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VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Howard P. King, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRANDON J. BERRY,

APPELLANT

APPELLATE CASE NO. 2015-002557

RECORD ON APPEAL

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1 3:42 PM.)

2 **THE COURT:** Counsel, I want you to think about this a
3 little bit. You don't have to give me a decision right
4 now, but you'll recall that early on we made Court's
5 Exhibit Number 5. Ms. Randall, Juror Number 231, indicated
6 that beginning Sunday she had a problem and would carry on
7 into next week. We're going to the jury in the morning.
8 We've got to make a decision whether she should continue on
9 in this case and go forward with it tomorrow with the idea
10 that if the jury doesn't reach a verdict tomorrow, I'm
11 gonna bring them back on Monday. So y'all think about how
12 you -- how you think you ought to handle things with
13 Ms. Randall, whether you ought to excuse her and replace
14 her with the alternate, or what we ought to do. Just give
15 a little bit of thought to that because I did assure her
16 that we would not mess up her week next week.

17 All right. Charges, counsel. First of all, let me
18 tell you what I generally charge and y'all tell me if there
19 are any special requests to charge. I will -- my general
20 charge includes the presumption of innocence, burden of
21 proof and reasonable doubt. The reasonable doubt charge I
22 use is not just -- it's a little fuller than the just
23 hesitate to act. It's the one that, if any of you have
24 ever heard, that Judge Baxley authored is the one I
25 generally use.

1 Also I will use the substantive charge of attempted
2 murder since that is now a separate offense of attempted
3 murder. The charge is an armed robbery. I'll charge the
4 armed robbery statute and then what basically attempted
5 armed robbery is by simply stating that an attempt can be
6 defined as an effort to accomplish a specific purpose but
7 falling short of success. Attempted armed robbery is
8 defined as the crime of attempting robbery while armed with
9 a pistol, dirk, slingshot, metal knuckles, razor or other
10 deadly weapon. Of course, I will by that point have given
11 a more detailed instruction on armed robbery itself. Then,
12 of course, the unlawful pistol..

13 And let's talk about the unlawful conduct toward a
14 child. I assume that the unlawful conduct toward a child
15 statute would probably be the appropriate thing to charge
16 in any case as set forth in the indictment. And the
17 arresting arrest, I will give that.

18 Direct and circumstantial evidence I think the
19 appropriate charge as approved now by the Supreme Court is
20 the Logan charge.

21 **MS. ZMROCZEK:** That's what we would request.

22 **MS. CAMPBELL:** Yes.

23 **THE COURT:** Expert witnesses. Since there are a
24 number of them in this case, I will give the expert witness
25 charge and I will give the -- charge them about the

1 Defendant's right not to testify and that nothing should be
2 assumed from that.

3 Just by way of further instructions, I would tell the
4 jurors that there is electronic evidence in this case, that
5 they do, of course, have a right to take the exhibits back
6 to the jury room with them, but if they wish to view any of
7 the electronic evidence as introduced in the case, to give
8 us a note and we'll make arrangements for them to see that
9 either by bringing them back into the courtroom or taking
10 it out to them.

11 **MS. CAMPBELL:** What we've done in the past is
12 actually --

13 **THE COURT:** I'm sorry?

14 **MS. CAMPBELL:** What we've done in the past is use
15 this, but we also have a computer that's clean that we
16 might be able to send back, but I'll check with her on
17 that.

18 **THE COURT:** Okay. And other than that, just general
19 instructions unless there are any specific requests by the
20 State.

21 **MS. CAMPBELL:** Your Honor, the only other thing that
22 I think we would be requesting is on the reasonable doubt
23 charge. Do you do the -- the language from Victor v.
24 Nebraska? State versus Darby?

25 **THE COURT:** Reasonable doubt? I'll tell you -- I

1 don't mind telling you what I use. Hold on just a minute.

2 **MS. CAMPBELL:** We have no problem with whatever you
3 normally use, but we might want to add that language as
4 well. It may be already in your charge.

5 **THE COURT:** Let's see. Do you want to come up and
6 look at it, counsel? I'll show you my charge on reasonable
7 doubt and tell me if there's anything you want me to add to
8 that.

9 (Proceedings held at the bench; not reported.)

10 **MS. CAMPBELL:** We request the State v. Darby language.

11 **THE COURT:** All right. Have you got the Darby request
12 at this time?

13 **MS. CAMPBELL:** Just a second. We can go ahead and
14 address something else.

15 **THE COURT:** All right. Any other specific requests
16 on behalf of the Defendant, Ms. Zmroczek?

17 **MS. ZMROCZEK:** Not -- not at this time, Your Honor.
18 Not that I can see.

19 **THE COURT:** All right. Y'all still haven't decided
20 about your arguments yet, but let me ask you how much time
21 you ought to have. I always ask lawyers how much time they
22 need to argue the case, even though when I was practicing
23 law I never liked arguing against the clock and I'm not
24 real strict on it, but when I first got this job I was
25 hearing a little ordinary garden variety automobile wreck

1 case that I thought could have been argued in ten minutes
2 and fifty-five minutes later the defense lawyer was still
3 going strong and so I decided I was gonna get some idea
4 about how much time people needed to argue.

5 And I'm not going to be real strict on it, but if it
6 gets way out of hand, I might call you out on it. How much
7 time do y'all think you will need approximately?

8 **MS. WALKER:** Your Honor, forty-five minutes to an
9 hour?

10 **THE COURT:** I will tell you like I tell my preacher.
11 Anything after twenty minutes is lost.

12 All right. That's a long time. What do you think,
13 Ms. Zmroczek?

14 **MS. ZMROCZEK:** Twenty-five minutes.

15 **THE COURT:** Twenty-five?

16 **MS. ZMROCZEK:** (Nods head.)

17 **THE COURT:** One argument or two?

18 **MS. WALKER:** Your Honor, there's debate about that.

19 **THE COURT:** All right. We'll talk about it in the
20 morning, but I -- you know, I think if you go more than
21 thirty or forty minutes you're gonna bore them to death,
22 but that's your call.

23 **MS. WALKER:** I've been accused of that before, Judge.

24 **THE COURT:** All right. With that change in the
25 verdict form, you have no problem with the verdict,

1 Ms. Zmroczek?

2 **MS. ZMROCZEK:** That's correct, Your Honor.

3 **THE COURT:** Okay.

4 All right. Anything else, counsel, that you think we
5 need to address this afternoon?

6 **MS. CAMPBELL:** Your Honor, I'm handing up --

7 **THE COURT:** Is that Darby?

8 **MS. CAMPBELL:** -- Darby.

9 **THE COURT:** I think that would be appropriate to add
10 to the end of my charge since it's from the Supreme Court.

11 **MS. CAMPBELL:** Thank you, Your Honor.

12 **THE COURT:** All right, counsel. Then we will be in
13 recess until 9:00 tomorrow morning.

14 **MS. WALKER:** Thank you, Your Honor.

15 **THE COURT:** Thank you.

16 **MS. ZMROCZEK:** Oh, Your Honor, the only -- I'm sorry.
17 The only other thing -- Mr. Berry was asking me a question
18 and reminded me to ask you if you're going to charge that
19 these are separate indictments that have to be considered
20 separately?

21 **THE COURT:** I will, yeah. I didn't.

22 **MS. ZMROCZEK:** I'm sorry. He just asked me a question
23 about that, which reminded me that I needed to ask you.

24 **THE COURT:** Yeah, I normally tell them you've got to
25 consider each indictment separate and a decision made

1 separately on each indictment.

2 MS. ZMROCZEK: I can just e-mail it to you. I know I
3 have a copy.

4 THE COURT: Just bring it in the morning.

5 MS. ZMROCZEK: Okay.

6 THE COURT: And think about it, counsel, and be
7 prepared to give me your thoughts on Ms. Randall so I
8 don't forget or something.

9 (Recess taken.)

10 THE COURT: Back on the record in regard to the matter
11 of State versus Berry. After recessing for the afternoon,
12 Ms. Zmroczek approached the Court and said that she wished
13 to request a lesser included. I'm not sure lesser included
14 about what, but let the record reflect that the Defendant
15 had already -- had already left the courtroom and that the
16 solicitors had already left the courtroom. The court
17 reporter was still here and I asked that they be called --
18 the solicitors be called to come back up. The purpose of
19 having a charge conference and the purpose of having an
20 approval of the verdict form was to preclude this very
21 problem and this very situation.

22 I'll be glad to hear from you, Ms. Zmroczek.

23 MS. ZMROCZEK: Thank you, Your Honor. And it -- it's
24 certainly my mistake. As a one-man show I simply had it
25 written down to ask for lesser includeds under attempted

1 murder for ABHAN, assault and battery first and assault and
2 battery second, and I forgot to ask for those requests.

3 **THE COURT:** Ms. Walker?

4 **MS. WALKER:** Your Honor, the State's position would be
5 that -- do you care if -- if you'll give us one moment,
6 Your Honor?

7 **THE COURT:** Yes, you were caught by surprise just like
8 I was.

9 (Discussion off the record.)

10 **MS. WALKER:** Your Honor, we would -- we understand her
11 asking for assault and battery of a high and aggravated
12 nature and assault and battery first degree, but I think
13 assault and battery second degree is a bit of a stretch
14 because --

15 **THE COURT:** Slow down and speak a little louder.

16 **MS. WALKER:** I'm sorry. We understand her asking for
17 the assault and battery of a high and aggravated nature and
18 assault and battery in the first degree. We don't think
19 assault and battery in the second degree is appropriate in
20 this instance. The victim testified that he was shot at
21 and heard the bullets whooshing past his head and he was
22 actually shot and hit, so.

23 **THE COURT:** So you don't object to having the lesser
24 included of ABHAN?

25 **MS. WALKER:** No, Your Honor, we do not object.

1 **THE COURT:** And A and B first?

2 **MS. WALKER:** We do not object to either of those.

3 **MS. CAMPBELL:** Are you good with that?

4 **MS. ZMROCZEK:** Yes, that's fine.

5 **MS. CAMPBELL:** I think we can both agree on that. Are
6 you good with those being lesser included?

7 **MS. ZMROCZEK:** I am.

8 **MS. CAMPBELL:** We all agree to those.

9 **THE COURT:** Okay.

10 **MS. CAMPBELL:** Do you want me to get you the charge on
11 those?

12 **THE COURT:** No, I have charges. Assault and battery
13 of --

14 **MS. CAMPBELL:** ABHAN and then A and B first.

15 **THE COURT:** Okay. I think I've got them. Let me see
16 what I've got. Yeah, I have a charge on each one of them.

17 **MS. CAMPBELL:** Okay. And, again, defense counsel
18 agrees with us that those would be appropriate.

19 **THE COURT:** All right. Do you still want your --

20 **MS. ZMROCZEK:** I'll withdraw the second, Your Honor.

21 **THE COURT:** -- on A and B second?

22 **MS. ZMROCZEK:** Right. I'll withdraw that. Oh, and,
23 of course, I don't think A and B third is appropriate in
24 this case.

25 **THE COURT:** Just ABHAN and first?

1 **MS. ZMROCZEK:** Correct.

2 **THE COURT:** Okay. All right. That's what we'll do,
3 counsel. May I see the verdict form?

4 **MS. CAMPBELL:** Thank you.

5 **MS. WALKER:** Thank you, Your Honor.

6 **MS. ZMROCZEK:** Thank you.

7 (Whereupon, the proceedings were concluded for
8 December 3, 2016, at 4:04 PM.)

9 (The following proceedings were held on December 4,
10 2015, beginning at 9:05 AM.)

11 **BAILIFF:** Court come to order. All rise. If you have
12 cell phones or electronic devices at this time, please turn
13 them off.

14 **THE COURT:** Thank you. Please be seated.

15 We're back on the record with regard to the matter of
16 the State versus Berry and Mr. Berry is present with his
17 attorney. The State is present and represented by the
18 Fifth Circuit Solicitor's Office.

19 I had shown verdict forms to both counsel, looked at
20 it myself and all three of us approved it, but, Madam
21 Clerk, his name shows on the verdict form as "Perry"
22 instead of "Berry", so that needs to be changed.

23 **THE CLERK:** I can change that.

24 **THE COURT:** Okay.

25 All right. Ms. Campbell, anything before we bring

1 the jury in?

2 **MS. CAMPBELL:** Yes, Your Honor, we do have a couple
3 of matters. In reviewing my notes from opening statement,
4 the defense got up here and said that this case is not a
5 slam dunk or we wouldn't be here. Your Honor, that is not
6 a true statement of why we are here. Of course, the State
7 can never force the Defendant to plead guilty regardless of
8 what the evidence is. I don't know quite how to address
9 that other than -- I mean, she's the one that had said it
10 and in my opinion that would open the door for me refuting
11 that because, of course, I'm going to argue that there is
12 substantial overwhelming evidence in this case.

13 **THE COURT:** What say you, Ms. Zmroczek?

14 **MS. ZMROCZEK:** Your Honor, I'm not quite sure what the
15 confusion is, but if we're gonna -- I mean, if she feels
16 like she needs to argue that there's substantial evidence,
17 I think that she's entitled to that.

18 However, Your Honor, while we're on that they did put
19 a tape in yesterday that talked about ten and thirty years,
20 and I'm gonna address that he's facing time because they --

21 **THE COURT:** Wait a minute. Let's do one thing at a
22 time. First of all -- and I did hear you make the
23 statement that if it was a slam dunk we wouldn't be here.
24 She has the right to refute that.

25 **MS. ZMROCZEK:** Absolutely.

1 **THE COURT:** Okay.

2 **MS. CAMPBELL:** And, Your Honor, I would just -- I
3 want to make sure I'm in the parameters of what the Court
4 thinks is proper. She said it's not a slam dunk. We, the
5 State, cannot force anyone to plead guilty to a charge. I
6 mean, she's opened the door and I don't know how --

7 **THE COURT:** I agree and I think you've got the right
8 to --

9 **MS. CAMPBELL:** And I would limit it to that.

10 **THE COURT:** I think you've got the right to say that.
11 Now what was this about the time?

12 **MS. ZMROCZEK:** Well, Your Honor, yesterday in the
13 phone call that they put in he said "I'll take ten years
14 but I'm not taking thirty years", and I understand that
15 sentencing -- that they're not to consider sentencing, but
16 I have to address what was put into evidence by them and I
17 think I'm allowed to address the fact that they -- there
18 were plea negotiations. They opened the door to that,
19 Your Honor.

20 **THE COURT:** Do you have any problem with that?

21 **MS. CAMPBELL:** I have no problem that he said he would
22 take ten if she sticks to what's in evidence.

23 **MS. ZMROCZEK:** Absolutely.

24 **THE COURT:** As long as you stick with what's in
25 evidence.

1 **MS. CAMPBELL:** Your Honor, would you also do during
2 your charge a brief statement about that it's their duty
3 to find guilt or innocence; they aren't to be concerned
4 with any sentencing?

5 **THE COURT:** I'll make a note to do that, yes.

6 **MS. ZMROCZEK:** Absolutely. I was gonna say that, but
7 if you'll say it, that's fine.

8 **THE COURT:** Okay.

9 **MS. CAMPBELL:** And then, finally, Your Honor, in her
10 opening as well she talked about some facts that weren't
11 in -- that aren't in evidence. She talked about the fact
12 that the phone records would show that he was nowhere near,
13 which is a misstatement and an untruth, the place and the
14 time. What the phone records reflect is --

15 **THE COURT:** Well, first of all, that was her
16 statement, not the witness's statement.

17 **MS. CAMPBELL:** Yes.

18 **THE COURT:** So that's not evidence.

19 **MS. CAMPBELL:** Yes, sir. And I'm just cautioning
20 again that -- for her not to try to -- there's a lot of
21 things that we know about that aren't in front of this
22 jury. We have to stick with what's in front of the jury.
23 Like where they were all night is not in front of this
24 jury.

25 **THE COURT:** I'm gonna require both of you to stick to

1 the evidence.

2 MS. ZMROCZEK: Thank you. And, Your Honor, all I'm
3 going to say is that there were phone records that weren't
4 put in and I think I'm entitled to say that.

5 MS. CAMPBELL: That's not a problem. I'm just saying
6 she can't talk about what was shown like she did in her
7 opening and things of that nature.

8 THE COURT: Not what they would show.

9 MS. ZMROCZEK: Right.

10 THE COURT: There were phone records that weren't put
11 into evidence. All right.

12 MS. ZMROCZEK: And lastly, Your Honor, I've tried many
13 cases with these solicitors and my concern is that there be
14 no talk about remorse or lack of remorse and that there be
15 no discussion about any burden shifting, how we could have
16 put the phone records in or how we could have put up
17 evidence, because that sometimes comes out and I just want
18 -- I know that Your Honor knows --

19 THE COURT: I can't anticipate everything they're
20 going to say. If it's not proper, then you can object.

21 MS. ZMROCZEK: Thank you.

22 MS. CAMPBELL: Thank you, Your Honor.

23 THE COURT: All right. Anything else?

24 Bring the jury in, please.

25 (Whereupon, the jury enters the courtroom at 9:12 AM.)

1 **BAILIFF:** Jurors seated, Your Honor.

2 **THE COURT:** Thank you. And good morning, ladies and
3 gentlemen, and thank you for your promptness in getting
4 back here. We are now ready to proceed.

5 As I told you yesterday, you have now heard all of the
6 evidence in this case and there are only two things that
7 remain to be done; that is the arguments of counsel and the
8 instructions on the law by the Court. I will tell you now,
9 as I did at the first of this case when we began, that the
10 arguments of counsel are not evidence. The evidence that
11 you will decide this case on is the evidence that you have
12 heard from the testimony on this witness stand and from any
13 exhibits that have been introduced into evidence. But the
14 lawyers do have the right, and not only the right but the
15 duty, on behalf of their clients at this time to address
16 you and to give you their views of what they think the
17 evidence shows.

18 After they have concluded their summations to you, I
19 will then instruct you on the law of South Carolina as it
20 pertains to the facts in this case as you may find those
21 facts to be and then you will be allowed to go to your jury
22 room to deliberate your verdict. You will hear first from
23 the assistant solicitor on behalf of the State and then
24 from the defense counsel on behalf of the Defendant.

25 Ms. Campbell.

1 **MS. CAMPBELL:** May it please the Court?

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

3 **MS. CAMPBELL:** Good morning. The first thing I'd
4 like to do on behalf of the State of South Carolina and on
5 behalf of Michael Keith and his family is to thank you for
6 your service here this week. I know on Monday morning when
7 you showed up for court you might have tried to anticipate
8 what type of case you might be sitting on, maybe a car
9 wreck, maybe a contract dispute, but as you have seen over
10 the course of this week, even though this trial has not
11 gone on that long, that this is a very important case to
12 the State of South Carolina and to the Defendant, Brandon
13 Berry. You've been very attentive. There's been a lot of
14 technical information that has been relayed to you and we
15 just appreciate your service.

16 Now you have heard all of the evidence that you can
17 consider in this case. You must base your verdict on the
18 evidence. As the judge has told you, and will tell you
19 again, what is the evidence? It's the sworn testimony and
20 the actual physical evidence, which will go back with you
21 to the jury room, the video from the camcorder, the
22 evidence, the DNA chart. That is all evidence that you
23 will have.

24 What he will also tell you is you aren't to base your
25 verdict on what's not evidence. Not on questions by

1 lawyers, innuendo, speculation, wishful thinking, fishing
2 expeditions. That doesn't make it in evidence. Just
3 because a question is asked, doesn't mean that it's true.
4 You have to listen to the answer and we just ask that you
5 do that.

6 Now the roles in this courtroom are defined and
7 there's a reason for that. And what is the role of the
8 State? To present to you the relevant, admissible evidence
9 about what happened that night and that morning surrounding
10 the facts of this case. It's not about what happened the
11 night before in a bar. It's about what happened in the
12 charges in this case on the front lawn of that apartment
13 complex, what happened after the traffic stop. That is the
14 evidence that you are to consider.

15 The defense role is to defend her client to the best
16 of her ability. The judge's role is to determine what
17 evidence you are actually allowed to hear, and then
18 ultimately, once we sit down, because this is the last
19 opportunity I'm gonna have to address you, once the defense
20 counsel sits down, he will tell you what the law is. But
21 the most important role in this courtroom, ladies and
22 gentlemen, is yours. Each of you individually, and then
23 once you get back into that jury room collectively,
24 because you must determine what happened that night and
25 that morning back on July the 29th. No one will say that

1 anyone's role is more important than yours. You are the
2 factfinders and then you must apply the law as the judge
3 gives it to you.

4 And I want to apologize if over the course of this
5 week if we have done anything to offend you, Mr. Steadman,
6 Ms. Walker, the State. At times our questions get clumsy,
7 some of us don't know what day it is, things of that
8 nature. It's not intentional on our part, so please don't
9 hold it against Mr. Keith and his family.

10 Now criminal cases are unique. In criminal cases,
11 the law recognizes that you, the jury, should have the
12 right to judge the credibility of each and every witness.
13 They must appear before you. You've heard references to
14 statements, but you haven't seen any depositions, audio
15 depositions, video depositions. You haven't seen anything
16 like that and the reason for that is very clear. Because
17 you have to determine the credibility of each and every
18 witness that comes before you.

19 You've also heard us talk a little about some stupid
20 questions about like chain, did anyone alter or tamper with
21 anything, and that is before evidence may be admissible,
22 especially with testing involved, we must prove that there
23 was no one that tampered with anything or altered anything.
24 The chain of evidence must be proven before you consider
25 that and that's the reason for those questions.

1 Now I'm gonna take this opportunity to talk to you
2 about the law and then from there I'm going to talk to you
3 about the facts in this case. The burden of proof, as it
4 should be, is on the State of South Carolina to prove this
5 Defendant's guilt beyond a reasonable doubt. It's the
6 highest level of proof, as it should be, in criminal cases
7 and, ladies and gentlemen, I submit in this case, in this
8 courtroom, on this date, that is a burden the State
9 welcomes. The evidence in this case is not only beyond a
10 reasonable doubt. It's overwhelming.

11 What is proof beyond a reasonable doubt? And the
12 judge will instruct you on this. I want to talk to you
13 some about what he's gonna say because he's going to tell
14 you that anybody can doubt anything any day, but proof
15 beyond a reasonable doubt is not that. Reasonable doubt is
16 a substantial doubt, not an insignificant doubt. You can
17 look at what evidence is before you, what evidence is not,
18 but if the evidence before you is sufficient to prove him
19 beyond a reasonable doubt, that is the correct standard.
20 Just because there's reference to something, as long as the
21 evidence is sufficient beyond a reasonable doubt, then if
22 you find evidence, you must hold him responsible for his
23 actions.

24 The judge will go further and talk to you a little
25 bit about in our law it's been held that proof beyond a

1 reasonable doubt is proof that leaves you firmly convinced
2 of the Defendant's guilt. There are very few things in
3 this world that we know with absolute certainty. In
4 criminal cases, the law does not require proof that
5 overcomes every possible doubt. If, based upon your
6 consideration of the evidence, you are firmly convinced
7 that the Defendant is guilty of the crime charged, you must
8 find him guilty. If, on the other hand, you think there
9 is a real possibility he is not guilty, then you must give
10 him the benefit of the doubt and find him not guilty. All
11 we must prove is evidence that leaves you firmly convinced
12 of the Defendant's guilt, and I'll talk a little bit more
13 about that.

14 Now there are multiple indictments that are before
15 you and these arose out of two events that morning that
16 were connected obviously as you've seen and when a person
17 commits a crime they can commit more than one crime at one
18 time.

19 And the first charge -- I'm gonna take them out of --
20 I don't know what order the judge is gonna talk to you
21 about, is the crime of attempted murder. And very simply,
22 ladies and gentlemen, what is attempted murder? It's a
23 person who, with intent to kill, attempts to kill another
24 person with malice aforethought, either express or implied.
25 That is the offense of attempted murder. So what does the

1 term mean? What is malice? The easiest way for me to
2 think about is the word "malicious" comes from the word
3 "malice". Were his actions that night malicious? And I
4 submit, ladies and gentlemen, when you point a gun at
5 someone, pull the trigger multiple times in an attempt to
6 hit him, it doesn't get any more malicious than that. This
7 case reeks of malice. While you're attempting to rob a
8 man, as you point a gun at him, give me your money or I'm
9 going to I'll kill you.

10 And that takes me to the next point. What is express
11 or implied malice? And listen carefully to the judge. It
12 doesn't get more expressed than this because the law
13 recognizes in most cases people don't use the words to
14 express malice and the judge may define express malice as
15 such a thing as lying in wait. He had the car parked down
16 the road and waited for him to go through the gate. He
17 said the words "If you don't give me your money, I'm going
18 to kill you". Malice? In this case, both express and
19 inferred. The judge will tell you even without lying in
20 wait, even without express malice, words, tell you I'm
21 gonna kill you, you can infer it from his actions alone.
22 Were his actions such? But you don't even have to get to
23 that in this case because you have so much malice it's
24 attempted murder. We have to prove the specific intent to
25 kill.

1 And the courts have gone a little further in defining
2 and showing if you don't have express malice, which you do
3 in this case, what is the specific intent to kill? The
4 Defendant consciously intended the completion of acts
5 comprising the attempted offense. Intent means intending
6 the result which actually occurred, not accidentally or
7 involuntary. He had the gun pointed at him. It's not that
8 it went off accidentally or involuntarily. He shot not
9 once, but twice. Intent may be shown by acts and conduct
10 by the Defendant and other circumstances from which you
11 may naturally and reasonably infer intent. Intent may
12 also be inferred when it is demonstrated that the Defendant
13 voluntarily and willfully commits an act, the natural
14 tendency of which is to destroy another's life. And I
15 submit, ladies and gentlemen, when you take a gun and you
16 start pointing it at people and shooting, the natural
17 tendency is to destroy another's life. We're lucky in this
18 case. Mr. Keith is here, but not by any fault of him, and
19 that's why we're here on attempted murder and attempted
20 armed robbery.

21 And remember this. This young man has been given the
22 benefit of the doubt because he was originally charged with
23 armed robbery and as soon as we realized it wasn't the
24 correct charge, it was downgraded to attempted armed
25 robbery. There's no one trying to hold him. He's been

1 given the benefit of the doubt there for the lesser charge.

2 The judge will also tell you that if you think that
3 the State hasn't met their proof of burden and proof of
4 malice in this case, which I submit is overwhelming, then
5 you may consider a lesser included. In many cases, such
6 as a murder case, there's always lesser includeds. And the
7 first lesser included we'll tell you can consider, if you
8 don't find that he acted with the intent to kill or malice,
9 is assault and battery of a high and aggravated nature.
10 And what is the definition of that? Assault and battery
11 of a high and aggravated nature, if the person unlawfully
12 injures another person. And, ladies and gentlemen, in
13 this case there were multiple shots. The first bullet,
14 remember, it whizzed by his head. But for the grace of
15 God he jerked over and it's over. But if they injure
16 another and the act is accomplished by a means to likely
17 produce death or great bodily injury. The gun worked and
18 he used it.

19 Also, another lesser included, which is the lowest
20 degree, if you find that we didn't prove malice and you
21 find that shooting someone with a gun is not likely to
22 produce great bodily injury or death, then you can consider
23 assault and battery of the first degree. That they
24 unlawfully injure a person or offer an attempt to injure
25 another person with the present ability to do so and the

1 act is accomplished by means likely to produce death or
2 great bodily injury or occurred during the commission of a
3 robbery, burglary or kidnapping offense.

4 I submit, ladies and gentlemen, he's already been
5 given the benefit of the doubt because to get up here and
6 argue that this wasn't an attempted murder and attempted
7 armed robbery borders on offensive.

8 Now what is attempted armed robbery? The judge may
9 go into the elements of armed robbery, which I'm not going
10 to go into, but basically armed robbery is when a person
11 attempts to take property from the person or presence of
12 the victim while armed with a pistol, dirk, or while
13 alleging. In this case, there's no alleging. There were
14 bullets, there were shell casings, there were projectiles
15 in people's cars, there was bullet holes in Michael Keith.
16 So it's not that we just allege he had a gun, he had a gun.

17 And basically what is attempted armed robbery? Very
18 simply, it's stealing. It comes from the lesser included
19 of larceny, but the only one that applies here is attempted
20 armed robbery, which is basically stealing from another
21 person with threat or intimidation and while armed with a
22 deadly weapon. The fact that he didn't succeed, because
23 luckily for Mr. Keith he's here today because his
24 girlfriend happened to come out on the porch at the right
25 moment, because any time he thinks he's about to get

1 caught, his natural instinct is to flee. He's consistent
2 there. But for Ms. Allen, you wouldn't hear from Michael
3 Keith. Remember, it was hot, pointed to my head, and I
4 knew I was gonna die. Those are the charges of attempted
5 murder and attempted armed robbery.

6 Now he is charged with additional conduct for when he
7 tried to get rid of the evidence in this case. And, again,
8 I don't know what order the judge will charge you on
9 these. Unlawful conduct towards a child. It is unlawful
10 in this state, as it should be, for a person who has
11 charge or custody of a child, and it was his child, that's
12 undisputed, or who is the parent and is responsible for
13 the welfare, to place the child at unreasonable risk of
14 harm. Ladies and gentlemen, I submit putting a toddler --
15 I think there's been testimony she was two, in the back
16 seat, unrestrained with a gun in her diaper bag right next
17 to her, that alone. But let's go further. Because to
18 place a child at unreasonable risk of harm affecting the
19 child's life, physical, mental, or cause to be done
20 unlawfully so that the life or health is in danger. When
21 you hear your buddy say -- and it's on the video -- yeah,
22 you can search my car, then jumping in the driver's seat,
23 taking off, speeding around the corner while the police
24 chase you with blue lights, then jumping out of the car and
25 not even checking to make sure you've got it in park, he

1 left it running, as it backs across. And luckily nothing
2 happened to her that permanently scarred her, but that
3 doesn't relive him of violating that law.

4 He's also charged with resisting arrest. You heard
5 from the officers after he ran. And she's gonna get up
6 here and say oh, well, you can't believe anything that's
7 not on video. The reason it's not on video is because he
8 ran. He's the one that took it out of the scope of the
9 video. The police couldn't drive the car through the
10 woods. He made sure of that. It's unlawful for a person
11 to oppose or resist law enforcement in serving, executing
12 or attempting to serve or execute a legal writ or process,
13 or, to resist an arrest being made by whom the person knows
14 or reasonably should know is a law enforcement officer.
15 They had their uniforms on. He's yelling stop. You can
16 hear that.

17 And finally the unlawful carrying of a pistol. It is
18 unlawful in the state to have near you, around you, on your
19 person or to basically throw it away because it's evidence
20 you need to get rid of. It's not gonna be good for you.
21 About the person. A weapon is about the person when it's
22 readily assessable, convenient for immediate use. We know
23 he was reaching back in the diaper back and giving her
24 cookies before he took off in a high speed chase and then
25 he took it with him before he threw it and he had it the

1 night before because otherwise nobody's shot.

2 The judge will tell you there's two different kinds
3 of evidence you can consider in the case. Circumstantial
4 evidence and direct evidence. He's gonna tell you that
5 basically one is not better than the other, you can use
6 both. In this case, you have eyewitness testimony from the
7 neighbors and Michael Keith, you've got circumstantial
8 evidence that shows where the Defendant was and when he
9 was doing it, and all of that is what you can consider when
10 you combine the two.

11 Finally, ladies and gentlemen, I'm gonna talk to you a
12 little bit about credibility or believability. That's all
13 it is. It's up to you and that's what each of these
14 witnesses have to appear to you. Do they have something to
15 gain, lose, bias, prejudice? Michael Keith doesn't care.
16 He did this to him. He just wants the person that did it
17 held responsible. The DNA department didn't care who the
18 DNA matched to. That's not their job, that's not their
19 role, and for anyone to argue it is, is ludicrous. All
20 the police did in this case -- and I remember when she
21 said in opening statement the police did a good job in
22 this case. That's true. They didn't do a good job. They
23 did a great job. They did their job. They even went and
24 searched the young lady's home to make sure the child got
25 back in a proper environment. They did their job. She

1 admitted it in opening. And they don't have a dog in the
2 fight as to who the evidence should point to. Credibility.
3 Believability. It's totally up to you. Listen to the
4 judge. And I submit, ladies and gentlemen, all of the
5 evidence in this case, as much as he wishes pointed to
6 Nickilous Wallace, yeah, it was Nickilous Wallace's car,
7 but all of the evidence -- and it's so funny to listen
8 because in many cases there isn't DNA because DNA can
9 exculpate, it can inculcate someone, it can exonerate
10 people, and in this case all the DNA points to one person
11 and that just corroborates all the other evidence in the
12 case.

13 Now as I was getting ready for this case last week
14 and you prepare and try to anticipate what the defense is
15 gonna do, and typically in attempted murder, armed robbery
16 case you think well, maybe it will be an ID case. There's
17 one eyewitness, they're gonna say they were mistaken, the
18 lighting was bad, they were too far away, they really
19 couldn't see what was going on. Or maybe they're gonna say
20 the defense is that it's not really an armed robbery, he
21 didn't have a gun. He, you know, might have acted like he
22 had a gun, but it's just a strong arm robbery. Or maybe
23 the defense is gonna be oh, well, this is just like a drug
24 deal gone bad or something of that nature.

25 But as I have listened to opening statements and I

1 have listened to the cross-examination, it's -- it's
2 different, it's unusual, because first you kind of attack
3 the victim, ridiculed him because he has a job. He doesn't
4 have one job, he works all the time. And then as it
5 evolved I guess maybe Nickilous Wallace is the one that
6 kind of framed him amazingly. And if it wasn't Nickilous
7 Wallace because, oh, we don't have any of his DNA, then
8 perhaps it's just an unknown third person because there's a
9 fingerprint on the trunk that doesn't belong to any of the
10 players in this case. A fingerprint -- excuse me, two,
11 right next to each other, at a place where, say, if his
12 friend was helping him load things. Remember they went to
13 I-Hop? Hold the trunk down. And then it became well, the
14 police really -- even though she said it, didn't do a job,
15 they were bad. They moved the evidence because they didn't
16 want to leave it out there for small children to find.

17 You can't rely on the evidence because they did what
18 their protocol tells them to do and make sure the community
19 -- because their number one priority is making the
20 community safe, and that's why we're here? And then it
21 became I guess everyone's in this grand conspiracy to frame
22 Brandon Berry. These officers would put their careers on
23 the line to frame this man? Is there any evidence of that?
24 And they're so good. I guess they're in cahoots with
25 Michael Keith and he's willing to get shot for it to frame

1 this poor, innocent man? Is that their theory?

2 You know, when I was in law school, and that's been a
3 long time ago, there was a joke and it went around that,
4 you know, there are two people walking down the street,
5 one's a preacher, one's a lawyer, and as they're walking
6 down the sidewalk, it had rained the night before, and they
7 looked down and there's a puddle of water and at the bottom
8 of the puddle is a large silver coin, and the preacher
9 looks at the lawyer and he says, "Look, there's a silver
10 coin", and the lawyer picks up a stick and he stirs up the
11 water and the mud and the dirt and clouds it and you can't
12 see anything. And I submit, ladies and gentlemen, that's
13 exactly what's happened here.

14 So I want to take this opportunity to talk about the
15 facts, the real facts in this case, what the evidence
16 overwhelmingly shows in this case. I'm talking about the
17 witnesses and who you have heard from, and what did you
18 hear? You first heard from Michael Keith. And I'm not
19 taking these quite in the order they testified in just to
20 kind of make sense. And she brought out his nickname is
21 Cadillac, and he told you that, and it was like she was
22 derogatory towards him, and he got up here and he was
23 angry. You could tell he's a proud person, he's a
24 competent person, or he was, who thought he was going to
25 die that night. And this wasn't easy for him. Everybody

1 reacts differently when they've been traumatized. Some
2 people get mad, some get sad, but as he testifies she's
3 saying and your name is Cadillac? Yeah, that's what he
4 does for a living because he works.

5 And then she questioned him. Well, didn't you have a
6 gun? No, he legally got one after this because he has to
7 protect himself now because what he does involves him being
8 out late at night, but he's not the one out late at night
9 without a job. He's working. He talked to you about what
10 happened, how he got out of his car. He had even checked
11 his rear behind him before he pulled through the gate
12 because he was known for having large amounts of money
13 because that's how his job pays him usually unless it's a
14 wedding, and there was no one behind him and that's how we
15 know that Brandon Berry had already scoped out this dude.
16 He's down the street as the neighbor, remember her,
17 Ms. Settles told you he jumps across the fence and then
18 she sees the lights come on in the car as he gets in.

19 I submit she may get up here and argue well, he
20 doesn't have his driver's license, he wouldn't have been
21 able to drive. You think he's not gonna break that law?
22 He told you that as he got out of his car at first he
23 thought it was a joke and then he heard him rack the gun
24 and then they started running around the car and, funny,
25 the majority of the fingerprints are whose? The victim's.

1 And as they ran around the car finally the Defendant
2 jumped on the top of it. His shoes were dirty. They left
3 prints. The first shot whizzed by his head. Obviously it
4 ricocheted off something because it ends up in the front
5 wheel of the car next to it, or down one or two, I'm not
6 sure, but they got into a struggle, that he was down, that
7 he pointed the gun at his head and then he pointed it at
8 his leg and shot. I guess we're lucky he didn't hit the
9 artery in his leg. But then he took the gun he just shot
10 him with and put it to his forehead and he could feel the
11 heat and at that moment his girlfriend literally saved his
12 life because Brandon Berry is not gonna get caught if he
13 has anything to do with it. He didn't know which direction
14 he went. He was frantic. He asked his girlfriend to check
15 for his keys, then he realized they needed to get inside.
16 You actually see on the ground the spots of blood and
17 they're not even transferred because the first blood which
18 we notice now ended up on these pants. As they struggle,
19 they drip onto the tops of his shoes. It's only as he's
20 trying to get up that the blood drips onto the ground.
21 You even see as he hops in the blood right outside his
22 apartment.

23 And, oh, there was the question of nobody was allowed
24 in that apartment. There wasn't a crime committed in the
25 apartment. That's where they went for sanctuary. Is the

1 inference that he was hiding something inside? No, he
2 couldn't stay and give permission for the police to go in
3 the apartment because he needed to go to the hospital and
4 get treatment so that he could get an operation for where
5 he shot him. Again, inference, innuendo. It doesn't make
6 it true. It's just offensive.

7 He said he threw the Minute Maid bottle. I don't
8 know. The inference is because he's a DJ he's a bigger --
9 he says he's got that bigger than life personality. He
10 should be penalized for that? The Minute Maid bottle, I don't
11 know where it went. Is it under another car? Probably.
12 But think about it. Because everything Michael Keith told
13 you is absolutely and totally corroborated by Sidara Allen,
14 his girlfriend, what she saw when she looked out the
15 window, what she saw when she got on the balcony and was
16 literally trying to come across it, and he's yelling no,
17 no, no to her telling to her to go back in.

18 And, finally, his account is, once again, totally
19 corroborated by Ms. Settles who doesn't know anybody
20 involved. She's just a nice lady who happened to look out
21 her window at 4:30 something in the morning because Brandon
22 Berry decided that was when he did his best work. And when
23 she looked out the window she saw -- she'd already heard
24 one shot, but she saw him shoot him there on the ground.
25 Is Michael Keith believable? Don't let anyone get up here

1 and argue that this happened any other way.

2 Ms. Settles is important because she sees him jump the
3 fence. His car is parked, remember, on the road, not in
4 the gate, on the road, this fence. You can see it right
5 here. He jumps across where he's had his car, his getaway
6 car, stashed, and the lights come on and all she can see
7 are the rear lights, remember? And what does the car look
8 like? It sounded a lot like the car that Nickilous Wallace
9 was in, the car he had access to, the car where he stored
10 his tools of the trade, his gun, his mask, his gloves, his
11 zip ties.

12 You also heard from Thomas Stetson. Basically all he
13 knew was he heard the shots and he had to take his infant
14 child and hide in the bathroom with his wife at 4:30
15 something in the morning. He called 9-1-1, as did many
16 other people who also hid, worried they were getting shot.
17 The next morning he goes out and his front tire's flat
18 because but for the grace of God those bullets didn't
19 ricochet somewhere else, they just hit his car. We can be
20 thankful of that.

21 And you heard from Lourisa Katio. She and Brandon
22 were on and off. They had been arguing about money. He
23 stayed with her sometimes. That's not who he was going to
24 see the next morning, but he stayed with her sometimes.
25 They had a child. That she thought she said, and this is

1 how she phrased it, what I told the police is he left in
2 his white shoes because those are the shoes he had on the
3 next day, but that was at nine or 10:00. When she gets the
4 call at work, she responds, and when she gets there she
5 finds her child. Brandon is not right there where the
6 child was because they didn't bring him back to that area,
7 they had to take him to another area because he chose to
8 run to another apartment complex, so he's put in another
9 officer's car. That they asked her about her child. She
10 was the mother. She told them they were more than welcome
11 to search her house. They wanted to search to make sure
12 there weren't any other weapons that he may have left. He
13 needed to make sure her child was safe and they wanted to
14 search, and they were upfront about it, for anything
15 belonging to Brandon, and she let them. And she even
16 showed them where some of Brandon's stuff was in that
17 bedroom, her bedroom, where she slept, where they found --
18 and you have a photograph of it -- these pants and these
19 shoes. And the reason they took those items -- they don't
20 just take random items because they can, they took them
21 because they had blood on them, because they matched the
22 description of what was told the night before, a guy in all
23 black, six feet tall, by the way, not five foot eight.

24 And the defense is gonna get up here and say these
25 pants have cuffs on him. Yeah, they do. I don't know how

1 he wears his pants. I don't know whether he wears them
2 high, I wouldn't think so, or if he wears them low, but
3 the important part is Lourisa, his girlfriend, said
4 unequivocally to the police, and she told you, these were
5 Brandon's pants. As much as they don't want that to be
6 true, these aren't Nickilous Wallace's pants. Or I guess
7 Nickilous Wallace showed up at her bedroom at five in the
8 morning and just discarded his clothing while she slept in
9 the bed. Is that the theory? Or some unknown third person
10 happened to have access to frame him and leave these --
11 this evidence in Lourisa's bedroom while she slept? Is
12 that the theory? Because that's where they were. Does
13 that even make sense? Is that even possible?

14 She said that he got home that morning. On the stand
15 she said she thought it was around -- it was before she
16 woke up at six, she didn't know when, she was asleep. Back
17 then she told the police it was sometime she thought around
18 5 AM, which just happens to be after he did that. And then
19 there was the question did Investigator Carwell ever drive
20 from the crime scene to Lourisa's house. Lourisa told you
21 she wasn't sure of the time. And she didn't live in Camden
22 or in Orangeburg. She lives in Columbia. And at 4 AM the
23 traffic was better than it was this morning. Did he have
24 time? She can't tell you the exact moment he was there.
25 She said when she woke up he was there. And what else was

1 there when she woke up? These pants and these shoes in her
2 bedroom on the floor. She left her child with him. He was
3 supposed to take care of her at her home. He didn't even
4 have a child seat to take her anywhere, but he had places
5 to go and she was out of the picture, so he went.

6 You also heard from Dr. Jones. He talked about the
7 surgery, the injury. Luckily in this case it didn't cost
8 him his life. You heard from an EMT and he told you about
9 treating him and taking him to the hospital because he
10 needed treatment, that his injury was bleeding. And
11 notice, too, you know, she talked about how Trevor Holt
12 couldn't get in the apartment. Did she ever ask the EMT
13 one question? Because remember where he found the victim?
14 It was in the apartment. It wasn't like they weren't
15 letting people in. The police were in at that point. Did
16 she ask Clay Short any of those questions? He was in the
17 apartment because that's where he made contact with the
18 victim. That's where the victim was when EMS got there.
19 Clay Short took it down basically at that point. The
20 victim was still in pain, he couldn't give a real specific
21 description, but he was unwavering when he did give the
22 description. The guy was about my height, which is about
23 six feet, six foot one, skinny, in all black clothes. And
24 guess what, ladies and gentlemen? No, he wasn't able to
25 identify anyone because Brandon Berry made sure no one was

1 gonna be identified.

2 And even during the course of this trial -- I've torn
3 this -- you heard from Deputy Pennington and Owens and you
4 see everything that happened as they made that traffic
5 stop. They stop them because he sees them putting their
6 seatbelts on and then when he goes up to the car he notices
7 there's a two-year-old in the back seat unrestrained and
8 that caused them to call it in. Because if they get up
9 here and argue this is anything but a routine traffic stop,
10 he can't let them go with the child unrestrained in the
11 back seat. What if there was a wreck? What if anything
12 else happened? They had to be there and get the child into
13 some type of proper seat, if that makes sense. There was a
14 problem with the insurance card, he didn't have it, but
15 what's the most -- remember Brandon kept talking over
16 Nickilous. Remember who's older. And you heard the phone
17 call. Who's in charge? They were nervous. They wanted to
18 make sure everything was okay. There's a child in the back
19 seat. If she argues anything, they're doing their job the
20 right way.

21 They ask Mr. Wallace to get out of the car and come
22 talk to them. He's talking about his insurance. And then
23 as you see in the video, remember -- and she made some big
24 deal, too, when she was talking about -- what was it? She
25 was talking about there was a ringing on the computer, what

1 was that, and he said it was his computer, it alerts him
2 when there's a message waiting, it does that ringing sound.
3 And then she asked Deputy Owens about calling him ten times
4 that day and he said yeah, I call him all the time, I don't
5 know what I was referring to, but, yeah. What is that?
6 Because the ringing stops as soon as he gets in his car and
7 contacts headquarters and calls in the driver's licenses.
8 She made a big deal about how he said -- when the deputies
9 met he said I didn't see anything, why don't you go look.
10 They want to make sure the child is okay, that everything
11 is okay. They don't go up there and drag somebody out of a
12 car. They don't go up there and shoot somebody. They do
13 their job. They observe. They asked Mr. Wallace to get
14 out of the car and he complies because, guess what, the one
15 thing in this case, Nickilous Wallace is cooperative. Then
16 she made a big deal about how they thought they found some
17 marijuana and some tweezers in the car that was never
18 recovered. By the time the car comes back in play after
19 the chase and the child is recovered, there are bigger fish
20 than trying to find trace amounts of marijuana.

21 And notice on the video, you'll have it, Deputy
22 Pennington is talking to Mr. Wallace and he asks
23 Mr. Wallace do you mind if we search your car or something
24 to that effect, I don't remember the exact words, and he
25 says not a problem. Once that's said, what does Brandon

1 Berry do? Not Nickilous Wallace. He jumps into the
2 driver's seat, he throws the car into drive and he takes
3 off. Because Brandon Berry knows that a search of that
4 car is gonna be a problem, the problem he has here today.
5 Because Brandon Berry doesn't go anywhere without his
6 tools. He takes off and he runs into a dead end and at
7 that point he makes a choice and his choice is to save
8 himself. He throws the car into -- maybe he thought it
9 was going into park, but it didn't, reverse, and leaves his
10 two-year-old in a moving car while he grabs not one bag,
11 but two bags. If Brandon Berry didn't do this, why is the
12 gun from the shooting in his baby's diaper bag? If Brandon
13 Berry didn't do this, why does he know that he needs to
14 grab both bags, the one with the gun and the one with the
15 mask, the gloves and the zip ties? And if Brandon Berry
16 didn't do this, why is his DNA on the gloves, his DNA on
17 the mask? And how would he know that he needed to get rid
18 of that evidence? And at the moment he thought he was out
19 of sight of that police officer, he tossed those items and
20 thought they never would find them.

21 But, luckily, as she said in her opening, this was
22 good police work. They chased him. And, by the way, they
23 did have to tase him, there's no dispute about that,
24 because he wouldn't come off the fence. But he was taken
25 into custody, he wasn't hurt, and he was booked. But this

1 officer saw him throw something and he went back to the
2 scene. And, luckily, in this case we have Henry Owens
3 because Henry Owens was astute enough to notice the one bag
4 with the diapers in it he was fiddling with it. Remember
5 what he testified to? I saw him reach back there and give
6 the child something to eat or drink out of the bag. And
7 when the first deputy, Pennington, went to the scene and
8 found the first bag, which had been thrown, that's all he
9 thought had been thrown when he came back and that's the
10 bag that has the mask and those things, the blue-ish bag,
11 but luckily in this case Henry Owens is observant enough
12 that he knew that there was another bag that had been
13 taken out of the car and it was no longer there and they
14 went back and they did their job. And, yes, ladies and
15 gentlemen, they picked up those items and they collected
16 them because they wanted to ensure the safety of that
17 community, as they should, and you want to fault them for
18 that? It doesn't relieve him of any responsibility of
19 what's in them because it's not the deputy's DNA, it's
20 Brandon Berry's. But let's move on. And think about it,
21 too. If Nickilous Wallace did this, is Brandon Berry
22 someone to protect him that he would grab those bags and
23 leave his own child unattended in a moving car, to protect
24 Nickilous Wallace?

25 You heard from Investigator Holt who went out there

1 that day and processed the crime scene. He even told you
2 when she asked him isn't the proper way to leave it there
3 and he told you this is a public safety exception. And,
4 remember, this is near the cut between the apartment
5 complexes. He told you that at times it is proper to
6 collect the evidence and that's what was done here.

7 You heard from Amanda -- excuse me, Kerri McClary, and
8 all she did was process the masks. Then she asked well,
9 did you process them separately? No. And, ladies and
10 gentlemen, I submit it doesn't matter which one of the
11 masks he used that night, just that he used one of the
12 masks. Did she do one swab from both of them? Yes.

13 You heard from Sergeant Stan Richards and what did
14 he tell you? He processed the car, he collected the
15 fingerprints, he collected the gel lifts of the footprints.
16 He later compared those and they just happened to match the
17 shoes that happened to come with the victim's blood on them
18 that happened to be found in the bedroom of Brandon Berry's
19 girlfriend -- or the mother of his child.

20 You heard from Trisha Odom, fingerprints, and the
21 defense got up here -- and, ladies and gentlemen, it's our
22 job to bring forth all relevant evidence. Brandon Berry's
23 DNA is on this glove. Do we expect to find Brandon Berry's
24 fingerprints? This is the tools he had with him, with his
25 mask and his gloves, to do his job. We wouldn't expect to

1 find them, but she's gonna get up here and say -- like in
2 one place she's gonna point out on Item -- Lift L-1, which,
3 I think, is on a window -- well, I don't have that picture
4 up here. I guess it got moved. Anyway, it's here. It's
5 on the back. It shows you. These are the actual lifts of
6 the prints. Remember on this one, on L-1, like she said,
7 that she was able to match two of these fingers to Michael
8 Keith and because of the quality of the known prints she
9 had she couldn't match the other two. Well, we don't know
10 who those belong to. Look at the print. It's a handprint,
11 there are four fingers. Is it -- even common sense at some
12 point has to play a role. It's a handprint from four
13 fingers. She was able to match two to Michael Keith. If
14 she gets up here and argues we don't know who the other two
15 are, is that even reasonable? She's going to talk about
16 the second, L-2, which is from the rear of the car on the
17 top, right there where you pull down the trunk. As you've
18 heard, we can't tell how long fingerprints have been there,
19 we can't tell who all was in and out of Michael Keith's car
20 and anticipate that. We can't tell if somebody just came
21 by and touched it. We would expect, ladies and gentlemen,
22 to find fingerprints that may not match the victim,
23 although in this case, surprisingly, overwhelmingly, he got
24 his car washed the day before, the majority of them
25 did.

1 But she's gonna want you to ignore, I guess, the gel
2 prints, the foot -- the tread wear that matches and focus
3 on the one fingerprint. Ladies and gentlemen, I submit
4 that's what makes this credible. This is real life. Of
5 course, there's gonna be other fingerprints. And, no,
6 she's gonna get up here and tell you not to convict Brandon
7 Berry because his fingerprints weren't on that car? They
8 shouldn't be. He knows what he used to cover to make sure
9 there's no fingerprints. So the fact that there are no
10 fingerprints exonerates him and then just ignore all the
11 DNA? Is that the argument?

12 And then you heard from Amanda Metz and she testified
13 that the two shell casings -- she wasn't asked to test the
14 projectile because that was collected by other people, but
15 the two shell casings, and they matched the gun that he had
16 and he threw when he left his child. And then she got up
17 here and questioned the science; ballistic testing, firearm
18 examination, evidence that's been admissible in this court
19 for longer than I have been alive, and that's a long time,
20 because that doesn't help her. That's not good.

21 So moving on to Dr. Amick. And you have his chart.
22 And remember how she focussed on certain areas? He talked
23 about how small amounts of evidence are needed to do the
24 testing in this case. I don't even remember. Was it a
25 nano -- something small, small amounts, in order to do

1 testing. And she asked him specifically about the scraping
2 of the waistband and she harped on that. Well, wouldn't it
3 be the owner? Wouldn't it be the owner? Somebody else
4 could have worn it, somebody else could have worn it, and
5 wouldn't it be true that the last person -- the owner would
6 be more likely to leave that than the last person that wore
7 them? And she didn't get the answer she liked because he
8 told you about examples when they do steering wheels. They
9 thought they would get the owner's DNA, but instead they
10 found that it was much more likely to get the DNA from the
11 person who had last touched the steering wheel. So then
12 she moved on to say that oh, well, perhaps he was wearing
13 boxers. Does that even make sense? By the way, the pants
14 that were found and identified by his girlfriend as his,
15 regardless of the cuffs, the shoes, they did that.

16 Getting down to the blue bag with the masks. The
17 brown gloves with grips, mixture, major contributor.
18 Remember, this is supersensitive science and in these
19 mixtures you gonna expect to find somebody else. It could
20 be the person that packaged the gloves, it could be the
21 person who sold him the gloves because that's how sensitive
22 this it, but look at this. Never once is Brandon Berry the
23 minor contributor because the person that wore the gloves
24 it gonna slough off. Remember touch DNA? Because that's
25 not blood right there. The brown gloves, mixture; major

1 contributor is Brandon Berry. The black stocking cap.
2 Remember dressed in all black with a mask on? Major
3 contributor. The red polo shirt, too weak. But it gets
4 better, or worse, I guess, for Brandon Berry because the
5 police did do their job.

6 The swab from the outside leg matches Michael Keith's.
7 Brandon Berry. One swab that was not blood from the
8 outside of the leg and I submit, ladies and gentlemen,
9 that's what makes this credible. That's how we know
10 nobody's up here framing him because this is real life,
11 this is real evidence. Did he brush up against somebody
12 else? Did Lourisa handle his pants before he put them on
13 and leave her DNA? That's what makes this credible. Yes,
14 there was one swab that wasn't blood from the outside of
15 one leg that all three are excluded. And, by the way, it's
16 not Nickilous Wallace again. All the swabs matched Michael
17 Keith whenever there is blood and they're able to get a
18 result. Rapid DNA. All three of those matched Michael
19 Keith. The swab from the shoes. And they're gonna say
20 well, they didn't do ownership on the shoes. Lourisa,
21 they're his shoes. She said so. They're in his -- where
22 he has access to, not some unknown third-party, not some --
23 Nickilous Wallace. At some point common sense has to
24 prevail. The swab from the Glock, too weak.

25 Finally, ladies and gentlemen, Item 31. Remember

1 about blood, excuse me, body fluids, they leave stronger
2 results and that's why you get these blood matches. Two
3 swabs that matched. Major contributor matches Brandon
4 Berry. Michael Keith and Nickilous Wallace are excluded as
5 minor contributors. And you'll have this evidence.

6 Sergeant Carwell. She talked about there were a
7 number of people that called 9-1-1 that he didn't
8 interview. That's true. He interviewed people who had
9 information that was pertinent to the case. She asked him
10 about the cuffs on the pants. He doesn't know whether the
11 pants were cuffed or whether they weren't. There's a
12 picture of how they were collected. Were they cuffed at
13 that point? Yes. Did he wear them cuffed? Possibly.

14 He talked about -- she asked him about the fact that
15 oh, this was Nickilous Wallace's car, wasn't it, where the
16 guns were and everything. Yeah, it was Nickilous Wallace's
17 car, but it was Brandon Berry who needed to get rid of the
18 evidence. Then she talked about video from inside the two
19 clubs, they never went and got the videos from inside the
20 clubs. He even went so far as to try to get video from
21 around the clubs to see if there was anything. There was
22 nothing there. That is uncontroverted. But, ladies and
23 gentlemen, video from inside the clubs doesn't have
24 anything to do with what happens when someone was lying in
25 wait for him that night. We don't have to prove who was

1 inside the clubs. We have to prove who committed this
2 crime.

3 She's gonna talk about the fact that there -- that
4 they collected phone records, and they did, and that the
5 phone records weren't reviewed. No, you have all the
6 evidence you can consider in this case; the relevant,
7 probative evidence. She talked about how he didn't
8 interview Kayla. She's the one that showed up on the
9 scene. You can see her in the video. She pulled up in a
10 car. She's the one that was holding the baby and called
11 Lourisa after the baby was recovered by the police. She
12 asked him why he didn't collect all the clothing in that
13 closet. Because his job is to collect anything that may
14 be probative to this case, not to destroy people's lives by
15 just taking random evidence. She asked him about whether
16 or not he timed how far it was from one scene to the other.
17 She didn't ask him about the zip tie that was on the bed
18 stand in the photograph. It's right there.

19 And finally, ladies and gentlemen, I want to talk
20 to you about the jail calls, the dates on those and
21 everything. The first two, when he first got arrested,
22 and he used his own PIN number on those. On the third
23 one, the one last Sunday, I've got it right now, he used
24 someone else's because he was doing -- doing prevalent
25 things. And she mentioned that there were hundreds of

1 phone calls, we could bring so many. These were pertinent
2 because it was right after he gets arrested he was talking
3 to -- not Lourisa, but the other girlfriend. And what does
4 he say? And these are just tidbits. You listen to the
5 calls. Everything's in. It's you. What does he say? I
6 did some -- excuse my language -- dumb-ass shit, wasn't
7 F'ing thinking. Again, left because they were about to
8 search the car. Lo and behold, that's corroborated by
9 the video. Wasn't thinking. And then talks about how he
10 cried because he left his daughter in the car and he looked
11 at her before he left because he knew he had to get rid of
12 the evidence that implicated him.

13 The next phone call the next day, on August the 1st,
14 from Brandon to Kayla. Brandon: Why the F did I -- did
15 that dumb-ass shit? And, remember, this is after he's been
16 served with the warrants. That was some dumb-ass shit I
17 did. Kayla: I know why you did it though. You was trying
18 to get rid of that shit. Uh-huh. Brandon, later on, I
19 need a paid lawyer for my shit. I'm F'd, word. I don't
20 know what it is. I'm F'd.

21 And what's in these calls is basically a confession
22 and these are when he's calling and this is to his friend,
23 his girlfriend, but what's interesting is he doesn't say
24 I'm F'd because of what Nickilous did, he doesn't say I'm
25 F'd because of what somebody else did. I'm F'd because of

1 what my -- dumb-ass shit I did.

2 And, finally, November 29th under a different PIN
3 number, using somebody else's so we wouldn't find it, he
4 calls his friend, Nickilous Wallace, who's got his own
5 charges and has his own day in court and says hey, but G-D
6 listen, bro, G-D, I don't think you're gonna have to be
7 there tomorrow -- and that would have been Monday --
8 because tomorrow ain't shit happening. Yeah. Know what
9 I'm saying? I don't think you got to be there tomorrow,
10 but whenever you do got to be there, brother, you ain't got
11 to say shit now. Nickilous Wallace is like oh, I looked it
12 up last night and I clearly know what plead the Fifth
13 means. Brandon: Yeah, you ain't got to say shit. Not a
14 word, bro, and that's what I want you to do, bro. You
15 ain't got to say shit.

16 Notice who's telling who what to say. Who's in charge
17 here? I don't want you to get up there and think you're
18 trying to make shit look good for me and F it up, make shit
19 bad, you know what I'm saying? All right. Because them
20 people G-D might ask you all kinds of scary-ass kinds of
21 questions and whatever, you feel me? And you might get up
22 there, you know what I'm saying, and choke up or some shit,
23 but you don't need to say a M-F thing, bro.

24 And then later on in that same call -- and I'm just
25 taking -- this whole call is in evidence. When he's

1 talking about what he thinks he should do, that they
2 might offer thirty and what he might do if they were to
3 offer something else. Bro, go to court tomorrow, take the
4 plea or whatever. The lawyer can go back tomorrow and be
5 like he don't want that, let's negotiate or something.
6 Negotiate like fifteen, boom. I already know you'll take
7 like fifteen.

8 Why does he know he should take fifteen? Because he
9 committed the robbery? Because he committed the attempted
10 murder? Brandon Berry replies, unh-unh, I will take ten,
11 nonviolent, know what I'm saying? I will take that, you
12 know. I'm really not going to speak too much. Again, I'm
13 not -- he doesn't say I'm not taking anything, I'm
14 innocent. Those are confessions.

15 Ladies and gentlemen, I don't know what she will
16 argue when I sit down. All I ask is that you focus on the
17 overwhelming evidence in this case. Brandon Berry made
18 choices. He needed money. He needed to work and get
19 money. Lourisa told you that. Lourisa told you he didn't
20 have a job. Nickilous did. There's not just one piece
21 of evidence that I'm asking you to rely on, ladies and
22 gentlemen. I submit that the DNA on the mask alone would
23 be enough, but you don't have to stop there. You've got
24 DNA on the pants, on the shoes. The pants identified by
25 his own girlfriend, pants found in his -- the bedroom where

1 only he had access. The evidence in this case, ladies and
2 gentlemen, is overwhelming as he acknowledges the day
3 before he has to go to court and confesses. And those are
4 his words and you actually get to hear him saying them.
5 All we ask is that you told him responsible for his choices
6 and what he did. Thank you.

7 **THE COURT:** All right. Ladies and gentlemen, you now
8 will hear from defense counsel in this matter and I want to
9 know if you'd like to go ahead and take a break before we
10 go any further? Anybody want to take a quick break?

11 Okay. We'll take about five minutes. It's going
12 to be a very short time. Do not discuss the case among
13 yourselves. We'll send for you in just a few minutes, but
14 we'll take about five minutes. And the lawyers also need
15 to get the evidence moved around and the defense counsel
16 needs to check on matters that she wants to refer to, so
17 we're gonna make it quick, five minutes, and we'll be ready
18 to go forward. Thank you. Do not discuss the case among
19 yourselves.

20 (Whereupon, the jury retires to the jury room at
21 10:20 AM.)

22 **THE COURT:** All right. Five minutes, counsel. We'll
23 be in recess.

24 **MS. ZMROCZEK:** Thank you.

25 (Recess taken.)

1 **BAILIFF:** Court come to order.

2 **THE COURT:** Thank you. Keep your seats.

3 We were waiting for the jury to tell us if they're
4 ready and they have done so, so we are ready to go forward.
5 Anything further before we bring the jury in?

6 **MS. CAMPPELL:** (Shakes head.)

7 All right. Bring the jury in, please.

8 (Whereupon, the jury returns to the courtroom at
9 10:30 PM.)

10 **THE COURT:** All right. Thank you very much, ladies
11 and gentlemen. We are now ready to proceed. You have
12 heard the State's argument and now you're going to have
13 the right to hear the summation or argument from defense
14 counsel.

15 Ms. Zmroczek.

16 **MS. ZMROCZEK:** Thank you, Your Honor. May it please
17 the Court?

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

19 **MS. ZMROCZEK:** Good morning. I, too, on behalf of
20 Brandon Berry would like to thank you for the time and the
21 attention that you've paid during this case. And it hasn't
22 been long. I'm sure on that side of the bench it felt
23 really long, but we appreciate the time as do my friends
24 and colleagues.

25 Brandon Berry, you got to hear a little bit of him, I

1 submit, and I'll talk about those phone calls in a little
2 bit, but Brandon Berry is twenty-five years old as you
3 heard and they played three phone calls in which he cussed
4 a lot and he said he didn't have friends and family. He
5 sat there all week with nobody behind him. The judge is
6 going to --

7 **MS. CAMPBELL:** Objection, Your Honor. May we
8 approach?

9 **THE COURT:** Yes.

10 (Proceedings held at the bench; not reported.)

11 **THE COURT:** I caution counsel against arguing anything
12 that's not in evidence.

13 **MS. ZMROCZEK:** The solicitor's office asked you to not
14 hold anything against Mr. Keith, the victim. The judge is
15 going to tell you that it's not your job to have sympathy
16 for either side. I submit the telephone calls were played
17 for one reason and one reason only and that was so you
18 would dislike or hate Brandon Berry because he has a fowl
19 mouth, because he's twenty-five years old, because he cares
20 about his brother. And they spent a lot of time talking
21 about -- making you listen to an entire phone call that
22 they were having conversations that had nothing to do with
23 this case, but had cuss words every other sentence. Is he
24 dumb? Yeah. But those two phone calls that they played
25 and that she put up here with the "F" words and "S" words.

1 Those were the two phones calls that he was talking about
2 where he F'd up or he messed up. Those two phone calls
3 were before warrants for attempted murder and robbery were
4 ever served.

5 **MS. CAMPBELL:** Objection, Your Honor. That's not,
6 true.

7 **THE COURT:** All right. Not -- not in evidence. The
8 jury will disregard that. There's no evidence of that fact
9 and the jury will disregard that statement.

10 **MS. ZMROCZEK:** Your Honor, may we approach?

11 **THE COURT:** Yes.

12 (Proceedings held at the bench; not reported.)

13 **THE COURT:** All right. Ladies and gentlemen, again,
14 I will tell you that the arguments of counsel in this case
15 are not evidence. You are to rely on the evidence that you
16 heard from this witness stand. The attorneys have the
17 right to argue what they believe the evidence shows, but it
18 is up to you to make the final determination of what the
19 witness actually said.

20 **MS. ZMROCZEK:** May it please the Court?

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

22 **MS. ZMROCZEK:** Thank you. Investigator Carwell was
23 asked when he got and executed those warrants. Ladies and
24 gentlemen, the State talked a lot about rules. The Court
25 is full of rules. We have rules in evidence, we have rules

1 in presentation of the evidence. The judge has rules. He
2 can't comment on the facts. And you have rules and your
3 rules that you were sworn and you were selected to be fair
4 and impartial, not only to the defense, but to the State.
5 Because the State and the defense have a dispute and that
6 dispute is whether or not Brandon Berry committed attempted
7 murder and attempted armed robbery.

8 I solved half of the dispute for you. I told you
9 he's absolutely guilty. He had the gun. We know it's on
10 video and we'll talk about why these two cases were tried
11 together to help explain what we think the evidence shows
12 and why that was presented that way. Resisting arrest.
13 You heard Officer Pennington. He resisted. They tased
14 him. Check that off. Thank you. Find him guilty. Child
15 neglect. I submit that he should have gotten a ticket for
16 not restraining his child, but absolutely find him guilty
17 of child neglect. Ladies and gentlemen, they have proven
18 their case in that regard, and they have all along. So in
19 those discussions about the ten to thirty or I'll take
20 fifteen, he's guilty, ladies and gentlemen. He's guilty of
21 unlawful possession, neglect and resisting arrest.

22 That's not why we're here. Why we're here is because
23 he's not guilty of attempted murder or attempted armed
24 robbery. There were lots of charts and I'm not going to go
25 through the law again. The judge will give you the law and

1 he will tell you that you decide the facts and you apply
2 the facts to the law. You don't have to find him guilty of
3 everything. You can split it. Each and every one of you
4 has to be firmly convinced that he has been proved guilty
5 of attempted murder and attempted armed robbery. And if I
6 were representing the person who pulled the trigger, I
7 would argue that he was guilty of assault and battery first
8 or whatever those lesser includeds were, but that's not my
9 job. My job is to represent Brandon Berry and my job is
10 just to not give him my best. My job is to do my job under
11 the constitution.

12 The way that I've broken down my closing arguments and
13 remarks, because I don't want to keep you here all morning,
14 is I want to talk a little bit about the evidence, what it
15 showed, what we think it showed. I want to talk a little
16 bit about the evidence that wasn't presented, what we think
17 that showed, and why it wasn't presented. And then I want
18 to talk to you a little bit more about the phone calls.
19 But first I want to talk about my greatest fear, and I've
20 talked to you a little bit about it, is that you only base
21 your decision and your opinion on those phone calls and who
22 they want to show Brandon Berry is. They didn't play the
23 six hundred and however many phone calls or we would have
24 been here all week. And maybe you're wondering well,
25 Ms. Zmroczek, why didn't you play the good phone calls or

1 why didn't you put up any evidence? And the judge is going
2 to tell you it's because as much -- as much as I want to
3 prove someone innocent, that's not our job. It's never my
4 job to prove somebody innocent. And it seems it doesn't
5 make sense; well, if it's there, just do it. There are
6 reasons. There are reasons that people don't take the
7 stand. These -- these expert witnesses you see are skilled
8 and prepared in the way that they answer questions. Other
9 people are not.

10 Ms. Campbell told you a story that she heard in law
11 school about the puddle and the coin. What I heard her
12 say was a priest and a lawyer. What I think that she was
13 inferring was a priest and a defense lawyer. A defense
14 lawyer in just trying to muddy the water, but that's not
15 what I'm doing. I'm actually trying to clarify the water.

16 When I was in law school, not at the same time as
17 Ms. Campbell, I heard a different story and it was from my
18 professor who taught criminal law and, of course, the first
19 day everybody's excited and it's one of the first classes
20 we have in law school and they've already told you look to
21 the left, look to the right, people won't be here, we're
22 all nervous, we're all excited, and the professor gets up
23 and he doesn't yell and he doesn't scream or start calling
24 out our names to answer, but what he says is when I was a
25 kid I heard a story about Thomas, the apostle, Doubting

1 Thomas, and as you go through criminal law I want you to
2 remember Doubting Thomas because if you recall the story of
3 the apostle who was told he's risen, he's risen, he's --

4 MS. CAMPBELL: Objection, Your Honor.

5 THE COURT: Outside the evidence. Sustained.

6 MS. ZMROCZEK: I'm sorry?

7 THE COURT: As to commenting or making comments to the
8 jury that are not in evidence. The objection is sustained.

9 MS. ZMROCZEK: Thank you. May we approach again, Your
10 Honor?

11 THE COURT: No, ma'am. No, ma'am.

12 MS. ZMROCZEK: The point is, is that we are supposed
13 to question and were are supposed to doubt and I'm supposed
14 to ask questions because that's what the Constitution says
15 and if things don't add up, that's what I'm supposed to
16 show you.

17 Ms. Campbell said by the grace of God that Mr. Keith
18 is still with us, but you heard the doctor's testimony. He
19 wasn't going to bleed out. He was injured, no doubt. He
20 was absolutely injured, but that injury was not caused by
21 Brandon Berry. She said that I'm gonna make a big deal
22 about what the evidence shows and what the evidence doesn't
23 show. Absolutely I am. And she said rely on the DNA. So
24 let's talk about that real briefly.--

25 Rely on the DNA. Mixtures. Mixtures. Mixtures. Oh,

1 she's gonna point them out that they're mixtures. Yes,
2 because I asked their expert that mixture means that it's
3 somebody else's DNA. They want you to speculate that it
4 could be the person that manufactured the items, but isn't
5 it just as reasonable, perhaps a little more, that the
6 waistband with the mixture of DNA could have been from
7 somebody that was wearing those jeans? They want you to
8 believe Ms. Katio's testimony except for the parts where
9 she says that Brandon shared his shoes, Brandon shared his
10 clothes, and he was like a brother to Nickilous Wallace.
11 Disregard that because that means that somebody could have
12 been wearing his jeans. Is that unreasonable?

13 They want you to say that the swabs from inside
14 of his jeans that don't match anyone could just be from
15 brushing up. It could be. It could also be from somebody
16 taking the jeans off. It's just as reasonable. But what
17 about the gloves? What about the gloves? Because the
18 testimony that I heard, and the judge is going to tell you
19 this over and over and over and over, rely on what you
20 heard. But the testimony that I heard from each and every
21 one of these witnesses included a black mask, a T-shirt --
22 a black T-shirt and black jeans. Never once did I hear
23 that that person was wearing gloves.

24 And that's, ladies and gentlemen, why the fingerprints
25 are so important are. Number 3 lift. And you'll have all

1 these pictures back there -- back with you. I submit that
2 most of these pictures show the same thing, but they're all
3 in evidence. Number 3, the roof of the car. The roof of
4 the car. Not the trunk, the roof. L-4, it was not made
5 by Wallace, was not made by Berry, inconclusive as to
6 Mr. Keith. The roof of the car, ladies and gentlemen. The
7 same roof that the person who shot Mr. Keith ran across.
8 Isn't it reasonable that their hand would be up there?
9 There was somebody else who committed this shooting. Not
10 Brandon Berry.

11 Cuffs in the pants. Now there's cuffs in the pants
12 because they realize there is a picture of it. It's not
13 done by the DNA person who swabbed it. It was done by the
14 person who wore his clothes and they want you to ignore all
15 the other clothes because they weren't pertinent and they
16 want you to say -- I did say the police did a good job.
17 Not a great job, but a good job. Because a great job would
18 have been to follow up, get the video to see what Brandon
19 Berry was wearing that evening if it would have shown, but
20 we don't know.

21 What shoes? They want you to believe Lourisa's
22 testimony about everything, but not the shoes that he was
23 wearing that night because they were white with a black
24 check. The same ones he had on the next day. They said
25 is it reasonable that somebody snuck into her room and put

1 clothes in there at five in the morning? If you recall
2 Lourisa's testimony, she woke up at six and left by seven
3 or 7:30. This home was searched after 1:00 in the
4 afternoon. Is it reasonable, is it possible that Brandon
5 let his dumb friends come over? Yes, it's reasonable and
6 possible, which is why the DNA is in the waistband, which
7 is why the shoes are on the car, which is why his handprint
8 is not. Is it reasonable when he gets pulled over if the
9 gun is already in the backpack to have it open and be
10 fiddling in it when Deputy Owens can see? Or is it also
11 reasonable that he knows that his friend lent his car and
12 he lent his clothes to another friend and that I need to
13 get that gun? Is it reasonable? Is it possible? And,
14 yes, I made a big deal about no pictures and no video at
15 the scene where the bag or bags were located because they
16 talked about credibility and I submit that the mask and the
17 glove bag were found inside the trunk. It's a reasonable
18 inference. That's why we don't have any pictures. Even
19 though Deputy -- Investigator Carwell had his camera that
20 day, we have no pictures from that scene. And it's just a
21 mistake and that's okay. Do I think that that's because
22 they're trying to frame anybody? No, it's an honest
23 mistake. But those honest mistakes when they consider
24 crucial evidence aren't important -- and does it make
25 sense, ladies and gentlemen, that he would grab the bag

1 with masks and gloves and zip ties, which were never
2 mentioned, and bring those but not hide shoes -- or not
3 leave them with the shoes and the pants? That just doesn't
4 make any sense.

5 His car was washed the day before, his cell phone was
6 on the car. The fingerprints could have been made by --
7 the fingerprints on the rear of the trunk that could have
8 been made by somebody who was shutting it also could have
9 been made by somebody who was jumping on it. It's just as
10 reasonable, ladies and gentlemen, but they want you to
11 dislike Brandon and to discount those reasons to doubt.

12 Nickilous Wallace, he didn't testify, and they want to
13 tell you it's because he told him not -- he, Brandon, made
14 him not testify. Is it reasonable to think that Nickilous
15 also knows who he gave his car to? Is it reasonable to
16 think that he would not be eaten alive by a seasoned
17 prosecutor on cross-examination? Is it reasonable that he
18 would not implicate himself? Common sense, ladies and
19 gentlemen, is not something we leave at the door or in this
20 jury box.

21 Phone records. Don't you think -- don't you think
22 they would have had a hundred more maps, a hundred more
23 big poster boards showing that phone --

24 **MS. CAMPBELL:** Objection, Your Honor, as to
25 speculation.

1 **THE COURT:** All right. I'm gonna overrule that
2 objection and she can comment on it if she thinks it's a
3 reasonable inference from the evidence. Go head.

4 **MS. ZMROCZEK:** Don't you think that had that evidence
5 placed Brandon Berry at the scene we would have every
6 single word of every single phone call and every single
7 text message? There's a reason that information wasn't
8 presented.

9 Ladies and gentlemen, I'll just briefly talk about
10 reasonable doubt. Again, we're talking about attempted
11 murder and attempted armed robbery, and to demonstrate that
12 I would like to tell a story to demonstrate what I believe
13 my understanding of reasonable doubt is. And the judge
14 is going to tell you the law and that's what you should
15 follow, but when I was a kid -- and I have six sisters.
16 When I was a kid, I would always get in trouble always
17 because of what my sisters did or one of my sisters'
18 friends did. It's so frustrating and my dad just wanted a
19 boy, so they just kept having kids and so we have all
20 girls. And we would fight and we would fight about clothes
21 and no matter what, as the oldest one, I'd always get in
22 trouble. And so when I would get in trouble, I would then
23 say that's not fair, that's ridiculous, and I would
24 sometimes use cuss words, inappropriate, and I learned it
25 from my dad, but he didn't care, and as soon as that first

1 cuss word came out of my mouth, I knew what was gonna
2 happen, and he'd get the belt and I'd run. And so I'd run
3 up the stairs and slam my door and hide because I knew what
4 was coming. You could hear him come up the stairs and my
5 mom's following him going don't, don't, she's just -- don't
6 hit her, don't, you know, but every time.

7 And then this one afternoon I came home and there was
8 crayons all melted on the floor. My sister -- growing up
9 in Louisiana, my sister had friends over and they played
10 and they would leave the crayons and just make a mess, but
11 I wasn't home that day and I came home from swim practice
12 and I walked in the door and I can hear my dad screaming
13 about the crayons. And at first I said what have I done?
14 But I haven't been home, so I knew it wasn't me and I knew
15 I couldn't be blamed. And my dad's yelling and my sister
16 dropped the F bomb. Nine years old and she drops it. And
17 I was like oh, yeah, here we go. And she goes running up
18 the stairs and my dad grabs his belt and he's running up
19 the stairs and I'm running up the stairs behind him going
20 yes, yes, and the door slams and at that point I knew what
21 was coming and my dad stomps and opens the door and she's
22 sitting on the bed, she's crying no, daddy, no, and he
23 lifts that belt and the breeze blows and it slams the door
24 and he lowers the belt because, ladies and gentlemen, it
25 wasn't the words, it was the defiance in slamming the door,

1 and when he thought that the wind blew it shut, that gave
2 him a reason to doubt.

3 Ladies and gentlemen, I can give you three, four,
4 five, and I'm sure you can find more, reasons to doubt
5 Brandon Berry's guilt of attempted murder and attempted
6 armed robbery. And as a true believer in the system, I
7 believe that each and every one of you will follow your
8 oath and that you will find him guilty of the charges of
9 which he is guilty and you will find him not guilty of the
10 two charges for which they have not proved him guilty
11 beyond a reasonable doubt. Thank you.

12 **THE COURT:** All right. Madam Forelady, and ladies
13 and gentlemen of the jury, if you would give me your
14 attention. You have followed very patiently and listened
15 very attentively to the presentation of the evidence in
16 this case and also to the able arguments made by the
17 solicitor, Ms. Campbell, on behalf of the State and by
18 Ms. Zmroczek on behalf of the Defendant, and I thank you
19 for that.

20 It now becomes the duty of the trial judge under the
21 Constitution of this state to charge and instruct you on
22 the law applicable to this case and it is your duty as
23 jurors to accept and apply the law as the Court will now
24 state it to you. And as jurors it is your exclusive duty
25 to decide all of the issues of fact in this case and for

1 that purpose to determine the effect, the value, the
2 weight, and the truth of the evidence. Both the State
3 and the Defendant have the right to expect that you will
4 conscientiously consider and evaluate the evidence and
5 apply the law of the case thereto to the end that both the
6 State of South Carolina and the Defendant will receive a
7 fair and impartial trial.

8 Now when I use the word "Defendant", I refer, of
9 course, to Mr. Brandon Berry. The State of South Carolina
10 by the bills of indictment, and there are five of them,
11 charge Mr. Berry with five separate offenses. Indictment
12 Number 020 is an indictment for attempted murder and
13 charges that Mr. Berry did on or about July the 29th, 2014,
14 with intent to kill, attempt to kill Michael Keith with
15 malice aforethought, either express or implied. That is
16 the charge for attempted murder.

17 Indictment Number 5062 charges that on July the 29th,
18 2014, while armed with a deadly weapon that Joseph {sic}
19 Berry did attempt to take and carry away the personal
20 property from the immediate presence of Michael Keith
21 with intent to deprive him of possession by use of force,
22 threats or intimidation, and that is the charge for
23 attempted armed robbery.

24 Indictment Number 015 charges that on or about
25 July the 29th, 2014, that Mr. Berry did in Richland County

1 carry about his person a pistol not being authorized to do
2 so by law.

3 Indictment Number 017 charges that on July the 29th,
4 2014, that Joseph Brandon Berry, while having custody or
5 charge or being a parent or being responsible for the
6 welfare of a minor child, B.K. , age two years,
7 did place the child in unreasonable risk of harm by placing
8 the child's life, physical or mental health or safety, or
9 did unlawfully or maliciously cause -- or cause to be done
10 bodily harm to the child so that the life or health of the
11 child was in danger, or did willfully abandon the child,
12 and that is the charge of unlawful neglect of a child.

13 And, finally, in Indictment Number 018 Mr. Berry is
14 charged on or about July the 29th, 2014, with knowingly and
15 willfully opposing or resisting an arrest being made by an
16 individual who the Defendant knew or should have known was
17 a law enforcement officer.

18 Now to these bills of indictment the Defendant has
19 entered a plea of not guilty on each charge. This plea of
20 not guilty by the Defendant places the burden of proof on
21 the State to prove by evidence the guilt of the Defendant
22 beyond a reasonable doubt on each and every charge before
23 you can -- you, the jury, can find him guilty. The
24 Defendant, Mr. Berry, is presumed in the law innocent of
25 the charges contained in these indictments. It is a

1 cardinal and fundamental rule of the law of evidence that
2 the Defendant, irrespective of the enormity of the charges
3 against him, will always be presumed innocent of the crime
4 for which he is indicted, unless and until, the guilt of
5 the Defendant has been proven by the evidence which
6 satisfies you, the jury, of his guilt beyond a reasonable
7 doubt.

8 The presumption of innocence is not a mere legal
9 theory. It is not just a legal phrase. The presumption
10 of innocence is a substantial right to which every accused
11 is entitled. Our Supreme Court has declared that the
12 presumption of innocence is like a robe of righteousness
13 placed upon the shoulders of this Defendant and it remains
14 with him and assigns to him that class to be innocent until
15 the presumptive robe of righteousness has been stripped
16 from his person by evidence that satisfies you, the jury,
17 of his guilt beyond a reasonable doubt.

18 The presumption of innocence accompanies the Defendant
19 from the time of his arraignment in this courtroom and
20 continues with the Defendant until you retire to the jury
21 room to deliberate your verdict. The presumption of
22 innocence continues with the Defendant to his benefit
23 until you, the jury, reach the conclusion that the State
24 has proven the guilt of the Defendant beyond a reasonable
25 doubt.

1 Now the State is not required to prove the guilt of
2 a Defendant beyond all doubt or beyond every doubt, but
3 beyond a reasonable doubt. What is a reasonable doubt?
4 It is not an imaginary or fanciful doubt or a weak doubt.
5 It is a substantial doubt. It is a doubt which the words
6 imply, a doubt for which you can give or assign a reason
7 based on the testimony or the evidence in this case. A
8 reasonable doubt is not any sort of a doubt. You and I
9 know from everyday life experiences that you may have a
10 sort of a doubt about any matter that arises no matter
11 how trivial it may be or how serious it may be. A
12 reasonable doubt is a doubt which makes an honest,
13 sincere, conscientious juror in search of the truth
14 hesitate to act. Proof beyond a reasonable doubt is
15 proof which leaves you firmly convinced of the Defendant's
16 guilt. If you have a doubt for which you can give or
17 assign a reason as to the guilt of the Defendant, then he
18 is entitled to a verdict of not guilty.

19 Reasonable doubt may arise from the evidence which is
20 in the case or from the lack of evidence which is in the
21 case. You, the jury, must make the determination of
22 whether or not reasonable doubt exists as to the guilt
23 of the Defendant in this case. If, based upon your
24 consideration of the evidence, you are firmly convinced
25 that the Defendant is guilty of the crime charged, you

1 must find him guilty. If, on the other hand, you find
2 there is a real possibility that he is not guilty, you
3 must give him the benefit of that doubt and find him not
4 guilty.

5 The very fact, however, that the jury engages in a
6 full and a free discussion of the issue of guilt or
7 non-guilt in the case with the normal conversational ebb
8 and flow on these issues does not automatically mean that
9 reasonable doubt exists in this case or in any other case.

10 I charge you that the Defendant is entitled to every
11 reasonable doubt arising in the whole case and on each
12 individual charge. If upon any issue of fact essential to
13 a conviction and a verdict of guilty you have a reasonable
14 doubt as to how that issue should be resolved, it would be
15 your duty to resolve that issue -- that doubt in favor of
16 the Defendant.

17 A defendant, ladies and gentlemen, is not required to
18 prove his innocence, but the State is required by law to
19 prove every essential element of the offense charged
20 against the Defendant by evidence which satisfies you, the
21 jury, of the guilt of the Defendant beyond a reasonable
22 doubt before you can convict the Defendant and find him
23 guilty. If then upon the whole case you have a reasonable
24 doubt as to the guilt or innocence of the Defendant, he is
25 entitled to that reasonable doubt and would be entitled to

1 acquittal and a verdict of not guilty. But, on the other
2 hand, if upon the whole case you find the State has proven
3 by the evidence which satisfies you, the jury, of the guilt
4 of the Defendant beyond a reasonable doubt, then in certain
5 circumstances it would equally be your duty to convict the
6 Defendant and find him guilty.

7 Now if you find the Defendant guilty, but you have a
8 reasonable doubt as to whether he is guilty of the greater
9 crime charged or the lesser crime charged, you would then
10 resolve that reasonable doubt in favor of the Defendant
11 and write a verdict of guilty only as to the lesser crime
12 charged. But, of course, you could not write a verdict of
13 guilty to any charge unless you find all of the elements
14 of the charge have been proven by the State beyond a
15 reasonable doubt.

16 Now I instruct you that the indictments in this case,
17 which I hold in my hand, are not evidence as I told you
18 at the first of the case and they cannot be considered by
19 the jury as evidence in this case. The indictments are
20 simply the formal written instruments which contain the
21 charges against the Defendant and they serve as the formal
22 documents by which this case is brought to trial.

23 You are instructed not to take into account the fact
24 that the accused has been charged in more than one
25 indictment. The reason for this is that the accused is

1 entitled to a fair and impartial determination on each
2 indictment based upon your determination of the evidence
3 on each indictment. The accused is not prejudiced by the
4 fact that there is more than one charge pending against
5 him.

6 Now, ladies and gentlemen, during this trial each of
7 us, you and I, have certain duties to perform. As trial
8 judge, it is my responsibility to preside over the trial
9 of this case and I also have the duty to rule upon or to
10 pass upon the admissibility of evidence. You are to
11 consider only the competent evidence before you. You are
12 to disregard and disabuse from your mind any testimony
13 ordered stricken from the record during the trial of this
14 case, if there be any, and you are to consider only the
15 evidence which has been presented from the witness stand
16 together with any exhibits admitted into the record of this
17 case and any stipulations made by counsel into the record,
18 if there are any.

19 I have the additional duty to charge you applicable
20 law in this case. As the presiding judge, I am the sole
21 judge of the law of this case and it is your duty to accept
22 and apply the law as I now state it to you. If you have a
23 preconceived idea as to what the law is or what the law
24 ought to be and it does not agree with what I tell you the
25 law is, you are obligated under your oath to abandon this

1 preconception on your part because you are sworn to accept
2 the law precisely as I state it to you.

3 In every case tried in this court before a jury, the
4 jury becomes the sole and exclusive judge of the facts of
5 the case. You, the jury, are the judge of the facts in
6 this case. The Court is the judge of the law. The
7 Constitution of this State has declared that the trial
8 judge shall not intimate, state, comment upon or make any
9 statement to a trial jury about the facts in a case. Since
10 you are the sole judges of the facts, you are not to infer
11 from anything that I have said during the progress of this
12 trial in ruling upon the admissibility of evidence, or
13 otherwise, or anything that I say now during the course of
14 this charge to you, that I have an opinion about the facts
15 of the case. I do not. The law does not permit me to have
16 an opinion about the facts. This is a matter solely for
17 you, the jury, to determine. As jurors then, it is your
18 duty to determine, as I have said, the effect, the value,
19 the weight, and the truth of the evidence presented during
20 the course of this trial.

21 Necessarily, then you must assess the credibility of
22 the witnesses who have testified in this case. Credibility
23 is simply a legalistic term which means believability. It
24 becomes your duty then to analyze and evaluate the evidence
25 and to determine that evidence which convinces you of its

1 truth. I charge you that in determining the question of
2 credibility or believability of the witness, you may
3 believe one witness as against several witnesses or several
4 witnesses as against one witness. You may believe a part
5 of the testimony of a witness and reject the remaining part
6 of the testimony of that same witness. You may believe the
7 testimony of a witness in its entirety or you may reject
8 the testimony of a witness in its entirety. You may
9 consider whether any witness has exhibited any interest,
10 any bias, or any prejudice in the case. And you may
11 consider the demeanor of the witness, that is the
12 appearance of the witness, from the witness stand. And
13 you may consider the opportunity for knowledge concerning
14 those things about which a witness testified. These
15 considerations you do not exercise arbitrarily, but if in
16 your good judgment there is sound reason in the record for
17 so doing because your objective, ladies and gentlemen, is
18 to find the truth whether it comes from one or more
19 witnesses.

20 And in doing so, in exercising your mental processes
21 and in determining what you consider to be true, the law
22 simply requires that you exercise your good judgment, your
23 common sense, your sense of logic and reason, and your
24 experiences in life. You then apply these attributes of
25 ability to the evidence and determine what you consider to

1 be the truthful evidence and to these true statements of
2 facts as determined by you, the jury, you take and apply
3 the law as I now state it to you and thus arrive at a true
4 verdict in this case.

5 Now, as I have said, there are five separate
6 indictments that you will consider, five separate charges,
7 separately and must find the Defendant guilty beyond a
8 reasonable doubt on each charge. The first indictment,
9 and the first offense, is the crime of attempted murder,
10 and I want to define that charge for you. South Carolina
11 Code Section 16-3-29 provides a person who, with intent
12 to kill, attempts to kill another person with malice
13 aforethought, either express or implied, commits the
14 offense of attempted murder. And as I said, the Defendant
15 is charged with attempted murder. Murder is the killing
16 of another person with malice aforethought. Malice is
17 hatred, ill will or hostility towards another person. It
18 is the intention of doing a wrongful act without just
19 cause or excuse and with the intent to inflict the injury,
20 or under circumstances where the law will infer an evil
21 intent.

22 Malice aforethought does not require that malice exist
23 for any particular time before the act is committed, but
24 malice must exist in the mind of the Defendant just before
25 and at the time the act is committed. Therefore, there

1 must be a combination of the previous evil intent and the
2 act. Malice aforethought may be express or inferred. The
3 terms "express" and "inferred" do not mean different kinds
4 malice, but merely the manner in which malice may be shown
5 to exist; that is either by direct evidence or by inference
6 from the facts and circumstances which are proven.

7 Express malice is what's shown when a person speaks
8 words which express hatred or ill will for another or when
9 the person prepared beforehand to do the act which was
10 later accomplished. For example, lying in wait for a
11 purpose or any other acts of preparation going to show that
12 the deed was within the Defendant's mind would be express
13 malice. Malice may be inferred from conduct showing a
14 total disregard for human life. The law says that if one
15 intentionally attempts or kills another with a deadly
16 weapon, the implication of malice may arise. If facts are
17 proven beyond a reasonable doubt sufficient to raise an
18 inference of malice to your satisfaction, this inference
19 would be simply an evidentiary fact to be taken into
20 consideration by you, the jury, along with other evidence
21 in this case and it may be given such weight as you may
22 determine it deserves.

23 The next charge that the Defendant is charged with is
24 the crime of armed robbery or attempted armed robbery.
25 I'll talk about attempted in just a minute, but let me

1 first talk about what armed robbery is. Section 16-11-330
2 of the Code of Laws of South Carolina provides that armed
3 robbery is committed when a robbery is committed while
4 armed with a pistol, dirk, slingshot, metal knuckles,
5 razor, or other deadly weapon, or while alleging, either
6 by action or words, that he was armed with using -- while
7 using a representation of a deadly weapon, or any object
8 which a person present during the commission of a robbery
9 reasonably believed to be a deadly weapon. To convict a
10 person of armed robbery, the State must prove, first, that
11 he committed a robbery; second, that while armed with a
12 pistol, dirk, slingshot, metal knuckles, or other deadly
13 weapon, or alleging that he had such a weapon.

14 Now what is robbery? Robbery is larceny from the
15 person or immediate presence of another by violence,
16 intimidation, or by putting such person in fear. A thing
17 is in the presence of person with respect to robbery when
18 it is so within his reach, inspection, observation and
19 control that he could, if not overcome by violence or
20 prevented by fear, retain possession of it. Robbery is
21 basically larceny compounded by aggravation or intimidation
22 or force used in taking the property from the person or the
23 presence of another. Larceny is the felonious taking or
24 carrying away a person -- of the goods of another person
25 against a person's will with the intent to appropriate them

1 for one's own use and to permanently deprive the owner of
2 possession of the property.

3 Now the Defendant in this case is charged with
4 attempted armed robbery and I will tell you that -- just
5 a moment -- an attempt can be defined as an effort to
6 accomplish a specific purpose, but falling short of
7 success. Attempted armed robbery is defined as the crime
8 of attempting robbery while armed with a pistol, dirk,
9 slingshot, metal knuckles, razor, or other deadly weapon.

10 Now the Defendant also is charged with the crime of
11 unlawful pistol, and I want to read you the South Carolina
12 Code on that particular charge. Section 16-23-10 of the
13 South Carolina Code defines a handgun as any firearm
14 designed to expel a projectile and the code section prior
15 to that provides that it is unlawful for anyone to carry
16 about the person any handgun, whether concealed or not,
17 except as follows, and there are a number of exceptions
18 which are not applicable in this situation.

19 The State must prove the elements of unlawful carrying
20 of a handgun beyond a reasonable doubt. These elements are
21 that the Defendant did, in fact, possess a handgun. If you
22 find the item which the Defendant possessed was something
23 other than a handgun, then you cannot find him guilty of
24 this offense. Secondly, the Defendant carried the handgun
25 about his person. The phrase "about the person" means any

1 position where the handgun is readily accessible and
2 convenient to the immediate use, whether or not it actually
3 touches the person of the Defendant. The State is not
4 required to negate each exception to -- well, we don't have
5 the exceptions. I said they were not applicable in this
6 case. So the two elements of the unlawful handgun are that
7 the Defendant did, in fact, possess a handgun and that
8 carrying it about his person means that it is readily
9 accessible or convenient to his immediate use.

10 The Defendant is also charged with the crime of
11 unlawful conduct toward a child. South Carolina Code
12 Section 63-5-70, excuse me, provides as follows. It is
13 unlawful for a person who has charge or custody of a child,
14 or who is a parent or guardian of a child, or who is
15 responsible for the welfare of a child, to place the child
16 at unreasonable risk of harm affecting the child's life,
17 physical or mental health or safety, or to do cause or to
18 cause to be done maliciously and unlawfully any harm to the
19 child so that the child's health is in danger or likely to
20 be in danger, or willfully abandon the child.

21 And, finally, the Defendant is charged with the crime
22 of resisting arrest, and I want to read the code section
23 to you on resisting arrest. The law says that resisting
24 arrest is knowingly and willfully opposing or resisting a
25 law enforcement officer when that officer is making a

1 lawful arrest. South Carolina Code Section 16-9-320
2 provides it is unlawful for a person knowingly and
3 willfully to oppose or resist a law enforcement officer
4 in serving, executing, or attempting to serve or execute a
5 legal writ or process, or to resist an arrest being made by
6 one whom the person knows or reasonably should know is a
7 law enforcement officer, whether under process or not.

8 Now, ladies and gentlemen, those are the definitions
9 of the substantive charges in this matter, but there are
10 several other matters of law that I need to discuss with
11 you. One is that -- the matter of evidence. There are
12 generally two types of evidence that are presented during
13 a trial, direct evidence and circumstantial evidence.
14 Direct evidence directly proves the existence of a fact
15 and does not require deduction. Circumstantial evidence
16 is proof of a chain of facts and circumstances indicating
17 the existence of a fact. Crimes may be proven by
18 circumstantial evidence. The law makes no distinction
19 between the weight or value to be given to either direct
20 evidence or circumstantial evidence. However, to the
21 extent that the State relies on circumstantial evidence,
22 all of the circumstances must be consistent with each
23 other and when taken together point conclusively to the
24 guilt of the accused beyond a reasonable doubt. If these
25 circumstances merely portray the Defendant's behavior as

1 suspicious, the proof has failed.

2 The State has the burden of proving the Defendant
3 guilty beyond a reasonable doubt and this burden rests
4 with the State regardless of whether the State relies
5 upon circumstantial evidence, direct evidence or some
6 combination of the two.

7 Now you have heard testimony in this case from what
8 we have described as expert witnesses. Although normally
9 lay witnesses are limited to testifying about the facts
10 within their knowledge and are not allowed to give
11 opinions, certain witnesses who by their training,
12 education or experience are considered experts in a
13 particular field, may give their opinions in that field
14 based upon the facts of the matter and their conclusions.
15 These opinions constitute evidence to be considered by you
16 in connection with all of the other testimony and evidence
17 in this case. You may consider the expert's opinion just
18 as you do all other evidence in this case. It is for you,
19 the jury, to give it such weight as you in your experience
20 and discretion may determine. You must weigh the evidence
21 and accept or reject it in the same manner as you do all
22 other evidence in this case.

23 Now, ladies and gentlemen, the Defendant in this case
24 has not testified. This is his legal right. It is his
25 constitutional right and it is not a circumstance that you

1 can take into consideration or even allow to enter into
2 your discussions in the jury room. Under the Constitution
3 of the State of South Carolina and the United States
4 Constitution, it is a Defendant's constitutional right not
5 to testify. The burden of proof is on the State of South
6 Carolina to establish his guilt by competent evidence
7 beyond a reasonable doubt. The fact that the Defendant
8 did not take the witness stand and testify in this case
9 does not create any inference against him and you are not
10 permitted to weigh -- or not permitted to use that fact
11 or to weigh that in the slightest degree against the
12 Defendant, nor should this fact even enter into your
13 discussions or deliberations in the jury room.

14 Now, ladies and gentlemen, you will also recall that
15 I have told you throughout the trial of this case that the
16 questions of the lawyers are not evidence. Unless the
17 witness testifies to a statement you should not consider
18 it. Additionally, you are not to consider in this matter
19 the punishment or possible punishment that the Defendant
20 may receive. That is a matter for the Court. Your duty
21 is to find only the guilt or innocence of the Defendant.

22 Now I've also told you that and you know that there
23 are certain electronic evidence in this case and if during
24 -- and all the evidence will go with you back to the jury
25 room when I send you to the jury room in just a few

1 minutes, but if you do want to review the disc or any of
2 the electronic evidence we can make arrangements for that
3 to be shown to you. What I would tell the forelady in
4 this case is that any time you've got anything you need to
5 communicate to me, simply give a signed note to the bailiff
6 and they will give it to me and we will take care of your
7 situation.

8 Now, ladies and gentlemen, you are not partisans or
9 advocates for the State of South Carolina or for this
10 Defendant. You have no friends to reward and no enemies
11 to punish. Obviously such a verdict under our system
12 would be intolerable. You have been selected by both the
13 State of South Carolina and by this Defendant as fair and
14 impartial jurors. It is your duty then by your joint
15 deliberations to determine the truth in this case giving
16 to the Defendant the benefit of every reasonable doubt on
17 each and every issue and then to the facts which you
18 determine to be true, you then take and apply the law which
19 has been given to you by this Court and thus arrive at a
20 verdict which does speak the truth. Because the word
21 "verdict", ladies and gentlemen, has a Latin derivative.
22 It comes from the Latin word "veredictum", meaning to speak
23 the truth or truth saying. And when you have accomplished
24 these responsibilities you would have discharged your oath
25 as jurors and your duties to this Court.

1 Now, ladies and gentlemen, I want to instruct you on
2 your forms of verdict in this case. If the State has
3 failed to prove the guilt of the Defendant on any charge,
4 your verdict would be two words, not guilty. If the State
5 has proven the guilt of the Defendant on any charge, your
6 verdict would be one word, guilty. The verdict that you
7 render in this case must be the verdict of each and every
8 juror. It must be your unanimous verdict. All twelve must
9 agree on the verdict, which you authorize the foreperson to
10 write.

11 Now, Madam Forelady, I have prepared a sheet of paper
12 that contains the possible verdicts in this case, in fact,
13 there's two pages, and I will tell you now that the order
14 in which I have put the possible verdicts on this papers
15 has absolutely no significance. You should not infer from
16 the order in which I have put these possible verdicts that
17 I have any opinion as to what your verdict should be. I do
18 not -- it does not. The law does not allow me to have an
19 opinion as to what your verdict should be, but obviously to
20 put something down on paper, I had to put something down
21 first and put something down second.

22 But across the top up here we have the State of South
23 Carolina, County of Richland, Court of General Sessions,
24 the name of the case and the indictment number, and the
25 first one is: We, the jury, by unanimous agreement find

1 the Defendant, Brandon Joseph Berry, number one, on
2 Indictment -- well, and I need to go back on that. I
3 forgot to tell you that on the theory of lesser included
4 offenses that on the attempted murder charge it includes
5 certain lesser included offenses that are not in the
6 indictment, but that you can consider, and let me tell you
7 what those are.

8 The first of those is assault and battery of a high
9 and aggravated nature, and I need to tell you what that
10 lesser included offense is. Section 2 -- South Carolina
11 Code provides that a person commits the offense of assault
12 and battery of a high and aggravated nature if the person
13 unlawfully injures another person and, A, great bodily
14 injury to another person results or, B, the act is
15 accomplished by means likely to produce the death or great
16 bodily injury, and it is a lesser included offense of the
17 charge of attempted murder.

18 To prove assault and battery of a high and aggravated
19 nature, the State must first prove beyond a reasonable
20 doubt that the Defendant unlawfully injured another
21 person. Next the State must prove beyond a reasonable
22 doubt that either great bodily injury resulted or the act
23 was accomplished by means likely to produce death or great
24 bodily injury.

25 Great bodily injury is defined as bodily injury which

1 causes a substantial risk of death and which cause serious
2 permanent disfigurement or protracted loss or impairment of
3 the function of a bodily member or orifice.

4 Also included as a lesser included offense, although
5 not set forth in the indictment, is the offense of assault
6 and battery in the first degree. Assault and battery in
7 the first degree occurs when, according to the code and is
8 defined in the code, a person commits the offense of
9 assault and battery in the first degree if that person
10 unlawfully, A, injures another person and the act involves
11 nonconsensual touching of the private parts of an adult,
12 which is not applicable here. Secondly, it occurred during
13 the commission of a robbery, burglary, kidnapping or theft,
14 or, B, offers or attempts to injure another person with the
15 present ability to do so and the act is accomplished by
16 means likely to produce death or great bodily injury and/or
17 occurred during the commission of a robbery, burglary,
18 kidnapping, or theft. It is a lesser included offense of
19 attempted murder and of attempted -- assault and battery of
20 a high and aggravated nature.

21 To prove assault and battery of a high and aggravated
22 -- to prove assault and battery in the first degree, the
23 State must prove beyond a reasonable doubt that the
24 Defendant either injured another person and the act
25 occurred during the commission of a robbery, burglary,

1 kidnapping, or theft, or that the Defendant offered or
2 attempted to injure another person with the present ability
3 to do so and the act was accomplished by means likely to
4 produce death or great bodily injury.

5 So with regard to the first indictment, of course, I
6 have defined for you what attempted murder is and a lesser
7 included offense of attempted murder is assault and battery
8 of a high and aggravated nature and a lesser included
9 offense of these is also assault and battery in the first
10 degree. So when considering that indictment, there are
11 three possible verdicts and I have put those on the first
12 page of this sheet. As I say, don't take any -- the order
13 that they're put on here as having any meaning whatsoever.
14 It does not.

15 We, the jury, by unanimous agreement, find the
16 Defendant, Joseph {sic} Berry, on the Indictment 2015-020
17 for attempted murder; guilty, not guilty, or, the lesser
18 included offense of assault and battery of a high and
19 aggravated nature; guilty, not guilty, or, the lesser
20 included offense of assault and battery of a high and
21 aggravated nature; guilty, not guilty, or, the lesser
22 included offense of assault and battery in the first
23 degree; guilty or not guilty.

24 Only one of those on that indictment. So you will
25 have one verdict on that indictment and you would indicate

1 the unanimous agreement of the jury by checking one of
2 those six blocks or putting an "X" in one of those six
3 blocks.

4 Then you are to go on and consider the other charges
5 in this case, and they are contained on the second page
6 of the sentencing sheet and, again -- I mean, on the
7 verdict form, and it says that on the Indictment Number
8 2015-GS-5062 for attempted armed robbery; guilty or not
9 guilty. Then you would go to the Indictment Number
10 2015-015 for unlawful carrying of a pistol; guilty or not
11 guilty. Then you would go to Indictment Number 2015-017
12 for unlawful conduct toward a child; guilty or not guilty.
13 And, finally, on Indictment Number 2015-018 for resisting
14 arrest; guilty or not guilty. So there are five possible
15 verdicts in this case according to how you view the facts
16 in this matter.

17 Now, ladies and gentlemen, as I said, if at any
18 time during the course of your deliberations you wish to
19 communicate with me, please give a signed note to the
20 bailiff and they will bring it to me and I will address
21 your problem. Let me tell you that there is nothing that
22 I can do to help you with the facts on this matter. You
23 will have to determine this case based upon the facts that
24 you've heard from this witness stand and from any exhibits
25 that have been introduced and I cannot comment on the

1 facts. However, if I can be of any help in any definitions
2 of the law or anything on the law of this case, again, send
3 me a signed note and I will attempt to clarify that for you
4 by giving you an additional charge on the law. I will tell
5 you though that throughout your deliberations in this case
6 at no time does the Court want to know what the jury's
7 counts or status is on any charge. That is a matter that
8 is solely within your prerogative, but do not at any time
9 include on any communications to this Court what the count
10 is with regard to where y'all stand on reaching a unanimous
11 verdict.

12 Now with that, I am going to send you to the jury
13 room. I'm gonna ask that you not begin your deliberations
14 just yet. The law does require that I give you certain --
15 that I confer with the lawyers over certain matters and if
16 it's necessary for me to bring you back into the courtroom
17 for additional instructions, I will do so. If that is not
18 necessary, then you will be brought the exhibits in this
19 case and the verdict form by the bailiff and they'll will
20 tell you to begin your deliberations.

21 As you know, we have ordered lunch. It will be here
22 in a little while. As soon as it gets here, you can
23 either stop and eat your lunch, Madam Forelady, or y'all
24 can continue to work through lunch, but your lunch will be
25 here. We did this in order to expedite and give the jury

1 an opportunity to have as much time as they needed to
2 deliberate the charges in this case and so when lunch comes
3 you can either stop or you can keep on working and then eat
4 your lunch during the process.

5 I am going to excuse you at this time. Do not begin
6 your deliberations just yet. Wait until you are told to
7 begin your deliberation, but you may go to your jury room
8 with the exception of the two alternates and I'm gonna ask
9 that they stay with me. Thank you.

10 (Whereupon, the jury retires to the jury room at
11 11:39 AM.)

12 **THE COURT:** Additions or exceptions on behalf of the
13 State, Ms. Campbell?

14 **MS. CAMPBELL:** No, sir.

15 **THE COURT:** On behalf of the defense?

16 **MS. ZMROCZEK:** No. I have another issue I'd like
17 to put on the record after -- none with respect to the
18 charges?

19 **THE COURT:** Ma'am?

20 **MS. ZMROCZEK:** I have an issue just to put on the
21 record for my closing, but none due to the charges, Your
22 Honor.

23 **THE COURT:** Please listen to the question,
24 Ms. Zmroczek.

25 **MS. ZMROCZEK:** I have no objection or exception to the

1 charges.

2 **THE COURT:** Okay. Thank you.

3 All right. Mr. Bailiff, here's the verdict form and
4 if y'all would gather up the exhibits and take those to the
5 jury and tell them to begin their deliberations.

6 And I will address this to the two alternates. You
7 have heard all of the evidence in this case, but the law
8 only allows me to have twelve jurors. The purpose of
9 drawing alternates is to substitute an alternate if
10 somebody gets sick or can't serve for some reason, but
11 I'm not permitted to have more than twelve jurors. So
12 even though you've heard all of the testimony in this
13 case, you will not be participating in the decision and
14 I'm going to excuse you from any further participation in
15 this matter.

16 I'll tell you that once you've been excused as a
17 juror, there is nothing illegal about your talking with
18 anybody about your service on this case. There is nothing
19 illegal about anybody talking to you about your service on
20 this case. It is a practice of which I strongly disapprove
21 and I strongly discourage, but it's not illegal. But
22 it's up to you as to whether you wish to discuss it with
23 anybody. However, I would ask that you not discuss this
24 case with anybody until after this jury returns a verdict,
25 and you don't know when that's going to be, so I'll ask

1 that you not discuss it with anybody at least until
2 tomorrow because I suspect that we will have a verdict
3 sometime today, but I would ask that you not discuss it
4 with anyone or allow anyone to discuss it with you until
5 at least tomorrow.

6 I will also tell you that if anybody wants to talk to
7 you about your service on this case and you don't want to
8 discuss it with them and they continue to harass and bother
9 you, you let court personnel know and we will deal with
10 them. It's solely your call as to whether you wish to
11 discuss it with anybody or don't wish to discuss it with
12 anybody.

13 I will also tell you that next week sometime you will
14 receive a small check from the clerk's office. It will
15 in no way pay you or compensate you for the time that
16 you've spent in court this week, but it's a small token
17 of appreciation on behalf of Richland County and the State
18 of South Carolina for your service.

19 Also, if you need a certificate to show that you were
20 serving on a jury to take your to employer, the clerk has
21 those and will give those to you and you can take those to
22 your employer.

23 I hope that you have a better appreciation of the
24 criminal justice system as a result of having served on
25 the jury this week. I know it is never convenient to serve

1 on a jury, but it is important that we have good citizens
2 willing to come forward and serve when they are requested
3 to do so and I do appreciate your being here.

4 Having said that, again, you are free to go. Thank
5 you for your service.

6 (Whereupon, the alternates were dismissed at
7 11:43 AM.)

8 **THE COURT:** All right. Ms. Zmroczek, I'll be glad for
9 you to put on the record whatever you'd like.

10 **MS. ZMROCZEK:** Thank you, Your Honor. I renew my
11 previous objections, but additionally -- throughout the
12 case. And then, additionally, Your Honor, I wanted to put
13 on the record that I felt the objection to a story that I
14 learned in law school after Ms. Campbell discussed a story
15 that she learned in law school was completely improper and
16 was done I guess -- I don't know why, just to throw me off,
17 but --

18 **THE COURT:** Well, what was the legal objection? I
19 mean, that was not something that was in evidence.

20 **MS. ZMROCZEK:** I understand it was a demonstration.

21 **THE COURT:** I overruled -- I sustained the objection
22 based upon the fact that it's not facts in evidence.

23 **MS. ZMROCZEK:** Certainly, Your Honor. I was using
24 that as a demonstrative just as Ms. Campbell had used that
25 as a demonstrative and I --

1 **THE COURT:** There was no objection to her argument.

2 **MS. ZMROCZEK:** Correct.

3 **MS. CAMPBELL:** Your Honor, I'd just put on the record
4 that I believe there's case law that says quoting the Bible
5 or using stories from the Bible is improper.

6 **THE COURT:** All right. Well, they -- your objection
7 is noted and it's on the record.

8 **MS. ZMROCZEK:** Thank you, Your Honor.

9 **THE COURT:** All right. Counsel, we will be at ease
10 until we hear from the jury. Look at all the exhibits and
11 make sure that there's not anything that -- I don't know
12 that there was anything that was marked for ID only that
13 didn't go in, but make sure that there are no -- nothing
14 was marked for ID only or no Court's exhibits go to the
15 jury.

16 And also if we do get into a situation where they
17 want to view some of the video or any of that sort of
18 stuff, we can do it with the computer in the jury room,
19 but we'll wait until we hear from the jury to see if they
20 want that, okay?

21 **MS. CAMPBELL:** Thank you, Your Honor.

22 **THE COURT:** All right. We'll be at ease.

23 (Recess taken.)

24 (Whereupon, the exhibits were inventoried and sent
25 back to the jury at 11:56 AM.)

1 (Recess taken.)

2 (Court's Exhibit Number 7, Jury Note, was marked for
3 identification.)

4 **BAILIFF:** Court come to order, please.

5 **THE COURT:** Thank you. Please be seated. Be seated.
6 Counsel, we have a question from the jury.

7 Back on the record with regard to the State versus
8 Berry. Mr. Berry is not present. Do you waive his
9 presence for purposes of the attention to this question?

10 **MS. ZMROCZEK:** I do.

11 **THE COURT:** Okay. The question is: The jury
12 respectfully requests the transcript, if any, of the
13 telephone recordings, parenthesis, three of them, closed
14 parenthesis, that were admitted into evidence. If the
15 transcript is not available, we request the three
16 recordings be played for us again.

17 I don't believe the transcript was introduced, was it?

18 **MS. WALKER:** No, Your Honor.

19 **THE COURT:** So it's just gonna be the video of the --
20 of the three.

21 Ms. Walker, how do you suggest we handle this?

22 **MS. WALKER:** Your Honor, my suggestion would be that
23 we get -- I think Ms. Zmroczek is in agreement, that we
24 get a clean computer and all that doesn't have anything on
25 it, we take the disc -- the disc should be back there with

1 them, send the computer back there and let them hear it in
2 the jury room.

3 **THE COURT:** Is somebody gonna need to play it for them
4 or can they --

5 **MS. WALKER:** Your Honor, I mean, they can --

6 **THE COURT:** Is there anything on that disc other than
7 this?

8 **MS. WALKER:** No, Your Honor.

9 **THE COURT:** So there's no danger of anything --

10 **MS. ZMROCZEK:** No, I think the disc is --

11 **MS. WALKER:** The disc is in evidence and should be
12 back there.

13 **MS. ZMROCZEK:** And then the computer -- we've had this
14 issue before, so we -- they have clean computer.

15 **MS. WALKER:** We have a clean computer.

16 **THE COURT:** So it's agreeable to y'all to send the
17 computer back and see if there's somebody computer literate
18 enough to run it themselves?

19 **MS. WALKER:** Yes, sir. Really it's just a push play
20 and they'll be good to go.

21 **MS. ZMROCZEK:** Yeah.

22 **THE COURT:** Okay. Let's see what we got here.

23 All right. We have another question that I'll have
24 marked as a Court's exhibit. This will be Court's Exhibit
25 Number 8.

1 (Court's Exhibit Number 8, Jury Note, was marked for
2 identification.)

3 **THE COURT:** The jury respectfully requests the
4 statutory definition of the following crimes: Attempted
5 murder and assault and battery of a high and aggravated
6 nature.

7 All right. I can do that without any problem. I do
8 note that lunch has just come. What I would propose to
9 do, Counsel, if it's agreeable with you is just bring the
10 forelady in and tell her what we're gonna do with the
11 recording and let them have the computer and play it
12 themselves and then I can bring them all back in and do
13 this. Or do they want to eat lunch first or do they want
14 to come back in and let me give them the definition and
15 then -- you know, whatever their preference is.

16 **MS. WALKER:** We don't object to either of those, Your
17 Honor. As long as it's agreeable, I don't mind if you send
18 the definitions back there.

19 **MS. ZMROCZEK:** We would ask that you just read it.
20 Unless we send all of the definitions back.

21 **THE COURT:** I'll do what they've asked for and they
22 just said -- I think that it would be appropriate that I
23 just give them the same charge that I gave before.

24 **MS. WALKER:** Yes, Your Honor.

25 **THE COURT:** Ask the forelady -- where's my bailiff?

1 **THE DEPUTY:** I'll go check, sir.

2 **BAILIFF:** Here I am.

3 **THE COURT:** Just ask the forelady to come out here
4 for just a minute. I want to ask her a question or two
5 and then decide which way we want to proceed.

6 **BAILIFF:** Yes, sir.

7 (Whereupon, the foreperson of the jury enters the
8 courtroom at 12:18 PM.)

9 **THE COURT:** You can stand right there for just a
10 minute. I just want to ask you a question. We have both
11 of your notes. First of all, with regard to the first
12 note, there is no transcript available of the recordings,
13 but the disc is in evidence and can be played. We propose
14 to send a computer back to the jury room and let y'all play
15 the disc and look at it right there in the jury room. I
16 think somebody can probably play that disc and the disc is
17 in evidence and you can play that in the jury room.

18 **THE FOREPERSON:** Okay. That's fine.

19 **THE COURT:** So we'll handle that that way. The second
20 question we had was for additional legal definitions by me
21 and I'll have to bring all the jurors back in the courtroom
22 for that purpose. I can either do it now or allow you to
23 go ahead and eat lunch and then come in or whichever --

24 **THE FOREPERSON:** I don't think we have the lunch yet,
25 so what we --

1 **BAILIFF:** It's here.

2 **THE FOREPERSON:** Can I clarify what we're asking?

3 **THE COURT:** No, I need -- let me read the note and
4 see. Here's what it says. The jury respectfully requests
5 the transcript, if any, of the telephone recordings. We've
6 addressed that one.

7 The jury respectfully requests the statutory
8 definitions of the following crimes: Attempted murder and
9 assault and battery of a high and aggravated nature. And I
10 can give you those definitions, the legal definitions. Is
11 that what you need?

12 **THE FOREPERSON:** Yes, sir.

13 **THE COURT:** Okay. Well, I can -- that will be just
14 that portion of the charge. That's all I'll be able to
15 do. Now do you want to do that before you get into your
16 sandwiches or do you want to go ahead and eat?

17 **THE FOREPERSON:** No, let's go ahead and do it.

18 **THE COURT:** Go ahead and do it?

19 **THE FOREPERSON:** Yes, sir.

20 **THE COURT:** All right. If you will return to the jury
21 room and -- Mr. Bailiff, will you bring all the jurors back
22 and -- maybe we ought to have the Defendant here for that.

23 **MS. ZMROCZEK:** Right, Your Honor. I don't think I can
24 -- here's the bailiff.

25 **THE COURT:** Okay. Tell the bailiff to hold off just

1 a moment until we get the Defendant in the courtroom. We
2 probably need the Defendant in here for this.

3 **MS. ZMROCZEK:** Yes. Thank you, Your Honor.

4 **THE COURT:** Do you have a computer available to take
5 to the jury room?

6 **MS. WALKER:** Your Honor, I think she's getting it now.
7 Our paralegal is going to get that.

8 **MS. CAMPBELL:** It's the one we always use that's
9 clean.

10 **MS. ZMROCZEK:** Yes.

11 (Whereupon, the Defendant enters the courtroom at
12 12:24 PM.)

13 **THE COURT:** Come have a seat, Mr. Berry.

14 All right. We're back on the record with regard to
15 the matter of the State versus Berry. Mr. Berry is present
16 in the courtroom. Mr. Berry?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Wait just a minute. We have two
19 notes from the jury. The first one is that the jury
20 respectfully requests the transcript, if any, of the
21 telephone recordings, three of them, that were admitted
22 into evidence. If the transcript is not available, we
23 request that the three recordings be played for us again.
24 Signed by the forelady. And I've marked this as a Court's
25 exhibit.

1 We've conferred with counsel and your counsel as well.
2 There is no transcript of the telephone recordings, only
3 the video, and the parties have agreed to allow a computer
4 to go into the jury room for the purpose of playing the
5 recording, the video recording, which was introduced into
6 evidence, so that's the way that's going to be handled. Do
7 you understand that?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** And the other question is the jury
10 respectfully requests the statutory definitions of the
11 following crimes: Attempted murder and assault and battery
12 of a high and aggravated nature. And I'm gonna bring the
13 jury back in and we'll instruct them on those charges
14 again.

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** All right. Bring the jury back in.

17 (Whereupon, the jury returns to the courtroom at
18 12:26 PM.)

19 **BAILIFF:** Jurors seated, Your Honor.

20 **THE COURT:** All right. Thank you. Sorry to interrupt
21 your lunch, ladies and gentlemen, but we felt like it
22 better to address these questions that you had before you
23 ate lunch and so we're going to do that. The way we're
24 going to handle the first question with regard to the
25 video -- the telephone conversations is to tell you that

1 there is no transcript of those telephone conversations,
2 but we're going to allow you to have a computer in the jury
3 room where you can play that disc, which is in evidence,
4 and you will be able to play that back in its entirety or
5 any part of it that you want to hear.

6 The second question dealt with a definitions of
7 attempted murder and assault and battery of a high and
8 aggravated nature, and in that connection I'll redefine
9 and give you the law on those two offenses.

10 Section 16-3-29 of the Code of Laws of South Carolina
11 provides that a person who, with intent to kill, attempts
12 to kill another person with malice aforethought, either
13 express or implied, commits the offense of attempted
14 murder. The Defendant in this case is charged with
15 attempted murder. Murder is the killing of another person
16 with malice aforethought. Malice is hatred, ill will, or
17 hostility toward another person. It is the intentional
18 doing of a wrongful act without just cause or excuse and
19 with the intent to inflict an injury or under circumstances
20 that the law will infer an evil intent.

21 Malice aforethought does not require that malice exist
22 at any particular time before the act is committed, but
23 malice must exist in the mind of the Defendant just before
24 and at the time of the act. Therefore, there must be a
25 combination of the previous evil intent and the act.

1 Malice aforethought may be express or inferred. These
2 terms "express" and "inferred" do not mean different kinds
3 of malice, but merely the manner in which malice may be
4 shown to exist; that is either by direct evidence or by
5 inference from the facts and circumstances that are proved.

6 Express malice is shown when a person speaks words
7 which express hatred or ill will toward another, or if a
8 person prepared beforehand to do the act which was later
9 accomplished. For example, lying in wait for a person or
10 any other acts of preparation going to show that the deed
11 was within the Defendant's mind would be express malice.
12 Malice may be inferred from conduct showing a total
13 disregard for human life.

14 The law also says that if one intentionally kills
15 another with a deadly weapon the implication of malice
16 may arise. If facts are proven beyond a reasonable doubt
17 sufficient to raise an inference of malice to your
18 satisfaction, this inference will be simply an evidentiary
19 fact to be taken into consideration by you, the jury,
20 along with other evidence in this case, and you may give
21 it such weight as you determine it should receive.

22 An attempt is an effort to accomplish a crime which
23 does not succeed. An attempt includes a specific intent
24 to do a particular criminal act along with an act falling
25 short of the act intended. The State must show more than

1 mere preparation and intent. There must be some overt
2 act committed in an effort to commit the crime. Intent
3 means intending the result which actually occurred, not
4 accidentally or involuntary. Intent may be shown by acts
5 and conduct of the Defendant and other circumstances from
6 which you may naturally and reasonably infer intent. To
7 prove attempted murder, the State must prove beyond a
8 reasonable doubt that the Defendant attempted to kill
9 another person without -- with malice aforethought.

10 Now the other lesser included offense is assault and
11 battery of a high and aggravated nature, for which you
12 asked a definition, and I will give you the statutory
13 definition on that as well.

14 South Carolina Code provides that a person commits the
15 offense of assault and battery of a high and aggravated
16 nature if the person unlawfully injures another person and,
17 A, great bodily injury to another person results, or, the
18 act is accomplished by means likely to produce death or
19 great bodily injury. And, as I said, assault and battery
20 is -- of a high and aggravated nature is a lesser included
21 offense of murder as defined earlier. To prove assault and
22 battery of a high and aggravated nature, the State must
23 first prove beyond a reasonable doubt that the Defendant
24 unlawfully injured or attempted to injure another person.
25 Next, the State must prove beyond a reasonable doubt that

1 either great bodily injury resulted or that the act was
2 accomplished by means likely to produce death or great
3 bodily injury. Great bodily injury is defined as bodily
4 injury which causes a substantial risk of death or which
5 causes serious permanent disfigurement or protracted loss
6 or impairment of a function of a bodily member or organ.

7 Those are the legal definitions. I can't really add
8 anything to that to make it any clearer, but that's the
9 exact definitions of attempted murder and assault and
10 battery of a high and aggravated nature. And having given
11 you that, I'll ask that you return to your jury room, enjoy
12 your lunch, and continue your deliberations.

13 (Whereupon, the jury retires to the jury room at
14 12:33 PM.)

15 **THE COURT:** Any exceptions or objections on behalf of
16 the State?

17 **MS. CAMPBELL:** No, sir.

18 **THE COURT:** On behalf of the Defendant?

19 **MS. ZMROCZEK:** None, Your Honor.

20 **THE COURT:** All right. We'll be at ease until we hear
21 back from the jury.

22 **MS. WALKER:** Your Honor, Ms. Allen has the computer in
23 the back and we'll hand it to the bailiff as soon as she
24 gets it turned on.

25 **THE COURT:** Yeah, just give it to the bailiff when she

1 gets it turned on and gets it set up so all they've got to
2 do is put the disc in. Give it to the bailiff and he'll
3 give it to the jury.

4 **MS. WALKER:** Okay. Thank you, Your Honor.

5 (Whereupon, a computer was sent back to the jury room
6 at 12:34 PM.)

7 (Recess taken.)

8 **BAILIFF:** Court come to order. Remain seated.

9 **THE COURT:** Ms. Zmroczek, do you want the Defendant
10 in?

11 **MS. ZMROCZEK:** No, I waive his presence, Your Honor.

12 **THE COURT:** Okay.. Back on the record with regard to
13 the State versus Berry. Mr. Berry is not present, but his
14 counsel waives his presence. We have another note from
15 the jury. The jury respectfully requests the statutory
16 definition of attempted murder. May we please get a
17 written copy of the law or, if not, will you show us the
18 printed copy of the statutory definition that the assistant
19 solicitor used in her closing argument.

20 A document has been put on my desk. It's Section
21 16-3-29, attempted murder, and says -- gives the definition
22 -- statutory definition, and I guess both sides have looked
23 at this and are agreeable to sending it to the jury?

24 **MS. CAMPBELL:** Yes.

25 **MS. ZMROCZEK:** Yes, Your Honor.

1 **THE COURT:** I don't think it's necessary to bring them
2 in for that purpose. I'm going to mark it as Exhibit --
3 the question as Exhibit Number --

4 **THE COURT REPORTER:** Nine. It will be nine.

5 **THE COURT:** -- Court's Number 9, and just ask the
6 bailiff to give this definition to them -- to the forelady.
7 Any problem with that? All right. Just tell them here is
8 the response to their question.

9 All right. Thank you. We'll be at ease.

10 **MS. CAMPBELL:** Thank you, Judge.

11 **MS. ZMROCZEK:** Thank you.

12 (Court's Exhibit Number 9, Jury Note, was marked for
13 identification.)

14 (Recess taken.)

15 **BAILIFF:** Court come to order. All rise.

16 **THE COURT:** Thank you. Please be seated.

17 All right. We're back on the record with regard to
18 the matter of the State versus Berry. Mr. Berry is present
19 with his counsel. The State is present and represented by
20 the Fifth Circuit Solicitor's Office.

21 Let me first say to all the spectators here that
22 obviously this is an important matter for all of the people
23 concerned. I don't know what the verdict is, nobody at
24 this point does, but I'm gonna have to require that order
25 and decorum in the courtroom be maintained when the verdict

1 is published. So if there's anybody present who thinks
2 that they cannot sit quietly without any kind of show of
3 emotion, clapping or anything else, when the verdict is
4 published, I would ask that you leave now.

5 All right. Anything before we bring the jury in,
6 Ms. Campbell?

7 **MS. CAMPBELL:** No, sir.

8 **MS. ZMROCZEK:** No.

9 **THE COURT:** All right. Bring the jury in, please.

10 (Whereupon, the jury returns to the courtroom to
11 report their verdict at 2:46 PM.)

12 **BAILIFF:** The jurors are seated, Your Honor.

13 **THE COURT:** Thank you, sir.

14 Madam Forelady, I understand that you've reached a
15 verdict; is that correct?

16 **THE FOREPERSON:** Yes, sir, we have.

17 **THE COURT:** Will you past it up, please, to the clerk.

18 **BAILIFF:** (Handing.)

19 **THE COURT:** All right. From the standpoint of the
20 form, the verdict appears to be correct from a form
21 standpoint. Ms. Zmroczek, will you and your client stand,
22 please.

23 Madam Clerk, you may publish the verdict.

24 **THE CLERK:** Yes, sir, Your Honor.

25 State of South Carolina, County of Richland, in

1 the Court of General Sessions, Indictment Number
2 2015-GS-40-00020, Indictment Number 2015-GS-40-05062,
3 Indictment Number 2015-GS-40-00015, Indictment Number
4 2015-GS-40-00017, and Indictment Number 2015-GS-40-00018,
5 the State of South Carolina versus Brandon Joseph Berry.
6 We, the jury, by unanimous agreement find the Defendant,
7 Brandon Joseph Berry, on Indictment Number 2015-GS-40-00020
8 for attempted murder, guilty. On Indictment Number
9 2015-GS-40-05062 for attempted armed robbery, guilty. On
10 Indictment Number 2015-GS-40-00015 for unlawful carrying of
11 a pistol, guilty. On Indictment Number 2015-GS-40-00017
12 for unlawful conduct towards a child, guilty. On
13 Indictment Number 2015-GS-40-00018 for resisting arrest,
14 guilty. Signed Number 168, Janice Lewis, Foreperson,
15 December 4, 2015.

16 Madam Forelady, were these your verdicts and the
17 verdicts of the entire jury?

18 **THE FOREPERSON:** Yes, they are.

19 **THE CLERK:** Thank you.

20 **THE COURT:** You may be seated. Anything before the
21 jury is excused, Ms. Zmroczek?

22 **MS. ZMROCZEK:** We would ask to poll the jury.

23 **THE COURT:** All right. Poll the jury, please, ma'am.

24 **THE CLERK:** Yes, Your Honor.

25 Ladies and gentlemen of the jury, I'm gonna ask you

1 two questions related to your verdict. Please answer yes
2 or no to both questions.

3 Number 168, Janice Lewis, were these your verdicts?

4 **JUROR:** Yes.

5 **THE CLERK:** Are they still your verdicts?

6 **JUROR:** Yes.

7 **THE CLERK:** Number 296, Deborah Wiggins, were these
8 your verdicts?

9 **JUROR:** Yes.

10 **THE CLERK:** Are they still your verdicts?

11 **JUROR:** Yes.

12 **THE CLERK:** Number 26, Jeffrey Brady, were these your
13 verdicts?

14 **JUROR:** Yes.

15 **THE CLERK:** Are they still your verdicts?

16 **JUROR:** Yes.

17 **THE CLERK:** Number 182, Travis Malseed, were these
18 your verdicts?

19 **JUROR:** Yes.

20 **THE CLERK:** Are they still your verdicts?

21 **JUROR:** Yes.

22 **THE CLERK:** Number 57, Mary Cooper, were these your
23 verdicts?

24 **JUROR:** Yes.

25 **THE CLERK:** Are they still your verdicts?

1 **JUROR:** Yes.

2 **THE CLERK:** Number 231, Kathleen Randall, were these
3 your verdicts?

4 **JUROR:** Yes.

5 **THE CLERK:** Are they still your verdicts?

6 **JUROR:** Yes.

7 **THE COURT:** Number 54, Andrew Connaker, were these
8 your verdicts?

9 **JUROR:** Yes.

10 **THE CLERK:** Are they still your verdicts?

11 **JUROR:** Yes.

12 **THE CLERK:** Number 315, Jessica Phipps, were these
13 your verdicts?

14 **JUROR:** Yes.

15 **THE CLERK:** Are they still your verdicts?

16 **JUROR:** Yes.

17 **THE CLERK:** Number 17, Stephanie Beaty, were these
18 yours verdicts?

19 **JUROR:** Yes.

20 **THE CLERK:** Are they still your verdicts?

21 **JUROR:** Yes.

22 **THE CLERK:** Number 95, Dana Gantt, were these your
23 verdicts?

24 **JUROR:** Yes.

25 **THE CLERK:** Are they still your verdicts?

1 **JUROR:** Yes.

2 **THE CLERK:** Number 37, Kendall Buchanan, were these
3 your verdicts?

4 **JUROR:** Yes.

5 **THE CLERK:** Are they still your verdicts?

6 **JUROR:** Yes.

7 **THE CLERK:** Number 150, Vita Jones-Robinson, were
8 these your verdicts?

9 **JUROR:** Yes.

10 **THE CLERK:** Are they still your verdicts?

11 **JUROR:** Yes.

12 **THE CLERK:** The jury has been polled, Your Honor.

13 **THE COURT:** All right. Thank you.

14 Anything else, Ms. Zmroczek, before the jury is
15 excused?

16 **MS. ZMROCZEK:** No, Your Honor.

17 **THE COURT:** All right. Ladies and gentlemen, this
18 will conclude your services in connection with this case
19 and I'm going to excuse you in just a few minutes. I
20 want to tell you that in my view the jury's role in the
21 factfinding process is so important that the trial judge
22 cannot comment on the verdict of a jury even after the jury
23 has returned a verdict, and I make it a practice to never
24 comment on the verdict of the jury. I will tell you that
25 there was evidence in the record by which you could reach

1 the decision that you did.

2 This will excuse your service -- this will complete
3 your service on this case and I'm going to excuse you
4 from any further service on this case and for any further
5 service this week, even though it is Friday afternoon.
6 This will conclude your jury service for this week.

7 There's several things that I want to tell you.
8 First of all, by serving on the jury this week, you have
9 met your citizenship responsibilities for jury service in
10 the Circuit Court of South Carolina, that's either the
11 Court of Common Pleas, which is the civil side of this
12 court, or the Court of General Sessions, for the next three
13 years. If you were to get a summons from the clerk in the
14 next year, we couldn't take you even if you wanted to serve
15 because you would be disqualified. In the second and third
16 years, you have an exemption and you could serve if you
17 wanted to, but you could be excused, but you cannot be
18 required to serve as a juror in the Circuit Court more than
19 once every three years.

20 And I can't help you with Federal court or
21 Magistrate's court. If you get a summons for one of
22 those courts, you'll just have to take that up with the
23 court, but as far as the Circuit Court is concerned,
24 you've met your citizenship responsibilities for the next
25 three years.

1 I will also tell you that next week sometime you will
2 get a small check from the County.

3 **THE CLERK:** I have their checks.

4 **THE COURT:** She's already get the checks written, so
5 right in time for Christmas. I don't think it's going to
6 be any problem, but don't spend it all in one place. It
7 is only a small token of appreciation from the County for
8 your services this week and it will in no way compensate
9 you for the time that you spent up here this week, but
10 it's a small token of appreciation on behalf of the County.

11 I will also tell you that once you have been
12 discharged there is nothing illegal about your talking with
13 anybody about your service on this case. You can talk to
14 anybody or not talk to anybody and anybody can talk to you
15 or not talk to you, but it's your call. If you don't want
16 to talk about it and they continue to bother or harass you
17 about it, you let the court personnel know and we'll deal
18 with them, but it is -- it's your call as to whether you
19 do want to discuss it with anybody or you don't want to
20 discuss, but it's not illegal. It's a practice for which
21 I strongly -- the contact with the jurors is a practice
22 which I strongly discourage and I strongly disapprove, but
23 it's not illegal. But if anybody wants to talk to you
24 about it and they harass you about it, you let us know and
25 we will deal with them, but it's your call.

1 Also the clerk has a certificate that you can take to
2 your employer to show that you were serving on the jury
3 this week. I hope that you have found your jury service
4 interesting and informative. I know that it is never
5 convenient to serve on a jury, but it is important that we
6 have good citizens who are willing to come forward and
7 serve when they are summoned to do so. Although I know you
8 didn't have much choice about being here, it is important
9 that we have good citizens willing to serve. And the
10 citizenship participation in the judicial process is one
11 of the things that makes our system the best in the world.
12 It's not without its flaws, but it's still the best in the
13 world and so devised by man and it is because we have this
14 citizen participation in the judicial system.

15 The only thing remaining to be done is for the
16 imposition of sentencing. We're going into the sentencing
17 phase of this case in just a few minutes. I know that
18 sometimes -- and many times jurors are anxious to know
19 what the final outcome is and what the sentence that the
20 Defendant is going to receive as a result of their verdict.
21 What I'm going to do is allow you to go out this way. If
22 you would like to stay for the sentencing phase, if you
23 would go around the way that you come in and come in the
24 back of the courtroom and just have a seat right there in
25 the back of the courtroom. You're welcome to stay for the

1 sentencing phase and then I will dismiss you before anyone
2 else will be released from the courtroom and the courthouse
3 so you can get out of the building without running into any
4 of the participants of the trial.

5 So if you'd like to stay, you're welcome to, but you
6 don't have to. Once I excuse you, you can go on and go
7 home, but if you'd like to just come on around and have a
8 seat in the back of the courtroom as we go into the
9 sentencing phase.

10 With that, I will make one final comment. I hope
11 that you have found not only your service interesting --
12 I think you probably have found that it's a great deal
13 different than television, and I have always said that it
14 never ceases to amaze me that on television they can have a
15 crime committed, an investigation, a trial and sentencing
16 and all in sixty minutes less commercials. It doesn't work
17 that way in real life. So I hope you have a better
18 appreciation of our criminal justice system as a result of
19 having served this week.

20 Thank you. You are free to go. Have a pleasant
21 holiday.

22 (Whereupon, the jury is excused at 2:55 PM.)

23 **THE COURT:** Motions on behalf of the Defendant,
24 Ms. Zmroczek?

25 **MS. ZMROCZEK:** Yes, Your Honor. At this time I would

1 renew all of my previous motions, as well as make a motion
2 to set aside the verdict based on -- well, set aside the
3 verdict on the two, attempted murder and attempted armed
4 robbery, Your Honor, just for the previous reasons that I
5 had set forth.

6 **THE COURT:** I'm sorry?

7 **MS. ZMROCZEK:** For the previous reasons that I had
8 argued before.

9 **THE COURT:** All right. Your motion is that you want
10 to renew your previous motions and also judgment not --
11 judgment in arrest of verdict for the same reasons; is that
12 right?

13 **MS. ZMROCZEK:** Correct, Your Honor. And to be more
14 specific, Your Honor, on the reasons for the attempted
15 murder and the attempted armed robbery, my objections would
16 be -- the reason that I would ask that be set aside is
17 because the jury specifically asked to listen to the three
18 phone calls and one of the phone calls was between the
19 co-defendant in one of the charges and I just -- as I told
20 the Court prior, I just had issues with that coming in.
21 And I understand the Court's ruling. I just simply wanted
22 to put that on the record.

23 **THE COURT:** Okay. That was one of the things they
24 asked for, but they also asked for further definition of
25 attempted murder and I felt like based on the questions

1 that were asked, whether the jury -- what the jury was
2 deliberating really and whether they were having a problem
3 with the overall case, was making their decision between
4 the attempted murder and the attempted armed robbery and
5 once they resolved that in their minds, they returned a
6 verdict of guilty on all charges, and I would respectfully
7 deny the motions for the same reasons that have been
8 previously put on the record. I believe there was evidence
9 by which the jury could reach all of the decisions they
10 have reached on all of these five cases, and so the motion
11 for a new trial or judgment in arrest of verdict is denied.

12 All right. Prior record.

13 **MS. WALKER:** Thank you, Your Honor. The Defendant's
14 prior record goes back to 2009 in South Carolina. He has a
15 receiving stolen goods in 2009. In 2010, he was convicted
16 of assault and battery in the third degree, possession of
17 marijuana and miscellaneous criminal offenses. In 2011, he
18 was convicted of two counts of burglary, Your Honor. He
19 received probation for that. Probation was violated,
20 Your Honor, when he was convicted of unlawful carrying of a
21 weapon.

22 **THE COURT:** What happened on the probation violation?
23 Was some time revoked? Do you have -- does it show that?

24 **MS. WALKER:** Yes, sir. It looks like he got one year
25 revocation on each of them.

1 **THE COURT:** All right. So he had -- in 2011, he had a
2 conviction for two counts of burglary?

3 **MS. WALKER:** Yes, Your Honor. He was convicted of two
4 counts of burglary. That probation was revoked.

5 **THE COURT:** What was his sentence?

6 **MS. WALKER:** Your Honor, his sentence at that point --
7 it was five years suspended to probation for two years.

8 **THE COURT:** All right. And one year was revoked?

9 **MS. WALKER:** Yes, Your Honor.

10 **THE COURT:** And I assume terminated. You don't know
11 that?

12 **MS. WALKER:** I don't -- I don't have that on here,
13 Your Honor.

14 **MS. ZMROCZEK:** That's correct. It was terminated.

15 **THE COURT:** One year revoked and probation terminated.
16 All right. Go ahead.

17 **MS. WALKER:** And then going to North Carolina, Your
18 Honor, he was found guilty of a misdemeanor larceny, four
19 counts -- five counts of misdemeanor larceny in North
20 Carolina.

21 **THE COURT:** When was that?

22 **MS. WALKER:** Your Honor, that was in 2008.

23 **THE COURT:** All right.

24 **MS. WALKER:** Your Honor, Mr. Steadman went outside.
25 He will be back to talk about the Defendant's gang

1 affiliation, which we didn't get into.

2 **THE COURT:** I'm sorry, the Defendant's what?

3 **MS. WALKER:** Gang affiliation, which we did not get
4 into during the course of this trial. He is a documented
5 Blood, Your Honor, by the Richland County Sheriff's
6 Department and -- I'm sorry, by the Columbia Police
7 Department.

8 **THE COURT:** Pardon?

9 **MS. WALKER:** He's a documented member of the Blood
10 street gang by the Columbia Police Department.

11 **THE COURT:** Okay.

12 **MS. WALKER:** Also, I think, Your Honor, at the
13 appropriate time the victim's mother would like to address
14 the Court and then I'll finish up.

15 **THE COURT:** All right. Let me see if I summarize
16 this thing correctly right now to make sure. The earliest
17 criminal record that you have on him is 2009?

18 **MS. WALKER:** Yes, Your Honor.

19 **THE COURT:** And that was for receiving stolen goods?

20 **MS. WALKER:** Yes, Your Honor.

21 **THE COURT:** And then in 2010 assault and battery
22 third?

23 **MS. WALKER:** Yes. Yes, Your Honor.

24 **THE COURT:** And in 2011, burglary two counts, for
25 which he was given probation and that was -- he was unable

1 to keep his probation and one year was revoked and he was
2 terminated?

3 **MS. WALKER:** Yes, Your Honor.

4 **THE COURT:** And then he has a North Carolina record of
5 some larcenies up there?

6 **MS. WALKER:** Yes.

7 **THE COURT:** All right.

8 **MR. WALKER:** And there's also an additional pending
9 burglary in our office.

10 **THE COURT:** Okay. All right. Ms. Zmroczek, has the
11 solicitor correctly recited the Defendant's criminal
12 record?

13 **MS. ZMROCZEK:** Yes, they have, Your Honor.

14 **THE COURT:** All right. And we'll come to the gang
15 situation in just a minute, Ms. Walker, but let me address
16 the victim in this case or the victim's family. You, of
17 course, have the right to be present during the entire
18 trial, and you have been here, and you've kept advised of
19 everything that's been going on with the -- by the
20 solicitor's office and I'm sure the solicitor's office has
21 kept you advised. You also have the right to address the
22 Court at this time. So if there's anything that you would
23 like to tell me, if you will give me your -- give the court
24 reporter your name and your affiliation with the victim in
25 this case, and I'll be glad to hear from you.

1 **MRS. KEITH:** Janice Keith, and I'm the mother of
2 Michael Keith. Your Honor, I just want to thank you, and
3 the jury, for what they've done. But, Your Honor, I taught
4 my child from a young age, if he wanted something, you
5 work for it. And I also told him if he ever went downtown
6 for a crime and it's not self-defense, he will stay there.
7 This young man, Mr. Berry, I'm going -- I forgive you and
8 I pray that whenever you do get out that you will change
9 your life because, if not, you can't continue to live like
10 this. And I pray that the laws will change with all the
11 shooting. It just -- it needs some changes and I just pray
12 to God that I was able to come to the court for him being
13 shot and not going to the graveyard to visit my child every
14 day and I just thank you again and that's all I'm saying.

15 **THE COURT:** All right. Thank you for being here.
16 Mr. Keith, is there anything you'd like to say?

17 **MR. KEITH:** No, I'm good, Your Honor. Thank you.

18 **THE COURT:** Okay.

19 All right. What else, Ms. Campbell?

20 **MS. CAMPBELL:** Your Honor, we're getting the
21 documentation. He is a documented Blood gang member.
22 Actually, the tattoo on his neck is inscribed with the
23 South Carolina code for that. We do have -- I don't know
24 if you want to see the documentation. I don't think they
25 dispute that. It's in the rap sheet. He's documented and

1 was at the time this occurred.

2 **THE COURT:** All right. Unless you dispute that or
3 want to refute it in any way, I don't need to see the
4 documentation.

5 **MS. ZMROCZEK:** No, we don't dispute it.

6 **THE COURT:** All right.

7 **MS. CAMPBELL:** Your Honor, we would on behalf of the
8 citizens of Richland County just ask for a very substantial
9 sentence. We're just lucky today we weren't here on a
10 murder charge. We do feel like that his actions that
11 night, lying in wait, going there for the purpose of
12 robbing him and then when the victim was not cooperative
13 basically shooting at him at least once, shooting him the
14 second time, and then but for the actions of his girlfriend
15 putting the gun to his head and shooting him a third time,
16 I don't know that it gets much more serious than this.

17 **THE COURT:** All right. Thank you. Let's make sure
18 we're on the same page in connection with this, and I
19 think that we are, but I just want to confirm this. The
20 attempted murder, I believe, carries up to thirty years,
21 zero to thirty. The attempted armed robbery carries zero
22 to twenty. The unlawful pistol, one year or a thousand
23 dollars. Unlawful conduct toward a child, zero to ten and
24 a fine in my discretion. And the resisting arrest, one
25 year and a fine between five hundred and one thousand. Is

1 that correct?

2 **MS. CAMPBELL:** That's correct.

3 **MS. ZMROCZEK:** That's correct, Your Honor.

4 **THE COURT:** All right. Anything else on behalf of the
5 State at this time, Ms. Campbell? Or Ms. Walker?

6 **MS. WALKER:** No, Your Honor.

7 **THE COURT:** All right. Yes, ma'am.

8 **MS. ZMROCZEK:** Thank you, Your Honor. Mr. Berry is
9 twenty-four years old and he did graduate high school. He
10 has two children as you've heard with two different women.
11 Your Honor, he -- I did tell his friends not to come to
12 court, but he does not have any family support. He's never
13 met his father. It's not an excuse for his behavior. In
14 fact, I think during the jail calls when they were being
15 played he finally had a little bit of a reality check
16 about how -- he's much smarter than what he appears, Your
17 Honor. I know that several people are -- their initial
18 offer in this case was thirty years and then we had some
19 negotiations between fifteen and twenty, which Your Honor
20 is aware that he rejected. And I know that Your Honor is
21 not a fan of trial tax. I would ask that -- that you give
22 some sort of sentence that would run these cases concurrent
23 instead of consecutive. I think he's facing a substantial
24 amount of time and -- and for those reasons, Your Honor, we
25 would just ask that you give him a serious, but consecutive

1 -- or concurrent, not consecutive, sentence.

2 **THE COURT:** All right. Is there anything he'd like to
3 say?

4 **MS. ZMROCZEK:** Your Honor, at this time he requests
5 not to speak.

6 And, I'm sorry, I know you're writing, but, Your
7 Honor, and I'm pretty sure that they do this automatically,
8 but we would ask that he receive credit for the time that
9 he's been in jail.

10 **THE COURT:** Oh, yes.

11 When I got this job about eighteen years ago, I was
12 told by my colleagues that the most difficult thing we
13 would have to do would be criminal sentencing. And I'm
14 more firmly convinced of that fact now than I was
15 eighteen years ago when I first went on the bench. It is
16 the most difficult thing we have to do. It is something
17 that I've never gotten comfortable with and I hope that I
18 never get comfortable with it because I think if you get
19 comfortable with it, it means you don't care.

20 We judges have no -- first of all, we can't see the
21 future. We only make a decision on the case that is before
22 us and the individual that is before us based upon our
23 experience and the law and the needs of the society and the
24 community.

25 Mr. Berry, you're a mighty young man, twenty-four

1 years old, to be in the kind of trouble that you're in. I
2 could give you sixty-two years in prison for all of these
3 crimes if I ran them all consecutive. That means that you
4 would die in prison. But I'm going to give a sentence that
5 will enable you to one day get out of prison. I hope that
6 you will learn something while you're there, but you are
7 definitely going to prison and you're going to go there for
8 a long time. I'm most concerned about this situation with
9 gang affiliation and I hope this sentence will send some
10 message to your fellow gang members out there that if
11 they're going to commit these kind of crimes, they're going
12 to end up in the South Carolina Department of Corrections.

13 Starting with the less serious offenses, the two
14 weapons charges, not -- the weapons charge, that is
15 Indictment 2015-015, it carries a maximum of one year. The
16 sentence of the Court is the Defendant is sentenced to the
17 State Department of Corrections for one year, given credit
18 for time served, and it is concurrent with all charges.

19 The same thing with the resisting arrest, carrying a
20 maximum of one year. The sentence of the Court is the
21 Defendant's committed to the State Department of
22 Corrections for a term of one year to run concurrent with
23 all charges.

24 I'm going to come back to the neglect of the child
25 situation because I'm doing this consciously and I know

1 what I'm doing when I do it.

2 The sentence of the Court on the attempted murder and
3 the attempted armed robbery, the Defendant is committed to
4 the State Department of Corrections for a determinate term
5 of twenty years, concurrent with each other.

6 However, on the unlawful neglect of a child, the
7 sentence of the Court is that the Defendant is committed
8 to the State Department of Corrections for five years
9 consecutive to the armed robbery and attempted murder
10 charges. And, of course, the reason for that is it pretty
11 much means he'll do all of that twenty years before he
12 starts serving the five years on the other charge and
13 that's the reason for setting it up that way.

14 So the twenty years on the -- on the armed robbery and
15 the resisting -- or the armed robbery and the attempted
16 murder, five years after that on the neglect or unlawful
17 conduct toward a child, with the other charges all running
18 concurrent.

19 **MS. CAMPBELL:** Thank you, Your Honor.

20 **MS. ZMROCZEK:** Thank you, Your Honor.

21 **MS. WALKER:** Thank you, Your Honor.

22 **THE COURT:** All right. Everyone else keep your seats,
23 please. Jurors, you are welcome to leave and we'll give
24 you an opportunity to leave before anyone else is excused.

25 Let's wait just a moment to see if the -- give the

WITNESSES

(S) B Pennington
- Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010202677

ACTION OF GRAND JURY

TRUE BILL

Connie Lumpkin
Foreperson of Grand Jury

Date: FEB 11 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS40 00015

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

FEBRUARY, TERM 2015

42

THE STATE
vs.

Brandon Joseph Berry

Indictment for
WEAPONS / UNLAWFUL CARRYING OF
PISTOL

SC Code: 16-23-0020
CDR Code: 0044

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

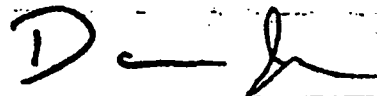
INDICTMENT

At a Court of General Sessions, convened on **FEBRUARY 11** 2015, the
Grand Jurors of Richland County present upon their oath:

UNLAWFUL CARRYING OF A PISTOL

That Brandon Joseph Berry did in Richland County on or about July 29, 2014, carry about the person a pistol, such carrying not being authorized by law, in violation of Section 16-23-0020, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

631

WITNESSES

(S) B Pennington
- Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010202680

ACTION OF GRAND JURY

TRUE BILL

Date: **FEB 11 2015**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS40 00017

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2015

42

THE STATE
vs.

Brandon Joseph Berry

Indictment for
CHILDREN / LEGAL CUSTODIAN,
UNLAWFUL NEGLECT OF CHILD OR
HELPLESS PERSON

SC Code: **63-05-0070**
CDR Code: **2481**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

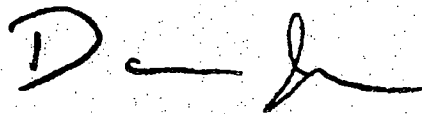
INDICTMENT

At a Court of General Sessions, convened on **FEBRUARY 11**, 2015, the
 Grand Jurors of Richland County present upon their oath:

UNLAWFUL CONDUCT TOWARDS A CHILD

That Brandon Joseph Berry did in Richland County on or about July 29, 2014,
 while having charge or custody, or being the parent or guardian, or being
 responsible for the welfare of the minor child, **B.K.** age two years,
 place the child at unreasonable risk of harm affecting the child's life, physical or
 mental health, or safety; or did unlawfully or maliciously cause or cause to be
 done bodily harm to the child so that the life or health of the child was endangered
 or was likely to be endangered; or did willfully abandon the child, in violation of
 Section 63-5-70, S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the
 statute in such case made and provided.



DAN JOHNSON, SOLICITOR

633

WITNESSES

(S) B Pennington
- Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010202681

ACTION OF GRAND JURY

TRUE BILL

Date: **1/20/15**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS40 00018

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2015

42

THE STATE
vs.

Brandon Joseph Berry

Indictment for
RESISTING / RESISTING ARREST;
OPPOSE, RESIST, OR ASSAULT LAW
ENFORCEMENT OFFICER SERVING
PROCESS

SC Code: **16-09-0320(A)**
CDR Code: **0326**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

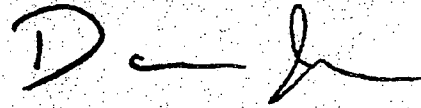
INDICTMENT

At a Court of General Sessions, convened on FEBRUARY 11 2015, the
Grand Jurors of Richland County present upon their oath:

RESISTING ARREST

That Brandon Joseph Berry did in Richland County on or about July 29, 2014,
knowingly and willfully oppose or resist an arrest being made by one whom the
defendant knew or reasonably should have known was a Law Enforcement
Officer, in violation of Section 16-09-0320(A), S. C. Code of Laws, 1976, as
amended.

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

635

WITNESSES

(S) John Carwell JR
- Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010600848

ACTION OF GRAND JURY

TRUE BILL

Date:

JAN 1 4 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS40 00020

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

42

**THE STATE
vs.**

Brandon Joseph Travon Berry

**Indictment for
ATTEMPTED MURDER**

SC Code: 16-03-0029
CDR Code: 3410

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

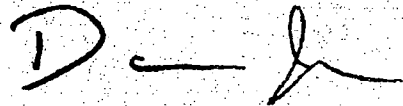
INDICTMENT

At a Court of General Sessions, convened on January 14 2015, the
Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Brandon Joseph Travon Berry did in Richland County on or about
July 29, 2014, did with the intent to kill, attempt to kill MICHAEL KEITH
with malice aforethought, either expressed or implied. All in violation of SC
Code of Laws § 16-3-29 (1976, as amended)

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

637

WITNESSES

(S)

Investigator Carwell – RCSD

ARREST WARRANT NUMBER

DP15236

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

SEP 09 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS4005062

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2015

42

**THE STATE
vs.**

Brandon Joseph Berry

**Indictment for
ROBBERY / ATTEMPTED ARMED, OR
ALLEGEDLY ARMED, ROBBERY**

SC Code: **16-11-0330(B)**
CDR Code: **0026**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 9, 2015,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Brandon Joseph Berry did, in Richland County on or about July 29, 2014, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of Michael Keith with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Brandon Joseph Berry

AKA: _____

Race: BLACK Sex: M Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Weapons / Unlawful carrying of pistol

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS4000015A/W#: 2014A401020267Date of Offense: 7/29/2014S.C. Code § : 1623-0020CDR Code #: 0044SC Court of Appeals
SENTENCE SHEET☒ CONVICTED OF or ☐ PLEADSin violation of § 16-23-0020 of the S.C. Code of Laws, bearing CDR Code # 0044☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: _____

Campbell, Luck13009
SC Bar#

Defendant

Attorney for Defendant79193
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all charges☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5%) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ _____

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Johnson

SCCA/217 (03/2011)

Presiding Judge Howard P. KingJudge Code: 2107Sentence Date: Dec 4, 2015

640

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
 STATE V.S.
Brandon Joseph Berry

INDICTMENT/CASE#: 2015GS4000017A/W#: 2014A4010202680Date of Offense: 7/29/2014S.C. Code § : 63-05-0070CDR Code #: 2481

AKA:

Race: BLACK Sex: M Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Children / Legal custodian, unlawful neglect of child or helpless person

SENTENCE SHEET

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The pleas: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Campbell, Luck13005
SC Bar#

Defendant

77713
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 ~~days~~ ^{years} ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2015-020 (A.H. Hudd) & 2015-5062 (Campbell)☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Consent to 2015-015 & 018☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5%) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ _____

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Johnson

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2107Sentence Date: Dec 4, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

641

COUNTY OF
STATE

Richland

VS.

Brandon Joseph Berry

AKA:

Race: BLACK

Sex: M

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Resisting / Resisting Arrest; Oppose, resist, or assault law enforcement officer serving process

SENTENCE SHEET

INDICTMENT/CASE#: 2015GS4000018

A/W#: 2014A4010202681

Date of Offense: 7/29/2014

S.C. Code §: 16-09-0320(A)

CDR Code #: 0326

in violation of § 16-09-0320(A) of the S.C. Code of Laws, bearing CDR Code # 0326

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Campbell Luck

13009
SC Bar#

Defendant

Attorney for Defendant

77193
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 1 days/months/years, or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessment: 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk k

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2/107

Dec 4, 2015

642

STATE OF SOUTH CAROLINA

COUNTY OF Richland
 STATE VS.
Brandon Joseph Travon Berry

AKA:

Race: BLACK Sex: M Age:DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Attempted Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS4000020A/W#: 2014A4010600848Date of Offense: 7/29/2014S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Campbell, Luck13005
SC Bar#

Defendant

Attorney for Defendant

SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years.

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: with attempted to
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$100

\$

\$12

\$

\$25

\$

\$500

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ea

\$

\$5

\$

\$

\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.Brandon Joseph Berry

AKA:

Race: BLACK Sex: M Age: DOB: SS#:

Address:

City, State, Zip:

DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Attempted armed, or allegedly armed, robberyINDICTMENT/CASE#: 2015GS4005062A/W#: DP15236Date of Offense: 7/29/2014S.C. Code § 16-11-0330(B)CDR Code #: 0026

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State

ATTEST

Campbell, Luck13009
SC Bar#

Defendant

Attorney for Defendant7-1-13
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: attempted murder☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL:	\$

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Clerk of Court/ Deputy Clerk: Jeannette W. McBradenCourt Reporter: Johnson

SCCA/217 (03/2011)

Presiding Judge Howard P. KingJudge Code: 2169Sentence Date: Aug 4, 2015

RICHLAND COUNTY SHERIFF'S DEPARTMENT
5623 TWO NOTCH ROAD
COLUMBIA, SOUTH CAROLINA 29223

CONSENT TO SEARCH

Date: 7/29/14

Location: _____

I, Louisa J. Katio, do hereby consent to the search of my premises and/or automobile without a search warrant by Det. Carnell and Sr. Dep. Owens, officers of the Richland County Sheriff's Department. These officers are authorized by me to take from my premises and/or automobile letters, papers, materials or other property which they may desire.

Description of property to be searched: Apartment at said locationBrandon Berry is not on the lease

I understand that I am free to leave, and I am aware that if any evidence is obtained as a result of this consent search, it can be used against me in a court of law.

This written permission is being given by me to the above-named officers freely, voluntarily, and without threats or promises of any kind.

WITNESS: [Signature]

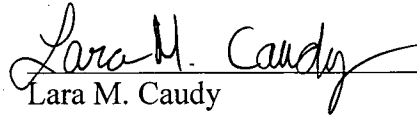
WITNESS: _____

SIGNED: x [Signature] Katio

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 9th day of November, 2016.

RECEIVED

NOV 09 2016

SC Court of Appeals

5

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

NOV 09 2016

SC Court of Appeals

Appeal from Richland County
Honorable Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

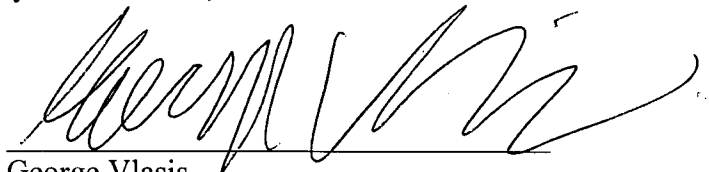
V.

BRANDON J. BERRY,

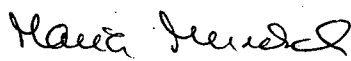
APPELLANT

CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above referenced case has been served upon Megan Harrigan Jameson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of November, 2016.


George Vlasis
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 9th day of November, 2016.

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