your Honor, may we approach?

2 **THE COURT:** Counsel approach.

3 **(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD**
4 **OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE**
5 **FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)**

6 **Q** Detective Inabinett, you've seen the written
7 statements, also in this case, have you not, from Ms.
8 Strickland and Ms. Ballard, correct?

9 **A** Yes, I have.

10 **Q** Was there anything in those written statements that was
11 inconsistent with the videotape statements that they made?

12 **A** To my knowledge, no. But I did not interview neither
13 Ms. Strickland nor Ms. Ballard.

14 **Q** Okay. And you would agree there were significant
15 omissions from those from what came from that stand here
16 today?

17 **MR. THORNTON:** I'd object to that, Your Honor. It
18 calls for a conclusion. That's the jury's call.

19 **THE COURT:** Sustained. No foundation. Proceed.
20 Cross-examination.

21 **Q** Was there any reference at all in the videotape about
22 Ms. Ballard making a phone call herself?

23 **A** I'm not sure. I didn't interview Ms. Ballard.

24 **Q** Okay. Are you familiar with what's in the videotapes?

25 **A** Just briefly about there was a -- a video of both

Direct Examination of Detective Allen Inabinett by Mr. Mathews

1 individuals. I, myself, did not interview neither Ballard
2 nor Strickland. I attempted to interview the defendant, Mr.
3 Sams.

4 Q Okay. What I'm saying is you've seen them. You know
5 what's in them, correct?

6 A Yes, sir, but I cannot recall verbatim any of the
7 statements.

8 Q Well, you would agree that it's a significant factor if
9 there was a second contact, would you not?

10 A I don't want to misquote, because I can't recall. I
11 don't know.

12 Q What physical evidence did you send to SLED?

13 A Presently, nothing. The carpet was secured, as well as
14 the stain on the carpet was lifted and then secured as well,
15 but we did not send it off due to both individuals being in
16 the exact location was Deputy Sergeant Dunn arrived on
17 scene.

18 Q Okay. So would you agree that this is not, there's no
19 physical evidence that we're looking at in this case, right?

20 A Just the actual carpet location, which was secured.

21 Q No, I know, but what I'm saying is this is not a case
22 that relies on the investigation of the Sheriff's Office; is
23 that correct? If the witnesses are telling the truth, it's
24 one way; if they're not, then it's another, and this is not
25 a case ---

1 **MR. THORNTON:** Objection, Your Honor.

2 **THE COURT:** Just a moment. Yes, sir?

3 **MR. THORNTON:** That's a call for the jury to make.

4 **THE COURT:** Sustained. Rephrase the question, counsel.

5 **Q** You found vomit on the floor?

6 **A** In the bathroom, yes, sir.

7 **Q** Okay. How big was the bathroom?

8 **A** I did measurements, but I cannot quote off the top of
9 my head. I can look at some documentation to verify that,
10 the measurements, but it was small, relatively, average size
11 bathroom.

12 **Q** Okay. All right. Detective Inabinett, you said that
13 the first time that you saw Mr. Sams was at The Annex?

14 **A** That I can recall, yes, sir.

15 **Q** You saw him at the hospital, didn't you?

16 **A** I don't remember. I don't recall.

17 **Q** You didn't see -- Mr. Sams was taken to the hospital
18 after this, was he not?

19 **A** He was, but I didn't transport him.

20 **Q** Okay. You didn't transport him, but you know that he
21 was taken to the hospital, and in fact, you saw him at the
22 hospital?

23 **A** I don't remember. I saw him at The Annex and . . .

24 **Q** Detective Inabinett, I hand you what's been marked as
25 Defendant's Exhibit Number One, and ask you if you can

Direct Examination of Detective Allen Inabinett by Mr. Mathews

1 identify that?

2 **A** Yes, this is a picture of the defendant, Mr. Sams.

3 **Q** Is that what he looked like on the night that you saw
4 him -- or the day that you saw him?

5 **A** That's correct.

6 **Q** All right.

7 **MR. MATHEWS:** I'd submit that into evidence at this
8 time, Your Honor.

9 **THE COURT:** Any objection?

10 **MR. THORNTON:** No objection, Judge.

11 **THE COURT:** Ladies and gentlemen of the jury,
12 Defendant's Exhibit Number One will be admitted into
13 evidence without objection. Defendant's One in evidence.

14 (WHEREUPON, Defendant's Exhibit No. One was received
15 into evidence.)

16 **THE COURT:** You may publish and proceed, Mr. Mathews.

17 **MR. MATHEWS:** If I could present that to the jury and
18 then I may -- I don't know if I have any further questions
19 or not, but while they look at this that might give me time
20 to figure out. (Defendant's Exhibit One presented to jury.)

21 **THE COURT:** Anything further on the record, counsel?

22 **MR. MATHEWS:** No, sir.

23 **THE COURT:** Cross-examination?

24 **MR. THORNTON:** None, Judge.

25 **THE COURT:** Very well. You may step down, Lieutenant.

Direct Examination of Jason Eubanks by Mr. Mathews

1 Call your next witness.

2 **MR. MATHEWS:** Officer or ---

3 **THE COURT:** Mr. Mathews, stay in the courtroom. You
4 just tell me what witness you want that you have subpoenaed
5 and I'll bring them up.

6 **MR. MATHEWS:** Ms. Mitchell.

7 **THE COURT:** Ms. Mitchell?

8 **BAILIFF:** I'll go look downstairs.

9 **THE COURT:** You got her Ms. Cobb?

10 **BAILIFF:** No, sir.

11 **MR. MATHEWS:** Jason Eubanks, Your Honor.

12 **THE COURT:** Mr. Thornton?

13 **MR. THORNTON:** Yes, Your Honor.

14 **THE COURT:** Eubanks one of your witnesses?

15 **MR. THORNTON:** He is, Your Honor.

16 **THE COURT:** Tell him where he's located so they can
17 pick him up.

18 **MR. THORNTON:** Mr. Griffith's gone to get him right
19 now, Judge.

20 (MR. EUBANKS ENTERS THE COURTROOM.)

21 **MADAM CLERK:** Please come forward and be sworn. Place
22 your left hand on the Bible and raise your right.

23 **WHEREUPON, JASON EUBANKS** was duly sworn to tell the
24 truth, the whole truth, and nothing but the truth, and
25 testified as follows.

Direct Examination of Jason Eubanks by Mr. Mathews

1 **MADAM CLERK:** Please have a seat on the witness stand
2 and state your full name for the record.

3 **THE COURT:** Have a seat. Pull the microphone over to
4 you; adjust it so you can speak into it. It's going to
5 amplify your voice so my jury can hear you. Speak so they
6 can hear you at the end of the row. State your full name
7 and spell your last name for the court reporter.

8 **DEPUTY EUBANKS:** My name is Deputy Jason Eubanks, last
9 name is spelled E-U-B-A-N-K-S.

10 **THE COURT:** Got to speak a little louder, now, Mr.
11 Eubanks. I want them to be able to hear you.
12 Your witness, counsel.

13 **MR. MATHEWS:** Thank you, Your Honor.

14 **DIRECT EXAMINATION**

15 **BY MR. MATHEWS:**

16 **Q** Officer Eubanks, did you -- were you involved in the
17 transport of Mr. Sams on the morning of April the 12th,
18 2008?

19 **A** Yes, I was.

20 **Q** Where did you take him from and where did you take him
21 to?

22 **A** Took him from the incident location to Colleton County
23 Medical Center.

24 **Q** You took him to the hospital?

25 **A** Yes, sir.

Direct Examination of Jason Eubanks by Mr. Mathews

1 Q During that time, did he make any statements to you?

2 A He made statements in the backseat of my car.

3 Q What did he say?

4 A He kept saying that it was self-defense and that the
5 victim was trying to kill him.

6 Q Okay. And he was in fact injured and you took him to
7 the hospital?

8 A That's right.

9 MR. MATHEWS: Nothing further, Your Honor.

10 THE COURT: Cross-examination?

11 MR. THORNTON: None, Your Honor.

12 THE COURT: As to this witness, Mr. Mathews, may he be
13 excused?

14 MR. MATHEWS: Absolutely.

15 THE COURT: Any objection, Solicitor?

16 MR. THORNTON: No, sir.

17 THE COURT: You may step down and you are excused from
18 the courtroom. Call your next witness, counsel.

19 MR. MATHEWS: That would be -- that would be Ms.
20 Mitchell. I suppose we could get -- I'm worried if we
21 call ---

22 THE COURT: Counsel, not a statement. Approach the
23 bench. You may approach, Solicitor.

24 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
25 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE

Direct Examination of Desmond Sams by Mr. Mathews

1 **FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)**

2 **THE COURT:** Call your next witness, counsel.

3 **MR. MATHEWS:** Desmond Sams, Your Honor.

4 **MADAM CLERK:** Please come forward and be sworn. Place
5 your left hand on the Bible and raise your right.

6 **WHEREUPON, DESMOND SAMS** was duly sworn to tell the
7 truth, the whole truth, and nothing but the truth.

8 **MADAM CLERK:** Please have a seat on the witness stand
9 and state your full name for the record.

10 **THE COURT:** Have a seat, make yourself comfortable,
11 pull that microphone over to you so you can use it to
12 amplify your voice. Speak into that microphone for me so
13 they can hear you. State your full name, spell your last
14 name for the court reporter.

15 **MR. SAMS:** My name is Desmond Sams, Desmond J. Javon
16 Sams, S-A-M-S.

17 **THE COURT:** Your witness, counsel.

18 **MR. MATHEWS:** Thank you, Your Honor.

19 **DIRECT EXAMINATION**

20 **BY MR. MATHEWS:**

21 **Q** Desmond, where are you from?

22 **A** This is my home, but I'm born in Philadelphia,
23 Pennsylvania.

24 **Q** How long have you been living in Colleton County?

25 **A** Since I was, like, on and off since I was, like, five

Direct Examination of Desmond Sams by Mr. Mathews

1 or six.

2 Q Five or six? Did you know Jake Frazier?

3 A Yes, sir.

4 Q Who was he to you?

5 A He was my first cousin and my best friend, my role dog,
6 everything. We was cool like that, you know. We was cool.

7 Q Mr. Sams, Desmond, you've had a chance to hear the
8 testimony through the course of this. Tell me about what
9 happened the evening of April 11th, going into the morning
10 of April the 12th. Tell the jury.

11 A Well, we was working together as well. We were
12 cleaning Alltel buildings with his sister, Ms. Glover, and I
13 was helping them out because he said he was about to start
14 going to jail on the weekends for a probation violation, so
15 I was helping him out with that. I was also renting from
16 them because I was living up north prior to this, I was
17 about to get married, whatever, like that, that didn't work
18 out so I came back down here. I was paying rent to him \$50,
19 and he in return, helping him on his job cleaning the Alltel
20 buildings.

21 Q Desmond, I don't want to interrupt you, but I -- I --
22 tell me about when you got to Lisa Strickland's house.

23 A Well, we got off from work. We used to work together,
24 so we came home from work to the house, our house, his house
25 or our house, and Lisa and Stephanie was on the porch with a

Direct Examination of Desmond Sams by Mr. Mathews

1 gallon of Vodka and lemon drops, you know, with the lemon
2 and the sugar and the salt. We then -- we then -- they was
3 giving shots right there. The girls was intoxicated, so I
4 wound up driving Stephanie green Neon. Lisa rode with me.
5 My cousin, Red, he drove his car, and Stephanie rode with
6 him. We stopped at BP to get some cigarettes and then we
7 went to the place where the tragedy happened.

8 Q That was Lisa Strickland's place?

9 A Yes, sir.

10 Q Okay. And everybody had been drinking?

11 A Yes, sir.

12 Q There had been some talk about you making some pass at
13 Stephanie. Bring us from about there, or tell what happened
14 -- at one point, was Jake sick? Was "Red" sick?

15 A Okay. When we got to the house, the girls, they had
16 like a half a gallon of Vodka left. They was already
17 intoxicated when we got off from work and met them at our
18 house, so they had the Vodka, the Tequila, it was around, a
19 little over a quarter of a gallon of Tequila left on the
20 table. It was a half of gallon of Crown Royal on the table,
21 and it was a gallon of gin, Seagram's Gin. All these was
22 open except for the Crown Royal and a little bit when we got
23 to the house, so I flipped through the CD's. I put in a CD
24 and we started, the girls they slipped in -- they got
25 dressed in some shorts or whatever like that, and we started

Direct Examination of Desmond Sams by Mr. Mathews

1 dancing. We was giving shots of different liquor and stuff
2 like that, and partying and dancing, like making the
3 sandwich, and so we was hanging out and having fun. And my
4 cousin, he had grabbed the Tequila, and it was only a
5 quarter left out of a gallon bottle, after taking another
6 shot. We was all drinking. He killed the rest of the
7 Tequila, and so we started dancing again, and he said he was
8 getting sick, so he had went to the bathroom. When he had
9 went to the bathroom, we -- the two girls, us, we remained
10 in the living room dancing and listening to music. The two
11 girls, they was getting more shots and stuff like that.
12 After around three or four songs, I said, where my cousin
13 at? I'm go check on my cousin, because everybody say we was
14 like twins, you know, we grew up together, and we used to
15 hang around each other and stuff. I went to the bathroom to
16 check on my cousin. When I went to the bathroom, he was
17 sitting on the edge of the bathtub while he was -- I
18 immediately seen puke on the floor, so I bent down
19 (indicating), excuse me, and I bent down like this, with my
20 hands on my knees and I say, "Cuz, you alright?" Me and him
21 was eye contact. Then when I say that, Stephanie Ballard,
22 she came in, and the bathroom was small. This is a single-
23 wide trailer. You get what I'm saying? The bathroom was
24 small. I was leaning down in front of the commode. He was
25 sitting on the edge of the bathtub, looked like he could

Direct Examination of Desmond Sams by Mr. Mathews

1 have bent over and called "Earl" or whatever you want to
2 call it, puke, or whatever you want to call it. Then I say,
3 "You alright?" Well, Stephanie came in and she was trying
4 to get past me, I guess, to comfort him, like this, you
5 know, pat him on the shoulder. So she had, like, walked
6 into me. Excuse me -- excuse me.

7 **THE COURT:** You need to sit down. Just tell the jury.

8 **A** I had my hands on my knees like I showed y'all. When
9 she went to try to scoot past me, I had like leaned forward;
10 you get what I'm saying? Besides head butting me and my
11 cousin, we eye -- we -- we at eye length with each other.
12 Besides head butting him, my hand went up like this
13 (indicating), and I caught Ms. Ballard on the -- like, a
14 little above her -- like maybe a hand length above her knee,
15 with one hand to catch my balance. Now, I was off-balance
16 like this, now, and as soon as that happened, my cousin say,
17 "Hey, get your hand off my -- boom." And then he hit me.
18 He hit me. And then after he hit me, I stood up, cause, you
19 know, we were in the bathroom. After he hit me, he grabbed
20 me around my neck. He was punching me, I went back -- I
21 went back and I hit the back wall and then I was still
22 trying -- trying to bend up because he caught me -- he
23 struck me, you know, caught me on surprise. So he was still
24 punching me and pushing me back, so I went -- I hit the back
25 wall of the bathroom, and then I turned to my right -- I

Direct Examination of Desmond Sams by Mr. Mathews

1 turned to my right and my back was to the entrance of the
2 room we was in. I was still steady, you know, landing on
3 trying to get -- I was still caught on surprise, so he was
4 still punching me and stuff, so I wound up falling on my
5 back. I wound up falling on my back in the room and when I
6 fell on my back, he fell on top of me. He was punching me
7 and stuff like this, and I still, I never even hit my
8 cousin. You get what I'm saying? I never even wanted to
9 fight my cousin because I, you know, I knew it wasn't like
10 that, you know. You get what I'm saying? He was punching
11 me and stuff like that, and he had one hand on my neck and
12 the other hand he was trying to pull out my windpipe. I
13 tried to push him off. I looked him in his eye. Right
14 then, I didn't know my cousin. I was scared, so I looked
15 him in his eye. I tried to push him off with my one hand
16 and that's when he bit my finger. He bit my finger and I
17 had to get -- he bit my finger; it was real deep, it swole
18 up, and after he bit my finger, I was still -- he was still
19 choking me with one hand and trying to pull my windpipe out
20 with the other hand.

21 Now, at this time, I'm scared with my adrenaline
22 flowing. I can't hardly breathe, so I punched him. With my
23 last bit of breath, I punched him off me. When I punched
24 him off me, I did like a superman punch. I kicked my leg up
25 and I jerked my body. He rolled over and he was about to

Direct Examination of Desmond Sams by Mr. Mathews

1 get up. I was about to get up. So I tried to hold him down
2 in it and he was like "ohh, ahh, ohh", and I was, like,
3 "Man, chill out, man. Chill out, man. What's wrong with
4 you, man? Chill out." "Ohh, ahh" And I remember -- I
5 remember -- the -- one of the girls they came over the
6 speakerphone and they said, Sharron on the phone." You know
7 what I'm saying? I was just trying to restrain him. I
8 wasn't trying to kill him. I was just trying to restrain
9 him till the police came. You get what I'm saying?
10 Somebody could come break us up, cause that's my best
11 friend. You know, we was about to open up a business, and
12 all that, together. You know what I'm saying? Other than
13 working for his sister, we was going to open up a women's
14 lingerie shop, but anyway, God bless the dead.

15 So my cousin, he still was "ohh, ahh, ahh, get off, get
16 off me." So, you know, I can't see out of one eye. I see
17 blood. I was scared. You know what I'm saying? So Sharron
18 and then, I heard her on the speakerphone. They ain't
19 really had the phone to my head. They had it on
20 speakerphone. They said, "What's going on?" I said, "Red,
21 you know, he trip me. He trying to fight me." She was,
22 like, "Oh, well get off him." I said, "No, cause he gonna
23 want to fight me." She said, "Well, I'm calling the cops."
24 And I said, "Please call the cops. Call the cops." She
25 say, "Okay." And she hung up the phone. Next thing I know,

Direct Examination of Desmond Sams by Mr. Mathews

1 he was "Ohh, ahh" We was fighting and I was just trying to
2 hold him and restrain him, and the next thing you know, it
3 was like, I don't how long it'd been, but the police, they
4 came, and they was like, "Well, get off him." I was, like,
5 I didn't know the policeman. My eye was swoll. I didn't
6 even see the police. I didn't know it was a police until I
7 got up. They was like, "Well, get off him." I was, like,
8 "Well, he gonna want to fight." You know what I'm saying
9 cause I still thought he was, like, you know, and I just was
10 scared, you know.

11 Q Desmond, did you intend to kill your cousin?

12 A No, sir. That was my best friend. We grew up
13 together. We grew up together. We was living together. We
14 was working together. We clubbed together. We did
15 everything together. We went for twins. Girls used to say
16 we looked like twins everywhere we went.

17 Q Why were you holding his throat, his neck? Why did you
18 have your arm around his neck?

19 A Because I was trying to restrain him from getting up
20 because, you know, I'm not trying to take away from him
21 carrying it, but my cousin was known for carrying knives and
22 stuff, and ---

23 Q I don't want to get into that.

24 MR. THORNTON: Objection, Your Honor.

25 THE COURT: Sustained.

Cross-Examination of Desmond Sams by Dep. Sol. Thornton

1 Q Yeah, don't get into that. Don't get into that.

2 A Well -- well, I couldn't see for one thing.

3 THE COURT: Just a moment. Ask a question. Let the
4 witness answer.

5 MR. MATHEWS: Thank you.

6 THE COURT: Proceed, counsel.

7 Q Desmond, had your cousin hit you first?

8 A Yes, sir.

9 Q Did you want to be fighting with him?

10 A No, sir.

11 Q Were you trying to protect yourself?

12 A I never hit him. One time ---

13 Q Were you trying to protect yourself?

14 A Yes, sir.

15 MR. MATHEWS: I have no further questions, Your Honor.

16 THE COURT: Cross-examination?

17 CROSS-EXAMINATION

18 BY DEP. SOL. THORNTON:

19 Q You testified earlier that you and your cousin were
20 cool like that. Were you cool like that when you were
21 choking him to death on the floor?

22 A I wasn't trying to choke him. I wasn't choking him
23 hard, it didn't seem like. I was scared.

24 Q You weren't choking him? You choked him hard enough to
25 kill him, didn't you?

Cross-Examination of Desmond Sams by Dep. Sol. Thornton

1 A I don't know, sir.

2 Q You don't know? Was he alive when you put your arm
3 around his throat?

4 A Yeah.

5 Q Was he alive when you took your arm off his throat?

6 A Yes, sir. I could swore he was breathing.

7 Q You could have swore he was breathing?

8 A I wasn't choking him like hard to try to kill him.

9 Q You went to the hospital that day with a swollen eye
10 and a busted lip, right?

11 A Yeah, and my neck was messed up and my finger was bit.

12 Q Did Jake go to the hospital that night?

13 A I believe so.

14 Q Did he walk out?

15 A Not -- no sir.

16 Q Did you?

17 A Yes, sir.

18 Q So you killed him? Your twin, your cousin that you was
19 "cool like that". I mean, there's no way around that, you
20 killed him.

21 A Yes, sir.

22 Q Now, you heard the testimony in here. You heard all
23 the witnesses, didn't you?

24 A (Deponent nods.)

25 Q You grabbed his girlfriend and he said something to you

Cross-Examination of Desmond Sams by Dep. Sol. Thornton

1 about it and you started choking him.

2 A No, sir.

3 Q Okay.

4 A He hit me and started choking me back to the room. I
5 never once attacked him. I was trying to restrain him.

6 Q You restrained him by choking him to death?

7 A I was just trying to hold him until somebody came to
8 help us out because it was . . .

9 Q Sound like he needed a lot more help than you, didn't
10 he?

11 A I was scared, sir. I was scared, sir. I couldn't
12 hardly see. I wear contacts. You get what I'm saying?

13 Q What was it that scared you? The part that his
14 lifeless body was lying underneath you not moving, was that
15 scary for you?

16 A It just happened so fast, sir. It just -- it was ---

17 Q Your testimony is it happened fast? Didn't you hear
18 the testimony of the officer that said it was 12 minutes
19 from the time he was dispatched till he got there? We know
20 you were choking him at least that long, don't we?

21 A No, sir.

22 Q Or was it 8 minutes?

23 A I couldn't tell you. I was scared.

24 Q You were scared? What was it about his lifeless, dead
25 body laying underneath you that scared you?

Cross-Examination of Desmond Sams by Dep. Sol. Thornton

1 A He wasn't lifeless the whole time, sir. Like I said, I
2 don't remember ---

3 Q When did he turn lifeless, if he wasn't lifeless the
4 whole time? At what point had you killed him with your bare
5 hands and you still were scared of him while you layed on
6 top of him? When did he become lifeless, Desmond?

7 A I didn't, sir . . .

8 Q You were drinking that night, too, right?

9 A Yes, sir.

10 Q So you're admitting that you killed him? We know that,
11 right?

12 A Look, when I let him go, he was still breathing.

13 Q Whoa, now, just a minute ago, you told me you didn't
14 know if he was still breathing or not.

15 A I told -- I told -- I told you when I let my -- when I
16 let my ---

17 Q Desmond, take a minute and get whatever story you want
18 to tell the jury straight, and you let me know when you're
19 ready.

20 A There's only one story.

21 Q We've heard two distinct stories today. The story that
22 everybody else tells and the story that you're telling now.
23 And even you can't keep yours straight. So which is it,
24 was he breathing when you turned him loose or not?

25 A I thought -- yes, I thought he was breathing, because

Cross-Examination of Desmond Sams by Dep. Sol. Thornton

1 right before when I -- I was like, "Help me." I told -- I
2 told -- I told Sharron, his sister, you know, I -- that was
3 my best friend, you know, I wouldn't -- I wasn't trying to
4 kill my best friend. I'm not, you know, I'm not no killer.
5 I'm not no murderer.

6 Q You just -- you just admitted you killed him, didn't
7 you?

8 A Sir, I don't know. I just ---

9 Q So you don't know if you're a killer or not?

10 A He was still breathing, Your Honor. I mean, he was
11 still breathing, sir. I just -- that's what happened.
12 That's the God's honest truth what happened.

13 Q Desmond?

14 A That's the God honest truth what happened.

15 Q Desmond? Basically, your testimony is you walked in to
16 check on your cousin. You accidentally bumped into his
17 girlfriend because you was in a small bathroom and he came
18 at you and you defended yourself, and that's all that
19 happened; is that your testimony?

20 A No, she almost knocked me into him and besides head-
21 butting him, I went in there to help my cousin. I told them
22 to get my cousin -- when I went back there, I said, "Cuz,
23 you alright?"

24 Q What about when you choked Lisa Strickland because she
25 was trying to call 9-1-1?

1 **A** Sir, that never happened. Once the fight started, that
2 was it. They saying two or three times, fights, and all
3 this. Once the fight started, that was it. That was one
4 time. We was men. We grew up together from five, six years
5 old. If a fight was -- if the fight was over and it was
6 like they said, he said it was cool, and we was like this
7 (indicating), it wouldn't been no more than that. And I'm
8 sure anybody that know us will tell you that.

9 **Q** But this fight didn't stop until he was dead, did it?

10 **A** Sir, I -- I didn't -- he wasn't -- like I said, you
11 know, I was scared. I don't know what happened. We was
12 drinking, I couldn't see, the room was dark. I don't know,
13 man, but I looked up, it was like a wall. I seen a wall
14 right there in the corner. It was just the element of
15 surprise. You get what I'm saying? It just happened so
16 fast cause, you know, but then I -- it happened fast, sir.
17 That's the best, that's the God honest truth I can tell you.

18 **Q** Did -- why didn't you let him up when he was begging
19 for his life?

20 **A** He was never begging for his life. Like I said, if my
21 cousin would have said it was cool, that would have been it.

22 **Q** So you decided since he said it wasn't cool, you was
23 going to choke him to death?

24 **A** I was trying to hold him, restrain him, until the
25 proper, you know, somebody come break us up. I was just

1 trying to restrain him. I wasn't trying to kill him.

2 Q So, basically, Desmond, we got you all wrong. It was
3 all just a mistake. You completely innocent. You went in
4 there to check on him, he came at you, and you just
5 restrained him?

6 A Yes, sir.

7 Q And you restrained him to the point that you choked the
8 life out of him?

9 A Sir, I ---

10 MR. THORNTON: I have no further questions, Judge.

11 THE COURT: Redirect?

12 MR. MATHEWS: No, sir.

13 THE COURT: You may step down. Call your next witness.

14 MR. MATHEWS: Ms. Mitchell.

15 May we approach?

16 THE COURT: Counsel approach.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
18 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE
19 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

20 THE COURT: Madam Foreperson, ladies and gentlemen of
21 the jury, I'm going to stop at this point for the day. We
22 will conclude the trial -- I ask you to be back in your jury
23 room before 9:30 in the morning. I'm going to try to start
24 at 9:30. I'm going to see to it that everyone is here at
25 9:30 in the morning, so that we can start on time, ladies

1 **MR. MATHEWS:** These are just from the book.

2 **THE COURT:** Solicitor, let the record reflect that he
3 doesn't have copies for you.

4 **MR. THORNTON:** Judge, I'll leave that to your
5 discretion. The State will ---

6 **THE COURT:** Well, I can tell you the three requests are
7 voluntary, involuntary, and self-defense.

8 **MR. THORNTON:** Well, then I would object to one of
9 them, Judge.

10 **THE COURT:** Which one is that?

11 **MR. THORNTON:** Involuntary. I don't think there's any
12 evidence that you could get an involuntary manslaughter
13 charge, but of course, he still has one witness left, Judge.

14 **THE COURT:** I can't rule on that at this point.

15 **MR. THORNTON:** Yes, sir.

16 **THE COURT:** I'm not asking for argument on it, I just
17 wanted to -- I'll be glad to make the copies. Hand them to
18 the clerk and let the Solicitor have them.

19 Pat, would you make a copy of those so the Solicitor
20 has a copy?

21 Anything else on the record from the defendant before
22 we adjourn for the evening?

23 **MR. MATHEWS:** No, sir.

24 **THE COURT:** All right. Here's what I'm going to ask
25 you to do. I told the jury to be back at 9:30. I expect

1 you to be here no later than 9:00. I expect you both to
2 review the video tonight, not only the defendant, but
3 counsel for the State. I will hear arguments on the request
4 for a mistrial in the morning after you've reviewed the
5 written statements provided to defendant and the video and
6 I've heard arguments in the morning. I have, now, all of
7 your requests to charge, so I'll be working on the charge.
8 I understand, Mr. Mathews, that if your witness, who you
9 subpoenaed, is here in the morning at 9:30, that you have an
10 additional witness. I understand that that would be your
11 last witness?

12 **MR. MATHEWS:** It would, and I don't think, actually, as
13 to involuntary manslaughter, I don't think it would change
14 the -- I don't think it would substantially change it.

15 **THE COURT:** I'm not asking for argument on that yet,
16 because I haven't heard all the testimony. I think it would
17 be premature for me to rule on it.

18 Yes, sir, Solicitor?

19 **MR. THORNTON:** With the Court's permission, Your Honor,
20 may Ms. Stilley remain and review the tapes?

21 **THE COURT:** I know that you have to leave. It's after
22 4:00, now, and Ms. Stilley can do the work that I've
23 requested be done by the State.

24 **MR. THORNTON:** And I'll be back in the morning, well in
25 advance, Judge. I'll review the tape prior ---

1 earlier in the trial of this case, and is being recalled to
2 the witness stand by the State of South Carolina and will be
3 subject to cross-examination by the defendant, and then
4 redirect, and possibly recross by the defendant, and
5 redirect by the State, and I wanted you to understand that.

6 Which witness are we calling first?

7 **MR. MATHEWS:** Stephanie Ballard, Your Honor.

8 **THE COURT:** Stephanie Ballard has already been sworn.
9 I'll tell her.

10 (STEPHANIE BALLARD ENTERS THE COURTROOM.)

11 **MADAM CLERK:** Please come forward.

12 **THE COURT:** Ms. Ballard, if you'll come right around
13 and have a seat on the witness stand for me. Good morning
14 to you. Watch those steps. Pull that microphone around.
15 Now, Ms. Ballard, I remind you first of all -- tap it for
16 me. (Witness Complies.) There you go, it's on. I remind
17 you that you're under oath in the trial of this case. You
18 were previously sworn. Do you understand?

19 **MS. BALLARD:** Yes.

20 **THE COURT:** All right. I want you to speak up now so
21 my people on the end of the row can hear you, and I'm going
22 to allow you to move forward at this time.

23 Mr. Mathews, subject to my ruling, this is cross-
24 examination of this witness, ladies and gentlemen of the
25 jury.

CROSS-EXAMINATION

1
2 **BY MR. MATHEWS:**

3 **Q** Ms. Ballard, you testified previously, under oath, that
4 the fight between Red and Desie, between Jake and Desmond
5 Sams, began in the bathroom at Lisa Strickland's residence
6 is that correct?

7 **A** Yes.

8 **Q** And you testified that before law enforcement was
9 called, that at that point, Jake had not been talking for
10 some time; is that correct?

11 **A** Yes.

12 **Q** And you gave a videotaped statement at the CID,
13 Criminal Investigation Division, at the Sheriff's office in
14 the afternoon of April the 12th, 2008; is that correct?

15 **A** Yes.

16 **Q** Isn't it true that at that point, you indicated that
17 there was no fight in the bathroom?

18 **A** He pushed him into -- into the bathtub. I would
19 consider that a fight.

20 **Q** Your testimony is that you did not say that the fight
21 did not begin in the bathroom; that's your testimony here,
22 right now?

23 **A** It started in the bathroom.

24 **Q** It's your testimony -- I'm not asking you at this point
25 what happened, I'm asking you what you said happened.

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 **A** That's what I said.

2 **Q** That's what you said? Okay. And isn't it true that in
3 a phone call that you made from the CID, from the Criminal
4 Investigation Division that afternoon, that on a phone call
5 you told a friend that you were talking to Jake just five
6 minutes before the police arrived.

7 **A** I never talked on the phone.

8 **Q** You never said that on April the 12th, the afternoon of
9 April the 12th at the Criminal Investigation Division?

10 **A** No.

11 **MR. MATHEWS:** Okay. Your Honor, I would ask to
12 introduce Ms. Ballard's tape at this time.

13 **THE COURT:** Solicitor?

14 **MR. THORNTON:** Your Honor, I'd like to have one moment
15 with Mr. Mathews.

16 [SOTTO VOICE DISCUSSION BETWEEN DEP. SOL. THORNTON AND
17 MR. MATHEWS.]

18 **Q** Could that have been -- how many times were you at CID
19 that day? One time or two?

20 **A** Twice.

21 **Q** Okay. In the morning then, let me rephrase that. In
22 the morning, did you have that telephone conversation or did
23 you say that?

24 **A** I don't remember.

25 **Q** Okay. All right. And in the morning, you did not

1 testify, you did not say at that time that the fight did not
2 begin in the bathroom?

3 **A** I don't think so.

4 **MR. MATHEWS:** I'd ask to introduce the tape at this
5 time, Your Honor.

6 **THE COURT:** Solicitor, any objection?

7 **MR. THORNTON:** State -- I don't think I can object,
8 Judge. No objection.

9 **THE COURT:** All right. Now, do we have the ability to
10 show it on the screen?

11 **MR. MATHEWS:** I tried to work with this last -- I'm not
12 sure, Your Honor.

13 **THE COURT:** Vicki, I need someone who can ---

14 **MADAM CLERK:** Let me see if I can write Deborah.

15 **THE COURT:** All right. I want to make sure the jury
16 can see it if we're going to show it -- are we going to show
17 it on this screen? Just a moment, counsel. Let me make
18 sure while I've got the jury in here. Are we going to try
19 to show it on this screen or are we going to show it on this
20 unit?

21 **MR. THORNTON:** Your Honor, that one does not have a VCR
22 hooked up to it.

23 **THE COURT:** Okay, so it's got to be this one. Ladies
24 and gentlemen, let me do this for you, because it might take
25 us a minute and they'll take better care of you back there

1 while I'm getting the technology worked out. If you'd
2 retire to your jury room, I'll be with you in just a moment
3 while I get the technology working.

4 (9:51 A.M., THURSDAY, JANUARY 29, 2009, WHEREUPON JURY
5 EXITS THE COURTROOM WHILE TECHNICAL ISSUES WERE WORKED OUT.)

6 (10:19 A.M., THURSDAY, JANUARY 29, 2009, WHEREUPON THE
7 JURY ENTERS THE COURTROOM AND THE FOLLOWING PROCEEDINGS WERE
8 HELD ON THE RECORD:)

9 THE COURT: All right. Madam Foreman, and ladies and
10 gentlemen of the jury, I apologize for the delay.
11 Unfortunately, our new system, the video works, the audio
12 has what we believe to have a wiring problem, so we have
13 video and not audio. So we are having to use a backup
14 system which require that we bring equipment to the
15 courtroom and that's the reason for the delay. We apologize
16 for that.

17 All right, Mr. Mathews, I understand you are moving to
18 admit the videotape of this witness, Stephanie Ballard,
19 without objection.

20 MR. THORNTON: Without objection, Judge.

21 THE COURT: All right. Now, although the tape is not
22 marked yet, Madam Court Reporter, it will be given to you
23 after it's shown to the jury. It's admitted as Defendant's
24 Exhibit Number Two, without objection, in the trial of this
25 case.

Cross-Examination of Stephanie Ballard by Mr. Mathews

1 (Defendant's Exhibit Number Two was received into
2 evidence.)

3 Mr. Mathews, let me step down so I can view with the
4 jury and then you may publish it.

5 Ladies and gentlemen, if any member of my jury,
6 everyone else has viewed the tape. I have not seen it yet,
7 nor have you. If you can't hear or see, let me know. You
8 see we've tried to put an extra microphone, we've turned it
9 up as high as we can. We're having to use backup equipment.
10 I want to make sure you can see and hear. Let me know.

11 Mr. Mathews, you may proceed.

12 **MR. MATHEWS:** Thank you, Your Honor.

13 **CROSS-EXAMINATION CONTINUES**

14 **BY MR. MATHEWS:**

15 **(VIDEOTAPE STATEMENT OF STEPHANIE BALLARD COMMENCES AT**
16 **10:22 A.M. AND ENDS AT 10:48 A.M.)**

17 **THE COURT:** Any additional cross-examination of this
18 witness?

19 **MR. MATHEWS:** No, sir.

20 **THE COURT:** Redirect?

21 **REDIRECT EXAMINATION**

22 **BY DEP. SOL. THORNTON:**

23 **MR. THORNTON:** Stephanie, after this, we see you step
24 out of the room. I assume that's what we saw on the video
25 since I was behind it, but after you stepped out of the

Redirect Examination of Stephanie Ballard by Dep. Sol.
Thornton

1 room, did you leave the Sheriff's Department?

2 A I believe so.

3 Q All right. Did you come back at some point later in
4 the day and fill out a written statement that Mr. Mathews
5 read into the record yesterday?

6 A Yes.

7 Q At the time this statement, the video taping was going
8 on, how long had you been up?

9 A More than a day.

10 Q And had you been consuming alcohol?

11 A Yes.

12 Q Did you consume any alcohol after you left?

13 A No.

14 Q Did you get any sleep?

15 A No.

16 Q All right. And did you sleep at all in between the
17 time that you were videotaped until when you came back later
18 in the day and filled out your written statement?

19 A No, not until three days after that.

20 Q All right. Had you had anything to drink, though?

21 A No.

22 Q All right. Thank you.

23 MR. THORNTON: I have nothing further.

24 THE COURT: Re-cross, limited to redirect.

25 MR. MATHEWS: Yes, sir.

Further Recross-Examination of Stephanie Ballard by Mr.
Mathews

FURTHER RECROSS-EXAMINATION

1
2 **BY MR. MATHEWS:**

3 **Q** At the end of your interview, Officer Stephens,
4 Detective Stephens said "I'm going to need for you to
5 rewrite this report, this statement", is that right?

6 **A** Yes.

7 **Q** Okay. And you took the statement home or you filled it
8 out there at the Sheriff's Office?

9 **A** I went back to the Sheriff's Office.

10 **Q** So you took the statement home and then came back?

11 **A** No.

12 **Q** Okay.

13 **MR. MATHEWS:** No further questions, Your Honor.

14 **THE COURT:** As to this witness, now?

15 **MR. THORNTON:** Your Honor, I'd ask that she be excused
16 and I don't plan on recalling her for anything. She's asked
17 that she be allowed to remain in the courtroom.

18 **THE COURT:** Any objection from counsel for the
19 defendant?

20 **MR. MATHEWS:** No, sir.

21 **THE COURT:** Very well, ma'am. You may step down and
22 you may remain in the courtroom. Mr. Mathews?

23 **MR. MATHEWS:** Lisa Strickland.

24 **THE COURT:** Lisa Strickland. Ladies and gentlemen,
25 this witness previously testified, called during the State's

Cross-Examination of Lisa Strickland by Mr. Mathews

1 case is being recalled to the stand, still under oath and
2 subject to cross-examination.

3 (LISA STRICKLAND ENTERS THE COURTROOM.)

4 **MADAM CLERK:** Please come forward.

5 **THE COURT:** Watch your step right there, Ms.
6 Strickland.

7 **MS. STRICKLAND:** Thank you.

8 **THE COURT:** Make yourself comfortable. Adjust that
9 microphone for me. I'll remind you, you're still under
10 oath. Speak into the microphone. Very well, ladies and
11 gentlemen, this witness has been previously sworn in the
12 trial of this case, Mr. Mathews, cross-examination.

13 **CROSS-EXAMINATION**

14 **BY MR. MATHEWS:**

15 **Q** Ms. Strickland, you testified under oath about what had
16 happened in this case. Did you, in fact, on that day, also
17 say, "I'm gonna call my brother, who's a cop", rather than
18 "I'm gonna call the police"?

19 **A** I don't recall.

20 **Q** It could have been, you just don't remember.

21 **A** I don't remember.

22 **Q** And isn't it true that Jake threatened to kill Desmond
23 that night?

24 **A** I don't recall Jake saying that.

25 **Q** Okay. Did you give an interview at the Criminal

Cross-Examination of Lisa Strickland by Mr. Mathews

1 Investigation Division in Walterboro on April the 12th?

2 **A** At the Annex?

3 **Q** Right.

4 **A** Yes, sir. I wrote a statement.

5 **Q** Did you also give a verbal statement telling them what
6 happened?

7 **A** I believe so.

8 **Q** Okay. In that statement, isn't it true that you said
9 Jake had threatened to kill Desmond?

10 **A** I don't remember.

11 **Q** Isn't it also true that you told Officer Stephens that
12 day that you really didn't remember much, that you had
13 patches of memory, but you don't really remember much about
14 what happened?

15 **A** I remember what happened. It's -- everything happened
16 so fast that it's hard to remember every detail.

17 **MR. MATHEWS:** Your Honor, I seek to admit the tape into
18 evidence.

19 **THE COURT:** Pardon?

20 **MR. MATHEWS:** I'd seek to admit the interview at this
21 time, Your Honor.

22 **THE COURT:** Any objection?

23 **MR. THORNTON:** None, Judge.

24 **THE COURT:** All right. First of all, take out the last
25 one and have the court reporter mark it. Do you have it?

Cross-Examination of Lisa Strickland by Mr. Mathews

1 **MR. THORNTON:** They're both on the same tape, Judge.

2 **THE COURT:** Okay. So it's going to be one exhibit?

3 **MR. THORNTON:** Yes, sir.

4 **THE COURT:** All right. This exhibit will also be -- it
5 will be Defendant's Exhibit Number Two? And it will be the
6 video without objection, of both the last witness and Ms.
7 Strickland; is that correct?

8 **MR. MATHEWS:** Yes, sir.

9 (Defendant's Exhibit Number Two, of Witness Lisa
10 Strickland video testimony, previously received into
11 evidence.)

12 **THE COURT:** All right. Now, Mr. Mathews, when you're
13 playing this, try not to walk in front of the jury so much.
14 If you have a problem, you let me know, and I'll get Mr.
15 Thornton to come so you don't keep walking around the
16 courtroom. Now, stand in one position and I'll tell you
17 when to start it.

18 Ms. Strickland, if you can't see the monitor, this is
19 going to begin in a minute, you let me know.

20 Ladies and gentlemen, if you can't hear or see the
21 monitor, please let me know. Give me a moment, Mr. Mathews.

22 Proceed. Defendant's Number Two in evidence, without
23 objection.

24 (VIDEOTAPE COMMENCES AT 10:52 A.M. AND ENDS AT 11:00 A.M.)

25 **THE COURT:** Is that everything now?

1 **MR. MATHEWS:** Yes, sir..

2 **THE COURT:** Any further cross-examination of this
3 witness?

4 **MR. MATHEWS:** No, sir.

5 **THE COURT:** Redirect?

6 **REDIRECT EXAMINATION**

7 **BY MR. THORNTON**

8 **Q** Ms. Strickland, at some point after this videotape was
9 done, did you come back to The Annex and fill out, write out
10 a written statement?

11 **A** I -- I believe so. We came back to The Annex that next
12 day.

13 **Q** All right. Did you sign a written statement at that
14 time?

15 **A** Yes, sir.

16 **Q** And is that the one that Mr. Mathews was questioning
17 you about yesterday?

18 **A** Yes, sir.

19 **Q** All right.

20 **MR. THORNTON:** I have nothing further, Judge.

21 **THE COURT:** Recross, limited to redirect?

22 **MR. MATHEWS:** None.

23 **THE COURT:** As to this witness?

24 **MR. THORNTON:** Ask that she be excused, Judge. I don't
25 know if she wished to remain in the courtroom or not. If

1 **THE COURT:** All right. Now that I've reviewed the
2 video with the jury in the box, I decline your invitation,
3 Mr. Mathews, to introduce the video statement of the
4 defendant into evidence in the trial of this case. I think
5 it improperly bolsters testimony and I see no basis for
6 doing so on the basis you're asking for, which was to show
7 his condition, in light of the fact that you've introduced
8 the picture, which the video would show, so I decline to do
9 it.

10 I think you have given me all of your requests to
11 charge.

12 **MR. MATHEWS:** I think so, Your Honor. I would like to
13 talk with Mr. Sams about whether or not we would request a
14 charge on voluntary manslaughter. That's the one thing
15 where ---

16 **THE COURT:** I intend to charge voluntary manslaughter.

17 **MR. MATHEWS:** Whether or not I request it, Your Honor?

18 On involuntary manslaughter, I was discussing the
19 possibility of not doing that, at a great risk. I mean,
20 obviously, there's a great risk, but ---

21 **THE COURT:** Mr. Mathews, I'm asking you if I have all
22 of your requests to charge. If you want time to talk to
23 your client, I'll give you that, but there's no need in you
24 telling me what you intend to discuss with your client.
25 Take a seat, Mr. Mathews. Take a seat. You have a tendency

1 to stand up. Take a seat.

2 **MR. MATHEWS:** Okay.

3 **THE COURT:** When I call on you, I'll let you stand up
4 and speak. Is there any other matter concerning the
5 requests to charge?

6 **MR. MATHEWS:** Just to the exhibits, not a request to
7 charge.

8 **THE COURT:** All right. Any other requests to charge
9 from the State?

10 **MR. THORNTON:** No, sir, Judge. At the appropriate
11 time, I'd like to be heard on the charge of involuntary
12 manslaughter.

13 **THE COURT:** I'll be glad to hear argument on it. All
14 right, Mr. Mathews, now, before -- I'm on requests to charge
15 right now. You've requested involuntary manslaughter. It
16 is my intention to charge murder, voluntary manslaughter,
17 and self-defense. Are you withdrawing your request to
18 charge for involuntary or not? I'll be glad to hear
19 argument on it.

20 **MR. MATHEWS:** Thank you, Your Honor. Your Honor,
21 involuntary manslaughter is the unintentional killing of
22 somebody with criminal negligence. I think that the
23 evidence very clearly shows that the defendant did not
24 intend to kill Mr. Frazier. I don't think there's any --
25 there were, perhaps, some statements when the officer came

1 in and said -- Officer Dunn came in and said that what he
2 said, "I can't let him up or he will want to fight me." I
3 think the evidence was that -- that this statement was
4 repeated by Ms. -- also repeated to Ms. Glover. She denied
5 it, but -- or said she couldn't say whether she said it or
6 not, but Ms. Sams said that she said that when she was
7 listening in on this, that Desmond had said that he would
8 want to fight me. So it's clear that he believed that he
9 was in danger, that may have been criminally negligent.
10 Maybe he -- maybe he wasn't really in danger, but he
11 certainly believed that he was, and that should give rise to
12 involuntary manslaughter, and that's why I'm requesting that
13 charge, Your Honor.

14 **THE COURT:** Very well. Take a seat.

15 Mr. Thornton, happy to hear from you.

16 **MR. THORNTON:** Your Honor, the State would object to
17 that instruction, if for no other reason, Judge, there are,
18 basically -- although Mr. Mathews, I think, has done a good
19 job of pointing out some inconsistencies in witness
20 testimony, there's two basic stories. The story from
21 everybody, but Mr. Sams, is that there was a fight that Mr.
22 Sams started by grabbing the rearend of Mr. Frazier's
23 girlfriend, that he then attacked Mr. Frazier and choked him
24 to death.

25 Mr. Sams got on the stand yesterday and claimed that he

1 did nothing wrong, that he accidentally bumped into his
2 cousin. His cousin, Mr. Frazier, the victim, then attacked
3 him, and he acted in self-defense. So the only possible
4 charges from the State's perspective, Judge, are murder, if
5 he had malice aforethought, but intended to kill him;
6 manslaughter, because it's a heat of passion during an
7 argument and fight; or self-defense, and he walks. There's
8 no criminal negligence shown. His story is he didn't do
9 anything wrong; it was all self-defense. So the State would
10 object to any charge on involuntary defense law, Your Honor.

11 **THE COURT:** Very well. Involuntary manslaughter is the
12 unintentional killing of another person, without malice,
13 while engaged in an unlawful activity that does not
14 naturally intend to cause death or great bodily harm; or it
15 is the unintentional killing of another, without malice,
16 while engaged in a lawful activity, with reckless disregard
17 for the safety of others.

18 Unintentional doesn't only mean, and we sometimes get
19 this confused in our law, it does not mean whether or not
20 you had the intent to kill. It also means that you did not
21 intend for anyone to be seriously injured, and because of
22 that definition and what I've heard in this case, I think
23 it's absolutely appropriate, Mr. Mathews, to grant your
24 request to charge self-defense, which would exonerate the
25 defendant of any criminal responsibility, based on your

1 defense. I decline your invitation to charge involuntary
2 manslaughter. It is my intention to charge voluntary
3 manslaughter and murder.

4 Now, are there any other matters before I bring the
5 jury back -- Vicky, because it's 11:20, and I'm going to
6 give them some time to argue -- my charge is going to take a
7 little while. We're probably not going to get this to the
8 jury before about, I would estimate, 12:45 or 1:00. So I
9 think it would be a good idea, now, to go ahead and take a
10 lunch order from the jury, so that they have their lunch
11 here around 1:00 to 1:15, and they can eat lunch at the time
12 they, hopefully, if I'm estimating correctly, begin their
13 deliberations. Will you go ahead and do that for me?

14 **MADAM CLERK:** Yes, sir.

15 **THE COURT:** All right. Mr. Mathews, I understand that
16 you have another matter which you wish to place on the
17 record outside the presence of the jury; is that correct?

18 **MR. MATHEWS:** Yes, sir.

19 **THE COURT:** All right.

20 **MR. MATHEWS:** Your Honor, all I wanted was to have this
21 Desmond Sams' videotape also marked as a court's exhibit,
22 that's all.

23 **THE COURT:** Is there anything -- again, I asked you
24 this earlier, and you told me what you intended to show. Is
25 there anything that the Court needs to review in that tape,

1 **MR. MATHEWS:** Thank you, Your Honor.

2 **CLOSING ARGUMENT**

3 **BY MR. MATHEWS:**

4 Good afternoon, Madam Foreman, ladies and gentlemen of
5 the jury. You've now had a chance to see all of the
6 evidence in this case. We are here today, as the Court had
7 mentioned earlier, to determine justice. But justice as it
8 is decided in American jurisprudence is that the State has
9 to prove, beyond a reasonable doubt, the charges that they
10 brought. That's very important. It's up to you. The Court
11 has told you at the beginning of this trial, that whatever
12 the judge thinks, whatever your -- your opinion is the only
13 one that counts. What I think, what Mr. Thornton, what Ms.
14 Stilley thinks, is not important, and you base that on what
15 was presented from this stand and any exhibits that you may
16 have. It would be about impossible for anyone to prove
17 their innocence in a case, in most cases it would, that's
18 why the State has to prove their case beyond a reasonable
19 doubt.

20 Now, you will be given an opportunity to decide between
21 three separate charges in this case. You'll be given the
22 opportunity to decide whether Desmond Sams is guilty of
23 murder. Murder is the unlawful intentional killing of
24 someone with malice aforethought. There's some other
25 things, but the most important thing is intentional killing,

1 with malice aforethought. Ladies and gentlemen, nothing
2 from that stand supports that. There may have been a couple
3 of statements about "I'm going to kill you" from both sides,
4 but this was -- this was a fight that broke up.

5 Mr. Sams was defending himself. Desmond was defending
6 himself from somebody that he loved, from his cousin. Now,
7 I'm sure the State will get up here and stomp around and
8 talk about a long time of choking somebody or whatever, but
9 what was the testimony that came from the stand regarding
10 intent?

11 From Sergeant Dunn, who was the first on the scene,
12 what did he say when he arrived? What did he see? "Get
13 up." "I can't. He will want to fight me." Mr. Sams
14 believed he was defending himself.

15 Now, we've heard inconsistent statements, and, my word,
16 I think the State will probably tell you there are two
17 stories in this case. There are Mr. Sams, and everyone
18 else's; but you know, there were plenty of stories out
19 there.

20 Ms. Strickland came out and told you that she was
21 choked, and even though there were three statements and a
22 video statement from Ms. Ballard, plus her statement on the
23 phone, none of those stories say anything about Lisa
24 Strickland being choked, that's ridiculous. It didn't
25 happen. Mr. Sams testified it didn't happen. Nobody other

1 than Ms. Strickland, who testified in her tape, that you
2 would not have seen had I not introduced it, that Ms.
3 Strickland's memory was patchy. "I was in and out. In and
4 out of the house? In and out of consciousness? I don't
5 know what happened. She was drunk. They had all been
6 drinking.

7 Now, the Judge will give you a charge on voluntary
8 intoxicification. The most important thing to come from that
9 stand is that everybody was drinking, and as that related to
10 their ability to remember what happened, and the appearances
11 given to Mr. Sams, those are important things.

12 The pathologist testified here that, in her opinion,
13 the cause of death was strangulation, and based partly on
14 petechiae, which is a burst blood vessel in the eyes. She
15 also said, of course, that throwing up could cause that, and
16 she was not told in her history that Mr. Frazier had thrown
17 up. But that's an issue as to the cause of death; but on
18 balance, it certainly, it appears that the State may well
19 have proved that. That's obviously your decision to make.
20 But certainly there were things that were missed. And
21 that's just one of the things that were missed.

22 The two stories, not two stories, several stories, four
23 stories, and see, that's why it's so important, the burden
24 of proof is so important. If you have a reasonable doubt,
25 because these stories are so different, you don't have to

1 make a decision that anybody was lying, although it looks
2 like somebody was.

3 They didn't remember -- and it could be, for example,
4 somebody said there were people that suffered genuine losses
5 here. Everybody suffered genuine losses here. This was a
6 tragic, tragic accident. This was a situation where two
7 guys were fighting over the perception, which Mr. Sams
8 testified was wrong, but the perception that he had made a
9 pass at his cousin's girlfriend.

10 There was testimony, and again, I -- I'm reluctant to
11 talk too much about Ms. Strickland's testimony, because it
12 was all over the place. It was several different stories,
13 things that could not have made any sense at all. But the
14 one thing that she did testify that it was abundantly true,
15 is that everybody was drunk.

16 So what are you going to remember when you see all of
17 that? Perceptions of time, how long things take, all those
18 things. What did Ms. Ballard say, on the stand, and not
19 when she testified initially, not in her two statements, and
20 not in her -- in her testimony, not in those did she testify
21 to this, but on the video. She's on the phone before the
22 police got there, and what did she say? She didn't talk
23 about the things that Jake said, "Man, nobody hits on my old
24 lady." When did you hear that for the very first time?
25 When she's on a phone call with somebody else. When

1 nobody's watching.

2 So what's the truth? What's the truth? Maybe there
3 was a misunderstanding, I don't know. Mr. Sams said that he
4 did not intend to grab Stephanie's behind, and then, we hear
5 about a fight that broke out where? We've got a statement
6 that says it broke out in the bedroom. We've got a
7 statement, and the testimony, very clear testimony from the
8 stand, that this fight began in the bathroom, and it was
9 very detailed: grabbed him by the throat, pushed him down
10 into the bathtub.

11 But you know what? Just hours after the incident, very
12 clearly, and even though Ms. Ballard was also obviously
13 intoxicated, her memory and her statements were very clear.
14 She wasn't slurring when she said this. She was asked by
15 Detective Stephens, asked, "Did this begin in the bathroom?"
16 and she didn't say, "It could have. The argument maybe
17 did." She said, "No, in the bedroom." You can't be less
18 consistent than that. Where did it begin? It did not begin
19 in the bathroom. Clear testimony here, from the stand.
20 That's not true. That's not true. It didn't happen that
21 way.

22 Ms. Ballard testified that there were three fights,
23 three. Now, if you want to believe that, then obviously,
24 the second fight wasn't caused by this offensive touching,
25 if you believe that. Everything was cool, was settled down,

1 got them separated. "Lisa went out with Desmond out into
2 the living room. I went with Jake into the bedroom." If
3 that's what happened, then that was done.

4 She testified from the stand that Desmond had walked
5 into the bedroom and Jake lost it. So you want to look at
6 the offensive touching? Even if there was an offensive
7 touching, even if Desmond did grab Stephanie's behind, and
8 which she testified he did not do intentionally, but even if
9 he did, that wasn't why they fought. He -- we don't know
10 why. She didn't say why. Walked into the bedroom after
11 Jake had been, "Red" had been in bed, and Jake freaked out
12 when he saw Desmond.

13 Now, if there were two fights at that point, and you
14 thought -- he thought he was done, and he was attacked
15 again, wouldn't you hold onto somebody for dear life that
16 once you thought something was over, it popped up again?
17 Wouldn't it be reasonable to expect exactly what he said to
18 Officer Dunn when he came in, "I can't let him up. He will
19 want to fight me." This was with an officer there.

20 He believed for all he was worth, that this guy, his
21 cousin whom he loved, was going to hurt him if he let up.
22 He was just defending himself. He was trying to defend
23 himself. He did not want to hurt his cousin. He did not
24 want to hurt his best friend, somebody he called a brother.
25 And you can hear about "Oh, he grabbed him for ten minutes.

1 Oh, some love there." You can hear about that, but when
2 push came to shove, as it were in this particular case, what
3 did -- what did Ms. Ballard say in that phone call when
4 nobody was watching? Not five minutes -- not five minutes
5 before the cops got there, I was talking to "Red", not five
6 minutes before. This isn't ten or twelve minutes or
7 something like that. Not five minutes and then, boom, it
8 was over. This was clearly, not an intentional killing.
9 Clearly, not an intentional killing. Malice aforethought,
10 no malice aforethought.

11 The difference between murder and voluntary
12 manslaughter: voluntary manslaughter is the intentional
13 killing of someone, without malice aforethought, with an
14 adequate provocation in a sudden heat of passion. Well, you
15 know, I think, clearly, one part is correct. There wasn't
16 premeditation, you would need that for murder. I mean, it
17 doesn't have to take a long time, but you would need that.
18 Clearly -- clearly, it's not murder. Voluntary
19 manslaughter, though, it still has to be an intentional
20 killing, even if there wasn't premeditation, it has to be
21 intentional.

22 And you can talk about circumstances. I mean,
23 obviously, if you're shooting at somebody and you shoot them
24 in the leg and you don't intend to kill them, and they end
25 up dying, well, you know, okay, that's murder. But if

1 you're holding somebody in a defensive position, holding
2 onto them -- there are statements back and forth again.

3 I'm reluctant to use Ms. Strickland because her
4 testimony is so unbelievable. She also has a conviction for
5 burglary, but her testimony is all over the place, but one
6 thing she did say in there, too, is that Jake had threatened
7 to kill Desmond, too. And when she thought she wasn't being
8 listened to, and when she was on the phone, and you'll have
9 the tape, I believe, I believe you will, you'll see where
10 when she's on the phone, she says, "Nobody messes with my
11 old lady, you son of a 'gun'." So there wasn't any
12 intention to kill, none. And all the screaming and all the
13 stomping around, and all the hot words at this point won't
14 change that.

15 There are a room full of people that are sorry that
16 Jake Frazier is dead, including his best friend and brother,
17 Desmond Sams. Abhan didn't happen. This isn't an
18 intentional killing. Mr. Sams -- Mr. Sams isn't guilty of
19 anything.

20 **THE COURT:** Mr. Thornton?

21 **MR. THORNTON:** May it please the Court?

22 **CLOSING ARGUMENT**

23 **BY DEP. SOL. THORNTON:**

24 (STANDS IN FRONT OF JURY WITHOUT SAYING ANYTHING FOR A
25 PERIOD OF TIME.)

1 That was one minute. One minute. Mr. Mathews is
2 right. Time is kind of a weird concept. It's hard
3 sometimes to understand what time means. Time in one
4 context may be different from another.

5 I just got up there and stood and looked at you for one
6 minute. We know, undisputed, that Desmond Sams was choking
7 the life out of Jake Frazier. The third time that he was
8 choking him for at least eight minutes. It was way beyond
9 that because he had him down the entire time. Nobody, even
10 Desmond Sams, has disputed that.

11 From the time law enforcement was dispatched, until
12 they got there, was over eight minutes -- eight minutes; and
13 what Mr. Mathews said is a defensive position, that Mr. Sams
14 was in a defensive position. I don't know how much more
15 offensive you can get than to have somebody pinned face down
16 with your arms wrapped around their throat, for well in
17 excess of eight minutes, and that's just one time. Even if
18 you disbelieve everything else, there's no doubt everybody
19 there was intoxicated, and the Judge is going to charge you
20 on what voluntary intoxication is, if that can be used as
21 a defense or not. Okay?

22 Everybody there was drinking. You've seen testimony on
23 the stand. You've seen statements that were given. You've
24 seen phone calls that were recorded. You've seen everything
25 that there is to see, and it's your job to decide what

1 happened. But what is it that's not in dispute? Everybody,
2 including Desmond Sams, agrees that he choked Jake Frazier.
3 You heard testimony from a pathologist, a forensic
4 pathologist, the only expert in the case, and what did she
5 testify to? That this was death caused by strangulation.

6 Now, Mr. Mathews made a big deal about, well, vomiting
7 can also cause the petechiae. Was that the only thing she
8 looked at? Because I'm fully certain that vomiting doesn't
9 cause abrasions to the neck. It doesn't cause contusions
10 and bruising to the neck. It doesn't cause damage to neck
11 muscles. But I'm a little bit confused of what the story is
12 by the defense in this case. Is it that he didn't do it?
13 Is it that it's not strangulation? Did he die of a severe
14 case of vomiting? Is it self-defense? What is it?

15 There's no doubt that Desmond Sams choked the life out
16 of Jake Frazier, even Desmond Sams admitted that he choked
17 him, and he wasn't sure if he was breathing or not when he
18 got off of him. Even if you believe that Stephanie Ballard
19 had a watch on, timing, and she said, "Five minutes before
20 he was talking to me." What was it? Do you remember,
21 because you're going to have the tape. You can watch it.
22 What was it that she said that Jake was saying? "Baby, get
23 him off me." The man pleaded for his life, over and over
24 again, and it fell on deaf ears. It fell on the deaf ears
25 of Desmond Sams.

1 You heard from Jake's sister. What did she say?
2 "Desmond, get off of him." "No." Stephanie Ballard tried
3 to pull him off. Lisa Strickland tried to pull him off.
4 Even if you doubt that there is some confusion in the
5 bathroom and the bedroom, and I understand that, all I ask
6 you to do is keep in mind what was going on. This was not a
7 few hours later when those videotapes were made. It was
8 within an hour. Later on that day, they came back and sat
9 down, and they wrote out statements for the police at The
10 Annex.

11 Even if you think there's some credence that there's a
12 problem with their written statement, and you're going to go
13 by what they testified to on videotape, and what they
14 testified to on the stand, what does everything agree?
15 There was a fight. Desmond Sams had Jake Frazier pinned to
16 the floor, face down, with his arms wrapped around his neck.
17 Nobody disputes that.

18 Dr. Presnell got up and told you that is what caused
19 his death. Murder, ladies and gentlemen, is the intentional
20 killing of another with malice aforethought. That's the
21 fancy definition. What does that mean? Everybody gets lost
22 in this premeditation issue. Premeditation can be that
23 fast. You don't have to lie in wait for anybody, it can be
24 instantaneous. I'm gonna f'in kill you. How many people
25 said that he said that? I'm gonna kill you. Mr. Mathews

1 said, ah, but on the videotape, Lisa Strickland said that
2 Jake said it as well. There's one big problem with that.
3 Jake's the only one that was murdered. Desmond Sams is
4 sitting right here. He said, "I'm going to kill you." He
5 wrapped his arms around his throat and choked the life out
6 of him. That's the best way to restrain somebody is to pin
7 them on the floor?

8 Here's the other problem with that. Why didn't he just
9 leave? Why didn't Desmond Sams just go? He came into the
10 bathroom, the fight started. He came into the bedroom, the
11 fight started. Remember what Lisa Strickland testified to,
12 she went to call 9-1-1, he chased her, choked her, punched
13 her, then came back, the fight started.

14 Why didn't he just leave? If he was as scared as he
15 claims he was, why didn't he just go? The Judge is going to
16 talk to you about what malice aforethought is. It's
17 basically an evil intent, but please, if I tell you anything
18 that disagrees with what the Judge says, you have to go by
19 what the Judge says that the law of South Carolina is.

20 But you can look at intent when you're trying to judge
21 -- I'm sorry, you can look at an inference of somebody's
22 actions when you're trying to judge malice. Was he acting
23 with malice? Well, is it malicious to pin somebody to the
24 ground and choke them to death? That's for you to decide.
25 If you find that he didn't have malice, he is still guilty

1 of voluntary manslaughter.

2 The only way, ladies and gentlemen, that you could find
3 him not guilty is if you believed his story of self-defense.
4 If you disbelieve everything every other witness says, and
5 only believe him and believe that he did nothing wrong,
6 walked into the bathroom, accidentally bumped his cousin.
7 His cousin went crazy and attacked him, and all he did was
8 just try to restrain him, and that's all he did, even then,
9 there's a problem, even then. Why? Because he could have
10 just left. He could have walked away, and he didn't. He
11 continued to choke him. He continued to pin him to the
12 floor until he killed him. Even if you believe everything
13 he tells you, self-defense would not be appropriate. There
14 are only two true verdicts in this case, ladies and
15 gentlemen. He's either guilty of murder or he's guilty of
16 manslaughter, because there's no dispute that he choked Jake
17 Frazier to death, April the 12th of 2008, right here in
18 Colleton County. Thank you.

19 **JURY CHARGE**

20 All right, Ladies and gentlemen of the jury panel, it's
21 now my duty to charge you the law on this case. The State
22 of South Carolina has charged the defendant, as I told you
23 at the outset of this trial, and the defendant is Desmond
24 Sams, with one count of murder in Indictment Number 2008-GS-
25 15-0370, and one count of Assault and Battery of a high and

1 aggravated nature, in Indictment Number 2008-GS-15-0371.

2 I remind you, first of all, that the fact that the
3 defendant was arrested, the fact that the defendant was
4 charged, the fact that the defendant was indicted in this
5 case is not evidence in this case, nor does it create any
6 presumption or inference of guilt. These documents, these
7 indictments, I hold in my hand are simply the formal written
8 instruments which contain the charges made against the
9 defendant. They are the formal documents by which the case
10 is brought into this court.

11 The indictments for murder and assault and battery of a
12 high and aggravated nature, each charge a separate and a
13 distinct offense. You must, as a jury, decide each of the
14 indictments separately on the evidence and the law
15 applicable to it, as I charge it to you to be, uninfluenced
16 by your decision as to any other indictment. The defendant
17 may be convicted or acquitted on any or all of the charged
18 offenses. And you will be asked by me, and I have prepared
19 for you, a separate written verdict form, which I will go
20 over with you in just a moment, Madam Foreperson, on these
21 indictments, but you'll be asked to write a separate verdict
22 of guilty or not guilty on each of the indictments.

23 The defendant has pled not guilty to these indictments,
24 and that plea of not guilty puts the burden on the State to
25 prove the defendant guilty beyond a reasonable doubt. A

1 person charged with committing a criminal offense in South
2 Carolina is never required to prove himself innocent.

3 I charge you, ladies and gentlemen of the jury, as an
4 important rule of law, that the defendant in a criminal
5 trial, no matter what the seriousness of the charge may be,
6 will always be presumed to be innocent of the crime for
7 which the indictment was issued, unless guilt has been
8 proven by evidence, satisfying you of that guilt beyond a
9 reasonable doubt.

10 The presumption of innocence does not end, ladies and
11 gentlemen, when you begin your deliberations. But it
12 accompanies the defendant throughout the entire trial, until
13 you, as the jury, reach a verdict of guilt based on evidence
14 satisfying you of that guilt beyond a reasonable doubt.

15 The presumption of innocence is not just a mere legal
16 theory. It's not just a legal phrase. It is a substantial
17 right to which every defendant is entitled, unless you, the
18 jury, are satisfied from the evidence of the defendant's
19 guilt beyond a reasonable doubt.

20 What is a "reasonable doubt" in the law? A reasonable
21 doubt is the kind of doubt that would cause a reasonable
22 person to hesitate to act. The State has the burden of
23 proving the defendant guilty beyond a reasonable doubt.
24 Some of you may have served as jurors in a civil case, where
25 in a civil case, unlike a criminal case, you were told that

1 it is only necessary to prove that a fact is more likely
2 true than not true, such as, we call that by the greater
3 weight, or preponderance of the evidence in a civil case.

4 In a criminal case, ladies and gentlemen of the jury,
5 the State's proof must be more than that. It must be beyond
6 a reasonable doubt. Proof beyond a reasonable doubt is
7 proof that leaves you firmly convinced of the defendant's
8 guilt. There are very few things in this world that we know
9 with absolute certainty, and in criminal cases, the law does
10 not require proof that overcomes every possible doubt. If,
11 based on your consideration of the evidence, you are firmly
12 convinced that the defendant is guilty of the crime charged,
13 you must find the defendant guilty. On the other hand, if
14 you think there's a real possibility that the defendant is
15 not guilty, you must give the defendant the benefit of the
16 doubt and find the defendant not guilty.

17 I remind you, ladies and gentlemen, that during this
18 trial, you and I have had certain duties to perform. As a
19 trial judge, it's been my responsibility to preside over the
20 trial of the case, and I also have the duty to rule on the
21 admissibility of evidence offered during the trial.

22 You are, as a jury, to consider only the competent
23 evidence before you. If there was any testimony ordered
24 stricken from the record in this case during this trial, you
25 should disregard that testimony. You are to consider only

1 the testimony which has been presented from the witness
2 stand, any exhibits which have been made a part of the
3 record in this case or if any stipulations or agreements of
4 counsel, as I told you when I explained evidence to you at
5 the beginning of the trial.

6 I, also, as the presiding judge have the additional
7 duty to charge you the law that applies to this case. As
8 the presiding judge, I am the sole judge of the law, and it
9 is your duty as jurors to accept and apply the law exactly
10 as I now state it to you. If you have any ideas as to what
11 you think the law is or what the law ought to be, and it
12 doesn't agree with what I'm now telling you what the law is,
13 you, as a juror, must abandon any of your preconceived
14 ideas, because you are sworn in that oath which each of you
15 took, to accept and apply the law exactly as I state it to
16 you.

17 In every case tried in this Courtroom before a jury,
18 the jury becomes the sole and exclusive judges of the facts
19 in the case. A trial judge, such as myself, cannot
20 intimate, state, comment on, or make any statement
21 whatsoever, to a trial jury, such as yourself, about the
22 facts in a case. Since you, the jury, are the sole judge of
23 the facts of this case, you are not to infer from what I
24 have said during the progress of this trial, in ruling upon
25 the admissibility of evidence, or otherwise, or anything

1 that I now say during this instruction to you on the law,
2 that I have any opinion, whatsoever, about the facts in this
3 case. The law does not allow me to have an opinion about
4 the facts in this case. This is a matter, ladies and
5 gentlemen of the jury, the facts are solely for you, the
6 jury to determine.

7 As jurors, then, you remember that it is your duty
8 under your oath, to determine the effect, the value, weight
9 and truth of the evidence presented during the trial of this
10 case.

11 Ladies and gentlemen, there are two types of evidence
12 that are generally presented during a trial, and like many
13 things in the law, ladies and gentlemen of the jury, we have
14 names for those types of evidence. We call the two types of
15 evidence, direct evidence and circumstantial evidence.

16 Direct evidence is the testimony of a person who claims
17 to have actual knowledge of a fact, such as an eyewitness.
18 It is evidence which immediately establishes the main fact
19 to be proved. Circumstantial evidence, as contrasted with
20 direct evidence, is proof of a chain of facts and
21 circumstances indicating the existence of a fact.
22 Circumstantial evidence is evidence which establishes
23 collateral facts, from which the main fact may or may not be
24 inferred. Circumstantial evidence is based on inference and
25 not on personal knowledge or personal observation.

1 The law makes absolutely no distinction between a
2 weight or value to be given to either direct or
3 circumstantial evidence, nor is a greater degree of
4 certainty required of circumstantial evidence than of direct
5 evidence. You should weigh all of the evidence in this
6 case, and after weighing all of the evidence, if you are not
7 convinced of the guilt of the defendant beyond a reasonable
8 doubt, you must find the defendant not guilty.

9 On the other hand, after hearing all of the evidence in
10 this case, both direct and circumstantial, if you are
11 convinced of the guilt of the defendant, beyond a reasonable
12 doubt, you must find the defendant guilty.

13 Necessarily, ladies and gentlemen, as I told you at the
14 outset, you must determine the credibility of the witnesses
15 that have testified in this case. Credibility simply means
16 believability. It, therefore, becomes your duty as jurors
17 to analyze and to evaluate the evidence and determine which
18 evidence convinces you of its truth.

19 In determining the believability of witnesses who have
20 testified in this case, you may believe one witness over
21 several witnesses, or several witnesses over one. You may
22 believe a part of a testimony of a witness, and reject the
23 remaining part of the testimony of that same witness. You
24 may believe the testimony of a witness in its entirety or
25 you may reject that witness's testimony in its entirety.

1 You may consider whether any witness has exhibited to
2 you any interest, any bias, any prejudice, or other motives
3 in this case. You may also consider the appearance or the
4 manner of the witness while on the witness stand. We call
5 that the demeanor of the witness while the witness is on the
6 witness stand in judging the credibility, or the
7 believability, of the witnesses who have testified during
8 the trial of this case.

9 Now as I told you during the trial of this case,
10 ordinarily, witnesses are not permitted to get on this
11 witness stand and say, "My opinion is so-and-so. My
12 conclusion is so-and-so." The rules of evidence do not
13 permit witnesses to testify to opinions or conclusions. An
14 exception to this rule exists for those witnesses that we
15 call "expert witnesses". A witness, who by education,
16 training, experience, has become, or claims to have become,
17 an expert in some art, science, profession or calling. They
18 state an opinion as to material matters in which the witness
19 claims to be an expert, and they'll also state the reasons
20 for his or her opinion if qualified as an expert by the
21 Court.

22 You should consider any expert opinion received in
23 evidence in this case, and just like any other evidence in
24 this case, you give it the weight you think it deserves. If
25 you decide that the opinion of an expert witness is not

1 based on sufficient education or experience, or if you
2 should conclude, as a jury, that the reasons given in
3 support of the opinion are not sound, or that the opinion is
4 outweighed by other evidence, you may disregard the expert
5 opinion entirely.

6 An expert witness's opinion is to be given no greater
7 weight than that of other witnesses, simply because the
8 witness is an expert.

9 I charge you ladies and gentlemen, that voluntary
10 intoxication is not an excuse for, or a defense to a
11 crime, regardless of whether the crime is one involving
12 general or specific intent, and I'm going to talk to you
13 about that in just one second. This rule extends to the
14 voluntary ingestion of alcohol or drugs.

15 A person who voluntarily ingests alcohol or drugs, and
16 thereby becomes intoxicated, is no less responsible for his
17 or her acts while in such condition. If one voluntarily
18 drinks intoxicating alcohol and becomes intoxicated to
19 whatever degree, and if, while in that condition, commits an
20 act which would be a crime, if it had been committed by a
21 sober person, the fact that intoxication would not relieve
22 the intoxicated person from criminal responsibility.

23 Now, having told you that, in order to explain to you
24 what I meant by general or specific intent, in order to
25 establish criminal liability, criminal intent is required.

1 For example, the mental state required to be proven by the
2 State for a particular crime, just by example, purpose, or
3 intent, or malice, or recklessness, or even in some cases,
4 criminal negligence. Those are examples of criminal intent.
5 Criminal intent must be proven by the State beyond a
6 reasonable doubt.

7 Criminal intent is always a matter that must be
8 determined by the jury from the circumstances surrounding
9 the situation. There is no way, ladies and gentlemen, to
10 prove intent to a mathematical certainty. There is no way
11 medical science can dissect a person's brain and determine
12 what that person had in mind, so the law says, ladies and
13 gentlemen, that criminal intent may be inferred from the
14 circumstances shown to have existed. This, ladies and
15 gentlemen, is how you as a jury make a determination of
16 whether or not any element in any crime requiring intent was
17 present.

18 It is not necessary to establish intent by direct
19 evidence, but intent may be established by inference in the
20 same way as any other fact, by taking into consideration the
21 acts of the parties, and all the facts and circumstances
22 based on evidence introduced during the trial of the case.

23 Criminal intent is a mental state, a conscious
24 wrongdoing. It is up to you, as a jury, to determine what
25 the defendant intended to do, based on the circumstances

1 shown to have existed, from evidence introduced during the
2 trial of the case.

3 Criminal intent can arise from action or a failure to
4 act. It may arise from negligence, recklessness, or an
5 indifference to duty, or to consequences considered by the
6 law to be the equivalent of criminal intent.

7 Now, I charge you, ladies and gentlemen, in this case,
8 the defendant is charged with the offense of murder. For
9 the offense of murder, the State must prove, beyond a
10 reasonable doubt, that the defendant killed another person
11 with malice aforethought.

12 What is malice? Malice is hatred, ill-will, or
13 hostility towards another person. It is the intentional
14 doing of a wrongful act without just cause or excuse, and
15 with an intent to inflict an injury or under circumstances
16 the law infers an evil intent. Malice aforethought does not
17 require that malice exist for an particular time before the
18 act is committed, but malice must exist in the mind of the
19 defendant just before and at the time of the act being
20 committed. There must, therefore, be a combination of the
21 previous evil intent and the act.

22 Malice aforethought may be expressed or inferred.
23 Those terms "expressed" and "inferred" do not mean different
24 kinds of malice, but merely the manner in which malice may
25 be shown to exist. That is, either by direct evidence or by

1 inference, from the facts and circumstances, based on
2 evidence introduced during the trial of the case.

3 Express malice is shown when a person speaks words
4 which express hatred or ill-will for another, or when the
5 person, beforehand, prepared to do the act, which was later
6 accomplished. For example, lying in wait for a person, or
7 any other act or preparation going to show that the deed was
8 in the defendant's mind, would be express malice. Malice
9 may be inferred from conduct showing a total disregard for
10 human life. Inferred malice may also arise when the deed is
11 done with a deadly weapon.

12 A deadly weapon is any article, instrument or
13 substance, which is likely to cause death or great bodily
14 harm, whether an instrument has been used as a deadly weapon
15 depends on the facts and circumstances of each case, based
16 on evidence introduced during the trial of the case.

17 If you find, ladies and gentlemen of the jury, that the
18 State has failed to prove beyond a reasonable doubt that the
19 defendant committed murder, you may consider whether the
20 State has proven, beyond a reasonable doubt, that the
21 defendant committed voluntary manslaughter. To prove
22 voluntary manslaughter, the State must prove beyond a
23 reasonable doubt, that the defendant took the life of
24 another in the sudden heat of passion, based on sufficient
25 legal provocation.

1 Both heat of passion and sufficient legal provocation
2 must be present at the time of the killing to constitute
3 voluntary manslaughter. Sudden heat of passion may, for a
4 time, affect a person's self-control and temporarily disturb
5 a person's reason. The sudden heat of passion must be the
6 type that would make an ordinary person unable to coolly
7 reflect on his actions, and would produce an uncontrollable
8 impulse to do violence.

9 Sufficient legal provocation must be the type that
10 would make a person of ordinary reason and caution become
11 enraged and to lose control temporarily. The provocation
12 needed for voluntary manslaughter must come from some act
13 of, or related to, the victim.

14 Words alone, however vulgar or insulting, are not
15 enough to be legal provocation. Where death is caused by
16 the use of a deadly weapon, the words must be accompanied by
17 some overt, threatening act which could have produced the
18 heat of passion.

19 The exercise of a legal right, no matter how offensive
20 it is to another, is never sufficient legal provocation for
21 voluntary manslaughter. If the heat of passion has cooled,
22 or if there was enough time between the provocation, if any,
23 and the killing for the passion of a reasonable person to
24 cool, the killing would not be voluntary manslaughter.

25 In deciding whether a reasonable person would have had

1 enough time to cool off, you should consider all the
2 circumstances surrounding the killing, based on evidence
3 introduced the trial of the case. You may consider the
4 nature of the provocation, if any. The defendant's mental
5 and physical state, and the circumstances and relationships
6 between the parties, based on evidenced introduced during
7 the trial of the case.

8 I charge you, ladies and gentlemen, that the defendant
9 is also charged in this case with the offense of assault and
10 battery of a high and aggravated nature. Assault and
11 battery of a high and aggravated nature is the unlawful act
12 of violent injury to the person of another, accompanied by
13 circumstances of aggravation. An assault occurs when a
14 person unlawfully attempts or offers to commit a violent
15 injury upon another person, and had the present ability to
16 complete the attempted injury.

17 An assault is the intentional creation of a reasonable
18 fear of immediate bodily harm. It is not necessary that the
19 attempted injury or harm actually take place for an assault.
20 For example, if I walk up to you and when we are within
21 arm's length of each other, I draw back to hit you, that is
22 an assault.

23 A battery is the unlawful touching of another person by
24 a person who has committed the assault. An unlawful
25 touching can be caused by a part of the accused body or by

1 any object the accused puts in motion. A battery is the
2 completion of the assault by using or applying force to
3 another person, however slight, in a rude, angry or
4 resentful manner without legal justification for doing so.
5 Using my earlier example, if I carry through the assault by
6 hitting you, then that is a battery.

7 The State must prove for the offense of assault and
8 battery of a high and aggravated nature, they must also
9 prove beyond a reasonable doubt, circumstances of
10 aggravation. Circumstances of aggravation include the use
11 of a deadly weapon, the intent to commit a felony, the
12 infliction of serious bodily injury, a great disparity
13 between the ages or physical conditions of the parties, a
14 difference in the genders of the parties, the taking of
15 indecent liberties or familiarities with a female through
16 the use of force, the purposeful infliction of shame and
17 disgrace, and the resistance of lawful authorities. These
18 are only example of circumstances of aggravation. The State
19 must prove a circumstance of aggravation based on evidence
20 introduced during the trial of the case, beyond a reasonable
21 doubt.

22 The defendant has raised the defense in this case of
23 self-defense. Self-defense, ladies and gentlemen, is a
24 complete defense, and if it is established, you must find
25 the defendant not guilty. The State has the burden of

1 disproving self-defense by proof beyond a reasonable doubt.
2 If you have a reasonable doubt of the defendant's guilty
3 after considering all of the evidence, including the
4 evidence of self-defense, then you must find the defendant
5 not guilty.

6 On the other hand, if you have no reasonable doubt of
7 the defendant's guilt after considering all of the evidence,
8 including the evidence of self-defense, then you must find
9 the defendant guilty.

10 The following elements are required by law to establish
11 self-defense. First, the defendant must be without fault in
12 bringing on the difficulty. Second, the defendant must have
13 actually believed he was in imminent danger of losing his
14 life or sustaining serious bodily injury, or he actually was
15 in such imminent danger.

16 Third, if his defense is based upon his belief of
17 imminent danger, a reasonably prudent person of ordinary
18 firmness and courage would have entertained the same belief.
19 If the defendant actually was in imminent danger based on
20 your interpretation of the evidence, circumstances were such
21 that would warrant a man of ordinary prudence, firmness and
22 courage to strike the fatal blow in order to save himself
23 from serious bodily harm or losing his own life.

24 Fourth, the defendant had no other probable means of
25 avoiding the danger or losing his own life or sustaining

1 serious bodily injury, other than to act as he did in this
2 particular instance. Those are the four elements of self-
3 defense.

4 The First element, the defendant must be without fault
5 in bringing on the difficulty. If the defendant's conduct
6 was the type which was reasonably calculated to, and did,
7 provoke a deadly assault, the defendant would be at fault in
8 bringing on the difficulty, and would not be entitled to an
9 acquittal, based on self-defense.

10 The Second element of self-defense is that the
11 defendant was actually in imminent danger of death or
12 serious bodily injury, or that the defendant actually
13 believed that he was in imminent danger of death or serious
14 bodily injury. If the defendant was actually in imminent
15 danger, it must be shown that the circumstances would have
16 warranted a person of ordinary firmness and ordinary courage
17 to strike the fatal blow, to prevent death or serious bodily
18 injury.

19 If the defendant believed he was in imminent danger of
20 death or serious bodily injury, it must be shown that a
21 reasonably prudent person of ordinary firmness and courage
22 would have had the same belief.

23 In deciding whether the defendant actually was in
24 imminent danger, or believed he was in imminent danger of
25 death or serious bodily injury, you as a jury should

1 consider all of the facts and circumstances surrounding the
2 crime, including the physical condition and the
3 characteristics of the defendant and the victim, based on
4 evidence introduced during the trial of the case.

5 The defendant does not have to show that he was
6 actually in danger. It is enough that the defendant
7 believed he was in imminent danger and a reasonably prudent
8 person of ordinary firmness and courage would have had the
9 same belief. The defendant has the right to act on
10 appearances, even though defendant's beliefs may have been
11 mistaken.

12 It is for you, ladies and gentlemen of the jury, to
13 decide whether the defendant's fear of immediate danger, or
14 death, or serious bodily injury was reasonable and would
15 have been felt by an ordinary person in the same situation.

16 The relative size, ages, and weights of the defendant,
17 if based on evidence during the trial of the case, and the
18 victim, if based on evidence during the trial of the case,
19 may be considered in deciding the apparent or actual need
20 for force in self-defense and the amount of force needed.

21 The final element of self-defense is that the defendant
22 had no other probable way to avoid the danger of death or
23 serious bodily injury than to act as the defendant did in
24 this particular instance.

25 Madam Foreperson, I told you that I had prepared a

1 verdict form for you. Pay absolutely no attention, ladies
2 and gentlemen of the jury, to the order in which we wrote
3 the forms of verdict. We obviously had to write one before
4 the other in order to prepare the verdict form, so the order
5 has no significance, whatsoever.

6 I have put on the verdict form the title of the case.
7 It says at the top, State of South Carolina, County of
8 Colleton, Court of General Sessions, means criminal court,
9 has the indictment numbers below it, and then it says State
10 of South Carolina v. Desmond Javon Sams, and I wrote the
11 word "verdict", all of which is in the caption at the top.

12 Then I have number one, which is the first question.
13 Under number one, I have the following words typed for you:
14 We, the jury, by unanimous consent, find the defendant,
15 Desmond Javon Sams, in Indictment Number 2008-GS-15-0370,
16 and the first form of verdict under question one is guilty
17 of murder. If that be your form of verdict, Madam
18 Foreperson, you would check on the line beside that form of
19 verdict. Under the words, We, the jury, by unanimous
20 consent, find the defendant, Desmond Javon Sams, in
21 Indictment Number 2008-GS-15-0370, the second form of
22 verdict is: not guilty of murder. If that be your form
23 of verdict, Madam Foreperson, you would check on the line
24 beside that form of verdict. You cannot find both forms of
25 verdict as to question one. You must find one or the other,

1 guilty or not guilty.

2 And then I wrote you some instructions under one. If
3 you find the defendant not guilty of murder, you would move
4 on to number two, question number two on your verdict form.
5 If you find the defendant guilty of murder, you would skip
6 number two and move to number three.

7 Number two on your verdict form assumes you have found
8 the defendant not guilty of murder. Question number two on
9 your verdict form says, "We, the jury, by unanimous consent,
10 find the defendant, Desmond Javon Sams, Indictment number
11 2008-GS--15-0370, and the first form of verdict under
12 question two is: guilty of voluntary manslaughter. If that
13 be your form of verdict, you would check on the line beside
14 that form of verdict for the jury, Madam Foreperson.

15 Under question number two, we, the jury, by unanimous
16 consent find the defendant, Desmond Sams, in Indictment
17 Number 2008-GS-15-0370, the second form of verdict is: not
18 guilty of voluntary manslaughter. If that be your form of
19 verdict under Question Number Two, you would check on the
20 line beside not guilty. If you go to question two, you must
21 find one form of verdict or the other, either guilty or not
22 guilty, if you go to question two, which assumes that you
23 found the defendant not guilty of murder in question one,
24 because voluntary manslaughter, ladies and gentlemen, the
25 reason the indictment number is the same and I hesitated,

1 it's a lesser included offense in the indictment for murder.
2 That's why the indictment number's the same.

3 Now, you would then continue, regardless of what you
4 did in one and two, to complete question three. Question
5 three says, "We, the jury, by unanimous consent, find the
6 defendant, Desmond Sams, in Indictment number 2008-GS-15-
7 0371, first form of verdict under Question three is: guilty
8 of ABHAN. If that be your form of verdict, you would check
9 on the line beside that form of verdict. Under Number
10 three, we, the jury, by unanimous consent, find the
11 defendant, Desmond Sams, in Indictment number 2008-GS-15-
12 0371, second form of verdict is: not guilty of ABHAN. If
13 that be your form of verdict, you would check on the line
14 beside that form of verdict. You must find one form of
15 verdict as to question three, either guilty or not guilty of
16 the offense of Abhan.

17 When you have filled out questions one, two and three
18 on the second page of the verdict form, Madam Foreperson.
19 There's a line for you to sign your name as foreperson,
20 after you've checked the appropriate blanks. I have put
21 instructions on the side. I've already dated for you and
22 put Walterboro. I've got January the 29th. I put, "Please
23 indicate your findings by checking the appropriate line and
24 certify the finding by the foreperson' signature. Please
25 knock on the door and inform the bailiff when you've reached

1 a verdict."

2 Now, ladies and gentlemen, your verdict in this case
3 must be unanimous. That is, it must be the verdict of each
4 and everyone of you; all 12 of you must agree on a verdict.

5 Now, Madam foreperson, as I told you, you will be using
6 this in your jury room, but please don't leave the courtroom
7 today once the jury has completed its deliberations without
8 my law clerk bringing you these indictments, where you will
9 take your signature from here and write it also on the
10 indictments, and also the appropriate verdict that you have
11 found on the indictments to make it consistent with your
12 verdict form. My law clerk will be giving you instructions
13 about that.

14 Now, Madam Foreperson, and ladies and gentlemen of the
15 jury, I have now charged you on the law in order to help
16 guide you to a fair and a just result in this case.

17 You are the judges of the facts in this case, and based
18 on your determination of the facts in this case from the
19 evidence introduced, and the law as I have explained it to
20 you, you will soon begin your deliberations in your jury
21 room. You've been selected, ladies and gentlemen, as
22 fair and impartial jurors. You are sworn to fairly and
23 impartially try and determine the facts of this case and
24 when you comply with that oath to be fair and impartial, no
25 one can criticize your verdict.

1 You are to decide this case, ladies and gentlemen,
2 based solely on the evidence that's been introduced during
3 the trial of this case, that means the testimony you have
4 heard from the sworn witnesses who have testified before
5 you, along with the exhibits, which may have been introduced
6 into evidence and any stipulations, if any were introduced
7 into the record, and nothing else. You must decide the
8 issue in this proceeding without any bias, without any
9 prejudice towards either party in this case.

10 You cannot allow yourself, ladies and gentlemen, to be
11 governed by public opinion, or prejudice for or against any
12 person, or by any other arbitrary factor not in evidence in
13 the trial of this case. Both the defendant and the State of
14 South Carolina have the right to expect that each of you on
15 the jury will carefully and impartially consider all the
16 evidence in this case, and that you will follow the law as I
17 have instructed it to you in reaching your verdict in this
18 case.

19 Now, ladies and gentlemen, I've explained the verdict
20 forms to you and told you that your verdict must be
21 unanimous. When you have reached a verdict, as I put on
22 your verdict form, if you will knock on the jury room door
23 and tell the bailiff that you've reached a verdict, when
24 you've completed the verdict form, we will then bring you
25 back into the courtroom in order to publish your verdict.

1 At this time, I'm going to ask you to retire to your
2 jury room. It may be necessary for me to bring you back
3 for some brief additional instructions, so I don't want you
4 to begin your deliberations just yet. When it is time for
5 you to begin your deliberation, I will send the verdict form
6 in to you by the bailiff and tell the bailiff to instruct
7 you that you may now commence your deliberations, along with
8 the exhibits which have been introduced into evidence during
9 the trial of the case.

10 Now, ladies and gentlemen, I recognize that there has
11 been a tape in evidence in this case. If you need to see
12 that, we have the ability for you to watch it and we will
13 set that up for you here in the courtroom, if the jury
14 chooses to do so, you understand?

15 All right. Please do not begin your deliberations
16 until I instruct you to do so. Please bear with me. I'll be
17 back with you in just a moment, or give you instructions
18 through the bailiff. Will my alternate juror remain in the
19 courtroom? You may retire to your jury room at this time.

20 **(1:00 P.M., JANUARY 29th, 2009, WHEREUPON JURY EXITS THE**
21 **COURTROOM, THEREAFTER THE FOLLOWING PROCEEDINGS WERE HELD ON**
22 **THE RECORD:)**

23 **THE COURT:** All right. So no one became ill, or for
24 some reason could not continue to serve, so this concludes
25 your service in the trial of this case. On behalf of

1 Colleton County and this Court, I want to thank you for your
2 service. I can tell you this concludes your jury service for
3 the week, so I'm going to be excusing you for the balance of
4 the week. But I always give my jury an opportunity to let
5 me know if we need to improve on anything or if you have any
6 questions about anything that happened in Court this week.
7 Do you have any questions or suggestions for me?

8 **MALE JUROR:** No, sir.

9 **THE COURT:** Did we treat you okay?

10 **MALE JUROR:** Yes, sir.

11 **THE COURT:** Good. Has it been an educational
12 experience for you?

13 **MALE JUROR:** Real education for me.

14 **THE COURT:** Well, thank you, sir. I hope it has been.
15 I think jury service is something we all ought to fulfill.
16 It's an honor to have a country which allows you to have a
17 trial by jury. With that, sir, I thank you for your
18 service. I can't allow you to go back to the jury room, now,
19 but you're excused with my blessing. We'll be sending you a
20 check in the mail, which is not enough for your service, at
21 the address that you gave us. You're excused for the
22 balance of the week and you may leave the courtroom at this
23 time. Thank you, sir.

24 Any exceptions or additions to the charge from the
25 State of South Carolina?

1 **MR. THORNTON:** None, Your Honor.

2 **THE COURT:** Any exceptions or additions to the charge
3 from the defendant?

4 **MR. MATHEWS:** Yes, sir. In addition to the, again, I'm
5 renewing my request for involuntary -- I understand the
6 Court's rule. Also, I'm not sure whether the Court charged
7 a criminal conviction, as an impeachful thing going to
8 character. I don't know. I may have missed that.

9 **THE COURT:** One moment. I'm not sure that I did. Hold
10 on one minute. I don't believe I did. Was it brought out
11 during the trial of this case? I know that there -- was
12 there a record for the defendant?

13 **MR. MATHEWS:** No, sir, for Lisa Strickland, had a
14 burglary conviction.

15 **THE COURT:** You are correct. And you would request
16 that, Mr. Mathews?

17 **MR. MATHEWS:** Yes, sir.

18 **THE COURT:** All right. You agree, Solicitor, it was an
19 issue in the trial of this case?

20 **MR. THORNTON:** I do, Your Honor. And I also agree that
21 I do not believe that you mentioned it.

22 **THE COURT:** I don't think I charged it. I think Mr.
23 Mathews is correct. I'm looking to see because I have my
24 charge in front of me, but I don't believe I did. I took
25 out -- because there was no statement of the defendant in

1 this case, introduced in the trial of this case, although,
2 the defendant testified. Counsel approach.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
4 AND THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE
5 RECORD:)

6 THE COURT: Mr. Mathews, I understand, now, that you've
7 taken exception to my charge for the omission of a charge on
8 the criminal record of a witness; that you wish to withdraw
9 it?

10 MR. MATHEWS: I had. I explained that to my client,
11 and in consultation with my client, he's not running my
12 case, Your Honor, but it is his life, and he wishes the jury
13 to be brought back. It's hard for me to argue with that.

14 THE COURT: Any objection, Solicitor?

15 MR. THORNTON: No, sir.

16 THE COURT: Very well. Any objection to the charge,
17 which I've given you a copy of, Mr. Mathews?

18 MR. MATHEWS: No, sir.

19 THE COURT: Any objection to the charge, Solicitor?

20 MR. THORNTON: No, sir.

21 THE COURT: Bring the jury back, please.

22 (1:11 P.M., THURSDAY, JANUARY 29, 2009, WHEREUPON THE
23 JURY ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
24 WERE HELD ON THE RECORD.)

25 THE COURT: Madam Foreperson, ladies and gentlemen of

1 the jury, we follow this procedure so that if I realize
2 something that I might have omitted in my charge, then I can
3 conclude that for you.

4 I charged you, ladies and gentlemen, that a person who
5 has a past criminal record, is competent to testify during
6 the trial. The past record does not affect the ability of
7 that witness to testify. The past record, criminal record,
8 may be considered by you, if at all, in determining the
9 witness's believability or credibility. Remember, ladies
10 and gentlemen of the jury, you and you alone are the sole
11 judges of the facts in this case, and the believability of
12 any and all the witnesses in this case. Thank you. I'll
13 ask you, now, to return to your jury room, and bear with me
14 one more moment and I'll give you further instructions. Do
15 not begin your deliberations quite yet.

16 (1:13 P.M., JANUARY 29, 2009, WHEREUPON JURY EXITS THE
17 COURTROOM, THEREAFTER THE FOLLOWING PROCEEDINGS WERE HELD ON
18 THE RECORD:)

19 THE COURT: Any exceptions or additions to the
20 supplemental charge from the State?

21 MR. THORNTON: None, Your Honor.

22 THE COURT: From the defendant?

23 MR. MATHEWS: No, Your Honor.

24 THE COURT: Let the record reflect, Mr. Mathews, to the
25 extent that I need to make sure your client's rights are

1 protected, you've renewed your motion for charging
2 involuntary manslaughter, which I respectfully deny. I
3 granted your motion to charge the credibility of the
4 witnesses after prior criminal convictions.

5 All right, counsel, one other housekeeping matter.
6 Becky, please announce for us if you would, to me, so that
7 we have the numbers straight. I called counsel up to the
8 bench when the jury was coming in, prior to closing
9 argument, because my court reporter wanted to make sure she
10 had the numbers of the exhibits straight. We now have how
11 many court exhibits? Tell us what each one is.

12 **COURT REPORTER:** We have four, Your Honor.

13 **THE COURT:** Four Court's exhibits. Exhibit one is the
14 note selecting the foreperson of the jury. Exhibit two is -
15 --

16 **COURT REPORTER:** It is Lisa Strickland's written
17 statement.

18 **THE COURT:** Court Exhibit Number Two is Lisa Michelle
19 Strickland's written statement. Court's Exhibit Number
20 three?

21 **COURT REPORTER:** Is the written statement of Stephanie
22 Ballard.

23 **THE COURT:** Written statement of Stephanie Ballard.

24 **COURT REPORTER:** And Court Exhibit Number Four is the
25 videotape of Desmond Sams.

1 verdict.

2 (WHEREUPON, COURT WAS RECESSED FROM THE TRIAL OF THE
3 CASE; AT WHICH TIME, THEREAFTER, AT 2:50 P.M., THE FOLLOWING
4 PROCEEDINGS WERE HELD ON THE RECORD:)

5 THE COURT: All right, counsel. I've received a note
6 from the jury, which I have read to counsel in chambers,
7 both Solicitor and defense counsel. They both agree there
8 are a number of questions on the note, which I'll make a
9 Court's exhibit.

10 They both agree that with the exception of two
11 questions that are asked, the answer is you must decide the
12 case based on the evidence presented. The two questions
13 that they both agree can be answered are, the first one:
14 Can the jury hear Stephanie's videotape interview at the
15 police station? And, of course, the answer to that is we've
16 told them if they want to hear it, it is in evidence and
17 counsel discussed, I understand that question to be the
18 interview, because there's more on the tape than just the
19 interview. There's a telephone call and then Mr. Mathews
20 ran forward, fairly long segments on fast forward, where it
21 appears that the person is just sitting, waiting on Officers
22 to come back to talk to her, without any audio. Although,
23 there, I think, there's even a second telephone call on
24 there and they asked for just the interview. I'll inquire
25 to make sure that's correct, because Mr. Mathews says, and I

1 certainly agree with him, if they want to hear more than the
2 interview, we'll publish more than the interview.

3 The other question was, that can be answered: What is
4 the legal term for voluntary manslaughter again? Can we
5 get a print copy? Counsel has agreed that I will recharge
6 voluntary manslaughter, as I charged it before, orally, and
7 I will then ask them if that is sufficient, and if they want
8 anymore, if they ask for a print copy, I will give them a
9 print copy of voluntary manslaughter only by agreement of
10 counsel.

11 Have I accurately stated what occurred in chambers,
12 insofar as the Solicitor is concerned?

13 **MR. THORNTON:** You have, Your Honor.

14 **THE COURT:** Insofar as the defendant is concerned?

15 **MR. MATHEWS:** Yes, sir.

16 **THE COURT:** Now, there are other questions on here?
17 Your Honor, can we see a picture of Jake after being beaten?
18 Where is the record of 9-1-1 calls? Can we hear them?
19 What time did Jake and Desmond get off work? Who actually
20 called the police? What was Desmond's blood alcohol level?
21 What is the time difference between the start fight and the
22 first 9-1-1 call? What was the height and weight of Jake?
23 All of which counsel have all agreed the answer is you must
24 decide this case based on the evidence presented?

25 Have I accurately stated as to the other questions,

1 Solicitor?

2 **MR. THORNTON:** You have, Your Honor.

3 **THE COURT:** Mr. Mathews?

4 **MR. MATHEWS:** Yes, sir.

5 **THE COURT:** Very well. We will now make this Court's
6 Exhibit Number Five, I believe. Mark it for me and hand it
7 back to me. (COURT REPORTER MARKS NOTE OF QUESTIONS FROM
8 JURY AS EXHIBIT FIVE AND HANDS BACK TO JUDGE.)

9 **THE COURT:** All right, before I bring the jury in, turn
10 the television around, cue it to -- or they have the tape?

11 **MR. THORNTON:** They have the tape, Your Honor.

12 **THE COURT:** Bill, go get me the tape so y'all can cue
13 it to make sure it's up for the right spot and be ready.

14 **(3:01 P.M., THURSDAY, JANUARY 29, 2009, THE JURY ENTERS**
15 **THE COURTROOM AND THE FOLLOWING PROCEEDINGS WERE HELD ON THE**
16 **RECORD.)**

17 **THE COURT:** Madam Foreperson, ladies and gentlemen of
18 the jury, I received your note. First of all, let me tell
19 you it's not necessary that you put people's names that are
20 asking the questions. I appreciate your thoroughness, but
21 if you could just write the question out for the jury. Let
22 me go through, first of all, the first questions.

23 Can the jury hear Stephanie's videotape interview at
24 the police station? Now, I asked the bailiff to bring the
25 tape back into the courtroom, and we've cued it to the

1 interview with the officer. Is that what the jury wants or
2 do you want more of the tape than just the interview with
3 the officer?

4 **MADAM FOREPERSON:** They want the cell phone and the
5 officer.

6 **THE COURT:** Cell phone and the officer, All right. In
7 that case, then, counsel, I'd ask you to come forward
8 together, recue the tape to include that as well.

9 (WHEREUPON, ATTORNEY FOR THE STATE AND ATTORNEY FOR
10 DEFENDANT COME FORWARD TO COMPLY WITH JUDGE'S INSTRUCTIONS.)

11 **THE COURT:** While they are doing that, ladies and
12 gentlemen of the jury, let me go forward so we can utilize
13 our time effectively. You asked me other questions: could
14 the jury see a picture of Jake after being beaten? Where is
15 the record of 9-1-1 calls? Can we hear them? What time
16 did Jake and Desmond get off work? Who actually called the
17 police? What was Desmond's blood alcohol level? What is
18 the time difference between the start fight and the first
19 9-1-1 call? What was the height and weight of Jake? The
20 answer to each one of those questions is you must decide
21 this case based on the evidence presented during the trial
22 of the case.

23 Now, you also asked me, what is the legal term for
24 voluntary manslaughter? Can we get a print copy? My answer
25 to that is I am happy to recharge you the offense of

1 voluntary manslaughter. After I recharge it, if you would
2 like more such as a copy of my voluntary manslaughter
3 charge, I'd be happy to provide that to you? Does that
4 answer your question?

5 (JURY NODS IN AGREEMENT.)

6 **THE COURT:** Counsel, have you cued the tape?

7 **MR. THORNTON:** Yes, sir.

8 **MR. MATHEWS:** Yes, sir.

9 **THE COURT:** All right. We will now the tape as you
10 requested of -- I believe this is tape of Stephanie Ballard;
11 is that correct, counsel?

12 **MR. THORNTON:** That's correct, Judge.

13 **MR. MATHEWS:** Yes, sir.

14 **THE COURT:** Let me know if you can't hear or see.

15 (VIDEOTAPE BEGINS.)

16 **THE COURT:** The Foreperson of the jury, counsel, is
17 indicating they want you to run it forward now, to the
18 interview; is that correct?

19 **MADAM FOREPERSON:** Yes, sir.

20 **THE COURT:** Counsel, would you please come forward and
21 agree that it's forwarded to the interview before we publish
22 to the jury.

23 (VIDEOTAPE RESUMES)

24 **THE COURT:** All right. Ms. Stilley, you and Mr.
25 Haselden are excused from the courtroom.

1 **MS. STILLEY:** Thank you, Your Honor.

2 **THE COURT:** Ladies and gentlemen of the jury panel, now
3 to answer your other question that you had and I'll ask you,
4 Madam Foreperson, before you go back, for the jury, if we've
5 answered everything that I can answer. The question was,
6 what is the legal term for voluntary manslaughter again?
7 Can we get a print copy? If you find, ladies and gentlemen,
8 that the State has proved beyond a reasonable doubt that the
9 defendant committed murder, you may consider whether the
10 State has proven beyond a reasonable doubt that the
11 defendant committed voluntary manslaughter. To prove
12 voluntary manslaughter, the State must prove beyond a
13 reasonable doubt, that the defendant took the life of
14 another in the sudden heat of passion, based on sufficient
15 legal provocation.

16 Both heat of passion and sufficient legal provocation
17 must be present at the time of the killing to constitute
18 voluntary manslaughter. Sudden heat of passion may, for a
19 time, affect a person's self-control and temporarily disturb
20 a person's reason. The sudden heat of passion must be the
21 type that would make an ordinary person unable to coolly
22 reflect on his actions, and would produce an uncontrollable
23 impulse to do violence.

24 Sufficient legal provocation must be the type that
25 would make a person of ordinary reason and caution become

1 enraged and to lose control temporarily. The provocation
2 needed for voluntary manslaughter must come from some act
3 of, or related to, the victim. Words alone, however vulgar
4 or insulting, are not enough to be legal provocation. Where
5 death is caused by the use of a deadly weapon, the words
6 must be accompanied by some overt, threatening act which
7 could have produced the heat of passion.

8 The exercise of a legal right, no matter how offensive
9 it is to another, is never sufficient legal provocation for
10 voluntary manslaughter. If the heat of passion had cooled,
11 or if there was enough time between the provocation, if any,
12 and the killing, for the passion of a reasonable person to
13 cool, the killing would not be voluntary manslaughter.

14 In deciding whether a reasonable person would have had
15 enough time to cool off, you should consider all the
16 circumstances surrounding the killing, based on evidence
17 introduced the trial of the case. You may consider the
18 nature of the provocation, if any. The defendant's mental
19 and physical state, and the circumstances and relationships
20 between the parties, based on evidenced introduced during
21 the trial of the case.

22 Now, I ask you, Madam Foreperson, have I answered the
23 jury's question concerning voluntary manslaughter, or would
24 you like additional instructions or a print copy?

25 **MADAM FOREPERSON:** That's fine.

1 **THE COURT:** That's sufficient? Very well. I think,
2 now, I've addressed each one of your questions that are in
3 your two-page notes. I'll ask you now, if you would, if you
4 would retire back to your jury room. Now, I'm going to keep
5 the tape in here this time, obviously, it's available to you
6 and you've seen it, but I'll keep it out here unless you'd
7 like to take it with you. It will be here available for you
8 should you need it. You may retire to your jury room now to
9 continue your deliberations.

10 **(3:30 P.M., JANUARY 29, 2009, WHEREUPON JURY EXITS THE**
11 **COURTROOM, THEREAFTER THE FOLLOWING PROCEEDINGS WERE HELD ON**
12 **THE RECORD:**

13 **THE COURT:** Any exceptions or additions to the charge
14 from the State of South Carolina, as to the answering of the
15 questions?

16 **MR. THORNTON:** No, sir.

17 **THE COURT:** From the defendant?

18 **MR. MATHEWS:** No, sir.

19 **THE COURT:** Very well. I'm handing the court reporter,
20 which is now marked as Court's Exhibit Five, the questions
21 asked by the jury. We will be at ease while we await the
22 jury's verdict.

23 I see that I have Mr. Beach with pneumonia. I have Mr.
24 Bennett and Mr. Harvin here, so I'd like to try to get a
25 little work, at least for these lawyers, done. I do not see

1 before we publish the verdict?

2 **MR. THORNTON:** Nothing from the State, Judge.

3 **THE COURT:** From the defendant?

4 **MR. MATHEWS:** No, sir.

5 **THE COURT:** All right. Ladies and gentlemen, I realize
6 we have people that have been here and been patient
7 throughout the trial. I certainly enforce this rule: I
8 don't know what the verdict is, but whatever the verdict is,
9 you have to control your emotions. I do not allow any
10 outbursts. If you don't feel like you can control your
11 emotions, regardless of what the verdict is, you need to
12 leave this courtroom now, because my bailiffs are instructed
13 to remove you and I'll enforce that power by my contempt
14 power. Does everyone understand that? If you remain, I
15 expect you to remain quiet when the verdict is published.
16 Very well. Bring us the jury.

17 **(4:55 P.M., THURSDAY, JANUARY 29, 2009, THE JURY ENTERS**
18 **THE COURTROOM AND THE FOLLOWING PROCEEDINGS WERE HELD ON THE**
19 **RECORD.)**

20 **THE COURT:** You may publish the verdict.

21 **MADAM CLERK:** State of South Carolina v. Desmond J.
22 Sam, 2008-GS-15-0370, 2008-GS-15-0371, charged with murder
23 and assault and battery. We, the jury, by unanimous consent
24 find the defendant, Desmond Sams, in Indictment Number 2008-
25 GS-15-370, not guilty of murder.

1 We, the jury, by unanimous consent, find the defendant,
2 Desmond Sams, in Indictment Number 2008-GS-15-0370, guilty
3 of voluntary manslaughter.

4 We, the jury, by unanimous consent, find the defendant,
5 Desmond Sams, in Indictment Number 2008-GS-15-0371, not
6 guilty of assault and battery of a high and aggravated
7 nature, signed by the Foreperson, January 29th, 2009,
8 Marilyn Wade.

9 Ladies and gentlemen of the jury, if this is your
10 verdict, please raise your right hand.

11 **THE COURT:** Let the record reflect, twelve hands were
12 raised. Anything further from the jury from the defendant
13 before I excuse the jury?

14 **MR. MATHEWS:** No, sir, Your Honor.

15 **THE COURT:** From the State?

16 **MR. THORNTON:** No, sir, Judge.

17 **THE COURT:** Now, Madam Foreperson, and ladies and
18 gentlemen of the jury, I want to thank you for your service,
19 on behalf of Colleton County and this court. I told you
20 when I qualified you this week, that without you, justice
21 can never be accomplished in a courtroom, and I thank you
22 for that service. Now, let me give you some instructions.
23 If you want to discuss your verdict, you can. If you don't,
24 you tell the person that asked you about it, you don't want
25 to discuss it. If that person persists, you let me know.

1 You do not have to discuss anything about your verdict
2 unless you decide to do so.

3 Sentencing in this case is going to take place right
4 now. So if you would like to stay for sentencing, I'd be
5 happy for you to stay for sentencing, if you'd like to do
6 so. If you do not want to stay for sentencing, that is
7 entirely up to you. Now, does everyone understand that?

8 We'll be mailing you a check for your service. It's
9 not much. We're paying a whopping \$20 a day. We recognize
10 that this past summer that didn't pay for gas hardly, but at
11 least now the price of fuel is down some. We'll be mailing
12 you a check for your jury service at the address you
13 provided us; you understand?

14 With my thanks, you are now excused to either remain in
15 the jury box, if you would like to do so, or you may sit out
16 in the courtroom with my bailiffs if you would like to do
17 so, or you may leave the courtroom at this time. Whatever
18 you decide, but your service on the jury is now concluded
19 for the balance of the week, so you may do as you desire.
20 Thank you.

21 (WHEREUPON, THE COURT IS OFF THE RECORD FOR A BRIEF
22 TIME TO ALLOW JURORS TO LEAVE OR STAY OR BE RESEATED IN THE
23 COURTROOM. THEAFTER, AT 5:00 P.M., THE FOLLOWING SENTENCING
24 WAS HELD ON THE RECORD.)

25 THE COURT: Solicitor, you, defendant and defense

1 counsel, come around for sentencing. First of all, I'd like
2 to do this. Before sentencing, I'm going to ask Mr. Mathews
3 if he has any post-verdict motions, but because we -- I'd
4 like to mark my printed copy -- even though there's a record
5 of it, this is what the jury received with y'all consent, as
6 Court's Exhibit Number Six. Without objection, Solicitor?

7 **MR. THORNTON:** Without objection, Judge.

8 **THE COURT:** Without objection, Mr. Mathews?

9 **MR. MATHEWS:** No objection.

10 **THE COURT:** Court's Exhibit Number Six, without
11 objection. Mr. Mathews, I'll be happy to hear from you now,
12 as to any post-verdict motions.

13 **MR. MATHEWS:** Your Honor, I would make the standard
14 post-trial motions.

15 **THE COURT:** Mr. Mathews, you have to tell me what you
16 believe the standard post-trial motions -- in light of your
17 motion for directed verdict. I assume it's on the same
18 grounds?

19 **MR. MATHEWS:** It would be, Your Honor.

20 **THE COURT:** On the basis that you felt that there was
21 insufficient evidence to submit the case to the jury?

22 **MR. MATHEWS:** Yes, sir.

23 **THE COURT:** And for the reasons I articulated at the
24 close of the State's case, I, respectfully, deny your motion
25 for directed verdict. Get your client to come around beside

1 you. All right.

2 Solicitor, tell me when you've got your sheet ready. I
3 know you're working on it.

4 **MR. THORNTON:** Your Honor, may I approach?

5 **THE COURT:** You may.

6 **MR. THORNTON:** I've shown the sentencing sheet to Mr.
7 Mathews, Judge. He's indicated to me, to his knowledge, it
8 is accurate. Your Honor, I apologize. I failed to do what
9 I normally do at the top of that, which is to put the
10 minimum and maximum. It's up to 30 years in prison, Your
11 Honor.

12 **THE COURT:** There is no mandatory minimum. You agree,
13 Mr. Mathews? It's zero to thirty, and it can be suspended.

14 **MR. MATHEWS:** That's my understanding.

15 **MR. THORNTON:** Yes, sir, and as I've checked, it is
16 violent and most serious.

17 **THE COURT:** Violent and most serious. Now, Solicitor,
18 I'll be happy to hear from you, or if a member of the family
19 wishes to address the Court. I'll give you a minute to ask.
20 I'm going to hear from Mr. Mathews in mitigation before I
21 hear from them. Before I do, I want to make sure if you can
22 find out if anybody wants to address the Court for
23 sentencing purposes.

24 **MR. THORNTON:** Yes, sir.

25 **THE COURT:** Obviously, I'm familiar from listening to

1 all the testimony in this case, and the jury obviously took
2 four hours in deliberation and they carefully and
3 painstakingly went through the evidence. They reviewed it a
4 second time. I completely understand their verdict, and I
5 understand the facts, as presented in the evidence of this
6 case, but I'd like to hear from you in mitigation as to your
7 client.

8 **MR. MATHEWS:** Thank you, Your Honor. As Your Honor
9 knows, from Mr. Sams' testimony, he's 31 years old. He was
10 born in Philadelphia. He's lived in the Lowcountry since he
11 was 6 years old. He has a commercial driver's license and
12 drives a truck. He's not married and has no children. His
13 mother, Olympia, is here with him today, as she has been
14 this week, except when she was sequestered.

15 As the Court also knows from the testimony, the
16 defendant and the victim were best friends and were like
17 brothers. This is a tragedy for everybody. There's not
18 anybody in here that wishes things had not worked out
19 differently than they did. Everybody was drinking a lot.
20 Mr. Sams has a couple magistrate level things, but no prior
21 general session's record. No serious record.

22 Your Honor, he's been in jail since this happened,
23 since April the 12th, 2008, eight months, and just ask the
24 Court to show whatever mercy could be shown in this case.
25 He's been in jail a substantial period of time. There's

1 nothing anyone can do to bring back Mr. Frazier.

2 **THE COURT:** Mr. Sams, is there anything you'd like to
3 tell the Court prior to sentencing?

4 **MR. SAMS:** Sir, I just feel I was defending myself,
5 that's -- that's all I can say. I'm sorry for Sharrondale,
6 Mark --

7 **THE COURT:** Turn around and face me. Don't talk to
8 someone else. You're talking to the Court.

9 **MR. SAMS:** I'm sorry for the victim family. It was
10 like my brothers and sisters, too. They know that. I hope
11 they do, due to the evidence, they saw -- they know in their
12 heart that I didn't mean to kill him. I hope they can be at
13 rest with that. And I pray to God, God bless the dead, for
14 my cousin. He always my cousin, he always be my best
15 friend.

16 **THE COURT:** Mr. Mathews, anything further from the
17 defendant before I hear from the State?

18 **MR. MATHEWS:** Ms. Sams, his mother, would like to say a
19 word.

20 **THE COURT:** Ms. Sams, if you'd come up to the
21 microphone for me and give me your full name, please ma'am.

22 **MRS. SAMS:** Olympia Sams.

23 **THE COURT:** Ms. Sams?

24 **MRS. SAMS:** Yes, this is my son and I would just say
25 that I've known him since he was born and that really I

1 believe he did not mean to kill Red, his cousin, my cousin,
2 and I hope that you take into consideration, you know, we're
3 all family. We may never, you know, fully recover from
4 this, but we are sorry that it happened, and we extend that
5 to Jake's sister's family, and the father, also. Thank you.

6 **THE COURT:** Very well. All right, Solicitor?

7 **MR. THORNTON:** Thank you, Your Honor. May it please
8 the Court? Your Honor, we've heard a lot about the fact
9 that everybody was drinking that day, but only one person
10 lost their life, and that was the victim in this case, Jake
11 Frazier. I've spoken with the victim's family, his sister,
12 his brother, and they ask that I relay their wishes to the
13 Court, they don't wish to speak any further, Judge, once I'm
14 done.

15 Your Honor, I told them in the beginning, Judge, that I
16 was not going to get up here and ask for the maximum
17 sentence in this case of 30 years, however, I do think a
18 substantial prison sentence is appropriate.

19 **THE COURT:** What do you mean by "substantial"?

20 **MR. THORNTON:** Your Honor, the State's asking for a
21 sentence of 20 years in this case. There is a man that lost
22 his life. It was done with Desmond Sams' bare hands. He
23 choked him to death, Your Honor, over the course of, as we
24 know, many, many minutes, and all he would have had to do
25 was turn him loose and walk away, and he didn't do it.

1 Mr. Mathews is absolutely right. He has no prior
2 general session's appearances. He has several magistrate
3 level offenses; however, two of them do concern the
4 Solicitor's Office, Your Honor. He has two prior criminal
5 domestic violence convictions, a first and a second, so
6 violence is not something that is new to Mr. Sams. This is
7 his third offense involving some type of assault, Your
8 Honor, that we have. We have a 1998 conviction for Criminal
9 domestic violence and a 2003 conviction for criminal
10 domestic violence.

11 **THE COURT:** I need to explain, since the jury's
12 present, why the Solicitor ruled on that ruling, and so does
13 Mr. Mathews, and the reason that was not brought to the
14 jury's attention, and the reason for that was it didn't
15 carry more than one year, and that was the rule, and one of
16 them was 10 years old, which would have been an even greater
17 burden, but it wasn't brought it. I want the jury to
18 understand that.

19 Normally, a record could be brought out for credibility
20 purposes if it's punishable by more than a year, and it
21 involved dishonesty or false statement, and that was not the
22 case here. That's the reason. So you're bringing that to
23 my attention for the first time in trial, because it was
24 criminal domestic violence?

25 **MR. THORNTON:** That is correct, Your Honor. This is

1 not Mr. Sams first time at the rodeo, Judge, and the State
2 feels like a substantial prison sentence, as I said, of 20
3 years would be appropriate in this case. The victims have
4 nothing further. Thank you, Your Honor.

5 **THE COURT:** Mr. Mathews, anything in reply?

6 **MR. MATHEWS:** Yes, sir, Your Honor. Your Honor, I
7 understand this is not -- this is akin to, and I understand
8 that the law didn't permit this charge, but this would be
9 like an involuntary manslaughter case, in the sense that if
10 he acted recklessly, just ask the Court to consider if it
11 were involuntary manslaughter, he would get five years, a
12 max of five years and ---

13 **THE COURT:** And as you know, Mr. Mathews, which the
14 jury does not know, I declined to charge involuntary
15 manslaughter in this case because I did not think the
16 evidence supported a charge of involuntary manslaughter.
17 He's either not guilty, by virtue of self-defense, or it was
18 either murder, or voluntary manslaughter, based on the
19 evidence presented in the Court's view, but that would be a
20 matter that can be reviewed by the Appellate Court, but that
21 does not mean that I should sentence in accordance with
22 something that I declined to charge during the trial of the
23 case.

24 **MR. MATHEWS:** I understand, Your Honor. It seems like
25 based on his lack of a serious record, Your Honor, and the

1 circumstances of this case, that that would be -- I would
2 ask the Court to please consider that.

3 **THE COURT:** Solicitor, is there any reason -- it's my
4 intention to give him a split sentence. Is there any reason
5 why there should be any contact once he completes his active
6 sentence, with the family?

7 **MR. THORNTON:** No, Your Honor, there isn't.

8 **MR. MATHEWS:** I don't think so, Your Honor. I don't
9 think there's any reason.

10 **THE COURT:** Mr. Sams, as you know, I carefully went
11 over and I can tell the jury worked hard. They found you
12 not guilty of assault and battery of a high and aggravated
13 nature. They found you not guilty of murder. They found
14 you guilty of voluntary manslaughter. I believe there was
15 sufficient evidence to support that verdict. I take into
16 consideration that the maximum sentence is 30 years. I take
17 into consideration -- which I do not believe you should
18 receive, whether the Solicitor feels so or not. I take into
19 consideration, however, that you do have two prior offenses
20 for criminal domestic violence. I do believe that, as your
21 mother stated to me, prior to drinking, that it was your
22 intent to harm a person that you tell me was your friend,
23 but your actions, which I believe were exactly what the
24 reason for -- I think it was a sudden heat of passion and a
25 fight, and I think you felt like you had been provoked in a

1 fight, which is what the jury concluded, that there was
2 legal provocation and a sudden heat of passion, which is why
3 you were convicted of voluntary manslaughter.

4 The Solicitor is asking me for a straight sentence of
5 20 years. I'm going to split the sentence, because I want
6 you supervised, meaning after you've served your active
7 time, that you'll be on probation, and I'm going to make a
8 condition of probation that there be no contact by you with
9 the victim's family, direct or indirect. That means, you're
10 to have absolutely no contact with them; do you understand
11 that, sir?

12 **MR. SAMS:** Yes, sir.

13 **THE COURT:** That means you can't contact them, nor can
14 you have anybody else contact them. On Indictment 2008-GS-
15 15-0370, the State v. Desmond Sams, the sentence of this
16 Court is defendant is committed to the State Department of
17 Corrections for a term of 24 years, provided that upon the
18 service of 18 years, the balance is suspended and you be
19 placed on probation for a period of 5 years.

20 Special condition of probation, no contact with the
21 victim's family, direct or indirect. Defendant will be
22 given credit for any time that he's already served, pursuant
23 to South Carolina Code Section 24-13-40, that is to be
24 calculated and applied by the State Department of
25 Corrections. Because you have appointed counsel, it

1 required \$500 to be paid to the Clerk of Court of Colleton
2 County during your probationary period. Good luck to you,
3 sir.

4 **MR. THORNTON:** Thank you, Judge.

5 **THE COURT:** Thank you. Ladies and gentlemen of the
6 jury, this concludes the sentencing in the trial of this
7 case. I want to thank you for your service on behalf of
8 Colleton County and this court. Thank you very much.
9 You're now excused from the courtroom, with my blessing, for
10 the balance of the week, and you're exempt from jury service
11 for three years.

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WITNESSES

Allen Inabinett/CCSO *Holloman*

DOCKET NO. 2008-GS-15-0370

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

October, Term 2008

ARREST WARRANT NUMBER

HC14558

April 13, 2008

ACTION OF GRAND JURY

Tracy Bill
Jacqueline Callender

Foreperson of Grand Jury

Date: 10/9/08

VERDICT

Guilty of Voluntary
Manslaughter
Marilyn Wade

Foreperson of Petit Jury

Date:

NDICT

THE STATE

vs.

Desmond J. Sams

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code: 0116

COLLETON COUNTY
GENERAL SESSIONS COURT
2008 OCT -9 PM 4:55

STATE OF SOUTH CAROLINA)
COUNTY OF Colleton)

INDICTMENT

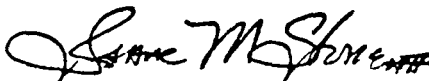
2008-GS-15-0370

At a Court of General Sessions, convened on October 9, 2008, the Grand Jurors of Colleton County present upon their oath:

Murder / Murder

That in Colleton County on or about April 12, 2008, with malice aforethought, Desmond J. Sams did kill and murder Jake Frazier by means of ^{choke}~~choked~~, and that Jake Frazier did die in Colleton County as a proximate result thereof on april 12, 2008; in violation of Section 16-3-10 of the South Carolina 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.



Isaac M. Stone
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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 29th, 2010


Joseph L. Savitz, III
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DESMOND SAMS,

APPELLANT

FINAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Senior Appellate Defender

South Carolina Commission on Indigent Defense
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STATEMENT OF ISSUE ON APPEAL

The trial judge committed reversible error by refusing to instruct the jury on involuntary manslaughter, where the evidence below supported a factual finding that appellant had unintentionally killed the victim while acting in self-defense.

STATEMENT OF THE CASE

On January 28 and 29, 2009, Desmond Javon Sams stood trial in Colleton County, before Judge Perry M. Buckner and a jury, on indictments charging him with murder and assault and battery of a high and aggravated nature. The State accused Sams of strangling to death his cousin and best friend, Jake Frazier, and choking his own girlfriend, Lisa Strickland, during a drunken trailer party.

At the time of his arrest, an injured Sams told police that “it was self-defense and that the victim was trying to kill him.” ROA p. 91 lines 3-8. Sams himself testified that he had not intended to kill Frazier, but had acted in self-defense after Frazier attacked him without provocation. ROA p. 93 line 2- ROA p. 100 line 14. The police officer who arrived at the trailer while the incident was occurring observed “two black males prone, face down on the floor in the bedroom, one on top of the other.” ROA p. 57 lines 5-8. Sams had “his arms wrapped around the neck of the victim.” ROA p. 58 line 18 – ROA p. 59 line 3.

The judge instructed the jury on murder, voluntary manslaughter, and assault and battery of a high and aggravated nature, but refused defense counsel’s request for a charge on involuntary manslaughter. ROA p. 107 lines 6 and 7; ROA p. 122 line 10- ROA p. 125 line 3. Counsel took exception to its omission from the judge’s final instructions to the jury. ROA p. 163 lines 2-6; ROA p. 165 line 24- ROA p. 166 line 2. The jury acquitted Sams of murder and ABHAN, but found him guilty of voluntary manslaughter, and the judge sentenced him to imprisonment for twenty-four years, suspended upon the service of eighteen years and probation for five years.

ARGUMENT

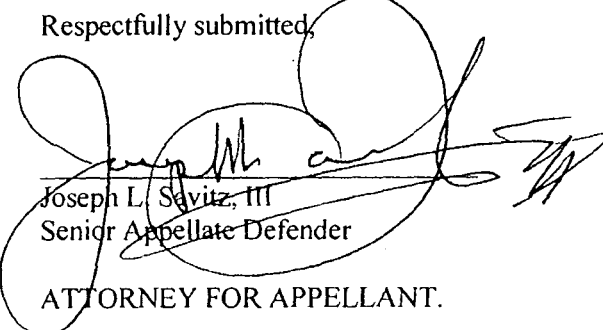
The trial judge committed reversible error by refusing to instruct the jury on involuntary manslaughter, where the evidence below supported a factual finding that appellant had unintentionally killed the victim while acting in self-defense.

Involuntary manslaughter is defined as (1) the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm, or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. *State v. Wharton*, 381 S.C. 209, 672 S.E.2d 786 (2009). To constitute involuntary manslaughter, there must be evidence of criminal negligence, statutorily defined as a reckless disregard of the safety of others. S.C. Code Section 16-3-60.

Here, the evidence supported a factual finding that Sams unintentionally killed Frazier while acting in self-defense. Compare *State v. Chatman*, 336 S.C. 149, 519 S.E.2d 100 (1999). It therefore supported a charge on involuntary manslaughter. See *State v. Light*, 378 S.C. 641, 664 S.E.2d 465 (2008), *State v. Meckler*, 379 S.C. 12, 664 S.E.2d 477 (2008), *State v. Crosby*, 355 S.C. 47, 584 S.E.2d 110 (2003), and *State v. Burriss*, 334 S.C. 256, 513 S.E.2d 104 (1999).

For this reason, the Court should reverse Sams' conviction for voluntary manslaughter and remand for a new trial.

Respectfully submitted,

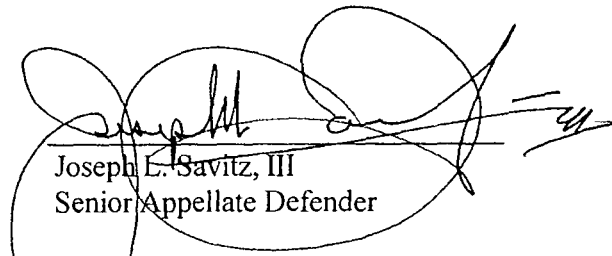

Joseph L. Savitz, III
Senior Appellate Defender
ATTORNEY FOR APPELLANT.

this 10th day of February, 2010

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 10, 2010

A handwritten signature in black ink, appearing to read "Joseph E. Savitz, III", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Joseph E. Savitz, III
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

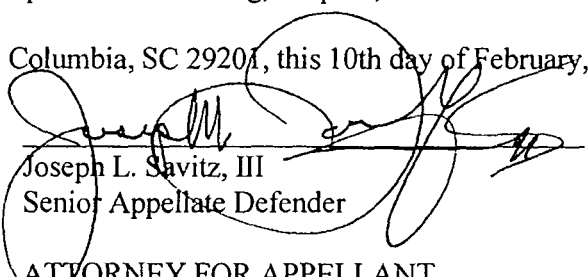
V.

DESMOND SAMS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark Farthing, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 10th day of February, 2010.



Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of February, 2010.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 1, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Colleton County
Honorable Perry M. Buckner, Circuit Court Judge

THE STATE

Respondent

VS.

DESMOND JAVON SAMS

Appellant

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly declined to instruct the jury on the law of involuntary manslaughter because the evidence and testimony did not support the charge.

STATEMENT OF THE CASE

Appellant Desmond Javon Sams was arrested following an incident at a trailer home. In October of 2008, the Colleton County grand jury indicted Appellant for murder and assault and battery of a high and aggravated nature. On January 28, 2009, a jury trial was held in the Colleton County court of general sessions with the Honorable Perry M. Buckner, circuit court judge, presiding. Appellant was convicted of the lesser-included offense of voluntary manslaughter and acquitted of assault and battery of a high and aggravated nature. Appellant was sentenced to a term of twenty-four (24) years incarceration, which was suspended upon the service of eighteen (18) years and five (5) years probation. He then filed a timely notice of appeal.

STATEMENT OF FACTS

In the early morning hours of April 12, 2008, Senior Sergeant Steve Dunn of the Colleton County Sheriff's Department responded to a call about a fight in progress. (R. p. 56). When he arrived at the trailer of Lisa Strickland, Sergeant Dunn was led to a bedroom where he found two men laying face down in the floor with one on top of the other. (R. pp. 56-57). Appellant Desmond Sams, the man on top, had his arms wrapped around the neck of the other man. (R. pp. 58-59). Sergeant Dunn drew his taser and ordered Appellant to release the other man. (R. p. 57). Appellant refused to comply and responded, "No, he'll want to fight." (R. p. 57; p. 63). After the officer's third command, Appellant finally released his victim. (R. p. 57).

Appellant eventually arose from the floor and was handcuffed. (R. p. 58). The other man did not get up. (R. p. 58). Sergeant Dunn had Strickland and Stephanie Ballard roll the victim onto his back. (R. p. 58). Sergeant Dunn then radioed in for support and medical units. (R. p. 59). He noted the victim, Jake Fraizer ("Victim"), was not breathing and had a blue tint to his skin. (R. p. 59). From the time Sergeant Dunn first entered the bedroom, he saw no signs of life, no movement, and no signs of fighting or resistance from Victim. (R. pp. 63-64).

Firefighter and EMT Jason Benton responded to the scene. (R. p. 68). He entered the bedroom and found Victim in the floor with no pulse, no signs of life, and not breathing. (R. p. 69). He attempted to restart Victim's heart and continued resuscitation efforts as Victim was transported to the emergency room, but the efforts were unsuccessful. (R. p. 69). Victim was pronounced dead at the hospital.

Dr. Erin Presnell, a forensic pathologist at the Medical University of South Carolina, performed an autopsy of Victim on April 12, 2008. (R. p. 74). She noted a number of abrasions and contusions, with most of the injuries centered around Victim's neck. (R. pp. 74-45). Along with multiple bruises and scratches around the neck area, Victim's neck muscles underneath his skin were also bruised. (R. p. 75). Additionally, the lining of Victim's eyes and eyelids revealed pin-point hemorrhages. (R. p. 75). Dr. Presnell testified her findings were indicative of strangulation. (R. p. 75). She determined the cause of death was asphyxiation due to strangulation. (R. p. 76).

At trial, multiple versions of the events leading up to Appellant's killing of Victim were presented to the jury. However, it is undisputed all parties involved were drinking. (R. p. 9; p. 37; p. 94). Testimony established Victim and Appellant were cousins and had a close relationship. (R. p. 47; p. 52; p. 93). It is also clear Appellant sustained injuries during the incident. (R. p. 33; pp. 83-84; p. 91). Furthermore, it is undisputed the time period between Sergeant Dunn's dispatch in response to the call about the fight and his arrival on the scene was eight and a half minutes. (R. p. 61).

Ballard testified she was at Strickland's trailer with Strickland, Victim, and Appellant on the night of the incident. (R. p. 8). She indicated Victim become ill and went to the bathroom. (R. p. 9). She and Appellant both followed Victim, and Victim and Appellant began arguing because Appellant grabbed her. (R. p. 10). Victim confronted Appellant about the contact, an argument erupted, and Appellant pushed Victim into the tub while choking him. (R. p. 10). Strickland came in and pulled Appellant off of Victim. (R. p. 10). Ballard and Victim retired to the bedroom, and Strickland and Appellant went into the living room. (R. p. 10).

Ballard testified Victim was on the bed preparing to sleep when Appellant entered the bedroom. (R. pp. 10-11). Another fight broke out until Strickland threatened to call the police. (R. pp. 11-12). Appellant chased after Strickland, pushed her onto the couch, and began choking her. (R. p. 12). Ballard intervened, and Appellant headed back towards the bedroom. (R. p. 12).

After Appellant entered the bedroom, Ballard testified Appellant and Victim started fighting for a third time. (R. p. 12). Ballard recounted the event:

That's when it just – they were fighting. [Appellant] was on top of [Victim] the whole time, just choking him. Then [Victim] kept telling him he couldn't breathe. He'd say, "Please let me go. Let me live for my kids." [Appellant] said, "I love your kids, but I'm going to fucking kill you." and that's what he did.

...

[Appellant] was choking him, just telling, "I'm gonna kill you. You hit me. You tried to kill me. I'm gonna fucking kill you."

(R. p. 13). Ballard indicated she told Appellant to stop, struck and pushed him, and did everything she could to get him to stop, but Appellant would not. (R. p. 13). As the fight progressed, Ballard called Victim's sister, Sharron Glover. (R. p. 16; p. 22). At that time, shortly before officers arrived, Appellant was on top of Victim and was yelling. (R. pp. 22-23). However, Victim was laying still and was no longer struggling. (R. p. 23).

Ballard testified law enforcement arrived and Appellant immediately released Victim. (R. p. 13; p. 23). She did not observe any movement from Victim after he was released. (R. p. 13-14).

Strickland also testified about the events of April 12, 2008. Strickland indicated she was drinking and listening to music at her home with Ballard, Victim, and Appellant.

(R. p. 37). Victim became sick and went to the bathroom. (R. p. 38). Everyone went to check on Victim, but Appellant and Strickland eventually returned to the living room.

(R. p. 38). Strickland testified Appellant then returned to the bathroom to check on Victim, exited the bathroom, and then re-entered the bathroom. (R. p. 38). At this point, Strickland heard Victim confront Appellant, and she went to see what was happening.

(R. p. 38). She then witnessed Appellant choke Victim down into the bathtub. (R. pp. 38-39). However, the fighting stopped, and Victim retired to the bedroom. (R. p. 39).

Appellant then entered the bedroom, and another fight broke out. (R. p. 39). Strickland testified she threatened to call the police. (R. p. 40). Appellant responded by chasing her into the living room and choking her. (R. p. 40). However, Ballard stopped Appellant from choking Strickland, and Appellant apologized. (R. p. 40). Strickland testified she called 911, was on the line with dispatch while Appellant had his hands around her neck, and hung up because she was scared of Appellant. (R. p. 41). She indicated authorities called her back, and she told them everything was okay. (R. p. 42).

Strickland testified she then went to the bedroom and observed Appellant choking Victim. (R. p. 42). Victim stated he could not breathe. (R. p. 42). Appellant told Victim he was going to kill him. (R. p. 43). Strickland and Ballard were unable to stop Appellant from choking Victim. (R. p. 43). Strickland then stated she went outside, called the police, and waited for an officer to arrive. (R. p. 43).

Strickland testified an officer arrived, went to the bedroom, and ordered Appellant to get off of Victim. (R. p. 43). She testified Appellant did not release Victim until the officer's second request. (R. p. 43). Once Appellant released Victim, Victim could not breathe, was lifeless, and was not moving. (R. pp. 43-44).

Appellant testified in his own defense and offered a substantially different version of the incident. Appellant indicated he and Victim met up with the girls, went to Strickland's house, and started drinking. (R. pp. 93-94). Victim became sick from the drinking, and Appellant went to check on him in the bathroom. (R. pp. 95-96). Appellant stated he grabbed Ballard to get his balance, and Victim attacked him. (R. p. 96). Appellant testified Victim began hitting him, grabbed him around the neck, knocked him into a wall, and fell into the floor on top of him. (R. pp. 96-97). Appellant stated Victim had one hand on his throat, was trying to tear out his windpipe out, and bit his finger.

After Appellant testified about Victim's attack, Appellant recounted how he was able to get on top of Victim:

Now, at this time, I'm scared with my adrenaline flowing. I can't hardly breathe, so I punched him. With my last bit of breath, I punched him off of me. When I punched him off me, I did like a superman punch. I kicked my leg up and I jerked my body. He rolled over and he was about to get up. I was about to get up. So I tried to hold him down in it and he was like "ohh, ahh, ohh[.]"

...

I was just trying to restrain him. I wasn't trying to kill him. I was just trying to restrain him till the police came.

(R. pp. 97-98). Appellant testified he asked the others to call the police. (R. p. 98).

Appellant had no idea how long he was restraining Victim. (R. p. 99). He indicated he never intended to kill Victim. (R. p. 99). Appellant testified he had his arm around Victim's neck and throat in order to restrain Victim. (R. p. 99). Appellant did not strike first, did not want to fight, and was only protecting himself. (R. p. 100).

On cross-examination, Appellant testified he was not trying to choke Victim, and it did not seem like he was choking Victim hard. (R. p. 100). Appellant admitted to killing Victim. (R. p. 101). Appellant indicated he was scared during the incident. (R. p. 102). When asked how in particular he was scared of Victim's lifeless body underneath him, Appellant responded: "He wasn't lifeless the whole time, sir." (R. p. 103). Appellant denied Victim ever begged for his life, stating: "He was never begging for his life. Like I said, if my cousin would have said it was cool, that would have been it." (R. p. 105). Appellant insisted he was only trying to restrain Victim and never intended to kill him. (R. pp. 105-106).

At the close of evidence, Appellant requested a charge on involuntary manslaughter. (R. p. 107; p. 121). Appellant argued the evidence showed he never intended to kill Victim, believed he was in danger, and may have been criminally negligent. (R. pp. 122-123). The trial judge denied the request to charge involuntary manslaughter. (R. pp. 124-125). The trial judge instructed the jury on murder, voluntary manslaughter, and self-defense. (R. p. 148; p. 149; p. 152).

ARGUMENT

The trial judge properly declined to instruct the jury on the law of involuntary manslaughter because the evidence and testimony did not support the charge.

Appellant contends the trial judge erred in refusing his request for a jury charge on involuntary manslaughter. Appellant asserts the evidence supported a factual finding he unintentionally killed Victim while acting in self-defense, therefore entitling him to a charge on involuntary manslaughter. None of the evidence or testimony from the trial, including Appellant's account of the incident, supports a finding of involuntary manslaughter. The trial judge properly rejected Appellant's requested charge, and Appellant's conviction should be affirmed.

In criminal cases, the appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In reviewing a trial judge's jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). "A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied." State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007). A trial judge's refusal to give a requested charge must be both erroneous and prejudicial to warrant reversal. State v. Burkhardt, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002).

A requested charge on a lesser-included offense is properly refused only when there is no evidence that the defendant committed the lesser rather than the greater offense. Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991); see State v. Cooney, 320 S.C. 107, 112, 463 S.E.2d 597, 600 (1995) ("A lesser included offense

instruction is required only when the evidence warrants such an instruction.”). If any evidence warrants a charge on involuntary manslaughter, then the charge must be given.

State v. Wharton, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009).

Involuntary manslaughter is: (1) the unintentional killing of another without malice while committing an unlawful act not naturally tending to cause death or great bodily harm and not amounting to a felony; or (2) the unintentional killing of another without malice while committing a lawful act with a reckless disregard for the safety of others. State v. Young, 319 S.C. 33, 40, 459 S.E.2d 84, 87 (1995); Bozeman v. State, 307 S.C. 172, 176, 414 S.E.2d 144, 146-147 (1992). Under S.C. Code § 16-3-60, criminal negligence, in the context of involuntary manslaughter, is defined as “the reckless disregard of the safety of others” and is required for a conviction of the offense.

“[I]nvoluntary manslaughter is at its core an unintentional killing.” Douglas v. State, 332 S.C. 67, 74, 504 S.E.2d 307, 310 (1998). In State v. Morris, 307 S.C. 480, 483, 415 S.E.2d 819, 821 (Ct. App. 1991), the Court of Appeals found involuntary manslaughter requires the act itself to be unintentional. However, our courts have also held “ ‘[a]n unintentional killing resulting from an unlawful assault and battery, not of a character itself to cause death, is involuntary manslaughter[.]’ ” State v. Chatman, 336 S.C. 149, 152, 519 S.E.2d 100, 101 (1999) (quoting 40 C.J.S. Homicide § 40 (1991)).

In Appellant’s case, the evidence and testimony presented at trial did not support a charge of involuntary manslaughter. The trial judge properly charged the jury on murder, voluntary manslaughter, and self-defense, while refusing to charge on involuntary manslaughter. Appellant has failed to explain or argue how the facts of his case would harmonize with any definition of involuntary manslaughter. See State v. Tyndall, 336

S.C. 8, 16, 518 S.E.2d 278, 282 (Ct. App. 1999) (finding reliance on cited cases was abandoned when there was neither discussion of the cases nor argument on their applicability to the appellant's case). Based on the facts of Appellant's case, a charge of involuntary manslaughter was inappropriate under either recognized definition of the offense.

A. Involuntary Manslaughter by an Unlawful Act Not Naturally Tending to Cause Death or Great Bodily Harm

Under the first definition of involuntary manslaughter, an individual is guilty of the offense if the person unintentionally kills another without malice while committing an unlawful act not naturally tending to cause death or great bodily injury. Young, 319 S.C. at 40, 459 S.E.2d at 87; Bozeman, 307 S.C. at 176, 414 S.E.2d at 146-147. At trial, Appellant asserted he was entitled to a charge of involuntary manslaughter because he did not intend to kill Victim, believed he was in danger, and may have been criminally negligent. Appellant is bound to the argument raised to and ruled upon by the trial court. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party cannot argue one ground at trial and another ground on appeal."); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) (finding issue is not preserved unless raised to and ruled upon by the trial court, and alternate grounds cannot be asserted for the first time on appeal).

Therefore, to the extent Appellant is arguing for a charge of involuntary manslaughter based on the commission of an unlawful act not naturally tending to cause death or great bodily injury, the issue is not preserved for appellate review. See State v. Wigington, 375 S.C. 25, 35-36, 649 S.E.2d 185, 190 (Ct. App. 2007) (finding appellant

was bound on appeal to the argument asserted at trial for an involuntary manslaughter charge). However, even if preserved, Appellant was not entitled to a charge of involuntary manslaughter based on this definition of the offense.

In numerous cases, our courts have found the commission of an unlawful act naturally tending to cause death or serious bodily harm precludes a charge of involuntary manslaughter. In State v. Tyler, 348 S.C. 526, 528, 560 S.E.2d 888, 889 (2002), Tyler doused her husband in gasoline and ignited him, which resulted in his death. The Supreme Court found this conduct would naturally tend to cause death or great bodily injury, meaning Tyler was not entitled to a charge of involuntary manslaughter. Id. at 529, 560 S.E.2d at 889.

In State v. Davis, 374 S.C. 581, 584, 649 S.E.2d 132, 133 (Ct. App. 2007), Davis killed his victim by striking him twice in the head with a five-pound sledgehammer. Testimony suggested the strikes to the victim's head were committed in self-defense and were merely intended to knock him unconscious. Id. The Supreme Court found Davis' act of hitting the victim in the head with a sledgehammer would naturally tend to cause death or great bodily injury, and thus, an involuntary manslaughter charge was inappropriate. Id. at 586, 649 S.E.2d at 134.

In State v. Wharton, Wharton shot and killed his victim after pulling out a gun with the alleged intention of firing it into the air. Wharton, 381 S.C. at 212, 672 S.E.2d at 787. The Supreme Court found an involuntary manslaughter charge was not applicable because, even if the shooting was unintentional, the pointing and waving of the firearm was an unlawful act reasonably tending to cause death or great bodily harm. Id. at 216, 672 S.E.2d at 789.

However, in State v. Chatman, the Supreme Court found a charge of involuntary manslaughter was required under the facts of the case. Chatman, 336 S.C. at 153, 519 S.E.2d at 102. After an initial altercation, Chatman grabbed his victim from behind, and they fell to the ground. Id. at 151, 519 S.E.2d at 101. While on the ground, the victim grabbed Chatman's testicles while Chatman placed the victim in a choke hold. Id. The victim ultimately died of asphyxiation due to manual strangulation based on Chatman's actions. Id. at 152, 519 S.E.2d at 101. The Supreme Court found Chatman was entitled to an involuntary manslaughter charge. Id. at 153, 519 S.E.2d at 102. The Court noted Chatman's actions did not amount to a traditional strangulation type situation, but instead, involved the pressing of Chatman's shoulder into the victim's throat with sufficient force to kill him. Id. Because Chatman was not attempting to strangle the victim by placing his hands around the victim's neck, Chatman's unlawful actions "were not the kind which would naturally tend to cause serious bodily injury or death." Id.

In the case sub judice, Appellant was not entitled to a charge of involuntary manslaughter because his unlawful act of strangling Victim for several minutes would naturally tend to cause serious bodily injury or death. The facts of Appellant's case are distinguishable from the facts of Chatman. Unlike in Chatman, Appellant's action were a typical strangulation type situation. While Chatman merely pressed his shoulder into the victim's neck, Appellant admitted to intentionally placing his arms around Victim's neck and choking him while on top of Victim's back. Additionally, Chatman was facing his victim and pressed into the victim's neck in response to the victim grabbing him. In contrast, Appellant choked Victim from behind while on top of his back, and no

testimony suggested Victim was grabbing or hurting Appellant at the time he was fatally strangled.

Even viewing the evidence in a light most favorable to Appellant, the evidence and testimony from trial did not support a charge on involuntary manslaughter. The evidence clearly established Appellant choked Victim for a significant time period. Regardless of Appellant's assertions he was merely trying to restrain Victim, Appellant continued to forcibly strangle Victim and refused to release him even after Victim's resistance ended. The officer who first responded to the incident noted Victim's skin had turned blue. Additionally, Appellant acknowledged in his testimony Victim became lifeless at some point during struggle. Appellant admitted to wrapping his arms around Victim's neck and choking him until ordered to stop by a law enforcement officer. Appellant's testimony alone clearly established his actions would naturally tend to cause serious bodily injury or death.

Appellant's actions resulted in contusions and abrasions visible around all sides of Victim's neck, and Appellant applied sufficient force to bruise the neck muscles underneath Victim's skin. Additionally, Appellant likely caused pin-point hemorrhaging in the lining of Victim's eyes and eyelids. The injuries shown and the evidence from trial, including Appellant's testimony and the other eyewitness accounts, established Appellant's actions were a typical strangulation type situation. Appellant's strangulation of Victim is clearly distinguishable from the incident in Chatman. Appellant does not contest his actions were involuntary or unintentional. He merely contends the ultimate result of those actions, Victim's death, was unintended. Because Appellant committed an intentional unlawful act naturally tending to result in death or great bodily injury, he was

not entitled to a charge of involuntary manslaughter. Appellant's conviction should be affirmed.

B. Involuntary Manslaughter by a Lawful Act Committed with Reckless Disregard for the Safety of Others

Under the second definition of involuntary manslaughter, an individual is guilty of the offense if the person unintentionally kills another without malice while committing a lawful act with a reckless disregard for the safety of others. Young, 319 S.C. at 40, 459 S.E.2d at 87; Bozeman, 307 S.C. at 176, 414 S.E.2d at 146-147. Appellant contends he was entitled to an involuntary manslaughter charge because the evidence showed he unintentionally killed Victim while acting in self-defense. However, Appellant did not unintentionally kill Victim while engaged in a lawful act, and therefore, a charge under this definition of involuntary manslaughter was not proper. Appellant's conviction should be affirmed.

In a number of cases, our courts have found the evidence must reflect the commission of a lawful, reckless act in order to warrant a charge of involuntary manslaughter. In State v. Smith, 315 S.C. 547, 549, 446 S.E.2d 411, 412 (1994), Smith sought reversal of his voluntary manslaughter conviction based on the trial court's failure to give a charge on involuntary manslaughter. Smith and his victim were engaged in an argument when the victim grabbed him. Id. Smith then pulled out a knife and proceeded to stab and kill the victim. Id. The trial judge charged the jury on murder, voluntary manslaughter, and self-defense. Id. at 550, n. 1, 446 S.E.2d at 413. While finding Smith's intent to harm was irrelevant, the Supreme Court found Smith's act of intentionally stabbing the victim was clearly not a lawful act and did not support an

allegation of mere criminal negligence. Id. at 550, 446 S.E.2d at 413. Therefore, Smith's actions were outside the definition of involuntary manslaughter, and his conviction was affirmed. Id.

In State v. Pickens, 320 S.C. 528, 529-530, 466 S.E.2d 364, 365 (1996), Pickens and his co-defendant, Douglas, were standing outside of the Waffle House when a group of people allegedly rushed at them. Pickens and Douglas intentionally shot into the group, killed two people, wounded several others, and claimed self-defense. Id. at 530, 466 S.E.2d at 365. Pickens contended he was entitled to an involuntary manslaughter charge because he acted lawfully but recklessly in defending himself. Id. at 531, 466 S.E.2d at 366. The Supreme Court held:

Under the definition of involuntary manslaughter, however, the jury could not find [Pickens] had acted lawfully without finding self-defense. Therefore, the trial judge did not err in refusing to charge involuntary manslaughter as the facts did not warrant such a charge.

Id. at 532, 466 S.E.2d at 366-367 (citation omitted).

Arising out of the same incident, in Douglas v. State, Douglas, Picken's co-defendant, also sought an involuntary manslaughter charge, arguing he acted lawfully but recklessly in defending himself. Douglas, 332 S.C. at 74, 504 S.E.2d at 310. Douglas admitted to intentionally firing the gun into the crowd in self-defense. Id. The Supreme Court again found an involuntary manslaughter charge was inappropriate. The Court held a defendant who intentionally fires into a crowd was not entitled to a involuntary manslaughter charge. Id. at 74, 504 S.E.2d at 310-311. The Court further noted "[a] claim of imperfect self-defense would also be unavailing because it has no application to

involuntary manslaughter.” Id. at 75, n. 4, 504 S.E.2d at 311 (citing William Shepard McAninch, The Criminal Law of South Carolina 163 (1996)).

In each of these cases, the Supreme Court affirmed the refusal to charge involuntary manslaughter in a situation where the defendant committed an intentional act allegedly in self-defense, which is exactly the situation in Appellant’s case. In the present case, Appellant intentionally strangled Victim and later asserted the act was done in self-defense. Regardless of Appellant’s intent to harm or kill while strangling Victim, he was engaged in an unlawful act, which would preclude a charge on involuntary manslaughter based on the commission of a lawful but reckless act.

Although unclear from Appellant’s argument, to the extent Appellant is arguing he was entitled to the charge because he was lawfully acting in self-defense, charges of both self-defense and involuntary manslaughter were not appropriate based on the facts of the case. While it has been recognized that self-defense and involuntary manslaughter charges can both be required in the same case, Appellant was not entitled to a charge on involuntary manslaughter. See State v. Mekler, 379 S.C. 12, 16, 664 S.E.2d 477, 479 (2008) (“[A] self-defense charge and an involuntary manslaughter charge are not mutually exclusive, as long as there is any evidence to support both charges.”). Unless Appellant was lawfully acting in self-defense, thus requiring his acquittal, his intentional act of strangling Victim was unlawful. See State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994) (defining the elements of self-defense as: (1) no fault in bring on the difficulty; (2) belief or existence of imminent danger of loss of life or serious bodily harm; (3) reasonableness of belief and actions; and (4) lack of any other probable means to avoid the danger).

As previously recognized by the Supreme Court in Douglas, a claim of imperfect self-defense cannot be harmonized with involuntary manslaughter. If Appellant was reckless or criminally negligent while engaging in self-defense, then self-defense would no longer apply and Appellant's actions would be unlawful. Therefore, Appellant cannot be both acting lawfully in self-defense and acting lawfully in reckless, imperfect self-defense. See United States v. Skinner, 667 F.2d 1306, 1310 (9th Cir. 1982) (finding the appellant's request for an involuntary manslaughter charge based on a lawful act of self-defense committed unlawfully with excessive force was inappropriate because a killing committed in self-defense is intentional and, if imperfect, could only lead to a conviction for murder or voluntary manslaughter); see also State v. Abeyta, 120 N.M. 233, 241-242, 901 P.2d 164, 172-173 (N.M. 1995), abrogated on other grounds by State v. Campos, 122 N.M. 148, 921 P.2d 1266 (N.M. 1996) ("Self-defense is only a justification for a killing, and thus a lawful act, if all the elements necessary for self-defense are met. . . . The use of excessive force in self-defense renders the entire action unlawful. Therefore the action cannot be deemed a lawful act done in an unlawful manner under the involuntary manslaughter statute."). Appellant was either acting in self-defense or his actions fell short of self-defense. If Appellant's action were committed in imperfect self-defense, then the act of strangling Victim cannot be considered lawful. Therefore, Appellant was not entitled to a charge on involuntary manslaughter.

Appellant cites several cases to support his contentions. However, these cases are distinguishable because they all involve situation where evidence existed to suggest the acts were unintentionally committed. See Mekler, 379 S.C. at 16-17, 664 S.E.2d at 479 (finding an involuntary manslaughter charge was warranted when the evidence suggested

both an intentional shooting in self-defense and an unintentional shooting resulting from the negligent handling of a firearm); State v. Light, 378 S.C. 641, 651, 664 S.E.2d 465, 470 (2008) (“When there is a factual issue as to whether the shooting was committed intentionally in self-defense or was committed unintentionally, then the defendant is entitled to both [self-defense and involuntary manslaughter] charges as there is ‘any evidence’ to support each charge.”); State v. Crosby, 355 S.C. 47, 52, 584 S.E.2d 110, 112 (2003) (finding the appellant was entitled to an involuntary manslaughter charge when there was ample evidence he did not intentionally discharge the weapon); State v. Burriss, 334 S.C. 256, 265, n. 10, 513 S.E.2d 104, 109 (1999) (noting the appellant testified the shooting was unintentional, thus entitling him to an involuntary manslaughter charge). Appellant has never asserted his act of choking Victim was unintentional, and no evidence or testimony presented at trial would support such a finding. Appellant’s cited cases are not applicable to the facts of this case.

The trial judge properly instructed the jury on murder, voluntary manslaughter, and self-defense, and the jury was presented with the proper factual questions to resolve. See State v. Mickle, 273 S.C. 71, 73, 254 S.E.2d 295, 297 (1979) (“We conclude the trial judge properly held that the question for the jury was whether appellant was guilty of voluntary manslaughter or not guilty because she acted in self-defense.”). The jury was free to accept or reject the doctrine of self-defense based on Appellant’s testimony. However, Appellant cannot have lawfully committed an act in self-defense if Appellant’s actions were reckless or criminally negligent. See Morris, 307 S.C. at 484, 415 S.E.2d at 822 (“Whether the shooting was excusable in the circumstances (self defense) or was committed in the heat of passion upon a sufficient provocation (voluntary manslaughter)

was for the jury to determine, and the judge so charged them.”). Therefore, the trial judge properly rejected Appellant’s request for an involuntary manslaughter charge.

Appellant’s convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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February 16, 2010

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IN THE COURT OF APPEALS

Appeal From Colleton County
Honorable Perry M. Buckner, Circuit Court Judge

THE STATE,

Respondent,

vs.

DESMOND JAVON SAMS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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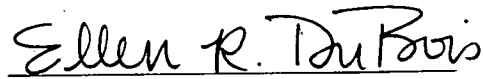
Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
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