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VOLUME THREE OF THREE

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appeal from Lancaster County

MAR 14 2017

Honorable Thomas W. Cooper, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ALLEN WESLEY MASSEY,

APPELLANT

APPELLATE CASE NO 2015-001934

RECORD ON APPEAL

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INDEX

INDEX.....	i
IMMUNITY HEARING TRANSCRIPT MARCH 31, 2015.....	1
TESTIMONY	
RENEE ROBINSON	
Direct Examination by Mr. Grier	10
Cross Examination by Ms. Collins.....	14
ALLEN WESLEY MASSY	
Direct Examination by Mr. Grier	20
Cross Examination by Ms. Collins.....	52
Redirect Examination by Mr. Grier	120
Recross Examination by Ms. Collins	122
JANICE ROSS	
Direct Examination by Ms. Collins.....	125
Cross Examination by Mr. Grier.....	140
Redirect Examination by Ms. Collins	148
Recross Examination by Mr. Grier.....	154
NAVONEY CURRY	
Direct Examination by Mr. Grier	156
Cross Examination by Ms. Collins.....	174
Redirect Examination by Mr. Grier	184
DOROTHY MASSEY	
Direct Examination by Mr. Grier	186
Cross Examination by Ms. Collins.....	193
Redirect Examination by Mr. Grier	207
SCOTT GRANT	
Direct Examination by Mr. Grier	208
Cross Examination by Ms. Collins.....	212
Redirect Examination by Mr. Grier	227
TYZHE HOUGH	
Direct Examination by Mr. Grier	231
Cross Examination by Ms. Collins.....	234
Redirect Examination by Mr. Grier	240
Recross Examination by Ms. Collins	242

LEANNA CRAWFORD

Direct Examination by Mr. Grier	243
Cross Examination by Ms. Collins.....	252

PHILLIP HALL

Direct Examination by Mr. Grier	264
Cross Examination by Ms. Collins.....	267

BRIAN SMALL

Direct Examination by Mr. Grier	278
Cross Examination by Ms. Collins.....	292
Redirect Examination by Mr. Grier	294
Recross Examination by Ms. Collins	295

ALLEN MASSY

Direct Examination by Mr. Grier	295
Cross Examination by Ms. Collins.....	296

MALIKA HARRIS

Direct Examination by Ms. Collins.....	299
Cross Examination by Mr. Grier	318
Redirect Examination by Ms. Collins	329
Recross Examination by Mr. Grier.....	330

SHONETTIA HUNTER

Direct Examination by Ms. Collins.....	333
Cross Examination by Mr. Grier	347
Redirect Examination by Ms. Collins	357

SINDAROUS WELLS

Direct Examination by Ms. Collins.....	357
Cross Examination by Mr. Grier	375
Redirect Examination by Ms. Collins	389
Recross Examination by Mr. Grier.....	391

PHILLIP HALL

Direct Examination by Ms. Collins.....	392
Cross Examination by Mr. Grier	393

EBONIE HARRIS

Direct Examination by Ms. Collins.....	396
Cross Examination by Mr. Grier	406
Redirect Examination by Ms. Collins	389
Recross Examination by Mr. Grier.....	391

DOROTHY MASSEY

Direct Examination by Mr. Grier	415
Cross Examination by Ms. Collins.....	417
Redirect Examination by Mr. Grier	418

LEANNA CRAWFORD

Direct Examination by Mr. Grier	418
Cross Examination by Ms. Collins.....	420
Redirect Examination by Mr. Grier	420

BRIAN SMALL

Direct Examination by Mr. Grier	421
---------------------------------------	-----

ARGUMENTS	423
-----------------	-----

IMMUNITY RULING TRANSCRIPT APRIL 3, 2015	450
--	-----

TRIAL TRANSCRIPT AUGUST 3-7, 2015.....	463
--	-----

OPENING STATEMENT BY MS. COLLINS.....	468
---------------------------------------	-----

OPENING STATEMENT BY MR. GRIER.....	475
-------------------------------------	-----

TESTIMONY**JANICE ROSS**

Direct Examination by Ms. Collins.....	482
Cross Examination by Mr. Grier	497
Redirect Examination by Ms. Collins	511

EBONIE HARRIS

Direct Examination by Ms. Collins.....	520
Cross Examination by Mr. Grier	538
Redirect Examination by Ms. Collins	550
Recross Examination by Mr. Grier.....	554

MALIKA HARRIS

Direct Examination by Mr. Edgerton.....	554
Cross Examination by Mr. Grier	567
Redirect Examination by Mr. Edgerton	594

SHONETTIA HUNTER

Direct Examination by Ms. Collins.....	597
Cross Examination by Mr. Grier	615
Redirect Examination by Ms. Collins	629
Recross Examination by Mr. Grier.....	631

SINDAROUS WELLS

Direct Examination by Ms. Collins.....	633
Cross Examination by Mr. Grier.....	655
Redirect Examination by Ms. Collins.....	672
Recross Examination by Mr. Grier.....	673

DUSTYNN BURLINGAME

Direct Examination by Mr. Edgerton.....	674
Cross Examination by Mr. Grier.....	681

BRIAN SMALL

Direct Examination by Mr. Edgerton.....	683
Cross Examination by Mr. Grier.....	689
Redirect Examination by Mr. Edgerton.....	698
Recross Examination by Mr. Grier.....	699

BOBBY HILDRETH

Direct Examination by Ms. Collins.....	700
Cross Examination by Mr. Grier.....	718

JENNIFER BARTMAN

Direct Examination by Ms. Collins.....	721
--	-----

JENNIFER BROWN

Direct Examination by Ms. Collins.....	728
Voir Dire Examination by Mr. Grier.....	730
Continued Direct Examination by Ms. Collins.....	730
Cross Examination by Mr. Grier.....	740
Redirect Examination by Ms. Collins.....	743
Recross Examination by Mr. Grier.....	745

CHAD SMITH

Direct Examination by Ms. Collins.....	745
Cross Examination by Mr. Grier.....	758

PHILLIP HALL

Direct Examination by Ms. Collins.....	759
Cross Examination by Mr. Grier.....	788
Redirect Examination by Ms. Collins.....	791

RASHAWN ROBINSON	
Examination by The Court	796
Examination by Ms. Collins	801
Examination by Mr. Grier	803
Direct Examination by Ms. Collins	804
Cross Examination by Mr. Grier	808
SCOTT GRANT	
Direct Examination by Ms. Collins	809
Cross Examination by Mr. Grier	828
DOROTHY MASSEY	
Direct Examination by Mr. Grier	852
Cross Examination by Ms. Collins	862
Redirect Examination by Mr. Grier	207
ALLEN MASSY	
Direct Examination by Mr. Grier	868
Cross Examination by Ms. Collins	916
NAVONEY CURRY	
Direct Examination by Mr. Grier	997
Cross Examination by Ms. Collins	1014
Redirect Examination by Mr. Grier	1024
LORENZO CRAWFORD	
Direct Examination by Mr. Grier	1025
Cross Examination by Ms. Collins	1029
Redirect Examination by Mr. Grier	1024
TYZHE HOUGH	
Direct Examination by Mr. Grier	1035
Cross Examination by Ms. Collins	1042
Redirect Examination by Mr. Grier	240
Recross Examination by Ms. Collins	242
CLOSING ARGUMENT BY MR. GRIER	1053
CLOSING ARGUMENT BY MS. COLLINS	1085
JURY CHARGE	1101
VERDICT	1102
SENTENCING	1105

INDICTMENTS.....1108

CERTIFICATE OF COUNSEL 1112

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**STATE'S EXHIBITS #10-13 FROM IMMUNITY HEARING (PHOTOS OF
APPELLANT'S LIP)**

**STATE'S EXHIBIT #24 FROM IMMUNITY HEARING (VIDEO OF APPELLANT'S
STATEMENT)**

NAVONEY CURRY - DIRECT

- 1 A Yes.
- 2 Q Did you work the night before that?
- 3 A Yes..
- 4 Q Are you under subpoena here today?
- 5 A Yes.
- 6 Q Are you enthusiastic about being here?
- 7 A Am I enthusiastic?
- 8 Q Are you happy about being here?
- 9 A No, I'm not. I'm groggy right now because I'm tired.
- 10 Q I understand. You know, how about -- how do you know
- 11 Allen Massey?
- 12 A He's a childhood friend that I grew up with.
- 13 Q He's a friend too.
- 14 A Yes.
-
- 15 Q All right. You're not related to him.
- 16 A No.
- 17 Q But he's a friend.
- 18 A Yes.
- 19 Q And over the course of the night after you got to
- 20 Shonettia's and Malika's, who all was at the house just
- 21 during the course of the evening that you can recall?
- 22 A I forgot those other three people that had came, I
- 23 don't know, their names like too good.
- 24 Q You just do not remember?
- 25 A But the other three people that came, I think they're

NAVONEY CURRY - DIRECT

1 related to Malika, I'm not for sure but they know her
2 really good, but they came over. And once they came over
3 then that's when Marcus and Ebonie came over.

4 Q Okay. And what were y'all doing?

5 A We was just hanging around in the kitchen, we was
6 playing cards at first.

7 Q All right. Drinking going on?

8 A Yes. They was -- had a little bit of drinks.

9 Q They were drinking.

10 A Yes.

11 Q But you weren't?

12 A Well, I had my own alcohol also, yes, sir.

13 Q Okay. Everybody feeling pretty good?

14 A Yes. I wouldn't say nobody was no wasted drunkenness
15 part.

16 Q I understand.

17 A I wouldn't say nothing like that.

18 Q Okay. But at any rate, you -- who was the last person
19 to get there that you recall, that you knew?

20 A Allen came.

21 Q Do you recall approximately how long it was between
22 the time that -- Marcus and Ebonie came together, didn't
23 they? Did they show up together?

24 A Yes.

25 Q And then Allen came in?

NAVONEY CURRY - DIRECT

1 A Yes. It was a little period afterwards he came in.

2 Q I mean, have you got any idea -- are you looking at
3 your watch and keeping track of whose coming in and out of
4 that house?

5 A No.

6 Q Now, when Allen came in, what was the reaction of
7 people there when Allen came in?

8 A I mean, everybody spoke to him like -- everybody
9 spoke.

10 Q Did anybody have any problems with Allen Massey being
11 there?

12 A Not that I know of, no.

13 Q All right. Well, do you have -- did you have a
14 conversation with Allen while he was there?

15 A Yes.

16 Q Did y'all kind of make some maybe tentative plans to
17 do something else even after that party?

18 A Yes. We was supposed to have been going over to one
19 of my cousin's house, because I was telling him, I said,
20 "We can leave from here," and he was like he wanted to go.
21 So I was telling him that we could go over to my cousin's
22 house, his name is Jamar, and I was telling him to hold on
23 a second, let me go outside and use the restroom.

24 Q Okay. At what point -- how long had Allen been there
25 when -- how long had Allen been there before you went out

NAVONEY CURRY - DIRECT

1 to use the restroom, have you got any idea?

2 A I'm guessing about two hours, an hour or two hours.

3 I'm guessing.

4 Q ~~Okay. All right. You really just don't know.~~

5 A No.

6 Q Not keeping -- you're not watching time.

7 A No not keeping no time, no.

8 Q ~~Okay. Did you see any tension between anybody at the~~

9 party prior to you walking out to go to the bathroom?

10 A Me personally, no, I didn't.

11 Q Everybody is kind of in the kitchen basically, some
12 people are going in and out, right?

13 A Yes.

14 Q But everybody -- people were rapping, listening to
15 music?

16 A Yes.

17 Q Just having fun.

18 A Yes.

19 Q And you went out to use the bathroom.

20 A Yes.

21 Q What's the next thing you recall? Tell me what you
22 recall.

23 A I was stepped outside and I was talking to one of
24 the -- there was another guy that was over there that knew
25 Shonettia really good, and me and him was standing outside

NAVONEY CURRY - DIRECT

1 talking or whatever, I know me and him had to be out there
2 approximately about -- I want to say about a good 15 or 20
3 minutes or so. So as I'm ending the conversation with
4 him, I'm trying to go back in the house, as I'm going back
5 in the house that's when I see Allen coming back out.

6 Q Well, did you hear anything?

7 A No, sir, I didn't.

8 Q Did you do your business outside? Do you go outside
9 to do your business as far as --

10 A Yes. Because Malika and Shonettia was in the
11 restroom at that point in time, so that's the reason why I
12 didn't even bother waiting around on them.

13 Q Okay. Well, sometimes it's an advantage to be a man,
14 isn't it?

15 A Yes, sir.

16 Q All right. You went outside.. How long do you
17 suppose -- how long do you think you were out there before
18 Allen came running out of the house?

19 A I would say about 15 or 20 minutes I'm thinking.

20 Q Really? Were you out there by yourself?

21 A No. I was out there talking to a guy outside, that's
22 what I was saying, the guy was standing on the front
23 porch.

24 Q All right. And what -- did you and Allen talk when he
25 ran out of the house?

NAVONEY CURRY - DIRECT

1 A No. I was asking him where he was going and he
2 didn't say nothing, he just went straight past me.

3 Q Okay. What did you do next?

~~4 A As I'm going back in the house it's like everything~~
5 was like happening at one time, everybody was -- the three
6 people that was already in there, they was still standing
7 in the kitchen, and Malika and Shonettia, they were coming
8 ~~in the kitchen also at the same point in time I was coming~~
9 there and that's when we seen Marcus laying on the floor.

10 At first I was thinking that Marcus had done passed out or
11 whatever and then that's when Malika had opened up Marcus'
12 shirt and that's when she seen like where Marcus had done
13 got shot. I panicked just like everybody else in the
14 house had panicked and everybody was saying, "Call the
15 police."

16 Q Okay. Now, did you call the police?

17 A No. I wasn't the one who called the police, no, sir.

18 Q Okay. Did you see what happened in that room that
19 night?

20 A Well, as far as --

21 Q Did you see the shooting at all?

22 A No, sir, I didn't.

23 Q Now, did you talk to law enforcement that night?

24 A No, sir, I didn't.

25 Q Did anybody that night try to pressure you into making

NAVONEY CURRY - DIRECT

1 a statement or say that you saw what happened in there?

2 A No, sir.

3 Q Have you given any statements in this case to law
4 enforcement? Did you talk to anybody?

5 A I told Detective Small that I had needed to speak
6 with him but I never did get the chance to.

7 Q You never did get the chance to?

8 A No.

9 Q Well, what did you want to tell him?

10 A I was going to tell him pretty much the same thing,
11 what had happened, because, you know, I was standing out
12 there. I was outside.

13 Q Okay. Did you -- well, why would you go up there to
14 tell him you didn't see nothing?

15 A I mean, I wasn't going to tell them I didn't see
16 nothing. I was going to tell him I was there, that I was
17 present, I was present when all of the stuff had happened
18 but I wasn't in the house whenever that shooting and
19 everything had took place.

20 Q Okay. Well, you have known Allen a long time.

21 A Yes, sir, we all grew up together.

22 Q So you're friends with everybody -- well, most of the
23 people in that house?

24 A Yeah. Well, everybody in the house, yes.

25 Q And this is a tragedy for everybody, isn't it?

NAVONEY CURRY - DIRECT

1 A Yes, it's completely tore me apart. Because I feel
2 like if only I was able to be in the house I wouldn't have
3 let that situation go that far because I'm friends with
4 both of them.

5 Q Yeah. Well, tell me about Allen's nickname.

6 A They call him Urk.

7 Q Why do they call him Urk?

8 A I have no idea.

9 Q You don't know? All right. Well, tell me about his
10 nature, man. What's he like?

11 A Well, as far as I know if -- he don't have no kind of
12 bad reputation for nothing, he's a very smart person.

13 Q How about how he gets along with people?

14 A Well, he gets along excellent around people as far as

15 I know of. When he's been around me there hasn't been no
16 kind problems or no troubles like me.

17 Q Have you ever seen him start anything with anybody?

18 A No, sir.

19 Q Were you aware that he was in possession of a pistol
20 that night?

21 A Not really, sir, no.

22 Q Well, not really? What do you mean? Were you or were
23 you not?

24 A No. I think I seen -- when he was leaving I think I
25 seen him with possession of a pistol when he was leaving.

NAVONEY CURRY - DIRECT

1 I'm not sure about --

2 Q Okay. Well, what makes you think you might have?

3 Just --

4 A Because, I mean at the rate he was leaving that's

5 what I said at the pretrial, I think I seen him leaving

6 out with a gun in his hand, I think so.

7 Q All right. Well, have you had any conversations at

8 all with Allen Massey?

9 A Yes. It was a little bit after the situation had

10 happened, he called me asking me what was going on, and I

11 told him, "I need to be asking you what just happened."

12 And then I told him that, you know, that Marcus just got

13 shot, and I guess he just panicked or whatever, he went

14 into a big panic. And I told him the best thing for him

15 to do would be to turn himself in with that firearm, to

16 turn himself in.

17 Q Okay. But you never -- you said you never got around

18 to making that statement that you went up to make with

19 Brian Small?

20 A No, sir.

21 Q Did you talk with Lieutenant Hall at all?

22 A No, sir.

23 Q Phillip Hall, do you know Phillip Hall?

24 A No, sir.

25 Q Now, did you talk with Allen's family shortly after

NAVONEY CURRY - DIRECT

1 that?

2 A I mean, it was asking me about what had happened and

3 I was telling them about what was coming to me, because I

4 ~~wasn't in that house when that stuff had happened.~~

5 Q Okay. And what did they come to believe about whether

6 you were or were not in the house?

7 MS. COLLINS: Objection to what somebody else would

8 believe.

9 MR. GRIER: I withdraw, improper question.

10 Q Sorry, Mr. Curry, I'm asking you to do something I

11 can't ask you to do, speculate. You did have a

12 conversation about what happened in the house, but it

13 wasn't -- nothing was based on -- as far as the shooting

14 but it wasn't based on your personal knowledge, correct?

15 ~~A No. I was telling them what was coming to me because~~

16 they wanted to know what had done happened because they

17 didn't know anything about what was going on. I'm like

18 questionable myself, I'm trying to figure out.

19 Q I understand. But you did have a conversation with

20 his family and told them things that you'd heard about what

21 happened in the house.

22 A Yes. I was telling them what I heard but I don't

23 know whether or not it was true or not.

24 Q Did you make that clear that you weren't in there to

25 them?

NAVONEY CURRY - DIRECT

- 1 A Yes.
- 2 Q All right. And did you -- all right. Well, Mr.
- 3 Curry, did you get a letter from Allen asking you to give a
- 4 statement, do you recall that? Well, let me hand you this.
- 5 Do you recognize State's Exhibit 45?
- 6 A Yes.
- 7 Q All right.
- 8 A And I was trying to figure out -- because I didn't
- 9 know Allen even knew my address.
- 10 Q Well, based on what he's saying here he things you
- 11 were present in the house when the shooting happened.
- 12 A Well, I can't figure out -- is he thinking I was
- 13 present in the house when the shooting happened? I was
- 14 not in the house, I was outside.
- 15 Q So anyone who says you were present when the shooting
- 16 happened is mistaken.
- 17 A Yes.
- 18 Q All right. Forgot to ask you one other thing, Mr.
- 19 Curry, that I meant to ask you about going back to Wiley
- 20 Park. Do you recall why you left there, Mr. Curry?
- 21 A Malika was ready to go home, she was ready to go home
- 22 to her house.
- 23 Q Malika wanted to go home?
- 24 A Yes.
- 25 Q Did you learn anything about a shooting there?

NAVONEY CURRY - DIRECT

1 A No, sir. I don't recall no shooting happening there.

2 Q Okay. And -- but -- so Malika didn't leave there
3 because of a shooting.

4 A -- No.

5 Q You left with her at the same she did and it wasn't
6 because there had been some shooting down there at Wiley.

7 A No, sir.

8 Q And Marcus -- you saw Marcus at Wiley Park, though,
9 right, or did you? Maybe you didn't. I can't remember
10 which --

11 A No, I didn't see Marcus there.

12 Q Okay. So if you didn't see him he didn't tell you to
13 leave.

14 A No, sir.

15 Q Okay. Well, Mr. Curry, do you recall speaking with
16 Allen's sister, Leanna, on the telephone?

17 A Yes, to tell her about -- to tell her about what had
18 happened, yes.

19 Q And was that on speaker phone with her as far as you
20 know?

21 A Not that I recall, I don't think so.

22 Q Do you know Lorenzo Crawford, her husband?

23 A Yes.

24 Q Do you know whether he was present during those
25 conversations?

NAVONEY CURRY - DIRECT

1 A No, sir. I don't know whether or not he was present.

2 Q Do you recall on -- how many times did you talk to
3 her, do you know?

4 A I know one time for sure I had spoke with her because
5 she was staying on Brooklyn.

6 Q Okay. That's the only time, you just remember one
7 conversation?

8 A Yes. Well, I spoke with her face to face.

9 Q But you spoke with her on the phone, too?

10 A Yes.

11 Q And then you had a face to face conversation?

12 A Yes.

13 Q All right. Now, on the telephone when you spoke with
14 her, you had one call?

15 A Yes. I remember that I spoke with her about it.

16 Q Now, on that occasion, do you recall telling her that
17 you witnessed the shooting?

18 A No, I don't remember that.

19 Q Is it possible that you told her that?

20 A I don't remember telling her that I witnessed no
21 shooting.

22 Q Do you recall whether during that conversation Lorenzo
23 Crawford was on the speaker phone with her or not?

24 A No. Because this was when she was with her mom --
25 with her mom, and my mother is a witness to that because

NAVONEY CURRY - DIRECT

1 my mother was at home, because they called my house on
2 another separate occasion and my mom wanted to record that
3 because I'm not quite sure -- because I was trying to get
4 my mom to come up here with me.

5 Q Well, Mr. Curry --

6 MR. GRIER: Beg the Court's indulgence one second.

7 (Break in proceedings.)

8 MR. GRIER: Thank you, Mr. Curry. Answer any
9 questions that Ms. Collins might have for you, sir. And I
10 hope you get some rest.

11 THE DEFENDANT: Okay. Thank you.

12 CROSS EXAMINATION

13 BY MS. COLLINS:

14 Q Did you work last night?

15 A Yes, ma'am.

16 Q Did you get any rest this morning?

17 A No, ma'am, not really.

18 Q I'll try to be as brief as I can, Mr. Curry, I know
19 everybody wants to hear what you have to say. So it's your
20 testimony that you were there at the house on City Avenue
21 that evening, but that at the time of the shooting you had
22 stepped outside to use the restroom; is that right?

23 A Yes, ma'am.

24 Q And because you're a man and a gentleman as I see you
25 to be I assume you didn't just stay right there on the

NAVONEY CURRY - CROSS

- 1 front porch, did you go around the side?
- 2 A Yes, ma'am. I went around the side of the house.
- 3 Q Certainly. Did you go around the side where the
- 4 kitchen is or did you go around to the right side?
- 5 A On the opposite side of the house.
- 6 Q Away from the kitchen?
- 7 A Yes, ma'am.
- 8 Q Because that's where everybody was staying?
- 9 A Yes, ma'am.
- 10 Q And when you used the restroom, you were out there,
- 11 what, five minutes or so and came back to the front porch?
- 12 A Yes, ma'am.
- 13 Q And then there was a gentleman on the front porch and
- 14 y'all hung out and talked for a few minutes?
- 15 A Yes, ma'am.
- 16 Q And while you were outside either on the side of the
- 17 house or on the front porch talking to that gentleman, did
- 18 you hear any shouting inside?
- 19 A No, ma'am, I didn't really hear nothing really.
- 20 Q And you were standing there on the porch?
- 21 A Yes, ma'am.
- 22 Q Is this like a wooden house, is it brick or wooden, or
- 23 do you remember?
- 24 A I have no -- I know it's a very big house.
- 25 Q Kind of a wooden siding it looks like.

NAVONEY CURRY - CROSS

1 A Yes, ma'am.

2 Q Did you hear any scuffling or moving around in the
3 house?

4 A ~~It kind of sounded like it, I'm not for sure but it~~
5 kind of sounded like it.

6 Q Did you hear a gunshot?

7 A No, ma'am, I didn't hear no gunshot.

8 Q ~~So certainly you didn't hear anything enough to alarm~~
9 you while you were being out there.

10 A No, ma'am. To go running in the house, no, ma'am.

11 Q Because certainly -- and forgive me for bringing this
12 up -- forgive me for bringing this up. I know that you've
13 had some tragedy in your life, isn't that right?

14 A Yes, ma'am, some major tragedy.

15 Q ~~You've had two brothers, right?~~

16 A ~~Yes, ma'am. I've lost both of my brothers.~~

17 Q Both of them were --

18 A Fatally shot, yes, ma'am.

19 Q Fatally shot?

20 A Yes, ma'am.

21 Q And when one of them, Eric, was shot you were actually
22 there at the time, too, right?

23 A Yes, ma'am, I got shot also.

24 Q And you were shot, and I think may have passed, right,
25 and they revived you.

NAVONEY CURRY - CROSS

1 A Yes, ma'am. I passed, yes, ma'am.

2 Q Thankfully so. And isn't it true that Sergeant Brian
3 Small was one of the officers that came to try to help you
4 and Eric there that night?

5 A Yes, ma'am.

6 Q And so you've never really had a problem talking with
7 Sergeant Small, right?

8 A Yes, ma'am.

9 Q Y'all have always been on a good relationship, right?

10 A Yes, ma'am.

11 Q So certainly if you would have been outside on the
12 porch and you hear something to alarm you, I assume that
13 after what happened with you and your brother you would be
14 very skittish about that, right?

15 A Yes, ma'am. I'm not going to sit up here and walk
16 into something like that, no, ma'am.

17 Q Because your mom has one son left, right?

18 A Yes, ma'am.

19 Q And that's you.

20 A Yes, ma'am.

21 Q And we want to make sure your mama keeps that one son.

22 A Yes, ma'am.

23 Q So in any -- so you didn't hear anything to where to
24 self protect, you were like, "I'm not going to go back in
25 there," you turned around to go back in there, right?

NAVONEY CURRY - CROSS

1 A Yes, ma'am. Because we was all in there talking and
2 playing cards.

3 Q Everybody had been fine up to that point, right?

4 A Yes, ma'am.

5 Q And you'd been talking to Allen, and Allen didn't say
6 he was going on home, he said -- you said you were going to
7 your cousin's house?

8 A Yes, ma'am. He wanted me to take him over to my
9 cousin Jamar's house.

10 Q So he was going to go with you too.

11 A Yes, ma'am.

12 Q And so you go outside, you turn to go inside and then
13 here comes Allen outside, right?

14 A Yes, ma'am.

15 Q And was he -- I think Mr. Grier asked, was he running?
16 Did he run outside?

17 A He was walking at a really fast pace.

18 Q Really fast pace.

19 A Yeah. And by the time I go in the house and I see
20 Marcus laying on the floor, I go back to the front door to
21 see where he is and he's gone.

22 Q So when you saw Marcus lying down you immediately went
23 out to see where is Allen?

24 A Yes.

25 Q And he'd gone?

NAVONEY CURRY - CROSS

- 1 A Yes.
- 2 Q And Allen didn't say anything as he walked by you?
- 3 A No, ma'am.
- 4 Q And did you happen to notice his face at that time?
- 5 A No, ma'am. But he did say that he had got jumped on
- 6 earlier that night but he didn't say by who.
- 7 Q Let's talk about that. So when he was at City Avenue
- 8 with y'all at Malika and Shonettia's house, Allen said that
- 9 he'd been jumped on earlier that night; is that right?
- 10 A Yes, ma'am.
- 11 Q And you were standing there when he said that?
- 12 A Yes, ma'am. And he just left the whole situation
- 13 alone, he didn't say nothing else about it.
- 14 Q And that was there in the kitchen?
- 15 A Yes, ma'am.
- 16 Q And everybody was in there then?
- 17 A Yes, ma'am, but he was talking to me.
- 18 Q He was talking to you?
- 19 A Yes, ma'am.
- 20 Q Was Demarcus in there?
- 21 A Yes, ma'am.
- 22 Q And he just said he'd been jumped on but he didn't
- 23 elaborate?
- 24 A No, ma'am.
- 25 Q And do you recall testifying at an earlier hearing

NAVONEY CURRY - CROSS

1 when he walked by you as he was going out and you were
2 going back in the house, there was nothing to call your
3 attention to his face such as a -- didn't see a swollen
4 lip, right?

5 A No, ma'am.

6 Q Didn't see any blood on his mouth, right?

7 A No, ma'am.

8 Q And so do you remember at an earlier hearing Mr. Grier
9 asked you about Demarcus had been drinking, right?

10 A Well, we all were.

11 Q All were drinking, right?

12 A Yes.

13 Q And do you remember Mr. Grier asked you in terms of
14 Demarcus was he -- I'm trying to find the page for you, I

15 want to make sure I word it right and you correct me. That
16 was he drunk and you said, "No, sir, I wouldn't say that."
17 Do you remember that?

18 A No. Because he had made me come into tears because
19 he was talking about my brothers while we were sitting in
20 there and he was talking about how he missed my brothers
21 and stuff. So I was telling him that we were going to
22 finish talking, let me go step outside, because I was
23 talking to him also in the house.

24 Q So Demarcus, he was being peaceful that night, right?

25 A Yes, ma'am.

NAVONEY CURRY - CROSS

1 Q In fact, as you said, he was talking about your
2 brothers that had gone to heaven, right?

3 A Yes, ma'am.

4 Q And he had said he missed them, right?

5 A Yes, ma'am.

6 Q And so the last thing that Demarcus said to you was
7 that he missed your brothers, right?

8 A Yes, ma'am. That was the last that me and him had
9 finished talking and I was telling -- I said I wanted to
10 finish talking to him, let me step outside.

11 Q I think you said at the other hearing it touched your
12 heart.

13 A Yes, ma'am.

14 Q And you were going to come back in and hear more about
15 that, right?

16 A Yes, ma'am.

17 Q And that's really the last thing that Demarcus said to
18 you, isn't it?

19 A Yes, ma'am.

20 Q And so he wasn't in any angry mood, was he?

21 A No, ma'am.

22 Q And Mr. Grier asked you at an earlier hearing
23 regarding did you know about any nickname that Demarcus had
24 and you said you didn't know of any nickname.

25 A No, ma'am. I always called him Marcus, I didn't know

NAVONEY CURRY - CROSS

1 no other nicknames that he went by.

2 Q And you remember Mr. Grier asking you at an earlier
3 hearing did you feel like Demarcus had a reputation for
4 fighting and you said, "No, I don't feel like he had a
5 reputation."

6 A No, not that I know of now. But now people always
7 put names on people, but I don't -- as far as I know of I
8 don't know them for anything bad that I seen him do.

9 Q And Navoney -- I'll tell you right now, I am 53, you
10 appear to me to be a strong young man. How old are you?

11 A I'm twenty-nine.

12 Q How tall are you?

13 A 6-1.

14 Q And you said that you thought about this a lot, if you
15 had known that there was a loaded gun in that house it
16 would have concerned you, wouldn't it?

17 A Yes, ma'am. Because I don't promote violence, I
18 don't.

19 Q And it would have concerned you not only in terms of
20 what might happen to you, your mama's last son, but as to
21 what might happen to anybody in that house, right?

22 A Yes, ma'am.

23 Q And I think you said at an earlier hearing that, you
24 know, what really hurt you the most was that if it happened
25 when you had been in there that you would have done

NAVONEY CURRY - CROSS

1 everything possible to make sure it didn't happen, right?

2 A Yes, ma'am.

3 Q You would have stepped between these men, right?

4 A Yes, ma'am.

5 Q And certainly you would agree that someone being hit

6 one time in the mouth wouldn't justify the other person

7 shooting them, would it?

8 A Yes, ma'am. That's what the police is for is to

9 protect and serve.

10 Q You agree with that?

11 A Yes, ma'am.

12 Q And you're a man of courage, right? Of course you

13 are.

14 A Yes, ma'am.

15 Q But you agree that it would take more than just one

16 hit in the mouth to shoot and kill somebody, don't you

17 agree?

18 A Yes, ma'am.

19 MR. GRIER: What was the question? I apologize.

20 MS. COLLINS: I said he would agree that it would take

21 more than just one hit in the mouth to justify shooting and

22 killing someone, and he said yes, ma'am. All right. Mr.

23 Curry, thank you so much for coming and talking to this

24 jury here today.

25 THE COURT: Redirect?

NAVONEY CURRY - CROSS

1 MR. GRIER: Little bit.

2 REDIRECT EXAMINATION

3 BY MR. GRIER:

4 Q Mr. Curry, the reality is on the streets out there in

5 that neighborhood, it's not uncommon for people to be

6 carrying guns, is it?

7 A No.

8 Q You've seen them over and over again, people pulling

9 them out, haven't you?

10 A Yes.

11 Q Not always for bad but just got them, correct?

12 A Yes.

13 Q It's just perception that you've got to have one to

14 protect yourself out there, is there not?

15 A Well, no, I wouldn't say that. Because I don't own

16 no type of firearm.

17 Q Good for you. I'm not asking if you do but I'm just

18 saying generally, is that --

19 A Yes, sir. I don't tie myself around people like

20 that, I don't.

21 Q Okay. All right.

22 MR. GRIER: Thank you, Mr. Curry.

23 THE COURT: Anything further?

24 MS. COLLINS: No, Your Honor. Thank you.

25 THE COURT: Thank you very much, you're free to go.

NAVONEY CURRY - CROSS

1 MR. GRIER: May I approach?

2 (A bench conference was held.)

3 The witness, LORENZO CRAWFORD, was first duly sworn

4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GRIER:

7 Q Please state your name.

8 A Lorenzo Crawford.

9 Q Okay. Mr. Crawford, are you related through marriage
10 to Allen Massey?

11 A Through marriage, yes, sir.

12 Q And how is that?

13 A His (sic) wife Leanna is his sister.

14 Q Do you know Allen Massey?

15 A Yeah. I've been knowing Allen off and on since I was
16 in high school.

17 Q Are you a few years younger than him?

18 A About a year or two older than him.

19 Q You're older than him.

20 A Just by a little bit.

21 Q Okay. Mr. Crawford, were you present at [REDACTED] City
22 Avenue on the night of October 12th of 2013?

23 A No, sir, I wasn't.

24 Q Okay. Mr. Crawford, you were in the courtroom during
25 some of the proceedings, correct?

LORENZO CRAWFORD - DIRECT

1 A Yes, sir.

2 Q But you were not in the courtroom during the testimony
3 of Navoney Curry, correct?

4 A No, sir.

5 Q I want to ask you questions, all I ask you is about a
6 question relating -- relevant to that. Okay?

7 A Okay.

8 Q Have you had any conversations with Navoney Curry
9 concerning his -- what he saw on the night of October 12th
10 of 2013?

11 A A few conversations.

12 Q A few conversations. Face to face or on the phone?

13 A Over the phone on speaker phone.

14 Q How did you have -- what did he say about whether or
15 not he was present on the speaker phone?

16 A He said he was in the back -- that he was in the I
17 guess in the back of the kitchen area and he was in there,
18 and pretty much he explained that Marcus just ran up and
19 hit Allen, Allen fell and Marcus was charging back at
20 Allen and Allen shot him. And he ended the conversation
21 with Leanna, "Tell your mama Urk, ain't no killer. That
22 man had to do what he had to do because that man was
23 coming back towards him."

24 Q You said there were other conversations with him as
25 well?

LORENZO CRAWFORD - DIRECT

1 A Uh-huh.

2 Q Did he discuss whether or not he was present on the
3 night of October 12th, 2013 at City Avenue, the night that
4 Marcus Robinson was

5 A Yeah. That's how he told me what happened because he
6 was there.

7 Q Well, you said one conversation on the speaker phone,
8 correct? That's what you just testified about, right?

9 A Yes.

10 Q Now, you said there were other conversations about his
11 presence?

12 A The other conversation that I heard on speaker phone
13 saying he was going to go up and help out and make a
14 statement. And then two other conversations he said he
15 wasn't going to do nothing because he was getting a lot of
16 threats, he was getting threatened real bad. He said,
17 man, he already done lost like two brothers and he would
18 be getting all of these threats so he said he wasn't going
19 to do anything.

20 Q Did he tell you anything else about whether or not he
21 was present at the shooting of Marcus Robinson?

22 A Just that he was there -- well, another conversation
23 he said he was going to go up and make a statement,
24 because like I said, he was there and he seen what
25 happened. And like two conversations -- and two more

LORENZO CRAWFORD - DIRECT

1 conversations he stated that he wanted to help but he
2 couldn't because he was being threatened so bad.

3 Q All right. Mr. Crawford, that's the limit of what I
4 can question you about today.

5 A All right.

6 Q I understand you do have some criminal record,
7 correct?

8 A Uh-huh.

9 Q And do you recall what your criminal record is?
10 Because you're going to be asked about it.

11 A Yeah.

12 Q Will you disclose that at this time?

13 A Pretty much just -- it's kind of embarrassing but it
14 is what it is. Simple assault, just petty theft, I got

15 petty theft, that's all, a couple -- about two or three
16 petty theft charges.

17 Q Do you have an assault and battery of a high and
18 aggravated nature?

19 A It got pushed down to like a misdemeanor. But it's a
20 little history on there as you can see on paper but it's
21 more than what it is on paper.

22 Q Well, you ended up on probation, didn't you, Mr.
23 Crawford?

24 A What?

25 Q Did you end up on probation for that back in 2010?

LORENZO CRAWFORD - DIRECT

1 A Yes, sir. But I got off early because the victim
2 signed a waiver saying that he didn't want any
3 restitution, that I apologized, he was sorry, it shouldn't
4 have ever happened and it's a copy down in my probation
5 file.

6 MR. GRIER: Okay. All right. Thank you, Mr.
7 Crawford.

8 CROSS EXAMINATION

9 BY MS. COLLINS:

10 Q Wow, that's nice of the victim, isn't it? You're
11 charged with assault and battery of a high and aggravated
12 nature, you're convicted of simple assault and battery
13 according to you, although your record says high and
14 aggravated nature. You say you're convicted of just simple
15 assault and battery?

16 A No, ma'am.

17 Q That's right. Because you got five years in prison
18 suspended on four years probation, right?

19 A Yes, ma'am, but I got off early.

20 Q But simple assault and battery only carries 30 days so
21 you had to be convicted of high and aggravated nature,
22 weren't you?

23 A I'm not exactly sure, because I didn't really look at
24 the files about that by all total. I didn't really go
25 into details by looking at the file.

LORENZO CRAWFORD - CROSS

1 Q And that was in 2010?

2 A Yes, ma'am.

3 Q You're also convicted of receiving stolen goods,

4 correct?

5 A Yes, ma'am.

6 Q That was in 2011; is that right?

7 A Yes, ma'am. But it's a little bit more than that. I

8 know easy to say because you're looking at it on paper,

9 but like I say, there's a story behind all of that. A lot

10 of the stuff occurred in my early twenties when I got laid

11 off my job, my wife -- it was hard to makes ends meet.

12 Q Well, wait a minute. I'm sorry, finish please.

13 A And I just turned to the wrong thing to bring some

14 extra income into the household. I did my time and I

15 apologize, the jury of my peers determined what my fate

16 was, I took my punishment and I stood on it.

17 Q Well, that's all well and good, but as to credibility

18 we can consider your prior record and you said this

19 happened awhile back. But in 2011 your possession of

20 stolen goods, receiving stolen goods, that's only four

21 years ago, right?

22 A That happened prior to that. You know how the court

23 system up here, it takes a long time for things to get

24 processed.

25 Q Really? Because the arrest was 2011 according to

LORENZO CRAWFORD - CROSS

1 this.

2 A 2011? Well, I'm sorry, I don't have the files to
3 look at.

4 Q Does it kind of run together after awhile?

5 A Which one?

6 Q I don't know, you tell me. Does all of this stuff
7 kind of run together after awhile?

8 A It was kind of all around the same timeframe. I was
9 just going through a bad period in my life at that time.

10 Q Assault and battery of a high and aggravated nature,
11 offense date was 2010, does that sound right?

12 A I need the paperwork in front of me to see.

13 Q Petty larceny conviction in 2011, you admit to that?

14 A I admit to all of my charges. Like I say, I did my

15 time, I paid my debts to my victims, I'm remorseful for

16 what I did, I knew it was wrong. But at that time I

17 wasn't thinking about that, I was just thinking about

18 providing for my family because my wife, she had a lot of

19 medical issues and it was hard to make ends meet coming in

20 the household.

21 Q And that was April 2011 for petty larceny, and then
22 six months later you had a shoplifting conviction; is that
23 right?

24 A Yes, ma'am.

25 THE COURT: Mr. Grier?

LORENZO CRAWFORD - CROSS

1 MR. GRIER: I don't see any point in objecting, Your
2 Honor, she's getting it out there. I understand that's not
3 admissible but I don't think it does Mr. Crawford or the
4 case any harm.

5 THE COURT: All right. That's fine.

6 MR. GRIER: She can ask him all she wants to.

7 MS. COLLINS: I'm sorry. I thought shoplifting was a
8 crime of dishonesty, Your Honor, and petty larceny.

9 THE COURT: Well -- go ahead.

10 Q All right. Well, let's move on, Mr. Crawford. You
11 said that Mr. Curry was on speaker phone when you spoke
12 with him, right?

13 A Yes, ma'am.

14 Q And so just -- you were in there listening to him,
15 right?

16 A No. It was -- he called, it was -- that particular
17 day that it happened, I really didn't know what was going
18 on until later that evening. Because a lot of strange
19 numbers kept popping up and I answered the phone, he said
20 who he was and who he needed to speak to, so I gave the
21 phone to my wife, I put the phone on speaker phone, he
22 started talking.

23 Q And your wife is Leanna Massey Crawford?

24 A Yes, ma'am.

25 Q And she is the sister of the defendant Allen Massey,

LORENZO CRAWFORD - CROSS

1 right?

2 A Yes, ma'am.

3 Q So you're his brother-in-law, right?

4 A Yes, ma'am.

5 MS. COLLINS: No further questions.

6 THE COURT: Anything further?

7 MR. GRIER: No questions.

8 THE DEFENDANT: I just wanted to say something.

9 THE COURT: No, you can't. You can only answer
10 questions, I'm sorry. Ladies and gentlemen, let's take a
11 brief recess. I remind you, don't talk about the case.

12 (The jury left the courtroom.)

13 THE COURT: Ready for the jury?

14 MS. COLLINS: Your Honor, if I may since the jury is
15 out, I'm aware of the witness' testimony in the immunity
16 hearing and I think his testimony goes toward not anything
17 on City Avenue so I'm not sure that he was present but as
18 to a shooting incident off Wiley Park.

19 MR. GRIER: That's right.

20 MS. COLLINS: And unless the defendant himself knew
21 about that -- I believe his testimony would be such that
22 Demarcus took a gun and shot towards someone after an
23 argument, and unless the defendant knew about that and it
24 went to his state of mind in responding, I would object to
25 it as not being relevant if he's not aware of that

LORENZO CRAWFORD - CROSS

1 happening and it didn't go into his thought process that
2 evening.

3 MR. GRIER: Well, Your Honor, in this case there were
4 two state of minds.

5 THE COURT: Let me understand the facts. Tell me what
6 he's --

7 MR. GRIER: What this witness is going to testify to?

8 THE COURT: Yeah.

9 MR. GRIER: That he witnessed Demarcus Robinson
10 attempt to find a pistol and to --

11 THE COURT: Attempt to find a pistol?

12 MR. GRIER: Well, asked for a pistol and they left
13 because of a dispute between him and his brother at Wiley
14 Park which ended up -- and then they were shooting as they
15 were leaving.

16 THE COURT: What's the objection?

17 MS. COLLINS: The objection is that unless the
18 defendant knew about the incident and said it went toward
19 his thought process that night in terms of fear of
20 Demarcus, I don't see how --

21 THE COURT: Unless the defendant knew of it?

22 MS. COLLINS: Yes. If the defendant did not know
23 about this, my understanding is this happened -- I think
24 the defendant already testified he wasn't aware of any
25 shooting at Wiley Park.

TYZHE HOUGH - DIRECT

1 MR. GRIER: She's right, he didn't know about it. But
2 there's two states of mind at issue that the jury has to
3 consider in this case, Your Honor, my client and the nature
4 of Mr. Robinson on the night that this happened. And this
5 goes to something that happened immediately prior to go
6 into fact -- there's been testimony that there was a
7 shooting and that Marcus told them to leave Wiley Park
8 already in these proceedings by -- and so, you know --

9 THE COURT: All right. I'll allow it.

10 MR. GRIER: Thank you, Your Honor.

11 THE COURT: Are we ready for the jury?

12 MS. COLLINS: Yes.

13 (The jury returned to the courtroom.)

14 THE COURT: All right, Mr. Grier.

15 The witness, TYZHE HOUGH, was first duly sworn and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. GRIER:

19 Q Please state your name for the record.

20 A Tyzhe Hough.

21 Q Mr. Hough, you've been sworn prior to the jury coming
22 in?

23 A Yes, sir.

24 Q Okay. Mr. Hough, how old are you?

25 A Twenty.

TYZHE HOUGH - DIRECT

1 Q Mr. Hough, you live out in the Buford area, that's
2 where you're from?

3 A Yes, sir.

4 Q And, you know, do you hang out in the city and the
5 area around the city very often?

6 A Sometimes.

7 Q Okay. Now, do you know Allen Massey?

8 A Not really.

9 Q Okay. You have spoken with him on a previous
10 occasion, right?

11 A Yes, sir.

12 Q And you communicated to him that you knew something
13 about that evening of October 12th of 2013 when y'all
14 spoke.

15 A Yes, sir.

16 Q Okay. And did he ask you to make up anything?

17 A No, sir.

18 Q Is that the only contact you've ever had with him is
19 just that contact when y'all found out that you had been in
20 the city, or close to the city on the night of October 12th
21 of 2013?

22 A I think so.

23 Q Okay. You don't socialize with him.

24 A No, sir.

25 Q Have you got mutual friends?

TYZHE HOUGH - DIRECT

- 1 A Yes, sir.
- 2 Q Are you related to him?
- 3 A To him?
- 4 Q Yeah.
- 5 A No, sir.
- 6 Q Who are your mutual friends? Can you think of them?
- 7 A Well, I just know a couple of people that I've done
- 8 been around and just done seen him in the area, but don't
- 9 know him.
- 10 Q Did you see him on the night of October 12th, 2013?
- 11 A No, sir.
- 12 Q Now, were you in Lancaster on that particular night?
- 13 A Yes, sir.
- 14 Q And were you in -- do you know whether you were in the
- 15 city or the county?
- 16 A Are you talking about this night?
- 17 Q The night of October 12th of 2013.
- 18 A Yes, sir.
- 19 Q You do? Where were you at?
- 20 A Wiley Park behind the hospital.
- 21 Q All right. Do you know where the city limits are over
- 22 there?
- 23 A It's kind of mixed up.
- 24 Q Well put. Now, Mr. Hough, what were you doing over at
- 25 Wiley Park?

TYZHE HOUGH - DIRECT

1 A I was at a party.

2 Q Now, do you recall whose party that was?

3 A No, sir.

4 Q ~~How did you end up there? Did you crash it?~~

5 A Did I crash it?

6 Q Yeah. Did you crash the party?

7 A No, sir.

8 Q Okay. Did you know Marcus Robinson?

9 A Know of him but I don't know him personally.

10 Q But did you know him when you saw him?

11 A Yes, sir.

12 Q Did you see him on the night of October 12th of 2013?

13 A Yes, sir.

14 Q Where did you see him at?

15 A At the party, at the kickback party.

16 Q At the what?

17 A Kickback party.

18 Q At a kickback party. And the kickback part party is

19 as opposed to a regular party.

20 A Just a house party.

21 Q Just a house party?

22 MS. COLLINS: I apologize, I cannot hear the witness.

23 Q Speak up a little bit, Mr. Hough, you're soft spoken.

24 A I said it was a house party.

25 Q All right. You don't know whose house -- you were at

TYZHE HOUGH - DIRECT

1 a house, you don't know whose it was.

2 A No, sir.

3 Q All right. A crowd?

4 A Yeah.

5 Q Did something come up between you and Mr. Robinson?

6 A Him and my brother had got into an altercation.

7 Q Did you see it with your own eyes because --

8 A Yes, sir.

9 Q What was the nature of that, what was the fuss about?

10 A It was argument about a girl they both basically was
11 talking to.

12 Q You need to speak up, Mr. Hough, it's hard to hear in
13 here.

14 A I said they both was talking to the same female.

15 Q And when you say talking, are they dating, seeing --

16 A I guess so.

17 Q Okay. Did -- were they both -- was it only at that
18 party where they had this dispute about the female or was
19 it relationships?

20 A From what I know it was just --

21 MS. COLLINS: Objection to -- excuse me. He's saying
22 from what I know so it would indicate a hearsay.

23 MR. GRIER: Okay.

24 MS. COLLINS: If he would just testify of his personal
25 knowledge.

TYZHE HOUGH - DIRECT

1 Q That's fine, only what you know. But you heard words
2 that were said and from that what did you conclude?

3 A That there was going to be trouble.

4 Q ~~And you concluded about the dispute that it was about~~
5 a girl?

6 A Yes, sir, about them having the same baby mama.

7 Q And you concluded there was going to be trouble?

8 A Yes, sir.

9 Q How did you conclude there was going to be trouble?

10 A Because of words that was spoken.

11 Q All right. And what were the -- well, those were
12 spoken by who, your brother and Mr. Robinson?

13 A Yes, sir.

14 Q Well, you can't say what that is. All right. But you
15 did see what happened.

16 A Yes, sir.

17 Q What happened? What did Mr. Robinson do?

18 A When we left -- we was leaving, but before we was
19 leaving him and a couple other guys was asking for guns
20 and whatever and they started shooting at my car.

21 Q Did you see who was shooting?

22 A I mean, I wasn't looking but I was aware of what was
23 going on, so obviously I figured it was them.

24 Q Okay. Well, did you hear Mr. Robinson say something
25 about getting a gun?

TYZHE HOUGH - DIRECT

1 A Yes, sir.

2 MS. COLLINS: I'm going to object to leading, it's his
3 witness.

4 THE COURT: ~~Overruled. Go ahead.~~

5 Q All right. What did you hear Mr. Robinson say about a
6 gun?

7 A He was asking for a gun.

8 Q Okay. Who was he talking to?

9 A I don't know who he asked for a gun, but it was in
10 reference to do something to my brother.

11 Q What did you do as a result of hearing that?

12 A Well, we started walking up to where the car was
13 parked and got in the cars and left.

14 Q But at what point was there some gunfire?

15 A As I was like backing out, I think.

16 Q Now, did the car get hit?

17 A No, sir.

18 Q Anybody get hurt as far as you know of?

19 A No, sir.

20 Q Did you go to the police?

21 A No, sir.

22 Q Mr. Hough, why didn't you go to the police?

23 A Because I didn't figure it was necessary.

24 Q Okay. You didn't call them, nothing, make a call or
25 report it or anything?

TYZHE HOUGH - DIRECT

1 A No, sir.

2 Q All right. From there where did you go?

3 A Back to Buford.

4 Q Back to Buford? All right.

5 MR. GRIER: Thank you, Mr. Hough. Answer any
6 questions that the solicitor may have for you, sir.

7 CROSS EXAMINATION

8 BY MS. COLLINS:

9 Q Mr. Hough, how old are you?

10 A Twenty.

11 Q What is your date of birth?

12 A [REDACTED] '94.

13 Q [REDACTED] 1994?

14 A Yes, ma'am.

15 Q In 2010, you were adjudicated a delinquent for the
16 offense of shoplifting; is that correct?

17 A When?

18 Q 2010.

19 A I guess.

20 Q In 2009 you were adjudicated for the offense of petty
21 larceny; isn't that right?

22 A In my juvenile?

23 Q In juvenile court.

24 A Yes.

25 Q In fact, you had two counts of petty larceny in

TYZHE HOUGH - CROSS

1 juvenile court back then, didn't you?

2 A Yes, ma'am.

3 Q You said someone shot at the car that you and your

4 brother were in and you didn't even pick up the phone and

5 call the police about it.

6 A No, ma'am.

7 Q And you didn't even go -- you said you were in the

8 county -- did it happen in the county or the city, do you

9 know?

10 A I don't know. Like the Wiley Park area is split,

11 it's like city on one side and the county on the other.

12 Q But you didn't go to either the county or the city and

13 say, "Hey, someone just shot at us," did you?

14 A No, ma'am.

15 Q Mr. Grier asked you about Allen Massey. You heard him

16 ask you about Allen Massey? You heard that?

17 A Yes, ma'am.

18 Q He said, "Do you see him frequently?"

19 A No.

20 Q You don't see him frequently?

21 A What do you mean by that?

22 Q I mean do you see him from time to time these days?

23 A No. Like we're locked up together but not back when

24 that was going on, no.

25 Q You talk to him?

TYZHE HOUGH - CROSS

1 A No. When I've been locked up?

2 Q Yeah.

3 A Yeah.

4 Q ~~Yeah, you talked to him. Did you talk to him about~~
5 this?

6 A No.

7 Q You didn't talk to him about this? I thought you told
8 Mr. Grier you told him what you knew about this.

9 A I mean, what are you really asking me?

10 Q I'm asking you do you talk to Mr. Massey about his
11 case?

12 A Not about his case.

13 Q About this shooting you say happened at Wiley Park.

14 A Well, we had a conversation and it come about.

15 Q And you said y'all are locked up together?

16 A Yes, ma'am.

17 Q You're in the same cell block, aren't you?

18 A Not anymore, we were.

19 Q Since July of 2014, right?

20 A Uh-huh.

21 Q Right.

22 MR. GRIER: Nothing further.

23 THE COURT: Anything further?

24 REDIRECT EXAMINATION

25

TYZHE HOUGH - CROSS

1 BY MR. GRIER:

2 Q Who approached who with information about what
3 happened at Wiley Street?

4 A ~~I had said something to him about it.~~

5 Q Okay. And how did you know it mattered to him?

6 A I mean, everyone had already knew like basically what
7 was going on, like who the victim was in his case because
8 it was on Facebook and public knowledge.

9 Q Has anybody promised to help you in any way in
10 exchange for your testimony?

11 A No, sir.

12 Q I mean, do you owe Allen Massey for something?

13 A No, sir.

14 Q Have you got a vendetta against Marcus Robinson?

15 A No, sir.

16 Q You're not mad at him because of that night?

17 A No, sir.

18 Q Have you got any reason to be mad at him?

19 A No, sir.

20 MR. GRIER: All right. Thank you.

21 THE COURT: Anything further?

22 RECROSS EXAMINATION

23 BY MS. COLLINS:

24 Q Mr. Grier asked if you were promised anything. Do you
25 remember talking to Mr. Grier and Mr. Massey's private

TYZHE HOUGH - REDIRECT

1 investigator?

2 A Yes, ma'am.

3 Q Talked to them on the phone. I think it was

4 ~~facilitated by -- maybe you were talking to your girlfriend~~

5 and she called them and y'all talked on the phone that way

6 while you were in jail, right?

7 A Yes, ma'am. I had got her to call him.

8 Q Got her to call them, right?

9 A Yes, ma'am.

10 Q And you remember saying that --

11 MR. GRIER: Your Honor, I'm not familiar with this,

12 it's a surprise to me. Oh, from my investigator? I'm

13 sorry, I thought you were saying --

14 Q You talked to Mr. Grier's investigator, didn't you?

15 A Yes, ma'am.

16 Q And you said you were willing to testify -- I'm sorry,

17 you did not want to testify but you were willing to write a

18 statement, right?

19 A Yes, ma'am.

20 Q Did you write a statement?

21 A Yes.

22 Q You did? Where is it?

23 A I guess they've got it.

24 Q Did you write a statement?

25 A I told what happened and they wrote it.

TYZHE HOUGH - RECROSS

1 Q They wrote it for you? Where is that? They wrote a
2 statement for you? Did you sign it?

3 A Yes, ma'am.

4 Q But you told them you didn't want to testify, right?

5 You didn't want to come in here and put your hand on the
6 Bible and see these good 12 people eye to eye, you didn't
7 want to do that, did you?

8 A No, ma'am.

9 FURTHER DIRECT EXAMINATION

10 BY MR. GRIER:

11 Q Why didn't you want to testify?

12 A Quite a few reasons. Because I didn't want trouble
13 with the family for one. And number two, she's the
14 solicitor on my case and I didn't want to have to see her
15 basically hinder my chances of getting a decent reasonable
16 plea.

17 Q All right. Fair enough.

18 MR. GRIER: Thank you.

19 THE COURT: That's it. Thank you very much. You can
20 come down.

21 MR. GRIER: Your Honor, we have another short matter
22 of law here. Well, in fact, if we could just take a couple
23 of minutes I may be done, I can size this up right here
24 with the jury present if everybody is okay waiting. I know
25 they just went out.

TYZHE HOUGH - RECROSS

1 THE COURT: You need the jury to be out of the room?

2 MR. GRIER: I do not, I just needed about maybe two
3 minutes to make a call.

4 ~~THE COURT: Just relax, ladies and gentlemen.~~

5 (Break in proceeding.)

6 MR. GRIER: Your Honor, that's the defense case.

7 THE COURT: Any reply?

8 MS. COLLINS: No, Your Honor, we have no reply
9 testimony.

10 THE COURT: All right. That's the case, ladies and
11 gentlemen, that's it. That's all of the evidence that's
12 going to be presented to you. Now, the remaining portion
13 of the trial will consist of the final summations by the
14 attorneys and my instructions to you on the law of the
15 State of South Carolina as it applies to this case.

16 Because there are numerous issues in this case and we know
17 there are two charges and the possibility of what are
18 called lesser-included charges -- if you recall at the
19 beginning of the trial I mentioned that that might come up
20 about lesser-included charges and I gave you an example of
21 murder in the first degree, murder in the second degree,
22 murder in the third degree, that issue may come up. I have
23 to talk to the attorneys and make a decision based on the
24 evidence as to what charges are to go forward at this point
25 in time. Obviously everything that's possible is not the

1 way to conduct a trial so that everything possible is
2 coming in front of you, I'm not trying to restrict anything
3 that's coming in front of you, the charges that will be
4 argued by the attorneys will be those that are supported by
5 the evidence in this case. That's a fairly lengthy process
6 and my instructions to you on the law of the State of South
7 Carolina are going to be somewhat lengthy too, in addition
8 to what the attorneys tell you, and then the matter will be
9 turned over to you for a decision based upon your
10 interpretation of the facts and your understanding of the
11 law as I explain it to you. Now, I never can predict how
12 much time that will take but I've been doing this enough to
13 know it's not a short process. I'm going to ask you to go
14 to the jury room and let me talk with these lawyers about
15 scheduling. It's pretty obvious that we're going to go in
16 tomorrow unless you feel like staying here until 2:00 in
17 the morning or late tonight. So let me talk to the
18 attorneys about a schedule and I will let you -- I will
19 call you in just a few minutes, let's do that. And put it
20 this way, if we have to go into tomorrow I will get you
21 another pizza. Maybe not.

22 (The jury left the courtroom.)

23 THE COURT: Let's talk about schedule first.
24 Obviously the State will argue first and Mr. Grier will
25 argue last. It's 4:00 --

1 MS. COLLINS: I'm confused. I thought Mr. Grier put
2 up a case and I got last argument.

3 THE COURT: I'm sorry.

4 MR. GRIER: ~~She does.~~

5 MS. COLLINS: I know it's ladies first.

6 THE COURT: I'm backwards, you're right. Mr. Grier
7 put up a -- so he -- that's right. Anyway, I'm just trying
8 to -- I'm very reluctant to argue and charge at 4:00 in the
9 afternoon, but I have argued and then charged in the
10 morning. How much time do you need? I'm not going to put
11 you on the clock but there is a two hour limit.

12 MS. COLLINS: I don't think my closing will take more
13 than 30 minutes.

14 MR. GRIER: I'm thinking 45 for me.

15 THE COURT: Well, you've got the burden.

16 MR. GRIER: Yes, sir.

17 THE COURT: They've got the burden but you've got a
18 burden, too.

19 MR. GRIER: I would ask that if they're going to be
20 charged in the morning that we be able to close in the
21 morning so they hear it close to context respectfully.

22 THE COURT: I thought you would say that. Are you
23 going to split your argument?

24 MS. COLLINS: I don't want to split it.

25 THE COURT: Oh, you don't want to split it.

1 MS. COLLINS: I do not.

2 THE COURT: I mean if your cocounsel would split.

3 MS. COLLINS: No.

4 ~~(The jury returned to the courtroom.)~~

5 THE COURT: All right, ladies and gentlemen, after
6 discussing the potential of scheduled with the attorneys
7 and my own concerns about the length of time I will dismiss
8 you for the afternoon. In the morning we will start a
9 little earlier, anybody have a problem with that? Start at
10 9:00 .the attorneys will argue their case and I will give
11 you my instruction, all of the evidence will go with you to
12 the jury room. We will provide lunch for you again
13 tomorrow and we will wrap it up, that will be it. All
14 right. Thank you very much. Again, please do not discuss
15 the case among yourselves. I will caution you again about
16 reading or watching any reports of this trial. I don't
17 know if there are or will be any, and don't discuss the
18 case among yourselves when you return to the jury room.
19 Thank you very much, you have been a very patient jury, I
20 appreciate it.

21 (The jury left the courtroom and court recessed for
22 The evening and resumed on Friday, August 8, 2015, at
23 9:00 a.m.)

24 MR. GRIER: First of all I do need to renew my motion.

25 THE COURT: That's correct. All right, Ms. Collins?

1 MR. GRIER: Your Honor, may I renew my motion
2 before --

3 THE COURT: I'm sorry, keep reminding me of it.

4 MR. GRIER: ~~Your Honor, I made a motion for directed~~
5 verdict at the conclusion of the State's case and I would
6 renew that argument, but I would -- I'm not going to
7 reargue it because I know the Court apprehended it and, you
8 know, appreciated it for what it was worth and ruled on
9 that. But I would submit to you that the additional
10 evidence that I based that motion on was buttressed by the
11 defense, and in light of the additional evidence given by
12 Mr. Massey that would have established conclusively, I
13 believe, that the State did not present a prima facia case
14 in regards to the budding self-defense. I believe that it
15 ~~would be appropriate for the Court to revisit that and~~
16 consider the additional evidence that was presented and
17 rule that the defendant was entitled to a directed verdict.

18 THE COURT: What is the State's position?

19 MS. COLLINS: The defendant testified on cross
20 examination several times that he thought he was going to
21 be hit. Again, I would submit that it as stated is a
22 quintessential jury question and it should go to the jury.

23 THE COURT: All right. Well, I think it's a jury
24 question of whether or not the State has proven beyond a
25 reasonable doubt that self-defense is not appropriate. And

1 (The jury returned to the courtroom.)

2 THE COURT: Good morning, ladies and gentlemen. We
3 are now ready to conclude the trial with the final
4 summations or arguments of counsel, and then my charge to
5 you on the law in the State of South Carolina as it applies
6 to this case. Mr. Grier will be first, followed by Ms.
7 Collins. Mr. Grier?

8 MR. GRIER: May it please the Court? Ms. Collins?
9 Ladies and gentlemen of the jury, thank you for your
10 attention along with everybody. I know you're tired, I am,
11 but we appreciate your service. It's quite an imposition
12 and it's a difficult thing to be the judge of the facts and
13 have to determine whether or not somebody committed a
14 crime, that's what you've been called on to do and we
15 appreciate that you have paid very close attention to the
16 proceedings here. It will end today when you reach a
17 verdict. You know, a quote often attributed to Mark Twain
18 is that a lie can travel halfway around the world before
19 the truth finishes tying its shoes. There's an argument
20 about whether Mark Twain said it or not, but I think this
21 case demonstrates that in a way, because, you know, the
22 night of the shooting on October 12th of 2013 the truth
23 didn't come out that night. You've heard the statements of
24 Malika Harris and Shonettia Hunter and Sindarous Wells, and
25 you've heard their testimony in court, and what you've

CLOSING ARGUMENTS

1 heard is that an account of what happened that night that
2 did not have any reference to important facts about this
3 case. The accounts given the night of the shooting
4 ~~strictly portrayed Allen Massey as a cold-blooded murderer~~
5 that shot him, shot Marcus Robinson unprovoked, nothing
6 happened, just shot him, killed him. And it didn't -- the
7 facts that were learned by law enforcement that night were
8 that ~~didn't include the fact that Marcus Robinson even~~
9 struck Allen Massey. You recall that Malika Harris said
10 that they -- that she saw the two wrapped up and the gun
11 went off, and then Sindarous Wells said that it just came
12 out of the blue, nothing happened. I don't understand it.
13 It did not -- there was no account of what happened, you
14 know, prior to the shooting. Now, Sindarous said there was
15 ~~no fussing or anything before Allen shot Marcus.~~ Now, at
16 ~~trial what did we learn? Well, we learned that Malika~~
17 didn't even see it. I believe the evidence is clear that
18 Malika didn't even see it, because certainly Shonettia said
19 ~~they were both in the bathroom and she told Malika that she~~
20 needed to tell the truth, that she didn't see it. And
21 Malika had said that she saw the gun in her first
22 statement, but then she admitted on cross examination that
23 she said that, you know, the -- or she said in her
24 testimony in the courtroom here that she saw the gun. But
25 on cross examination when she was confronted with her

CLOSING ARGUMENTS

1 statement on that night, that audio statement she admitted
2 that on the night of the shooting she said, "I didn't see a
3 gun, I didn't see it." So we learned -- I think it's clear
4 that we learned at trial that Malika nor Shonettia saw what
5 happened. And at trial we learned that Sindarous suddenly
6 remembered Marcus actually punching Allen out of the blue,
7 though, he said that they weren't fussing or anything and
8 Marcus punched him, but it was after he -- it was after
9 according to him that Allen told Marcus that he'd gotten
10 into a confrontation with Marcus' cousin, Rashawd, down at
11 16th Street, and that he had -- that he got jumped on down
12 there. I don't know if he even mentioned actually Rashawd,
13 I don't think he did, but he said that Allen said he got
14 jumped on down at 16th Street and he pulled his gun, and
15 that everything seemed fine and then suddenly again out of
16 the blue Allen Massey gets punched. Now, you know, I think
17 there's a good explanation why the story evolves, and I
18 think it's -- the only reasonable explanation is that, you
19 know, these were all really friends, and that's the -- it's
20 always tragic, but it's an extra tragedy when it's family
21 and friends, it adds another degree of tragedy to
22 everything. And so -- but Malika, of course, was, you
23 know, Marcus' girlfriend's sister, Ebonie's sister, Malika
24 and Shonettia are friends and Sindarous is close friends to
25 them. And I think that it's pretty obvious that the

CLOSING ARGUMENTS

1 relationship between Sindarous and Malika and Shonettia and
2 Marcus was a lot closer than it would have been without
3 Allen, he barely knew him. Just somehow Allen didn't
4 ~~remember his name but he really didn't know Allen very~~
5 well. So the story evolves from on the day of the shooting
6 to it just being out of the blue of a cold blooded murder
7 to it being that Allen had said something, you know, that
8 ~~could be interpreted~~ to have been provocative, although
9 according to Sindarous it didn't provoke Marcus, he said it
10 was fine, I believe they shook hands or whatever, and then
11 he just clobbered Allen, sucker punched him would be fair
12 to say, it's the way it was described. Now, one question
13 I've got is if Allen had just told Marcus that he had --
14 just right before coming over there to City Avenue that
15 ~~he'd pulled a gun on somebody to repel an attack there,~~
16 why -- does it really make sense that Marcus would be, you
17 know, attacking him because of something that Allen --
18 because Allen said that? Allen denies saying it and it
19 ~~doesn't make sense that Allen said it, because if Allen~~
20 would have said that Allen had a gun would it make sense
21 that Marcus hit him? I don't think it would. But it was
22 supported -- I guess you could say it was supported when
23 Rashawd Robinson took the stand, and Rashad said, "Yeah.
24 Allen did pull a gun on me after I hit him, but he was
25 bugging me about a beer, or bugging me about beers and I

CLOSING ARGUMENTS

1 got tired of it and I hit him and then he pulled a gun on
2 me and I hit him again after he pulled a gun on me." Now,
3 I don't know how much sense that makes, I guess, you know,
4 ~~he's so fearless that he punched a person that was holding~~
5 a gun on him. But I don't think it makes any sense, nor
6 does it make sense that Allen Massey was bugging him about
7 getting a beer, and following him around bugging him about
8 getting a beer. You know, has Allen really -- you know,
9 Allen is a snitch. There had been tensions since Allen
10 snitched on Rashawd and Rashawd went to prison. So what's
11 more likely, the explanation of how Rashawd comes to say
12 that Allen, you know, pulled a gun on him? I think the
13 more likely explanation is is that he knew that -- the same
14 reason that it didn't come out on the night of the shooting
15 ~~that Marcus hit Allen, nobody wanted to say anything that~~
16 could somehow portray Marcus in a negative light after he'd
17 been shot. And so -- you know, I believe it's pretty
18 obvious that Rashawd and Sindarous probably were in
19 communication, and it's very likely that they were, and
20 that to come up with an explanation that held -- that made
21 Marcus faultless they had to say that Allen told him
22 something that made him mad. Also, of course, when Rashawd
23 testified, not only does he have a motive and a bias
24 against Allen because he basically was part of the State's
25 case that sent him to prison, but also, of course, that he

CLOSING ARGUMENTS

1 had actually fired a fatal shot that killed his cousin,
2 Marcus. And so I don't think Rashad is going to testify in
3 any way that is going to portray Allen in a favorable
4 manner, and I believe it's reasonable to believe that he's
5 going to say what he can to try to hurt him. Switch gears
6 a little bit and then come around the circle. Talking
7 about the procedure that we have and the reason for the
8 State having the burden of proof, I want to switch gears on
9 you a little bit here. You know, the State has so many
10 advantages over the defense that -- and I discussed this a
11 little bit in my opening, I'm going to be pretty brief
12 about it, but to balance the advantages that the State has
13 the State has to carry the burden of proof in a trial,
14 because the State has virtually unlimited resources in
15 personnel and investigators and in money to prosecute a
16 case. The defendant, of course, we did have an
17 investigator in this case, but you know, a lawyer and an
18 investigator are the team for the defendant. The
19 psychology, the human instincts, if you -- and I don't
20 know, but when you parade a defendant out for trial and
21 pick that jury charged with murder, there's a shock factor
22 in that of -- because first impressions are very lasting
23 impressions, and the State gets the first opportunity to
24 take a shot at trying to discredit the defendant. That's
25 why reading newspaper accounts are so dangerous, you read

CLOSING ARGUMENTS

1 newspaper accounts, and I don't mean to disparage anybody
2 that's a journalist or anything because I know they're
3 vigilant and do what they can, but they're not sitting in
4 here typically seeing all of the evidence. But I think
5 even instinct even for me as a defense attorney, and I have
6 to shake myself when it happens, I pick up the newspaper
7 and I see an account of the crime and, you know, the person
8 that's arrested and, you know, suddenly saying, "Can you
9 believe so and so did that?" You know, those first
10 impressions are strong impressions, and of course, the
11 State gets to, you know, gets to introduce the case as --
12 read the indictment, a man charged with murder, there's a
13 shock value to that that the defense has to respond to.
14 They get to open, they get opening argument and, you know,
15 I don't know whether lawyer's comments really do anything
16 to change much with the way that jury's rule, but I guess
17 the people that framed our constitution and that framed our
18 system who were lawyers believed that lawyer's accounts of
19 what you should think is important is important. So they
20 get to open the trial, and then after arguing in opening
21 argument what they think the evidence is going to tell you
22 then they get to present their case and tell you everything
23 they think is important to try to convict the person
24 charged in this case, Mr. Massey. And then if Mr. Massey
25 presents any evidence, if the defense -- if I hadn't

CLOSING ARGUMENTS

1 presented any evidence, you know, we'd just sat there,
2 which we've got the right to do and the Judge would tell
3 you you can't hold that against the defense because the
4 ~~burden of proof is on the State, we could have done that~~
5 and the burden of proof would have been on the State. But
6 if the State -- if the defense presents any -- if we hadn't
7 done that you wouldn't have gotten to hear Mr. Massey's
8 account of what happened, and the defense believes that's
9 important that you got to see him and hear his explanation
10 of what went down that night, and so I am one of those
11 lawyers that thinks you've got to put your client up. A
12 lot of attorneys say don't put your client up, don't put
13 your client up. I believe that juries want to hear from
14 your client, and if they don't testify, even though they're
15 ~~told they can't hold it against them, I think there's a~~
16 negative downside to that. After I finish arguing Ms.
17 Collins is going to get up here and she's going to tear
18 everything I say to pieces, she's going to try to and so
19 she gets the final argument. So the State has a lot of
20 advantages, and I think -- and that's the reason that the
21 framers of our constitution who were trying to protect the
22 rights of individuals who may not have access to money and
23 may not have access to power, that the little man had a way
24 of defending himself against the powers of the State, and
25 that was why we have this creation of these legal phenomena

CLOSING ARGUMENTS

1 that we call the presumption of innocence. Mr. Massey as
2 the Judge, I think, told you earlier is presumed innocent.
3 Only you, the jury, after considering all of the evidence
4 and after the State after -- and if the State proves their
5 case beyond a reasonable doubt, that's when the presumption
6 of innocence is lifted off if, in fact, that were to
7 happen. And also the burden of proof, beyond a reasonable
8 doubt. Now, just if -- in a case involving death or
9 basically any case where somebody suffers some injury,
10 whether it be money or whatever, you can sue the person
11 that you claim injured you. So for instance -- that would
12 be a civil case, if you sued them for money. And so in
13 this particular case the family of Mr. Robinson could
14 conceivably sue Mr. Massey for wrongful death and they
15 would -- if they did that and the jury was sitting here
16 hearing that case, the burden of proof would be merely a
17 preponderance of the evidence, more likely than not, you've
18 heard all of those terms. And so what the defendant would
19 be seeking -- Robinson's family is going to be seeking, if
20 that would be the case, would be money of the loss of their
21 loved one. Not going to get into anything -- the burden of
22 proof is what is important because it could be confusing
23 and, you know, folks -- jurors often when they're talking
24 about criminal cases I hear confusing that, not jurors but
25 people in general, not jurors, so I think it's appropriate

CLOSING ARGUMENTS

1 to say that to demonstrate the difference between those two
2 things. Now, in a civil case if the Robinson family were
3 suing Mr. Massey for money the burden of proof would be
4 ~~more likely than not. Now, what does that mean? You~~
5 probably have seen the scales of justice, Lady of Justice
6 with the scales. Now, more likely than not simply means
7 that you tip the scales every so slightly, a preponderance
8 of the evidence, tip the scales ever so slightly. So when
9 you consider whether or not if Mr. Massey were sued and it
10 were found -- if he were found liable and owed money for
11 the wrongful death of Mr. Robinson, the jury would be
12 determining whether the scales were tipped ever so
13 slightly, proof beyond a reasonable doubt. Well, if that
14 happened Mr. Massey would owe money if it were found that
15 ~~he was responsible and negligent. But in a criminal case~~
16 the burden of proof is beyond a reasonable doubt, and
17 instead of merely tipping the scales the scales have to be
18 tipped in such a manner that they virtually touch the
19 floor. There can only -- if there is any doubt that you
20 can assign a reason, a reasonable doubt, a doubt that you
21 can give a reason for him being responsible, legally
22 responsible then he would not be guilty. And so, yeah,
23 conceivably he could be legally responsible for paying
24 money, but not legally responsible for the death of Mr.
25 Robinson. And so the -- our supreme court has said a

CLOSING ARGUMENTS

1 reasonable doubt is the kind of doubt that would cause a
2 reasonable person to hesitate to act, to hesitate to
3 convict is the interpretation I believe is what that
4 implies, hesitate to act. So if you hear all of the
5 evidence and you have a doubt that -- if there's any
6 explanation other than his guilt, any doubt other than your
7 firm belief that he is guilty then you must acquit. Now,
8 the Court will tell you that if you're firmly convinced of
9 Mr. Massey's guilty then you must convict him. However, if
10 there's that real possibility of innocence, if it's
11 possible that he might be innocent then you must acquit.
12 Now, the Judge, I think, told you that when the defendant
13 asserts self-defense that it kind of throws an unusual bit
14 of a twist into the analysis that the jury has got to --
15 the balance that the jury has got to consider. Because,
16 you know, the State -- when the defendant asserts
17 self-defense, which Mr. Massey has in this case, the State
18 has the burden of proving -- the burden of disproving
19 self-defense, so they have to prove that the defendant did
20 not act in self-defense, and, you know, there has to be
21 proof beyond a reasonable doubt that the defendant did not
22 act in self-defense. And so therefore I believe the Judge
23 will instruct you that there are four elements, there are
24 four things that the State -- that compose self-defense,
25 and if the State disproves any of those elements, any one

CLOSING ARGUMENTS

1 of those four elements by a reasonable doubt then the
2 defendant will not be -- will be found not to have acted in
3 self-defense if the State proves any one of those beyond a
4 ~~reasonable doubt, or disproves any one of those four~~
5 elements. The first element of self-defense is that the
6 defendant must be without fault in bringing about the
7 difficulties. The defendant must be without fault in
8 bringing on the difficulties. Now, what that means is that
9 if the defendant -- if the defendant's conduct was the type
10 that was reasonably calculated to and did provoke the
11 deadly attack, the deadly assault, Mr. Massey would be at
12 fault in bringing on the difficulty and would not be
13 entitled to an acquittal based on self-defense. Now, what
14 that means is that the defendant had to act in some way
15 ~~that was intended to make -- to provoke Marcus Robinson.~~
16 The defendant had to act in some way to provoke Mr.
17 Robinson to attack him. Now, in this case most certainly
18 what you've heard is -- I don't think you've heard anything
19 that would prove beyond a reasonable doubt that Mr. Massey
20 acted in some way to try -- with the intent of provoking
21 Marcus Robinson, you know. I mean, all the testimony is
22 consistent with everybody having a good time and everything
23 being hunky dory until out of the blue Marcus Allen (sic)
24 strikes Allen Massey. Now, Sindarous Wells said -- did
25 testify that Allen Massey told him about an incident

CLOSING ARGUMENTS

1 earlier in the evening where he got jumped on and he pulled
2 a gun. I do not believe that Sindarous Wells even said who
3 that was. My recollection of the evidence is he said he
4 ~~got jumped on down on 16th Street. Now, you can -- if~~
5 there's a dispute about what he said you can go back and
6 revisit that in the record, maybe I'm wrong, but I don't
7 believe that even Sindarous Wells' account has Rashawd
8 Robinson mentioned. Allen Massey's account does. So if
9 you believe -- you know, if you believe that Marcus -- that
10 Allen Massey told Marcus Robinson that he pulled a gun out
11 to repel an attack by someone down on 16th Street, it
12 really wouldn't make much sense that Allen Massey was
13 telling his friend that to try to provoke him in to
14 attacking him, that makes no sense that he would tell him
15 ~~that trying to provoke him, and it doesn't provoke him.~~
16 How do we know that? Because Sindarous Wells said he told
17 him that and nothing -- if -- he didn't react to it, didn't
18 appear that he was trying to provoke him. He said it did
19 not appear that Allen Massey was trying to provoke him.
20 But let's say you believe that Allen Massey -- that
21 Sindarous Wells did say that Allen said he pulled a gun on
22 Rashawd Robinson. Well, again, if he did say that then,
23 you know, it wouldn't -- you would have to believe that he
24 was doing it with the -- that he was trying to make Marcus
25 Allen (sic) mad, he said they had already talked about --

CLOSING ARGUMENTS

1 Marcus Allen -- excuse me, Marcus Robinson -- mad and
2 provoke him. The testimony is that they'd talked about it
3 many times and Marcus Robinson didn't have any problem with
4 it because he knew that Allen was not culpable in that and
5 it just had not created any difficulties between them, and
6 they're friends and, you know, that that continued
7 throughout. Now, you heard a lot, a lot of talk about the
8 fact that Marcus -- excuse me, that Allen Massey didn't
9 have a concealed weapons permit on that night, and also
10 that he went into that residence that night without telling
11 the owners that he didn't have a weapon. Now, if that --
12 you know, if the gun was -- not having a concealed weapons
13 permit -- not having a concealed weapons permit is
14 irrelevant to this whole case, I will tell you that. Okay.
15 His walking into the house without informing the owners
16 that he had a gun is really irrelevant to the analysis of
17 this case and to your decision today. Because why?
18 Because he would -- the State has to prove beyond a
19 reasonable doubt that his intent, that he used the gun in
20 some way with the intent -- physically used that gun with
21 the intent of provoking Marcus Robinson. There's no
22 evidence that Marcus Robinson knew he had a gun that night.
23 There's no evidence that anybody saw a gun until Allen
24 Massey pulled it to defend himself. So the idea -- you
25 know, whether you're carrying a gun legally or not is

CLOSING ARGUMENTS

1 irrelevant to whether you use it in self-defense unless you
2 used the gun in a way that brings about the difficulty.
3 You've got to -- if Allen walked in with his gun and you
4 know, "I've got a gun," you know, showing it around like
5 and Marcus had said, "Hey man, put that gun up." And
6 Marcus -- and Allen said, "I can carry my gun," and they
7 got into a fight, Allen would have been using his gun in a
8 way that provoked Marcus Robinson, but that didn't happen.
9 Nobody says that -- that is an example of what might be
10 construed to where the gun, you know, caused the problem,
11 but if he would have had a concealed weapons permit and he
12 did that it would have been the same thing. The difference
13 of whether the gun was -- whether he had a concealed
14 weapons permit or not doesn't matter. What matters is
15 whether that gun was used to bring on the difficulty, and
16 it was not. No evidence that it was used to bring on the
17 difficulty. And so did -- and I've already talked about it
18 a little bit, but in terms of bringing on the difficulty,
19 did Allen use words that brought on the difficulty, we've
20 already been through that. I don't think there's any way
21 to construe that what you said -- if you believe that he
22 did mention that shooting on 16th Street could have or did
23 bring about the attack of Marcus Robinson. His words and
24 that gun had no role in causing these difficulties, and the
25 State has to prove beyond a reasonable doubt that something

CLOSING ARGUMENTS

1 that Mr. Massey did did cause the difficulties, he had to
2 be at fault, but that gun and his words obviously were not,
3 and they have to prove beyond a reasonable doubt. So when
4 ~~this talk about the gun, all of this talk about, you know,~~
5 might have been kids in there, all this talk about walking
6 in that house without getting permission -- I mean, yeah,
7 it ain't good, he shouldn't have done it. I mean, no, I'm
8 not arguing that it was right, it just was not the factor
9 that caused the difficulty. It wasn't right but it's not
10 relevant. Now, the -- so the first element is that Mr.
11 Massey would have to be shown to be at fault in having
12 brought about these difficulties, and he again -- and I'm
13 leaving it, he would to have acted in -- and his conduct
14 was the type that was calculated to and it did provoke it,
15 ~~right? Didn't happen. And, I mean, I think that we've~~
16 proved it didn't happen, but we don't have any degree to
17 prove it, we don't have any duty to prove it. The State
18 has got to disprove it and they've got to disprove it
19 beyond a reasonable doubt. Imminent danger. The second
20 element of self-defense is that the defendant was actually
21 in imminent danger of death or serious bodily injury, or
22 that the defendant actually believed he was in imminent
23 danger of death or serious bodily injury. So the State has
24 got to really prove two things in there, you know, to --
25 and they've got to prove it beyond a reasonable doubt to

CLOSING ARGUMENTS

1 prove that -- they've got to prove imminent danger, either
2 that at the time of the shooting that Mr. Massey believed
3 he was in danger of harm, or that he actually was. He may
4 ~~not have believed it but if he actually was, even if he~~
5 didn't believe it if he actually was in danger of death or
6 serious bodily injury, even if he didn't believe it then he
7 was entitled to use force. Now, the testimony -- you know,
8 Dr. Ross, if you remember back when we started this on
9 Monday -- seems like a long time ago, doesn't it -- Dr.
10 Ross talked about the number of people that she has done
11 autopsies on that were killed by fists, and most certainly
12 that fists can cause death. I mean, the autopsy is usually
13 to a dead person, or serious bodily injury, and that she
14 had seen both of those things. So, you know, was there
15 imminent danger -- was there an actual imminent danger to
16 Allen Massey? Well, Dr. Ross says there was. I mean, that
17 alone satisfies the -- rebuts the allegations of the State
18 that he was not in imminent danger. Oh, you know, he
19 should have taken a hit, he should have taken a hit, he
20 should have let Marcus hit him again. He did take a hit,
21 he should let him hit him again. He didn't have to let him
22 hit him again. And I'm sorry for Mr. Robinson and for Mr.
23 Robinson's family, but Allen Massey didn't have any duty to
24 let Marcus Robinson hit him again. It's common sense that
25 if the knockout king is coming at you after sucker punching

CLOSING ARGUMENTS

1 you that you're in danger. Now, Allen is too smart for his
2 own good. Bless his heart, he -- you know, he turned
3 himself in. He didn't consult a lawyer, turned himself in,
4 you know, 36 hours after this happened. You know --- and
5 but he -- when he was asked about why he did it he never
6 used these magic words, "I was afraid," you know, "of
7 getting killed or of serious bodily injury." Well, he
8 describes that Marcus Allen (sic) sucker punched him, came
9 after him, was at his feet, bending over getting ready to
10 hit him again, and he at that time and he says, "I had been
11 drinking and I didn't feel like I was up to fight." He
12 doesn't say the magic words that now the State says he had
13 to say these magic words or he wasn't scared. I mean, come
14 on. It's common sense that if the knockout king is coming
15 after you over you -- excuse me, right hand, left hand,
16 whatever hand, doesn't matter that you're going to be
17 scared and afraid that something bad is about to happen.
18 Even if Marcus -- I mean, Allen is like a UFC situation
19 where the boxer has got him down and he is going to finish
20 him off. Well, I mean, Allen is a nerd, and a nerd being
21 confronted with the knockout king tells you what's probably
22 going to happen when the knockout king gets another hand on
23 you, you probably are going to get seriously hurt, and
24 Sindarous Wells said he thought that he was likely to be
25 hurt, he thought he was going to possibly be seriously

CLOSING ARGUMENTS

1 hurt. You know, it's common sense. I've said enough on
2 that. Now, just to recap it -- sorry, I've said enough,
3 but just to recap it, Allen Massey had to either believe it
4 at the time that he was in imminent danger of serious
5 bodily injury, and if he didn't believe it, which the State
6 says he didn't believe it, he didn't say it so he didn't
7 believe it, he doesn't have to say it. Is it credible that
8 he didn't believe it? No. But he doesn't have to believe
9 it, maybe he didn't believe it, maybe he's like, "I'm just
10 going to shoot this guy because he hit me." Is that what
11 he did? Did he just say, "You know what, he punched me,
12 I'm going to shoot him, I'm going to kill him because he
13 punched me." No. I believe that's what the State's
14 argument is, though, that he just killed him because he
15 punched him. But like I said Dr. Ross said, he was in
16 danger of imminent danger of death or serious bodily
17 injury, she told you that. And so the State's got to prove
18 that he wasn't in imminent danger, that he didn't believe
19 it, and that if he believed that he was not in imminent
20 danger, if he actually was in imminent danger of serious
21 bodily injury you've got to prove beyond a reasonable
22 doubt. The third element would be called the reasonable
23 person standard, so you know, the essence of that is is
24 that if a -- if he actually was in danger then is must be
25 shown that under the circumstances that the circumstances

CLOSING ARGUMENTS

1 would have warranted a person of ordinary firmness and
2 courage to strike the fatal blow to prevent death or
3 serious bodily injury. If he actually was then an
4 ~~ordinarily prudent person would have~~ ~~also of firmness~~
5 and courage the circumstances would have warranted using
6 that force to prevent death or serious bodily injury.
7 Now -- and that also applies to if he actually was or if he
8 believed he was in imminent danger, a reasonably prudent
9 person of ordinary firmness and courage would have had to
10 have the same belief that he was in imminent danger of
11 serious bodily injury. And so not only, you know, does he
12 have to prove that he actually was and -- or he doesn't
13 have to prove it, the State has to prove that he wasn't
14 actually in imminent danger, or believe that he was in
15 imminent danger, the State has to prove that a person of
16 ordinary firmness and courage would have struck a fatal
17 blow or would have been warranted in striking a fatal blow
18 under the circumstances. Now, the self-defense statute or
19 instructions that I believe you're going to hear, you know,
20 will tell you more about, you know, that Mr. Massey had a
21 right to act on appearances. It's enough that if Mr.
22 Massey believed he was in danger and a reasonably prudent
23 person of ordinary firmness and courage would have believed
24 that, even though they were mistaken he would have had the
25 right to act. Now, what to consider in self-defense and

CLOSING ARGUMENTS

1 whether he was in imminent danger. You also need to
2 consider the size -- relevant sizes of them. I don't think
3 that's much of a factor in this. The State is making an
4 argument that Mr. Massey is this athletic time who
5 they're about the same size obviously, but I think Mr.
6 Massey is about 10 pounds less. The knockout king is a
7 chubby guy and Mr. Massey is an athlete seems to be what
8 they're trying to say, but I think it's obvious that Mr.
9 Robinson had a reputation for being a scrapper and Mr.
10 Massey didn't. You can consider whether the defendant was
11 in imminent danger or believed he was. Whether or not Mr.
12 Robinson had a reputation of violence. At the time, you
13 know, of the shooting was that going through Allen Massey's
14 mind? It happened so quick, you can't really imagine that
15 someone would have a lot of time to think about that sort
16 of thing because we know it happened in a couple of
17 seconds. But Mr. Massey has been struck by what he thought
18 his friend who suddenly popped him, sucker punched him for
19 the first time and Mr. Massey has seen Mr. Robinson knock
20 some people out, including breaking his own hand one time,
21 so he knows what Marcus Robinson is capable of doing at the
22 time of the shooting. Prior violence by the victim. You
23 heard interesting testimony from Shonettia and Malika about
24 that as well, all right, and I'm talking about Wiley Park.
25 And I hope everybody by the time this is over knows where

CLOSING ARGUMENTS

1 Wiley Park and City Avenue and 16th Street are. We didn't
2 even give you a map so if you don't know where it's at
3 you're not going to know, but it's over here less than a
4 mile away. But what we know is that --- what we know is
5 that the city responded to a shooting down at Wiley Park on
6 that -- prior to this thing happening down on City Avenue
7 and I say -- I don't want to trivialize it, before the
8 shooting happened. The city had been over there and it was
9 a county case and they didn't find nothing, but there had
10 been a shooting over at Wiley Park, we know that from this
11 document, you're going to get to see it. I guess I can
12 pass it around right now, you can start looking at it, let
13 me just publish it. Now, you heard -- why did Malika --
14 Malika and Shonettia were together all night, all that
15 night. They went to -- you know, depending on who you
16 believe where they went, and it really doesn't matter other
17 than this matters, whether they were together. I think
18 Malika said she went straight home, didn't go to 16th
19 Street. Shonettia said they both went to 16th Street from
20 Wiley Park, that doesn't matter. But what does matter is
21 this: When they left Wiley Park, why did they leave Wiley
22 Park? Malika said there was a shooting, there was a
23 shooting at Wiley Park. Shonettia says there was a fight.
24 They both say they were together. Now, you tell me if me
25 and my wife are together at a party and there's a shooting,

CLOSING ARGUMENTS

1 are we both going to know about it? Yeah. Yeah. We ain't
2 going to -- not one of us is going to mistake a shooting
3 and a fighting. Somebody doesn't want to tell what
4 happened down there. Malika said that Marcus told us to
5 leave, "Y'all leave. I'm going to stay, there has been a
6 shooting, y'all leave, I'm staying." Now, why didn't
7 Marcus -- if there's a shooting, why is he not leaving?
8 That doesn't make any sense either. Well, that doesn't
9 prove what Marcus did, and -- but you heard from Tyzhe
10 Hough I believe it was credible evidence. Tyzhe Hough
11 didn't want to be here, you heard him, Ms. Collins is his
12 prosecutor. Did he come in here to try to help Allen for
13 some reason just to try to be trying to help him? I don't
14 think so. But he said that Marcus had -- his brother had
15 gotten in a conflict with Marcus over a girl, Marcus was
16 looking for a gun and he left, he and his brother left, and
17 then as they were leaving there was a shooting. And you
18 know, that was funny how that coincides with that shooting
19 down there. And I know Ms. Collins is going to say, "Well,
20 you know, Allen Massey has been locked up two years waiting
21 for this trial. You heard it from Tyzhe Hough yesterday,
22 they got together in the jail and cooked this up." Tyzhe
23 Hough didn't want to be here, Tyzhe Hough didn't know Allen
24 Massey. Ms. Collins is going to say Tyzhe Hough is mad at
25 Marcus Robinson and wants to discredit him. There's been

CLOSING ARGUMENTS

1 no other explanation of this shooting down there given.
2 And Malika -- and the discrepancy between Malika and
3 Shonettia's account for what happened down there tells you
4 that they don't want to talk about what happened down there
5 because Marcus was involved in the shooting, that's why
6 they don't want to talk about it, or Shonettia, they didn't
7 get the story straight before they got called up here for
8 the stand. We know they were trying to get their story
9 straight, Shonettia admitted they were talking in the hall
10 and she was telling her to tell the truth, that she wasn't
11 present at the shooting. Well, could Allen Massey have
12 done something else? Could he have avoided this in some
13 other way? There ain't much to say about that, you know,
14 you've heard everything. I know Ms. Collins said, "You
15 couldn't have put your hands up?" Yeah, he could have put
16 his hands up. He didn't have any duty to put his hands up
17 if he was afraid he was getting ready to get the crap beat
18 out of him. But he could have, he could have waited to see
19 how it turned out and in reflection said, "Well, I'm glad I
20 didn't use my gun because I didn't get hurt." Okay. He
21 didn't know what was going to happen at the time and he
22 didn't have any duty to wait and find out what was going to
23 happen when he was being viciously attacked. But the State
24 thinks he did and should have. He didn't have -- you don't
25 have to do that. If you're being attacked -- he'd already

CLOSING ARGUMENTS

1 been hit once, he'd already been attacked, and the attack
2 is continuing. Okay. How much force can you use to repel
3 an attack? You can use the right -- you've got the right
4 to use as much force as necessary -- you have the right to
5 use so much force as appeared to be necessary for complete
6 self protection. You don't have to decide and make an
7 analysis there in that split second of whether -- how is
8 this going to turn out. You know, if you actually are or
9 you believe you are in danger you've got the right to fully
10 protect yourself in any way at your disposal at that moment
11 whether it be with a -- anything, whether it be with a
12 legal gun or an illegal gun. Now, you know, a few things
13 to wrap it up here. You know, you're going to see multiple
14 documents, but you're going to be able to look at all of
15 this stuff we've been flashing around up here. But these
16 diagrams -- I mean, these pictures of the kitchen show what
17 the -- I believe you will recall that -- and you looked at
18 them, I don't know if you really got to look at them
19 because we were kind of passing them around and I doubt you
20 did, but I will pass them around while I am talking here.
21 And what they show is the kitchen, and they show the --
22 what Sindarous Wells said was the position of the three
23 parties, of he and Marcus and Allen at the time prior to
24 Marcus punching Allen, and then one of them has two little
25 red squiggles on it that shows where Sindarous Wells said

CLOSING ARGUMENTS

1 that Allen ended up after Marcus hit him. Now, the State
2 is going to say, "Well, you know, Allen said he was on the
3 floor -- got knocked to the floor," but they're going to
4 suggest that the evidence contradicts his statement that he
5 got knocked to the floor, you know, they're going to have
6 to -- and that matters quite frankly, you know. Quite
7 frankly whether he was on the floor or standing up I don't
8 really think changes anything. If he's on the floor he's
9 more vulnerable, I would admit obviously you are, but
10 either way you've got Marcus Robinson coming at you and you
11 are in danger of injury. But if you're on the floor you're
12 in more danger, and of course, Allen says he's on the floor
13 at the time that this happened. It happened in a split
14 second. And Sindarous Wells doesn't say that he was not on
15 the floor, he says he couldn't see him standing. Now, you
16 tell me. You look at the W on those pictures and you take
17 a couple of steps back, which is what he said he did, and
18 you tell me if you -- if where he puts those little feet on
19 there whether or not you could have seen somebody if they
20 were standing. It's common sense that you could have.
21 You're in a dark room and you've got light shining on you
22 right there, you're standing right there next to the
23 threshold in his version of it. I mean, if Allen had been
24 standing he would have seen that. Allen wasn't standing.
25 Allen, of course, says that he was right there on the

CLOSING ARGUMENTS

1 threshold was where he got knocked down, most certainly he
2 would have seen him standing under those circumstances.
3 But I think it's pretty obvious that Allen got knocked down
4 and in a vulnerable position. And, in fact, the State is
5 going to say that the pathologist's little stick. Remember
6 the stick. Okay. I don't have a stick but I've got a
7 pencil. All right. It's important. Everybody that
8 said -- that commented on it said this happened, it was
9 close, they were close when he shot him. So what that
10 tells you, I mean, is that Allen waited until the last
11 second, they were close, before he discharged the firearm.
12 He didn't shoot him after he stepped back, he was right on
13 top of him when he shot him. To have shot him close he had
14 to -- I believe that he -- well, I was going to say he had
15 to have been on the floor but that wouldn't be accurate to
16 say. It was obvious he shot him close but he didn't shoot
17 him until he was right on him, that was obvious. Okay.
18 Ms. Ross, you know, didn't measure the distance, and that
19 would have told us, you know, the actual trajectory. I
20 don't know -- I couldn't get -- I didn't understand. She
21 kept saying, "I can tell, I can tell." Well, you're a
22 scientist, tell me then. She never explained how you can
23 take the distance from, you know, the head to the entry
24 point and the distance to where the bullet ended up, or you
25 can -- with only one of those measurements how you can make

CLOSING ARGUMENTS

1 a trajectory. You know, how can you connect two points
2 when you don't know -- at an angle when you don't know the
3 distances from the top of the head for an erect person, for
4 a person whose standing up. But she admitted that if you
5 were bending over most certainly could have had a downward
6 appearance, and that's exactly what Allen said downward --
7 is that Marcus was bending over coming at him, listen to
8 his video if you want to. He even says that the bullet is
9 going to have a downward trajectory, listen to it if you
10 want to. But the solicitor says that that meant he was
11 standing up and he's a liar, he's lying about everything.
12 He wasn't scared, he's evil, he's an evil genius. He
13 orchestrated Tyzhe Hough to come in here and try to
14 discredit Marcus, and he set this whole thing up just so he
15 can kill Marcus, I guess. Well, Sindarous Wells certainly
16 said that it looked like that Allen was getting ready to
17 get -- possibly get seriously injured. You know, one other
18 thing -- and the State gets the last argument, I try to
19 anticipate what she's going to say. Obviously I've got to
20 try to anticipate what her arguments are going to be and I
21 think based on what they're presenting. Navoney Curry
22 wrote -- you're going to get this letter. Navoney Curry --
23 and get to look at it -- Navoney Curry got a letter from
24 Allen asking him to go make a statement. Now, I don't know
25 whether Navoney Curry was in there or not, Allen thinks he

CLOSING ARGUMENTS

1 was, but Allen thought Malika was in there, and Malika
2 wasn't in there, she was in the bathroom. So you know,
3 nobody was like keeping track exactly of everything and
4 everybody that was going on, there is naturally going to be
5 some confusion about it and mistaken beliefs, which I don't
6 know if there was, because either I believe Navoney was in
7 there, or he led Marcus' family to believe he was in there
8 based on his communication with them. So naturally if --
9 and I think, you know, Navoney, he's caught in the middle
10 of all of this stuff, his friends, family members, cousins,
11 you know, he has lost two brothers. I mean, what a tragedy
12 that Navoney Curry has been through. It tells you how
13 dangerous the neighborhood is though, doesn't it? But
14 Navoney believes he wasn't there. But I think it's
15 reasonable -- and this letter I think can only be
16 interpreted to -- I guess the State is putting it in to say
17 the evil genius is trying to orchestrate and get his buddy
18 to come lie for him, I suppose. But if I was in jail and I
19 thought somebody was there and I wanted them to give a
20 statement and they said they were going to give a statement
21 and told my family they were going to give a statement and
22 they told my family they were there, I would want them to
23 give a statement and help me. Now, you're going to also
24 see another document that Detective Small says -- and this
25 statement, you heard it, Navoney Curry talked to Lieutenant

CLOSING ARGUMENTS

1 Hall, supported Massey's statement. And it also has a note
2 on there that Rashawd is threatening he is going to get
3 revenge on anybody talking to Allen. Now, these are the
4 ~~police notes and -- but I believe Rashawd threatening he's~~
5 going to get revenge on anybody talking to Allen, I don't
6 know if that came in through an anonymous phone call, if --
7 excuse me, if Navoney Curry told the police that and they
8 are mistaken about it, I don't know. But it kind of
9 explains why Navoney Curry might not want to talk. Rashawd
10 Robinson, you heard him, he went to prison for shooting
11 somebody. Navoney Curry, you heard, he lost two brothers,
12 murdered, he got shot himself. He's in a heck of a mess.
13 Maybe he said, "I was there," or just said what he'd heard
14 in a way that the Masseys interpreted he was there. But
15 ~~Allen believed he was there, I think it's clear, all right,~~
16 and maybe he was. Because when I asked him whether he
17 told -- that he told Lorenzo Crawford whether he was there
18 or not, he did kind of -- he acted kind of funny. All
19 right. Other thing, he didn't turn himself in, well,
20 immediately. And, you know, if he had I don't know, maybe
21 the police would have done something different if he would
22 have waited and had been there. But, you know, I think he
23 told his explanation, I can't really expand on that. I
24 mean, he had to be in shock, he's just been attacked by a
25 friend and he knows he just put a bullet, sadly, in a

CLOSING ARGUMENTS

1 friend. He knows that, you know, this is a huge, huge
2 horrible tragedy and it would just have to be -- blow your
3 mind to be in that position in a way that that's hard to
4 comprehend. But I think what that translates to is that
5 you might need to go and get your head together about the
6 whole situation instead of your trying to avoid the police,
7 and he wasn't trying to avoid the police, he turned himself
8 in pretty quickly. He said he was a little bit nervous
9 about getting arrested there on the scene because he -- I
10 mean, the way he would be treated as a suspect, and that's
11 understandable, it would make you nervous, I believe.
12 Finally, I think it's pretty obvious that Allen is telling
13 the truth, I think he's a truthful guy. He comes from a
14 solid family who's tried to raise him right, and he had --
15 certainly he had a -- he didn't fulfill his potential up
16 until this happened and that's sad, because obviously he's
17 incredibly smart. He's a man with the brains to really do
18 something good in this world. But he gave a statement to
19 the police and that statement, while he didn't say, "I was
20 scared at the moment I shot him," he did say that Marcus
21 was right there at his feet and he bent over, coming at him
22 with his fist balled up, and what he says is it just
23 happened so quick, happened so quick. And it did happen so
24 quick and we know it happened so quick in a couple of
25 seconds. He got clobbered, he hits the ground, Marcus

CLOSING ARGUMENTS

1 Robinson is on top of him coming at him with his fist
2 balled up, he was about to get hit again. Now, you know, I
3 think from everything that's been presented, you know -- my
4 ~~job is to just point out the things that I think happened~~
5 or the most beneficial -- or to the evidence that's most
6 beneficial to my client, but as far the witnesses go --
7 and, you know, it's natural to try to blame -- out of
8 respect for Marcus, his friends and his family just want
9 this to be not Marcus' fault. At the time they didn't want
10 to say anything that made -- put him at fault and they
11 didn't. You know what? But the evidence in this case
12 clearly shows that Marcus caused his own death and that
13 Allen Massey acted in self-defense. And I believe after
14 you've had an opportunity to deliberate it and share each
15 ~~other's thoughts, that you will find that Allen Massey --~~
16 and I believe I said Marcus Robinson and Allen Massey -- I
17 believe you will find Allen Massey acted in self-defense,
18 and I believe that you will find him not guilty, and I ask
19 you to do that. Thank you for your attention.

20 MS. COLLINS: Your Honor, I'm sorry, it's been a
21 little lengthy. I need a five minute break. I apologize.

22 THE COURT: Let's take a short break. This will be a
23 short one. Don't discuss the case among yourselves while
24 you're in the jury room.

25 (The jury left the courtroom.)

CLOSING ARGUMENTS

1 THE COURT: Are you ready, Ms. Collins?

2 MS. COLLINS: Yes. Thank you, Judge.

3 THE COURT: Defense?

4 MR. GRIER: Yes, sir.

5 THE COURT: Bring the jury.

6 (The jury returned to the courtroom.)

7 THE COURT: All right, ladies and gentlemen. Ms.
8 Collins, you may proceed.

9 MS. COLLINS: Thank you, Your Honor. May it please
10 Court? The State has so many advantages, that's what Mr.
11 Grier says about us. We've got so many advantages. But
12 one advantage that we don't have, we don't have a person
13 here living and breathing to tell you what happened that
14 night. We don't have Demarcus Robinson here to tell you
15 what happened that night, and that's a very real
16 disadvantage and that's a tragedy. We've got the witnesses
17 that were there and we've got the body of Demarcus
18 Robinson, and we'll talk about that. You know, like Mr.
19 Massey, I'm pretty much a nerd too. I like poetry, I like
20 quotes, I was actually president of the math team in high
21 school, that tells you a little bit about me. I grew up
22 one of six kids on a farm in Florence County. I like
23 books, I wasn't athletic. I wasn't skinny like some might
24 say Urkle is on TV, but I sure wasn't athletic. And I
25 always like to have a quote for y'all, because I certainly

JURY CHARGE

1 think that there's a lot of people out there more eloquent
2 than I am. I don't have a quote for y'all today. I
3 thought about it and I thought about it, I just don't,
4 because at the end of the day words are just so empty to me
5 in this case. And we make our living in this profession
6 with words, but words are just so empty in this case. It's
7 a tragedy, no question. So I don't have any smooth quote
8 from a mind greater than mine. But all I can say is
9 there's something just wrong, there's just something so
10 wrong about the idea that someone can walk around all night
11 with a gun in his pocket and not tell anyone about it, and
12 go in a home and not tell the homeowners, "Hey, I've got a
13 gun and it's loaded in my pocket just to make you aware for
14 your safety," and after all of that have a disagreement and
15 be hit one time and pull out that gun and shoot. One time.
16 One time. And a man and a father and a fiance' and a son
17 is gone. What a world we live in. What a world we live
18 in. And to me there's just something so wrong about that.
19 And that's why we emphasize no one knew about this. Have
20 you ever thought that if Demarcus Robinson knew that Mr.
21 Massey had a gun that night maybe he wouldn't have hit him?
22 Is that fair? Is that right? Mr. Grier is so busy telling
23 you what I'm going to tell you, I might as well sit there
24 and wait for the judge to order pizza, but I'm not going to
25 use quite the words he said I'm going to use, he doesn't

JURY CHARGE

1 know me that well. I would not stand in front of you and
2 use a word or the phrase evil genius, that's a cartoon.
3 We've talked about the TV show Urkle -- that Urkle is on,
4 we're using a word like "Oh, she's going to say he's an
5 evil genius." I'm not going to say that because this isn't
6 a cartoon, this isn't TV, this is real life and real death.
7 This is our community, our houses, our children, which to
8 me these men are at my age. And when you carry a gun so
9 casually and continuously, a loaded gun until it starts to
10 just become a part of you that you immediately reach for
11 it, there are going to be consequences for that. There
12 going to be consequences for that. No, he just didn't just
13 have to take it. He didn't have to throw his hands, that's
14 one alternative he had. But he's not the skinny nerd that
15 he would be portrayed to be. He's a man that was a roofer.
16 Have y'all ever lifted -- we just had our roof replaced
17 about five years ago and they left the leftovers there in
18 case we ever lose some more with these hail storms we have,
19 and I picked them up to move them and boy I found out real
20 quick how heavy they are and I only had a little stack of
21 them, they're heavy. He's going up and down a ladder and
22 he's roofing. You saw his biceps, you saw his muscles on
23 the video, this is not a skinny little nerd Urkle, this was
24 a man that was able to fight back without using a gun. Mr.
25 Massey had an alternative, he had an alternative. First of

JURY CHARGE

1 all he was standing, he had a duty -- he has a duty to
2 retreat, he could have run. Second of all, even if he
3 wasn't standing he could have called out for help.
4 ~~Sindarous said he definitely would have stepped in, Mr.~~
5 Wells, and I will talk about Navoney Curry in a minute. He
6 said the tragedy to him is that if he would have been in
7 there he would have stopped it because these men were his
8 friends. Let me back up to that a minute. They keep
9 acting like Navoney Curry is in there, Navoney is in there.
10 Y'all heard his tragedy, his brother got killed in front of
11 his eyes, was shot and killed, he was shot and killed at
12 the same time and they revived him and he came back, he
13 lived that. Do you think if Navoney Curry had witnessed
14 this violent act of Mr. Massey shooting his other friend --
15 ~~his two friends, one shooting the other in front of Mr.~~
16 Curry after he had lived that with his brother, after he
17 had survived that with his brother, do you think if he saw
18 that he would be able to sit there and talk not casually
19 about it, but don't you think we would all see that? We
20 would have all seen him reliving that flashback of that
21 happening to him and his loved one? And the reason I sent
22 this letter to you, or submit it into evidence -- and
23 you've got a copy of it in there, you will have it, but I
24 ask you it read this for a couple of reasons. I submit to
25 you this shows a different side of Mr. Massey. He's not

JURY CHARGE

1 always the eloquent book person that you would believe him
2 to be, you're going to see language here that's more of a
3 street person. You're going to see language here that I
4 submit his mother would not be proud off, and you're not
5 going to see one person sent a letter saying, you know
6 what? Just tell the truth. You know what? Just go to the
7 police and tell the truth. What you're going to see is
8 language saying, "F the police" -- and I'm not saying the
9 full word on that -- "I've got a private investigator, you
10 give him the statement." You're not going to see you know
11 you were in there, you know you saw this, you're not going
12 to see any of this. It's saying, "You give a statement for
13 me." It's not threatening in any way, but he's saying,
14 man, you need at that give a statement for me and F the
15 police, forget them, forget Mr. Small, Sergeant Small.
16 Give it to my guy, my investigator, the ones that write
17 words like they did for Tyzhe Hough's, a statement we
18 didn't even have. Who's putting words in whose mouth? Mr.
19 Grier can try to twist this all day long, but Sergeant
20 Small told you what this was. This was notes that was
21 told -- that the calls came in saying that supposedly
22 Navoney Curry said this, and Navoney Curry said, "They were
23 trying to say I was in the kitchen but I wasn't." Sergeant
24 Small said, "These are just notes indicating that someone
25 thought this was the case." But you've heard from the

JURY CHARGE

1 witness himself, he wasn't in the kitchen. And you know
2 what else? He went outside to use the restroom. This is a
3 house that has one bathroom. He said -- Navoney Curry said
4 that Malika and Shonettia were both in the bathroom and so
5 he goes outside because it's a one bathroom house, and
6 being the gentleman he walks around outside the house
7 around the corner on the side. He said, "I was out there
8 about five minutes doing that and then I talked to a fellow
9 on the porch for about another five or ten minutes." So he
10 said it was about 15 minutes. So if Malika and Shonettia
11 went to the bathroom right when he was going outside to use
12 the bathroom since he couldn't use the one inside, 15
13 minutes later I submit to you Malika has used the bathroom,
14 is coming out. The defendant said in his earlier hearing
15 Malika was in the kitchen. And why is that important?
16 It's important because Malika said they were standing there
17 grappling, they were standing, and if he's standing he can
18 retreat. If he's standing and is closer to the door -- to
19 the living room, which goes to the front door, he has the
20 duty to retreat and he could have retreated. And it's
21 consistent with standing. Dr. Ross said the trajectory --
22 and she used this -- and how does she know? She doesn't
23 have to measure, she's a doctor, she knows where organs
24 are, she did the autopsy of Mr. Robinson, she saw it
25 herself. But it's important because if they're

JURY CHARGE

1 grappling -- this is the victim -- if they're grappling and
2 this is the trajectory the doctor said, that if you say,
3 "Okay, this is the victim and the hand of defendant is like
4 this," and that's what Malika said, they were grappling,
5 that the shot was downward. If he's on his back -- and
6 I'll back up enough so you can see me -- and I don't dress
7 quite so casually, usually I like to dress a little nicer
8 but I knew I would get down and the floor. If he's on his
9 back and said he was on his back and he's shooting, it's an
10 upward trajectory. I asked him, I said, "How far apart
11 were you?" Remember, he had me back up a little bit so
12 that's how far apart we are. It is an upward trajectory.
13 Sindarous Wells said that the back of Demarcus Robinson was
14 still up straight, so it would have to be an upward
15 trajectory if he was down on his back. Even if the victim
16 was leaning over him, for it to be a trajectory as it is
17 downward the defendant's arm would have to be like this and
18 the victim would have had to be bent over almost parallel
19 to where he was. And that's not what he was described, he
20 said, "He was starting to come toward me, he was at my feet
21 but he was still about five feet away and he was starting
22 to lean over." For the trajectory that the doctor
23 described, they would have to be more like this parallel to
24 where when the defendant pulls the gun, it goes in there.
25 And Dr. Ross said it was about one and to -- one to one and

JURY CHARGE

1 a half inches, that's consistent with them grappling and it
2 being right here. All these people were drinking, all of
3 them were drinking. The defendant said, "I had six or
4 ~~seven beers, it doesn't take that much for me.~~" And yet,
5 again, he says to the police, "I was in no shape to fight."
6 And why is it important that he ran? He didn't just run
7 and turn himself in right away, of course people are going
8 to panic. He stayed away for hours, hours, into the night
9 of when that -- it starts at 4:00 a.m. through noon,
10 through 5:00, through midnight of that night into the next
11 day, 9:00 a.m. the next morning, up until noon the next
12 day. And what is he doing? He's talking. He's talking to
13 family members. If he didn't have in all of those hours
14 time to get his story straight to come to the police and
15 say -- and I'm not asking for any legal words, I'm not
16 asking for him to say, "I was in imminent danger. I
17 expected serious bodily injury." I'm not expecting that.
18 This is not a cartoon, we don't go around talking like
19 this, this is real life. But I do expect someone to say,
20 "I was scared. I was scared," or, "I was afraid." That is
21 not asking too much if someone took the life of someone and
22 they're saying that they did so in self-defense, to never
23 articulate that, to never say those words. And what words
24 did he say to the police when he gave his statement? First
25 he talked about Rashawd and he said, "I had been drinking,

JURY CHARGE

1 I was in no shape to fight so I took those two punches and
2 I left." Great. Wonderful. If you had done that when
3 your friend hit you one time as opposed to two, as opposed
4 to this prisoner that you say you help put away, if you'd
5 just taken that and left, none of us would be here, and
6 best of all, best of all, not only would none of us be
7 here, best of all Demarcus Robinson would be here. But the
8 police asked him, and they asked him like three separate
9 times -- and you know, they didn't raise their voices, they
10 didn't have him under some bright spotlight like they do on
11 TV or in these cartoons with the evil genius and say what
12 was the difference. They're sitting back and just saying,
13 "Well, just tell us, why was it different? I'm just trying
14 to understand, why was it different?" Because at first he
15 says to Demarcus, he said again, "I had been drinking, I
16 was in no shape to fight." You know what's a little
17 appalling about that is, "I'm in no shape to fight, I've
18 been drinking six or seven beers," but you're in the shape
19 then to hold a loaded gun, to make a decision about
20 shooting a loaded gun? And then finally when pressed he
21 said, "Well, you know, with Rashawd I was part of him
22 having to go to prison because I was cooperating with the
23 police so I felt like I deserved that. I thought I
24 deserved that." Well, what's implied by that? "With
25 Rashawd I thought I deserved that." So what is the

JURY CHARGE

1 difference? "That with Demarcus I didn't deserve that.
2 That was a friend, he punched me out of the blue, I didn't
3 deserve that, I didn't do nothing to him." I submit to you
4 ~~that's what that implies. Mr. Grier says he was being~~
5 viciously attacked. This is not a case where he ended up
6 with bruises on his body. He didn't have a single
7 laceration other than he had a busted lip. He had a busted
8 ~~lip.~~ Is that the world we live in, that someone can hit
9 somebody one time in the mouth and then be killed with a
10 gun that he didn't even know the other person had? There's
11 so many options. Just ball up his own fist, deflect it,
12 ball up one fist, call out for Sindarous. Navoney was
13 about to come in, he was right there on the front porch.
14 This is not a vicious attack. His Honor will talk to you
15 ~~about those four elements of self-defense, and before we~~
16 ~~can get to the charge of murder or voluntary manslaughter~~
17 we have to disprove -- it is our burden to disprove one
18 element. We only have to disprove one of those four
19 elements. The second being that did he have a belief of
20 imminent danger of death or serious bodily injury? Did he
21 actually believe it, or was he actually in such danger? He
22 said -- I asked him on the stand -- remember? I'm sure we
23 all remember, because it was at that point that if I was
24 starting to get a little boring to you and drift away that
25 the door opened and we all stopped and I said, "I want to

JURY CHARGE

1 say this again," so I waited for the door to close, and I'm
2 sorry if I appeared rude to someone, I didn't mean to. I
3 wanted you all to hear those words, and he confirmed those
4 words, "I thought I would get hit again, that's what I
5 thought was going to happen. I thought I was going to get
6 hit again. I thought I was going to hit again." Not, "I
7 thought that was it. I thought I would probably get hit
8 again and I shot." The third element -- and this is the
9 crucial element I submit in this case, is would a man of
10 ordinary firmness and courage, a person of ordinary
11 firmness and courage feel like that's what he had to do to
12 avoid death or serious bodily injury? And I even asked
13 Navoney Curry that. And it is not his decision, it's your
14 decision, it's your decision to apply that standard. Would
15 a man of ordinary firmness and courage after being hit one
16 time, one time by the knockout king and yet he's not hit
17 hard enough to even knock his hat off, would he have felt
18 that he had to pull that gun and shoot it to avoid death or
19 serious bodily injury? You know, Shonettia said we were
20 both in the bathroom, and Navoney remembers they both went
21 to the bathroom at the same time, and Malika says "Well, we
22 did but I came out first." All of the stories -- there are
23 variations and I said that in my opening, because we're not
24 dealing with a script from Hollywood and we're not dealing
25 with a set thing of what people say, we're dealing with

JURY CHARGE

1 people, we're dealing with real life, we're dealing with a
2 shocking thing that they saw. They had all been out
3 drinking and they'd been having fun together. And I said
4 ~~they're going to be variations. There are going to be~~
5 variations not only in what each of them saw, but
6 variations in what they said not only here but at prior
7 hearings, or what they told the police. Remember what
8 Sindarous Wells said. He said Demarcus' back was straight
9 up, and he said, "I thought Demarcus was going to hit
10 Massey again." And as to where his feet are standing,
11 Captain Grant said, "When I came in the living room the
12 light is on." What had happened right before Captain Grant
13 got there? Do y'all remember? He wasn't one of the first
14 officers there. The officers come in, they don't know
15 ~~where the perpetrator is, they do a protective sweep of the~~
16 home to make sure there's no one in there while they're
17 treating the victim. Do you think they're going to do a
18 protective sweep of the home in the dark with the lights
19 off? Sindarous Wells said the light was off early in the
20 living room when it happened, that's why he couldn't see
21 more than the defendant's feet, but he saw them firmly
22 planted on the ground. The officers come in, they do a
23 protective sweep, I submit you they do that, they turn the
24 dang lights on, they want to make sure, they're not going
25 to search a house in the dark. And that's when Captain

JURY CHARGE

1 Grant comes in. He says he's one of the later ones to come
2 in, he says the living room light is on, that's how I
3 photographed it. The defendant said, "This was the hardest
4 decision I ever had to make." So in other words, he
5 confirmed even though it happened like that, that it took
6 him long enough, he made a decision, and I submit that
7 tragically he made the one wrong. He had other
8 alternatives. He never said he was afraid, he never said
9 he was scared, he never said, "I felt my life was at
10 stake." He never said on the video, "I thought he was
11 going to break my arm, I thought he was going to break my
12 leg. I thought I was going to end up that night in the
13 hospital," nothing. But he said, "I had been drinking, I
14 didn't feel like fighting, I was in no shape to." He
15 conceded here, he said here, "I didn't think I was going to
16 die," he admitted that. So that's off the table, he
17 admitted that. He said, "I did not think that I was going
18 to die," and then he said, "I thought I was going to get
19 hit again." And then he ran, and he got rid of the gun.
20 He gave it to a friend to hold, although he didn't think
21 enough of the friend to tell him what he was holding or
22 what had just happened. Asked another friend to take him
23 somewhere, although he didn't think enough of the friend to
24 tell them exactly what had -- her what just happened and
25 make sure she was okay with putting herself at risk. You

JURY CHARGE

1 know, this isn't a case where he was in his own house.
2 This isn't a case where he was in his own house and an
3 intruder came in and he was attacked in his own house.
4 ~~These two men were on equal footing. They were both in~~
5 that home. Now granted, Mr. Massey hadn't been invited
6 that particular night but he wasn't asked to leave, he was
7 welcome. They gave him a beer, they were hanging out, they
8 were waiting to play spades, the card game. They were on
9 equal footing. And I submit to you when you're on equal
10 footing, you fight force with force. And I submit to you
11 that the action he took that night was excessive and it was
12 unnecessary, and frankly it was against the law. They were
13 on equal footing except for one thing, one of them had a
14 gun and one of them didn't. They were about the same age
15 ~~and about the same weight, pretty much the same weight.~~
16 One, as I -- weight tends to go with gravity as you get a
17 little bit older and Demarcus was more like that at his age
18 and you saw that from the shot on the video. Ironically
19 Rashawd said he was about the same height, said he was 5-11
20 and 220, and got to see him walk in here and take the stand
21 and you got to see the defendant take the stand and you got
22 to observe their bodies. And I submit to you there's no
23 reason in the world that these two men couldn't have had at
24 it that night with a fist fight, I don't know who would
25 have won but I don't know how it would have turned out in

JURY CHARGE

1 terms of who would have won. But I think it was excessive,
2 I think it was against the law and it was not self-defense.
3 I think we have disproved one element and that is that a
4 ~~man of ordinary firmness and courage would not have felt it~~
5 necessary after one punch in the mouth that didn't even
6 knock his hat off to pull that gun out and to shoot him.
7 And because of that we get beyond the self-defense to just
8 the issue of what was it then? What was it? Was it
9 murder? Was it voluntary manslaughter? If you find there
10 was malice aforethought, if you find that in the moment --
11 and it can happen like that and His Honor will tell you
12 about that, that right before he pulled the trigger that he
13 had hostility toward Demarcus, if you find he acted with
14 malice aforethought in the unlawful killing of Demarcus
15 Robinson then that is murder. And again, I keep going back
16 to that phrase, I keep going back to that phrase. This
17 isn't a job to me as Mr. Massey would say, "I know it's
18 your job." My only job here is to ask questions and to
19 listen to the answers, ask the questions that I think y'all
20 would want to ask because you're not able, that's my job,
21 that's my job. And I keep going back to that of with
22 Rashawd, "I didn't deserve that, I didn't deserve that."
23 And I submit that with that phrase I think we've hit a
24 little closer to home than anything else, because I think
25 the flip side -- no. With Rashawd he said, "I deserved

JURY CHARGE

1 that." I think the flip side then with Demarcus his
2 immediate reaction was -- and I'm a country girl and I'm
3 not going to curse because I will try to be a little bit of
4 a lady, but I think his immediate reaction was something to
5 the affect, "Oh no, dang, I didn't deserve that. Where in
6 the heck did that come from? Are you kidding me? Are you
7 kidding me? I just got punched twice by your cousin.
8 Well, okay, he had a right to do it because I helped put
9 him in the big house, but you don't. I've had enough, I've
10 had enough," and I think he just reacted. And I think in
11 that moment, and tragically so, in that moment, in that
12 moment that he was not the man that you've seen in this
13 courtroom. He was not the gentleman, he was not the
14 scholar, in that moment -- and tragically because he had a
15 loaded gun in his pocket, that he reacted and that malice
16 and that hostility rose up in him and his reaction was
17 basically, and excuse my French, "Oh hell no, I don't
18 deserve that," and he reacted and he shot him. And even if
19 you find that he did not react with malice and that he did
20 not shoot with malice aforethought, you'll have the other
21 charge to consider, voluntary manslaughter. Did he act in
22 the heat of passion upon sufficient legal provocation? If
23 you find that one hit to the mouth is sufficient legal
24 provocation for him to act and if he acted in the sudden
25 heat of passion, then again, the unlawful killing of

JURY CHARGE

1 Demarcus Robinson should result in a verdict of guilty of
2 voluntary manslaughter. That's it. I don't have a fancy
3 quote to end with, all I have are two words. Thank you.

4 ~~You've got a big task ahead of you, because hesitation to~~
5 act as far as reasonable doubt doesn't mean you hesitate in
6 your decision. You deliberate, you talk with each other
7 and then you come back together as one body and you give a
8 unanimous verdict. Thank you for being with us these five
9 days, thank you for bringing justice to this courtroom.

10 THE COURT: All right. Ladies and gentlemen, you've
11 now heard all of the testimony in this case, you've heard
12 the arguments of both the State and the defendant, and you
13 will take to the jury room with you all of the evidence
14 that's been introduced in this case. I now must explain
15 the law to you of South Carolina as it applies to this
16 case. And let me remind you of certain things to begin. I
17 will remind you that during this trial you and I have
18 certain duties to perform. As trial judge it's my
19 responsibility to preside over the trial, and I also have
20 the duty of ruling on the admissibility of the evidence
21 during the trial. You are to consider only the competent
22 evidence which has been introduced before you. If there
23 was any testimony ordered stricken from the record, and I
24 don't believe there was, you must disregard that testimony.
25 You are to consider only the testimony which has been

JURY CHARGE

1 MR. GRIER: Yes, Your Honor.

2 THE COURT: Let me caution members of the audience,

3 nobody knows what this verdict is, the jury has received a

4 verdict, but I request that there be no emotional outbursts

5 when the jury delivers their verdict. I know these things

6 are very sensitive and I know both families are real

7 concerned about this, if you become overcome with emotion I

8 will ask you to leave the courtroom. All right. Thank you

9 very much. Bring the jury.

10 (The jury returned to the courtroom.)

11 THE COURT: Madam Forelady, has the jury reached a

12 verdict?

13 THE JUROR: Yes, sir.

14 THE COURT: Will you hand it to the bailiff, please?

15 Madam Clerk, you may publish the verdict, please.

16 THE CLERK: Yes, sir. State of South Carolina versus

17 Allen Wesley Massey. With respect to the charge of murder

18 we, the jury, unanimously find the defendant not guilty.

19 With respect to the charge of voluntary manslaughter, we,

20 the jury, unanimously find the defendant guilty. With

21 respect to the charge of possession of a firearm during the

22 commission of a violent crime, we, the jury, unanimously

23 find the defendant guilty. Ladies and gentlemen of the

24 jury, if this be your verdict so say you all by the raising

25 of your right hand. Your Honor, let the record reflect all

JURY VERDICT

1 jurors raised their right hand.

2 THE COURT: Any desire to poll the jury?

3 MR. GRIER: Yes, Your Honor, request polling, please.

4 ~~THE COURT: Madam clerk, poll the jury.~~

5 THE CLERK: Juror number 84, was this your verdict?

6 THE JUROR: Yes, ma'am.

7 THE CLERK: Is it still your verdict?

8 THE JUROR: Yes, ma'am.

9 THE CLERK: Juror 129, was this your verdict?

10 THE JUROR: Yes, ma'am.

11 THE CLERK: Is it still your verdict?

12 THE JUROR: Yes, ma'am.

13 THE CLERK: Jury 150, was this your verdict?

14 THE JUROR: Yes, ma'am.

15 THE CLERK: Is it still your verdict?

16 THE JUROR: Yes, ma'am.

17 THE CLERK: Juror 119, was this your verdict?

18 THE JUROR: Yes, ma'am.

19 THE CLERK: Is it still your verdict?

20 THE JUROR: Yes, ma'am.

21 THE CLERK: Juror number two, was this your verdict?

22 THE JUROR: Yes, ma'am.

23 THE CLERK: Is it still jury verdict?

24 THE JUROR: Yes, ma'am.

25 THE CLERK: Juror number 98, was this your verdict?

JURY VERDICT

1 THE JUROR: Yes, ma'am.

2 THE CLERK: Is it still your verdict?

3 THE JUROR: Yes, ma'am.

4 ~~THE CLERK: Juror number five, was this your verdict?~~

5 THE JUROR: Yes, ma'am.

6 THE CLERK: Is it still your verdict?

7 THE JUROR: Yes, ma'am.

8 ~~THE CLERK: Juror number 69, was this your verdict?~~

9 THE JUROR: Yes, ma'am.

10 THE CLERK: Is it still your verdict?

11 THE JUROR: Yes, ma'am.

12 THE CLERK: Juror number 122, was this your verdict?

13 THE JUROR: Yes, ma'am.

14 THE CLERK: Is it still your verdict?

15 ~~THE JUROR: Yes, ma'am.~~

16 THE CLERK: Juror number 112, was this your verdict?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Is it still your verdict?

19 THE JUROR: Yes, ma'am.

20 THE CLERK: Juror number 81, was this your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror number 53, was this your verdict?

25 THE JUROR: Yes, ma'am.

SENTENCING HEARING

1 But you're going to have to make more of yourself in prison
2 than you are now, and there's ways to do that and there are
3 ways to figure it out. All right. Mr. Massey, sentence of
4 the Court on your possession of a weapon during the
5 commission of a violent crime, sentence of the Court you be
6 committed to the state department of corrections for a
7 period of one year, you're given credit for 665 days
8 pretrial time, pretrial service. As to your
9 manslaughter -- voluntary manslaughter charge, sentence of
10 the Court is that you be committed to the state department
11 of corrections for a period of 15 years, provided upon the
12 service of ten years, the balance is suspended and you're
13 placed on probation for five years. Both sentences are to
14 run concurrent and you're given 665 days pretrial jail
15 time. If you don't do your five years of probation after
16 your ten year sentence, you go back to jail to serve the
17 full 15 years. Good luck to you, sir. Anything further?

18 MR. GRIER: Your Honor, I need to make motions, I
19 think, to protect the record, just a motion for a new trial
20 and --

21 THE COURT: That's why I asked is there anything
22 further?

23 MR. GRIER: Yes, Your Honor. Your Honor, at this time
24 defense would ask you to assume the role of the 13th juror.
25 I know always some judges believe that that is applicable

SENTENCING HEARING

1 to civil as well as criminal, and that when you see an
2 outcome that you do have -- that is not consistent with the
3 evidence and is contrary to what the Judge believes that
4 ~~the evidence would show, that you do -- in the light most~~
5 favorable to the defendant, and viewing the evidence and
6 reflecting on the evidence and reflecting on defense's
7 motions, that you find that it should have been a directed
8 verdict at the conclusion of the trial, and that the
9 verdict should be taken back from the jury and the Court
10 should make a ruling in favor of the defendant directing a
11 verdict.

12 THE COURT: Any comment from the State?

13 MS. COLLINS: No, Your Honor. We ask that that motion
14 be denied. It was properly sent to the jury and they
15 returned a verdict and we ask that it stand.

16 THE COURT: All right. Respectfully denied. I'm not
17 even sure of your assertion that the 13th juror is
18 available in criminal cases, but that's for another day.

19 MR. GRIER: Understandable, Your Honor. Thank you.

20 (End of trial proceedings.)

21

22

23

24

25

1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of the proceedings had and
5 evidence introduced in the trial of the captioned case
6 relative to appeal in the Court of General Sessions for
7 Lancaster County, South Carolina, on the 3rd-7th days of
8 August, 2015.

9 I do further certify that am neither of kin, counsel,
10 nor interest to any party hereto.

11

12

April 1, 2016

13

14

15


Michael C. Watkins

16

Court Reporter

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WITNESSES

B. Small - LPD#13-14869

DOCKET NO. 2014-GS-29-95

The State of South Carolina
County of Lancaster

COURT OF GENERAL SESSIONS

JANUARY TERM 2014

ARREST WARRANT NUMBER/DOA

2013A2920300810 (DOA-10-13-13)

ACTION OF GRAND JURY

THE STATE
vs.

Allen Wesley Massey

S. B. Williams
Foreperson of Grand Jury
Date: *2 Jan 2014*

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

Indictment for

Possession or Display of Firearm or
Knife During Commission of a Violent
Crime

SC Code: § 16-23-490
CDR Code: 0549
Class: Felony, F

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

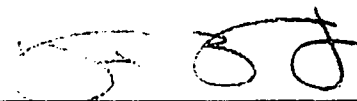
INDICTMENT

At a Court of General Sessions, convened on January 2, 2014, the Grand Jurors of
Lancaster County present upon their oath:

**POSSESSION OR DISPLAY OF FIREARM OR KNIFE DURING COMMISSION OF A
VIOLENT CRIME**

That Allen Wesley Massey did in Lancaster County on or about October 12,
2013, possess or visibly display a firearm or knife, to wit: a handgun during his/her
commission of a violent crime, to wit: Murder of Demarcus Robinson, in violation of §16-
23-490, *Code of Laws of South Carolina, (1976), as amended.*

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



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

/ B. Small - LPD #13-14869

DOCKET NO. 2014-GS-29-94

The State of South Carolina
County of Lancaster

FILED
OFFICE OF CLERK

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COURT OF GENERAL SESSIONS

JANUARY TERM 2013

ARREST WARRANT NUMBER/DOA

2013A2920300809 (DOA-10-13-13)

THE STATE

vs.

Allen Wesley Massey 14 95

ACTION OF GRAND JURY

Callie Wilk
Foreperson of Grand Jury
Date: 2 Jan 2014

VERDICT

TRIP BILL

Foreperson of Petit Jury
Date:

JAN 17 2014

Indictment for
Murder

SC Code: §16-3-10
CDR Code: 0116
Class: Felony, EXM

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on January 2, 2014, the Grand Jurors of Lancaster County present upon their oath:

MURDER

That Allen Wesley Massey did at [REDACTED] City Avenue, in Lancaster County on or about October 12, 2013, feloniously, willfully, and of his malice aforethought kill and murder Demarcus Robinson by shooting him in the chest with a handgun and the victim did die as the proximate cause thereof at Carolina Medical Center in Charlotte, North Carolina on October 12, 2013, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

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



Douglas A. Barfield, Jr., SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



John H. Strom
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 14th day of March, 2017.

RECEIVED

MAR 14 2017

SC Court of Appeals