

21986

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SALUDA COUNTY

Thomas A. Russo, Circuit Court Judge

RECEIVED

SEP 17 2018

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

STEVEN OTTS,

APPELLANT

APPELLATE CASE NO. 2014-000274

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

ANTHONY MABRY
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit
205 East Main Street
Lexington, SC 29072

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JULY 22 – 25, 2013.....	1
OPENING STATEMENT BY MR. MAYE	2
OPENING STATEMENT BY MR. SHAFFER	12
TESTIMONY	
LAKEISHA STALL WORTH	
Direct examination by Mr. Maye.....	23
Cross examination by Mr. Shaffer.....	39
Redirect examination by Mr. Maye	52
Recross examination by Mr. Shaffer	54
ANGELA CREECH	
Direct examination by Mr. Maye.....	57
Cross examination by Mr. Shaffer.....	67
Redirect examination by Mr. Maye	76
Recross examination by Mr. Shaffer.....	76
GWEN SIBERT	
Direct examination by Mr. Young.....	78
Cross examination by Ms. Johnson.....	91
Redirect examination by Mr. Young	97
KELLY ROSE	
Direct examination by Mr. Young.....	99
Cross examination by Mr. Shaffer.....	122
Redirect examination by Mr. Young	137
Recross examination by Mr. Shaffer	138
KEITH TURNER	
Direct examination by Mr. Young.....	140
Cross examination by Mr. Shaffer.....	142
MOTION FOR DIRECTED VERDICT.....	143
RULING BY THE COURT	143

TESTIMONY

RUSS PADGETT (IN CAMERA)

Direct examination by Mr. Shaffer	147
Cross examination by Mr. Maye.....	150

RULING BY THE COURT	153

TESTIMONY

RUSS PADGETT

Direct examination by Mr. Shaffer	154
Cross examination by Mr. Maye.....	162
Redirect examination by Mr. Shaffer	170

SACA JAWEA COLEMAN

Direct examination by Ms. Johnson	173
Cross examination by Mr. Maye.....	185
Redirect examination by Ms. Johnson.....	197

STEVEN OTTS

Direct examination by Mr. Shaffer	198
Cross examination by Mr. Maye.....	228
Redirect examination by Mr. Shaffer	262

RENEWAL OF MOTION FOR DIRECTED VERDICT	266

RULING BY THE COURT	267

CHARGE CONFERENCE.....	268

TESTIMONY

REBECCA SMITH

Direct examination by Mr. Maye.....	287
Cross examination by Mr. Shaffer.....	290

CHARGE CONFERENCE.....	292

CLOSING ARGUMENT BY MR. MAYE	323

CLOSING ARGUMENT BY MR. SHAFFER.....	347

CLOSING ARGUMENT BY MR. MAYE.....	369

CHARGE ON THE LAW.....	390

VERDICT	409
MOTION FOR NEW TRIAL	410
RULING BY THE COURT	410
SENTENCING	411
DEFENSE EXHIBIT # 4 (STATEMENT-STALLWORTH)	412
COURT'S EXHIBIT # 1 (INCIDENT REPORT)	413
COURT'S EXHIBIT # 2 (REQUESTED CHARGE)	416
DEFENDANT'S MOTION FOR A NEW TRIAL	421
ORDER DENYING DEFENDANT'S MOTION FOR A NEW TRIAL.....	428
INDICTMENT	429
SENTENCE SHEET	431
CERTIFICATE OF COUNSEL.....	432

State of South Carolina) In the Court of General Sessions
) Eleventh Judicial Circuit
 County of Saluda) 2011-GS-41-0288

State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Steven Dewayne Otts,)
)
 Defendant.)
)
 _____)

July 22 - 25, 2013
 Saluda, South Carolina

B e f o r e:

The Honorable Thomas A. Russo, Judge; and a jury

A p p e a r a n c e s:

Ervin J. Maye, Assistant Solicitor
 H. Franklin Young, III, Assistant Solicitor
 Attorneys for the Plaintiff

Tristan M. Shaffer, Esquire
 Catherine T. Johnson, Esquire
 Attorneys for the Defendant

Maryann S. Nevers, CVR-M-CM
 Circuit Court Reporter

1 MR. SHAFFER: None, Your Honor.

2 THE COURT: All right. Thank you, gentlemen.

3 Now, ladies and gentlemen, if you would, please, as I
4 said to you earlier, give the lawyers your undivided
5 attention as they address you with their opening remarks.
6 Mr. Maye?

7 MR. MAYE: May it please the Court, Your Honor?

8 THE COURT: Yes, sir.

9 OPENING STATEMENT BY MR. MAYE

10 MR. MAYE: Ladies and gentlemen of the jury, on the
11 morning of January the 27th of 2011, Hydrick Burno was a
12 29-year-old young man when he woke up that morning. By
13 February the 3rd of 2011, Hydrick Burno was in the
14 Lexington Medical Center being pronounced dead with a
15 cracked skull and the resulting brain injuries that caused
16 his death. By February the 5th of 2011, his remains were
17 over in Newberry County, being autopsied by Dr. Kelly Rose.

18 Submit to you: In this case that the state's going to
19 prove, through the evidence as it comes from this stand up
20 here, all of those events took place. The change from
21 Hydrick Burno being in a man -- being a man, alive and well
22 on January the 27th of 2011 when he woke up, to being dead
23 with a cracked skull, are the results of him being murdered
24 by Steven Otts, young man seated at this table over here in
25 the tan jacket.

1 He's charged with murder. State's got the burden of
2 proof in this case. And I submit to you, the state
3 welcomes it.

4 To back up a little bit, I realize that several weeks
5 ago, however long ago it was, that you got a letter or a
6 summons from Ms. Holmes, your clerk of court here, and you
7 went out to the mailbox or however you received that
8 notice, I doubt anybody leapt for joy or was skipping and
9 dancing when they came back from the mailbox with that.
10 Because it's an imposition. All of us up here realize the
11 imposition it is for you because most of the rest of us are
12 up here because it's our jobs.

13 My name is Ervin Maye, and I'm an assistant solicitor
14 for the Eleventh Judicial Circuit. And I work for your
15 elected solicitor, Mr. Donnie Myers. Seated at the state's
16 table with me here is Mr. Frank Young, who is also an
17 assistant solicitor. And we help Solicitor Myers take care
18 of McCormick, Edgefield, and Saluda Counties.

19 Judge Russo has been brought in here for other
20 counties -- from another county to sit as the trial judge
21 in this case. Everybody else is brought in here, for the
22 most part, because it's their job to be here. But the 12
23 of you were summoned away from whatever you would've been
24 doing: being with your families, going to work, totally
25 disrupting your schedule. And everybody realizes the

1 imposition that that is. But your job is vitally
2 important.

3 Winston Churchill once said that the highest duty that
4 a citizen has during peacetime is service on a jury. And
5 there's no question about that. Because that's exactly
6 what it is: It's service; it's an imposition. But the 12
7 of you that go back in that jury room to deliberate in this
8 case are going to sit as judges of the facts in this case.
9 Just as surely as Judge Russo is sitting up there on the
10 bench with his black robe on, presiding over this trial,
11 you're going to be the judges of the facts in this case.

12 And I submit to you, the state's going to prove in
13 this case that Steven Otts is a murderer through the facts
14 that are going to come before you from this witness stand.
15 Because at the conclusion of all of this evidence, the
16 facts, as they come forth from this stand -- at the
17 conclusion of that, Judge Russo is going to charge you in
18 great detail with what the law is in this case. And you're
19 going to take that law and apply it to the facts as you
20 heard it up here in the stand and go back and render a
21 verdict in this case. And I submit to you, the state's
22 going to prove without a doubt that Steven Otts is a
23 murderer.

24 To back up and talk about the events of January the
25 27th of 2011, it involves a number of people. And you're

1 going to hear from a number of people in this case. One of
2 the first that you're going to hear from is a lady named
3 Lakeisha Stallworth. And she's going to tell you that on
4 that evening, after she got off work on January the 27th of
5 2011, on that Thursday, she went over around her house in
6 Merritt Street over around Ridge Spring and she met up with
7 some people that were friends of hers.

8 She's going to tell you that she met up with a guy
9 that they call "Loopy," Antonio Valentine, and he was
10 driving a green Ford Explorer. She's going to say,
11 additionally, she got up with a lady that was a friend of
12 hers named Saca Jawa Coleman and her boyfriend, Steven
13 Otts, the defendant in this case; and that they talked over
14 there at that household. And then they got into the Ford
15 Explorer and they went back -- and submit to you: It's
16 already in evidence in this case -- that the scene where
17 this took place -- y'all are from here in Saluda County.

18 Town of Ridge Spring, most people know where Kent's
19 Corner is. If you're uptown in Ridge Spring there with the
20 main businesses and you're headed back out of town this
21 way, just before you get back out here to Kent's Corner are
22 the Orchard Park Apartments. And you might not even notice
23 them when you're riding down there. There's a little sign
24 out here at the corner of the road.

25 And there are three apartment buildings back here, and

1 the parking lot swings in right here, common parking area.
2 Some of it's here. But the majority of the parking area
3 for these three buildings right here is right here where
4 the state's pointing in this case.

5 In greater detail this is a blowup of that parking
6 area, the same one that you've seen. I submit to you,
7 you're going to hear in this case Ms. Stallworth's going to
8 say they all got in that Ford Explorer. Antonio Valentine
9 was in the driver's seat. Ms. Stallworth was sitting in
10 the passenger's seat right beside him.

11 Back behind Antonio was Saca Jawa Coleman. Over to
12 the right in the passenger's side in the rear was the
13 defendant, Steven Otts. But they got in that Ford Explorer
14 and they drove back down through Ridge Spring, and they
15 turned and they went back into the apartment complex.

16 She's going tell you that they were up there in the
17 parking complex, stopped, and Mr. Otts in this case began
18 to argue with his girlfriend, Saca Jawa Coleman, in the
19 back and that he wanted her to get out and go with him.
20 And she didn't want to. She wanted to go on where the rest
21 of them were going, and she did not want to stay with him
22 and she did not want to get out of the car.

23 And she's going tell you and you're going hear from a
24 number of witnesses in this case that an argument ensued, a
25 violent argument ensued; and that he got out of his side of

1 the car and went around to her side of the car and got the
2 door open and began to pull on her and fuss and holler and
3 yell and cuss and raise Cain and try to extract her
4 physically from that car; and that she was resisting and
5 she wouldn't go. And you're going hear testimony in this
6 case that he was beating on her. And you're going hear
7 testimony in this case that he was yanking and pulling on
8 her to the point that he yanked her shirt off of her,
9 trying to pull her out of that car; and that it created
10 such a commotion -- and I submit to you, you're going hear
11 in this case that all these buildings around here and that
12 this kind of commotion caused people to just spontaneously
13 start pouring out of the buildings and coming out to see,
14 Lord, what in the world was going on here with all this
15 fussing and fighting and carrying on.

16 And you're going hear from a witness in this case,
17 Angela Creech, who was in her apartment, and that she came
18 out and stood up on the balcony where she had a clear
19 vantage point of all that was going on. And she watched
20 this take place. She heard the blows raining down in this
21 case upon Ms. Coleman as Mr. Otts tried to drag her and
22 force her out of that automobile.

23 I submit to you, ladies and gentlemen, you're going to
24 hear that Hydrick Burno was also inside of one of those
25 apartments. And all of the commotion caused him to come

1 outside. And you're going hear evidence in this case that
2 Hydrick Burno is related to Saca Jawa Coleman -- that's
3 his cousin -- and that he sees his cousin in this case
4 getting waled on and drug -- trying to be drug out of this
5 car and all this commotion going on. And you're going hear
6 from the witnesses in this case that Hydrick tried to
7 intercede on her behalf.

8 But the first thing that he did was to try to talk to
9 Mr. Otts, who was in a rage and trying to extract her from
10 this vehicle. And I submit to you, you're going hear that
11 that didn't do any good. When he tried to talk to him and
12 reason with him and tell him just to leave her alone and
13 stop, that he told him to stay the eff out of it. You're
14 going hear some bad language in this case, I submit to you,
15 from the stand in this case from the mouth of the defendant
16 in this case, Mr. Otts.

17 But when he was unable to persuade him and ask him to
18 stop and leave her alone, he grabbed me from behind in a
19 bear hug and he just held him. You're going hear from the
20 witnesses in this case, at that point in time, once he
21 grabbed him and was holding onto him, that the response of
22 Mr. Otts to that was to tell him in the most vile terms,
23 which you're going hear in this case, "Motherfucker, when
24 you let me go, I'm going knock your punk ass out," state
25 submits to you is the evidence that you're going to hear.

1 We further submit to you: What you're going to hear
2 is when Hydrick Burno, the victim in this case, let him go,
3 Mr. Otts did exactly what he said he was going to do. He
4 violently wheeled around and punched him in the face and
5 with one punch, knocked him out, struck him in the head,
6 causing him to fall like a tree that was cut down. Knocked
7 him completely out.

8 You're going to hear that as he fell and laid there
9 unconscious, that he went into seizures, that he bit his
10 tongue, that he was shaking as a result of the violent
11 injury that he received at the hands of the defendant in
12 this case, Mr. Otts.

13 You're going to hear that Ms. Angela Creech, the woman
14 that called 911 as all of this was going on and taking
15 place, began to holler; that she had some medical training
16 and she began to holler, "Don't touch him. Don't get him
17 up." And you're going hear in this case Mr. Otts went over
18 and yanked him up and dropped him again.

19 I submit to you, you're going hear from the witnesses
20 in this case that as soon as there was any talk about
21 calling the police and getting the police involved in this,
22 Steven Otts turned tail and ran and fled into the woods.
23 You're also going to hear that Saca Jawa Coleman took off
24 at that point. And you're going hear that Ms. Stallworth
25 was left there with Hydrick Burno as he was what turned out

1 to be mortally and fatally injured in this case and that
2 the police came and that EMS came and that he was
3 transported to the Lexington Medical Center. And in spite
4 of their best efforts, they couldn't save him and he died.

5 You're going to hear from Russ Padgett, the officer in
6 this case, that when he got there, Steven Otts, the
7 defendant in this case, was nowhere to be found. He was
8 long gone.

9 Ladies and gentlemen, I submit to you, it's not very
10 complicated in this case. The state, again, has the burden
11 of proof. He's charged with murder in this case. Judge is
12 going to tell you what the law is in this case.

13 We're going to tell you about how Hydrick Burno went
14 and tried to intercede on his cousin's behalf. I submit to
15 you, you're going to hear about some -- about the law of
16 defense of others; about how, if there's a family member or
17 a friend of yours and they're being attacked, that you can
18 stand in their shoes and you can try to help them and you
19 can try to save them and intercede, which, I submit to you,
20 is what the state's going to prove in this case: that
21 Hydrick Burno was trying to help his cousin, Saca Jawa
22 Coleman, and was murdered for his troubles.

23 I submit to you, the judge will tell you in this case
24 -- he's going to charge you with what the law is. But he's
25 going to tell you that murder is the killing of another person

1 with malice aforethought. That's kind of an old
2 definition. But I submit to you, the judge will tell you
3 in this case "killing another person with malice
4 aforethought" means that you had malicious intent.
5 "Malice" just means meanness.

6 MR. SHAFFER: Objection, Your Honor: Incorrect
7 statement of law. That's not the definition of malice.

8 MR. MAYE: The old cases ---

9 THE COURT: All right. Hold on.

10 MR. MAYE: Excuse me.

11 THE COURT: Just -- I'm going to overrule. Just --
12 ladies and gentlemen, whatever I told you earlier, what the
13 lawyers tell you is not evidence. I will charge you on the
14 law when that time comes. And you'll take the charge as
15 the Court gives it to you. Okay?

16 MR. MAYE: May it please the Court?

17 THE COURT: All right.

18 MR. MAYE: Thank you.

19 THE COURT: Thank you.

20 MR. MAYE: Old cases define "malice" as depraved heart
21 bent on wickedness. The state's got to prove that it was
22 malice in this case. Submit to you: We welcome it.

23 "Aforethought": That just means that it was thought
24 about beforehand. And for there to be malice in murder
25 case, it doesn't have to meant that somebody planned and

1 schemed for months ahead of time and laid in wait for
2 somebody in order to murder them. It can occur just a
3 moment before.

4 And I submit to you, the state's going prove to you,
5 out of Mr. Otts's own mouth, that he made up his mind what
6 he was going do and he told the victim in this case before
7 he ever let him go exact what he was going to do. He was
8 going knock him out, and he carried through and he killed
9 him. He murdered him.

10 Ladies and gentlemen, again, we're extremely conscious
11 that you've been taken away from what you're doing this
12 week. I just ask for your close attention as you hear the
13 evidence come from this stand and ask that you apply the
14 law as the judge gives it to you to the facts as you hear
15 them and come back and render a just verdict.

16 THE COURT: Thank you, Mr. Maye. Mr. Shaffer?

17 MR. SHAFFER: Thank you, Your Honor. Just one second.

18 OPENING STATEMENT BY MR. SHAFFER

19 MR. SHAFFER: Steven Otts is not guilty of murder.
20 The reason I say that is one punch is not murder. In order
21 to prove murder, you have to prove this: malice. That's
22 what this case is about: whether or not it was lawful,
23 first of all, and whether or not there was malice. One
24 punch is not malice.

25 Now, I'm going to tell y'all a little story. And it's

1 not going to be a happy story. It's going to be a sad
2 story. And it might be a little bit different than the one
3 that Mr. Maye just told you.

4 Because the evidence -- you're going to hear a lot of
5 conflicting evidence in this case. You're going to hear
6 different versions of the facts and different versions of
7 what happened. But in this story, like I said, it's a sad
8 story. It's a tragic story.

9 It's a story of two friends: Steven Otts and Hydrick
10 Burno. Steven and Hydrick are friends. I think that
11 you'll hear a lot of evidence saying that they're friends.
12 They've been friends for quite a long time.

13 And that night people were having fun. People were
14 out drinking. Ms. Coleman -- Saca Coleman -- she has a
15 unusual pronunciation of her name, Steven's girlfriend.
16 Saca is out drinking and having a good time. She is with
17 Keisha, Ms. Stallworth. Saca and Keisha are having a good
18 time and they're riding around with a guy named Antonio.

19 And they're all drinking. They're going from party to
20 party, place to place, having -- having drinks. At some
21 point in the evening, they pick up Steven. And Steven goes
22 back -- he's going back to Hydrick's uncle and aunt's
23 house.

24 Because when I say "their house," they live at this
25 apartment complex where this whole thing happened. And

1 it's actually Steven's place too, because Steven had been
2 living there for a couple of months.

3 See, they're friends. The -- the aunt and the uncle
4 let Steven stay there because they're -- they're friends.
5 And Steven's going back to his place. And he wants the --
6 the night to end.

7 And you're going to hear that Ms. Coleman, Saca, which
8 is the girlfriend, Ms. Coleman -- Saca and Keisha were both
9 very drunk. And at some point Steven didn't want Saca to
10 go ride around with Antonio, who had also been drinking.
11 He wanted the party to end.

12 But Saca didn't want the party to end. Saca wanted to
13 keep staying out -- go out. Well, they got into a verbal
14 argument about this -- a verbal argument. They got loud.

15 You're going to hear -- one of the versions of this
16 story that you're people going to hear is that the only
17 thing that occurred physical between Saca and Steven is
18 that he grabbed her arm at one point and said, "Come on.
19 You're coming with me." Not assault, not punching; grabbed
20 her arm and said, "Come on. It's time to go inside."

21 Well, they get loud and they escalate the thing. And
22 a lot of bad judgment's used on a lot of people's part,
23 okay? But one of the people in the apartment, when they're
24 getting loud -- this isn't a huge place -- people start
25 coming out, seeing what's going on. It's Thursday night.

1 There's a fight going on or an argument going on. I --
2 it's not actually a fight; it's a argument, a verbal
3 argument. And they want to see what's going on.

4 Well, one of the people who come out is a girl named
5 Collette Coleman. And she goes and gets Hydrick, Steven's
6 friend, hoping he can de-escalate the situation.

7 She gets Hydrick, who is a large man, larger than
8 Steven. At the time probably had 80 pounds on Steven, at
9 least 3 inches taller, probably closer to 5, according to
10 the DMV records -- big man. And he's drunk. He's not just
11 a little drunk. He's not "I had two beers." He is drunk.

12 And he comes out there. And I don't know what his
13 intentions are going out there. But he seems like he's
14 trying to de-escalate the situation.

15 But he crossed a line at some point. What he did was
16 wrap Steven up in a bear hug from behind. Said, "Come on.
17 You're going with me." Like I said, he's a big man, a lot
18 bigger than Steven.

19 He probably thought, Yeah. Steven's my friend. I
20 could easily haul him inside. I don't have to listen to
21 him if he doesn't want to go somewhere.

22 Well, Steven wiggled away. Said, "Stop touching me."
23 Finally got out; wiggled away.

24 Hydrick grabbed him again. Grabbed him right back
25 here in the shoulder. You're going to hear this.

1 He turned around and he punched him one time. Some
2 people would call it a "haymaker." I like to call it a
3 "John Wayne punch," just because I'm a fan of old western
4 movies.

5 Essentially, he turned around and just swung with all
6 his might with whatever he could hit. And unfortunately,
7 he hit one spot. And that one spot in the head killed him.

8 It wasn't the fall. It was the punch. The state's
9 own expert will testify to that. It was the injury to the
10 side of the head right there. That's what killed him, a
11 big right hand to the left side of his head right there.

12 And he fell on the ground. And Steven started walking
13 away. Because at that point it had got too -- the
14 situation was so escalated that he needed to get out. So
15 Steven starts walking away. And he hears, "You hurt him."

16 So what does he do to this man the state he claims he
17 was trying to kill, acting with malice? He walks back over
18 and says, "Stop playing around. Get up. Stop playing
19 around." And he grabs his arms and sort of tugs at him and
20 says, "Stop playing around."

21 Now, the state's going to try to characterize that --
22 or I -- I believe that they tried to characterize that as
23 him slamming his head back on the ground. But I imagine
24 that's not what the evidence is going to show.

25 Well, Hydrick goes to the hospital. Well, first,

1 Steven walks away; goes to his sister's house. You're
2 going to hear all this from the stand. He goes to his
3 sister's house. And back at the scene, the cops come and
4 the ambulance comes.

5 By the time the cops get there, victim's awake. He
6 came to. Cops talk to witnesses. Then the victim goes to
7 the hospital.

8 He begins to -- begins to fade a little bit. And then
9 at some point, they -- they put him in a medically induced
10 coma. So you're going to hear about a couple of things
11 about medicine: One is that -- is -- is that he was -- had
12 a history of hypertension. And the other thing you're
13 going to hear about is the fact that he was extremely
14 intoxicated.

15 And you're going to hear that when -- when you had a
16 injury like that, what it's called is a "hematoma." It's
17 basically under your skull, bleeding, swelling under your
18 skull. When you had a injury like that, they don't want
19 your blood pressure to raise up. And one thing that they
20 can do to keep that is to put you into a coma. So that's
21 what they did.

22 Well, Hydrick died. And he died a couple days later.
23 Steven came in; gave a statement to police; got arrested.
24 They found out that he -- that he died, and then they
25 charged him with murder -- murder.

1 In this state murder is the highest crime there is.
2 There's no degrees of murder in this state. There's just
3 murder. And that's what murder is: the unlawful killing
4 of another with malice aforethought.

5 And that's what y'all are here for today -- or the --
6 actually, this week. It'll probably only be a couple days.
7 Y'all are here to decide two things: whether he acted with
8 malice.

9 Now, I had objected. And because of the fact I
10 objected, I'm going to read y'all what I think might be a
11 definition of malice, okay? I judged because I thought he
12 oversimplified it.

13 My belief -- I imagine this is pretty close to what --
14 what'll be told to you later on, but that malice is hatred,
15 ill will, hostility toward another person. It's the
16 intentional doing of a wrongful act with just -- without
17 just cause or excuse with the intent to inflict injury
18 under circumstances that the law will infer an evil intent.

19 Hatred, ill will, hostility -- that's what y'all are
20 here to decide: whether he acted in -- with malice. Y'all
21 are also here to decide one other thing: whether it was a
22 lawful killing or not. Okay? Whether that punch was an
23 unlawful punch. Whether he had the right to punch a man
24 who bear-hugged him at first and then grabbed him again and
25 whether he had the right to -- to punch him at that point.

1 And I don't mean just grabbed him slightly. He
2 grabbed him hard enough to rip the back of his jacket off.
3 And you're going to see that later on. Grabbed him hard
4 enough to rip -- it was, like, a artificial-leather jacket.
5 You'll get to see that later on. Ripped it.

6 This wasn't some easy grab. This was a hard grab.
7 And he ripped this shoulder, so Steven turned around and
8 punched him. You're going to -- your other decision is
9 find out whether or not that's lawful.

10 Now, the state, in its opening statement, said a lot
11 of things about "you'll hear this," "you'll hear that."
12 You're going to hear a lot of things in this trial. You're
13 going to hear a lot of things that contradict each other,
14 because people don't tell the same story, okay?

15 You're going to hear a lot of people -- and some
16 people probably aren't going to tell the -- the same story
17 that they told before. And that's just the way it goes.
18 And y'all get to decide to who to believe and who not to
19 believe.

20 And y'all are going to hear me stand up and object to
21 a whole bunch of stuff. In this particular trial, I didn't
22 object a whole lot during the state's opening argument. In
23 my last murder trial, I objected, I think, 18 times during
24 the state's opening argument. I object a lot. I'm long-
25 winded. And y'all are going to get sick and tired of me

1 standing up, saying, "Objection."

2 But what I do -- and y'all probably don't even -- what
3 will see it and say, "Well, what is he objecting for? That
4 doesn't even make any sense. That doesn't even matter."

5 Well, it -- the reason I'm objecting is that part of
6 my job is for y'all, and part of my job is to make sure
7 that other things later on happen. And I want to make sure
8 that I do a good job. And my job is to object, so I object
9 a lot. And that's the job of any good defense attorney, is
10 to make a lot of objections.

11 So y'all are going to get tired of me making
12 objections. You're going to get tired of going to the jury
13 room.

14 You're also going to hear some sad testimony. And
15 it's going to be very sad, because you'll probably hear
16 from Hydrick's mother. And there's absolutely nothing in
17 this world that can bring her son back. And she's going to
18 be upset.

19 And like I said, this is a tragedy. And I'm -- I'm so
20 sorry that she lost her son. But this isn't about whether
21 or not it's a tragedy. It's about whether or not it's a
22 murder. That's your job.

23 If your job was to decide if this was a tragedy or
24 not, well, your job would be real, real simple. But it's
25 not. Your job is to decide whether it meets the definition

1 of murder, whether there was malice, whether this situation
2 constitutes the highest charge -- most serious charge in
3 this country -- most serious charge anywhere: murder.

4 Now, one other thing you're going to hear: You're
5 going to hear something during the course of this trial.
6 And I'm not going to tell y'all what it is. But y'all are
7 going to hear something. And you'll know exactly what I'm
8 talking about when you see it.

9 It'll change the way you look about this entire trial.
10 And you'll hear it. But I'm not going to tell y'all what
11 it is because I want y'all to pay attention and -- and look
12 for it. And I'll probably talk about it in my closing
13 argument a little bit, tell y'all what it is, just in case
14 someone missed it.

15 But I want y'all to do two things during this trial:
16 One is I want you to keep an open mind. Now, I don't get
17 to go first. I probably won't get to speak last. I don't
18 think that's fair, but that's the way the courts go. And
19 quite honestly, I don't make the rules.

20 But I want y'all to keep an open mind because the
21 state's going to put up a whole lot of evidence right at
22 first. And you're not going to hear the second side of the
23 story. And I want y'all to keep that open mind until you
24 deliberate.

25 The other thing I want y'all to do is to keep focus.

1 This trial is about murder. It's not about anything else.
2 They're going to bring up a whole lot of evidence, whole
3 lot of stuff about bad stuff that happened. But what y'all
4 need to keep in mind is this: whether, when he threw that
5 punch, it was lawful and whether or not he was acting with
6 malice.

7 Y'all might not like Steven. You may. I do. But
8 y'all might not like him. I'm not asking y'all to be
9 friends with him. What I'm asking y'all to do is fairly
10 decide whether this is murder or not.

11 And I believe that when you look at all the evidence,
12 you'll see exactly why I say he's not guilty of murder.
13 Thank you.

14 THE COURT: All right. Mr. Maye, you may call your
15 first witness, sir.

16 MR. MAYE: The state would call Lakeisha Stallworth.

17 THE COURT: Ms. Stallworth, if you'd please come
18 around to be sworn.

19 MR. MAYE: She's probably outside.

20 THE COURT: All right. Go get her.

21 (Off the record briefly.)

22 (Whereupon, the witness came forward.)

23 LAKEISHA STALLWORTH, having been first duly
24 sworn, testified as follows:

25

DIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 158

DIRECT EXAMINATION

BY MR. MAYE:

Q Ms. Stallworth, speak up. This courtroom kind of eats up your voice. It's so big, and there's so much carpet in here. Speak up and talk to me. Introduce yourself to the ladies and gentlemen of the jury. Tell them what your name is.

A My name is Lakeisha Stallworth.

Q Okay. Ms. Stallworth, where are you originally from? Where'd you grow up?

A Ridge Spring.

Q In Ridge Spring?

A (Nodded head up and down.)

Q Have you lived around there all your life?

A Uh-huh.

Q Okay. Back in January of 2011, what were you -- or where were you working at that time?

A Urban Outfitters.

Q At Urban Outfitters?

A (Nodded head up and down.)

Q Okay. So January the 27th, 2011, on Thursday -- about when did you get off work that day?

A I got off that day around seven-thirty/eight o'clock.

Q Seven-thirty or eight o'clock?

A (Nodded head up and down.)

DIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 159

1 Q What was the first thing that you did? Tell the
2 ladies and gentlemen of the jury where you went after you
3 got off work at Urban Outfitters.

4 A Went home.

5 Q Okay. Where is home? Tell them about that.

6 A I went home to my house in Ridge Spring.

7 Q Okay. Where do you live in Ridge Spring? What
8 street's that on?

9 A I stayed on [REDACTED]

10 Q On Merritt Avenue?

11 A (Nodded head up and down.)

12 Q Okay. Who else lived there?

13 A Me and my mom.

14 Q You and your mom?

15 A Uh-huh.

16 Q Okay. When you got back to your mom's house there
17 after you got off work, what happened? Who was the first
18 person that you saw, or who were the first people that you
19 saw?

20 A I mean, when I got off, I went next door. I seen --
21 it was Saca, Antonio, Mr. Otts, and -- they were just
22 outside, hanging ---

23 Q Okay.

24 A --- around.

DIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 160

1 Q All right. Let's back up and let's talk about it,
2 now. Who -- who, you said, was the first person you saw?

3 A Saca.

4 Q Saca?

5 A Uh-huh.

6 Q What's her whole name?

7 A Saca Coleman.

8 Q Saca Coleman?

9 A Uh-huh.

10 Q You known her for a long time?

11 A Yeah.

12 Q She a friend of yours?

13 A Uh-huh.

14 Q Did y'all hang out pretty regularly?

15 A Yeah.

16 Q Okay. Who else?

17 A Antonio.

18 Q Antonio?

19 A Uh-huh.

20 Q Okay. What did they call Antonio?

21 A Loopy.

22 Q Loopy?

23 A Uh-huh.

24 Q Okay. What did he drive?

25 A Explorer -- Ford Explorer.

DIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 161

1 Q Ford Explorer?

2 A (Nodded head up and down.)

3 Q Who else did you say was there?

4 A Mr. Otts.

5 Q Steven Otts ---

6 A Uh-huh.

7 Q --- defendant in this case?

8 A (Nodded head up and down.)

9 Q If Mr. Otts is present in the courtroom, could you
10 point him out, just for the record, and say how he's
11 dressed?

12 A (Indicated.)

13 Q What -- what kind of -- what color of jacket does he
14 have on? Where is he sitting in relation to the these
15 three people at the table?

16 A Right there. He got a khaki -- a khaki suit jacket.

17 Q And he's the one in the middle, correct?

18 A Yeah.

19 MR. MAYE: Your Honor ---

20 A Uh-huh.

21 MR. MAYE: --- I'd just like for the record to reflect
22 she's identified the defendant in this case, Steven Otts.

23 THE COURT: All right. So ---

24 MR. MAYE: Okay.

25 THE COURT: --- reflected.

DIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 162

1 Q Do you know Mr. Otts?

2 A Yes.

3 Q Okay. Was he a friend of yours?

4 A Yeah. We was, you know, acquaintances. We ---

5 Q Okay. But you knew him?

6 A Uh-huh.

7 Q And you knew him -- Loopy?

8 A Yeah.

9 Q These were people that you knew and hung out with
10 sometimes?

11 A Uh-huh.

12 Q Okay. What was the next thing that happened after you
13 first encountered them there? What was the next thing that
14 happened?

15 A We was just talking or whatever. Then we decide to go
16 to the apartments.

17 Q Go to the apartments?

18 A (Nodded head up and down.)

19 Q Okay. Tell them what apartments you're talking about.

20 A Orchard Parks Apartments.

21 Q Orchard Park Apartments?

22 A Uh-huh.

23 Q I'm going to show you State's 1. Let me get up here
24 and try to hold it and get out of the way. Okay. What's
25 that on the corner right there? You know Kent's Corner?

1 Is that correct?

2 A Oh, yeah. Uh-huh.

3 Q Okay. Those the apartment buildings at Orchard Park?

4 A Uh-huh.

5 Q Okay. How did y'all get over there? How did you
6 leave and go?

7 A With Antonio Valentine, Loopy.

8 Q You went in Loopy's Explorer?

9 A Uh-huh..

10 Q Okay. Let's talk about this. Where were you sitting?

11 A In the passenger's seat.

12 Q In the front?

13 A Uh-huh.

14 Q That's correct?

15 A (Nodded head up and down.)

16 Q And you were in the passenger's seat in the front?

17 A Uh-huh.

18 Q Who was driving?

19 A Loopy.

20 Q Loopy was in the driver's seat?

21 A Uh-huh.

22 Q Okay. Where was Saca?

23 A She was behind Loopy.

24 Q Driver's side in the passenger in the rear?

25 A Uh-huh.

DIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 164

1 Q Where was Mr. Otts, defendant in ---

2 A Behind ---

3 Q --- this case?

4 A --- me.

5 Q He was over here?

6 A (Nodded head up and down.)

7 Q Okay. Where'd you go when you pulled into the
8 apartment complex? How'd y'all turn in and where did you
9 go?

10 A We just parked in the parking space in the parking
11 lot.

12 Q In the parking lot?

13 A Uh-huh.

14 Q Okay. Let me show you State's 2. All right. Look at
15 that. That's a little bit blurry. Is this the parking
16 area?

17 A Uh-huh.

18 Q Is that where you're talking about?

19 A Uh-huh.

20 Q The three apartment buildings here?

21 A (Nodded head up and down.)

22 Q Y'all pulled into the parking lot here?

23 A Yeah.

24 Q Okay. Let me ask you this: Were you intoxicated?
25 Were you grossly intoxicated?

DIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 165

1 A No. I didn't -- I ain't have nothing to drink that
2 night.

3 Q You had nothing to drink that night?

4 A Unh-unh.

5 Q Okay. Tell the ladies and gentlemen of the jury what
6 happened after all y'all pulled up in Loopy's Explorer.
7 Tell them what happened. What transpired between the
8 people in the car? What happened?

9 A I mean, we got there. And -- well, Saca and Steve,
10 they was already intoxicated. So ---

11 Q They were ---

12 A --- we got ---

13 Q --- already ---

14 A --- intoxicated.

15 Q Okay. So what happened then?

16 A When we got there, I mean, they start arguing. He was
17 -- I mean, because at the time he stayed at the apartments.
18 So ---

19 Q Okay.

20 A --- I guess he wanted Saca to spend the night with him
21 or whatever. And she kept saying no; she didn't want to
22 stay.

23 Q Okay.

24 A So after a while, you know, he got kind of aggressive.

25 Q Okay. Tell them exactly how it unfolded. He wanted

DIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 166

1 her to stay?

2 A Uh-huh.

3 Q She didn't want to stay?

4 A Unh-unh.

5 Q Tell them how it unfolded.

6 A I mean, after that he got aggressive or whatever. And

7 ---

8 Q Tell them what he did when he got aggressive. How did
9 you know that he was aggressive?

10 A Because he ---

11 Q What happened?

12 A --- start -- he start pulling on her.

13 Q He started pulling on her?

14 A Uh-huh.

15 Q Okay. Where was he when he was pulling on her in
16 relation to where she was? Was she ---

17 A It was ---

18 Q --- inside ---

19 A --- still in ---

20 Q --- the car?

21 A Yeah. We were still inside the truck.

22 Q Okay. He started pulling on her?

23 A Uh-huh.

24 Q Okay. Did she relent and go with him when he started
25 pulling on her?

DIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 167

1 A Unh-unh.

2 Q What happened next?

3 A She kept, you know, saying, "No, no," or whatever; she
4 wasn't going. So, I mean, at this time he got more
5 aggressive. And he pulled her -- he pulled her so hard
6 where he pulled the -- her coat over her head. And she was
7 just in her bra.

8 Q He pulled her shirt off?

9 A Uh-huh.

10 Q From yanking and pulling on it?

11 A Yeah.

12 Q He was that aggressive?

13 A Uh-huh.

14 Q Okay. What happened next?

15 A After that, I mean, he got out the truck. And then he
16 went to her side.

17 Q Otts went to her side?

18 A Yeah.

19 Q Okay. What ---

20 A And ---

21 Q --- happened when he went around to her side of the
22 Explorer?

23 A He still tried to pull out, but she had locked the
24 door before he got to her side.

25 Q Okay. So ---

DIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 168

- 1 A So he couldn't get in.
- 2 Q So what happened next?
- 3 A He kept trying to open the door, trying to get her
- 4 out.
- 5 Q Yeah.
- 6 A And she just -- and she wouldn't get out. So after a
- 7 while, Antonio told her, you know, "Y'all get out my truck.
- 8 I'm fixing to go."
- 9 Q Yeah. So what happened next?
- 10 A So we got out.
- 11 Q Okay.
- 12 A And he left.
- 13 Q What's the next ---
- 14 A And then ---
- 15 Q --- thing that ---
- 16 A --- after ---
- 17 Q --- happened?
- 18 A --- a while, after that Hydrick came outside.
- 19 Q Hydrick came outside?
- 20 A Uh-huh.
- 21 Q Okay. What happened -- what was happening when
- 22 Hydrick got outside?
- 23 A They were still arguing.
- 24 Q They were still going at it?
- 25 A Uh-huh.

DIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 169

1 Q Mr. Otts was still going at it with Saca?

2 A Uh-huh.

3 Q Okay. Well, what did Hydrick do?

4 A He came outside. And he was, like, "What's going on?"

5 Q Okay.

6 A And he was, like -- I mean, I don't remember him
7 actually physically putting his hands on -- you know, on
8 Steve, because Hydrick wasn't that type of guy. But he
9 was, like, "What's going on? What's going on?"

10 And Steve was, like, "Don't put your -- don't put your
11 fucking hands on me. Don't put your fucking hands on me."

12 So Hydrick's like, "What's going on? You know, what
13 -- why y'all out here" ---

14 Q Did -- did Hydrick start out putting his hands on him
15 or ---

16 A No.

17 Q --- doing anything? Did he start ---

18 A No.

19 Q --- out talking to him?

20 A Yeah.

21 Q Okay.

22 A I mean, basically, he was calming him down. Like, he
23 was trying to calm him down.

24 Q Did it work when he was trying to calm him down?

25 A No.

DIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 170

1 Q Okay. So what happened?

2 A I mean, after that all I remember, dirt just hitting
3 Hydrick and Hydrick fell. And he went in -- when he fell,
4 his head hit the -- hit the ground. And then at that
5 moment, he bust his head open.

6 Q All right. Now, Mr. Otts punched Hydrick in the face
7 and knocked him out?

8 A (Nodded head up and down.)

9 Q Once he knocked him out, how did Hydrick fall?

10 A He just fell. And he went into a seizure.

11 Q Prior to getting punched, did Hydrick attack him in
12 any way?

13 A No.

14 Q Were there multiple instances of him trying to put his
15 hands on him?

16 A (Shook head from side to side.)

17 Q He got punched?

18 A (Nodded head up and down.)

19 Q What did you do when Hydrick fell? Tell the ladies
20 and gentlemen of the jury what happened when he fell and
21 what you did.

22 A I got down on the ground, and I tried to stop him from
23 shaking. Then that's how I knew his head was busted,
24 because I put my hand up under his head.

25 Q You put your hand up under his head?

DIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 171

1 A (Nodded head up and down.)

2 Q What was he doing after he fell onto the ground?

3 A He was just shaking -- just shaking. And he bit his
4 tongue.

5 Q What was the next thing that happened?

6 A Steve came over there. And he grabbed him around his
7 collar. And he picked him up off -- off of my arm. And he
8 was, like, "Get up. Get up." And before I knew it, he let
9 him back down and his head hit the ground again.

10 Q He dropped him on his head?

11 A (Nodded head up and down.)

12 Q When did Mr. Otts leave, then?

13 A After he just ran off.

14 Q He ran away?

15 A (Nodded head up and down.)

16 Q He didn't stick around at all?

17 A (Shook head from side to side.)

18 Q Was he anywhere to be found when the police got there?

19 A No.

20 Q Was Hydrick trying to help Saca as she was being
21 assaulted by Mr. Otts?

22 A Yes, sir.

23 Q Let me ask you this: What was Mr. Otts wearing?

24 A I remember him having, like, a leather -- like, a
25 leather letterman's jacket. Looked like a -- you know,

DIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 172

1 like a football-team jacket.

2 Q Uh-huh. Did he wear that all the time?

3 A (Nodded head up and down.)

4 Q Let me ask you this: Prior to him running off of
5 there, did he have any damage to that coat at all?

6 A No.

7 Q Hydrick did not tear his coat?

8 A Hydrick didn't -- I don't remember Hydrick touching
9 him.

10 Q But you're positive his coat was intact when he left?

11 A (Nodded head up and down.)

12 Q Where'd he run off to? He run on down the road or run
13 in the woods? Where'd he run?

14 A To be honest, I don't know. Because my -- my
15 attention was on -- I was on Hydrick. I wasn't really -- I
16 wasn't worried about where he went.

17 Q But he ran ---

18 A All I know, he wasn't there.

19 Q Well, did Saca stick around?

20 A No. She just kept asking, "Where your keys? Where
21 your keys so I can go get your car?"

22 Q So she left too?

23 A Yeah.

24 Q Hydrick, her cousin, was laying there, having helped
25 her, and she too off too?

DIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 173

1 A (Nodded head up and down.)

2 Q Now, what was the relationship in between -- now, you
3 knew them and were around them, Saca and the defendant in
4 this case; is that correct?

5 A Uh-huh.

6 Q Okay. Is that her boyfriend?

7 A (Nodded head up and down.)

8 Q Okay. Have you continued to keep up with her -- Saca?

9 A What you mean? You talking about have I -- do I still
10 talk to her?

11 Q Yes.

12 A I mean, yeah. We conversate.

13 Q Where does she stay now?

14 A She stay in Batesburg.

15 Q With who?

16 A Her -- it's still Steven.

17 Q With Otts?

18 A Uh-huh.

19 Q So she's still with him, staying with him in
20 Batesburg?

21 A Uh-huh.

22 Q This is going sound like an absolutely silly question,
23 but I got to ask it. Place at the apartments at Orchard
24 Park where the fatal blow was struck on Hydrick, what
25 county is that in?

CROSS-EXAMINATION BY MR. SHAFFER - LAKEISHA STALLWORTH 174

1 A Saluda.

2 Q In Saluda County?

3 A Uh-huh.

4 Q Answer whatever questions the defense has for you.

5 CROSS-EXAMINATION

6 BY MR. SHAFFER:

7 Q Ms. Stallworth, you go by "Keisha," right?

8 A Uh-huh.

9 Q Would you mind if I called you "Keisha"?

10 A Don't mind.

11 Q Do you still work at Urban Outfitters?

12 A No, I don't.

13 Q Where do you work now?

14 A I work at the Babcock Center.

15 Q Okay. Now, I'm going to run through some of the
16 things you said before ---

17 A Uh-huh.

18 Q --- okay?

19 A (Nodded head up and down.)

20 Q And I'm going to do it mainly for the purposes of just
21 making sure that I got everything right, okay?

22 A (Nodded head up and down.)

23 Q So you, Antonio, and Saca were out, correct?

24 A And Steve.

25 Q And Steven?

CROSS-EXAMINATION BY MR. SHAFFER - LAKEISHA STALLWORTH 175

1 A Uh-huh.

2 Q Steven was there at the time that y'all initially went
3 out?

4 A When I initially got off, all them was in the yard.

5 Q Okay. So -- and you said you weren't drinking?

6 A No.

7 Q Y'all weren't partying?

8 A No. Well, I don't know what they was doing. But I
9 was just getting off. I hadn't -- I didn't have anything
10 to drink.

11 Q What time you get off?

12 A I got off at seven-thirty/eight o'clock.

13 Q Seven-thirty or eight o'clock?

14 A Uh-huh.

15 Q So you hadn't been drinking that day?

16 A No.

17 Q And you hadn't been smoking any weed?

18 A No.

19 Q Okay. But -- and you weren't partying with the rest
20 of them?

21 A No.

22 Q Was Antonio drinking?

23 A Yeah -- well, I guess -- of course -- all of them was
24 drinking, I guess.

25 Q But you weren't?

CROSS-EXAMINATION BY MR. SHAFFER - LAKEISHA STALLWORTH 176

1 A Unh-unh.

2 Q Okay. And you're absolutely sure about that?

3 A (Nodded head up and down.)

4 Q And when y'all initially got in the car, you said it
5 was a -- the Explorer that you got into ---

6 A Uh-huh.

7 Q --- you said you were in a yard. What yard were y'all
8 in?

9 A We was in between -- because where my mama stay, it's
10 a duplex, like, kind of. So we was in between where my
11 mama stay and the dude named Jimmy house.

12 Q Okay. And how far away from that is that from the
13 apartments?

14 A From Orchard Park?

15 Q Or from the apartments that this happened at, so ---

16 A Not even five minutes.

17 Q Five minutes by car?

18 A I said not even five minutes.

19 Q Not even five minutes by car?

20 A (Nodded head up and down.)

21 Q When y'all left the yard, you were going to go drop
22 Steven off, right?

23 A Uh-huh.

24 Q Where were y'all going after that?

25 A Nowhere.

CROSS-EXAMINATION BY MR. SHAFFER - LAKEISHA STALLWORTH 177

1 Q Y'all weren't planning on going out drinking some
2 more?

3 A No. I wasn't drinking.

4 Q Okay. I mean, everyone else wasn't planning on going
5 out drinking?

6 A No. I'm guessing everybody else was going home.

7 Q Okay. And you said that you rode with Antonio there,
8 right?

9 A Uh-huh.

10 Q And that there -- they started arguing in the car?

11 A Uh-huh.

12 Q And you said he pulled her coat off?

13 A Uh-huh. And he left her in her bra.

14 Q She didn't have a shirt on?

15 A Unh-unh. She ain't had no shirt on up under ---

16 Q She just ---

17 A --- her coat.

18 Q --- had a coat?

19 A Uh-huh.

20 Q Okay. And at that point -- at some point, Antonio
21 said, "I'm leaving," right?

22 A Uh-huh.

23 Q And he got out of there?

24 A (Nodded head up and down.)

25 Q Could you answer -- I'm sorry. The court reporter has

CROSS-EXAMINATION BY MR. SHAFFER - LAKEISHA STALLWORTH 178

1 to get -- you have to verbally answer ---

2 A Oh.

3 Q --- for the ---

4 A Oh.

5 Q --- court reporter.

6 A Yes.

7 Q So Antonio left there and y'all were in the parking
8 lot still when they were arguing?

9 A Yes.

10 Q Okay. And then Hydrick came out?

11 A Uh-huh.

12 Q Is that a "yes"?

13 A Yes.

14 Q And then you said that he did not touch Steven at all?

15 A No. I don't remember him touching Steven.

16 Q Okay. You don't remember him touching Steven?

17 A No, I don't.

18 Q Are you positive that he didn't, or you just don't
19 remember it?

20 A I don't remember him touching ---

21 Q Okay.

22 A --- Steven.

23 Q But you remember Steven punching him?

24 A Yeah.

25 Q Okay. And after he punched him, you said he left?

CROSS-EXAMINATION BY MR. SHAFFER - LAKEISHA STALLWORTH 179

1 A Yep.

2 Q He didn't stick around ---

3 A After he let him go and hit his head the second time,
4 he left.

5 Q Okay. So at first he -- he -- he stood there or he
6 walked away or what?

7 A When Hydrick hit the ground and hit -- when he hit the
8 ground, I got on my knees with him because he fell into a
9 seizure. So Steven came up and grabbed him round his
10 collar and said, "Get up. Get up." And then he just let
11 him go. And when he let him go, his head hit the ground
12 again.

13 Q And he was trying to help -- Steven was trying to help
14 him ---

15 A I ---

16 Q --- from your perspective?

17 A I guess.

18 Q Okay.

19 MR. MAYE: I can't see over you.

20 MR. SHAFFER: Oh, I'm sorry about that.

21 MR. MAYE: That's fine. Don't worry about it. Go
22 ahead.

23 MR. SHAFFER: Sorry. I need a podium.

24 Q So right after the punch, did Steven walk away or did
25 he just stand there?

CROSS-EXAMINATION BY MR. SHAFFER - LAKEISHA STALLWORTH 180

1 A No. He didn't walk away. He didn't walk away at that
2 point.

3 Q Okay. And you're sure about that, right?

4 A Uh-huh. Yes.

5 Q You're sure that that's what happened?

6 A Yes.

7 Q And Steven's up and Hydrick's on the ground, and
8 you're taking care of him?

9 A Yes.

10 Q And Steven ran away, correct?

11 A Yes.

12 Q And you testified that you didn't see his jacket?

13 A His jacket wasn't ripped.

14 Q You're sure about that?

15 A I'm positive.

16 Q Just like you're positive about everything else you've
17 just testified to?

18 A Yes.

19 Q You gave a statement to the police, right?

20 A Uh-huh.

21 MR. SHAFFER: (To the court reporter) Can I have this
22 marked Defendant's Exhibit 3 for the purposes of
23 identification.

24 (Whereupon, Defendant's Exhibit 3 was marked for
25 identification.)

CROSS-EXAMINATION BY MR. SHAFFER - LAKEISHA STALLWORTH 181

1 MR. MAYE: I'll submit you can put into evidence if
2 you would like.

3 MR. SHAFFER: I might in a second.

4 (Whereupon, Mr. Maye and Mr. Shaffer conferred.)

5 MR. SHAFFER: Apologize, Your Honor. May -- may I
6 have this marked Defendant's Exhibit 4 for the purposes of
7 identification?

8 THE COURT: Yeah. Okay.

9 MR. SHAFFER: Okay. Thank you.

10 THE COURT: Defendant's 4 for identification purposes.

11 (Whereupon, Defendant's Exhibit 4 was marked for
12 identification.)

13 MR. SHAFFER: The -- 3 was the highlighted, marked
14 one.

15 THE COURT: I'm sorry?

16 MR. SHAFFER: I -- I apologize. Three was a
17 highlighted copy, so that's the reason I'm putting in 4:
18 so that it's not highlighted.

19 THE COURT: All right.

20 (Whereupon, Mr. Maye and Mr. Shaffer conferred.)

21 Q I'm showing you what's been marked Defense Exhibit 4
22 for the purposes of identification. You recognize that
23 document?

24 A Uh-huh. Yeah.

25 Q Is that the statement that you wrote to police?

CROSS-EXAMINATION BY MR. SHAFFER - LAKEISHA STALLWORTH 182

1 A Yes.

2 Q Could you read that statement?

3 MR. MAYE: Now, Your Honor, if she's going publish it,
4 I'd like for it to be in evidence. If he wants to put it
5 into evidence as exhibit, she can publish it. But to just
6 publish it -- if he wants to ask her or cross-examine her,
7 but ---

8 THE COURT: He can ---

9 MR. SHAFFER: Okay.

10 THE COURT: --- cross-examine her on it, but ---

11 MR. SHAFFER: All right. I -- I'll just cross-examine
12 her for now.

13 Q You stated: "As we pulled up to the apartment" ---

14 THE COURT: No. Let me ---

15 Q --- "Saca and" ---

16 THE COURT: --- let ---

17 Q --- "Ox were" ---

18 THE COURT: --- let ---

19 Q --- arguing" ---

20 THE COURT: --- let -- let -- let -- let me get -- let
21 -- let me get y'all to ---

22 MR. SHAFFER: Oh, right.

23 THE COURT: Well, you know, it's going to be -- I'm
24 sorry, ladies and gentlemen. Let me get you to step back
25 in the jury room. Please have no conversation about the

1 THE COURT: All right. Defense Exhibit 4 is -- is --
2 the defense is moving that into evidence. The state has no
3 objection to that?

4 MR. MAYE: No, sir.

5 THE COURT: All right.

6 MR. MAYE: I'd like to get my -- my -- it -- a copy
7 back for myself. I did ---

8 MR. SHAFFER: Oh.

9 MR. MAYE: I gave ---

10 MR. SHAFFER: I'm ---

11 MR. MAYE: --- my copy ---

12 MR. SHAFFER: --- I'm sorry. I -- I didn't realize
13 there was a copy machine right there.

14 MR. MAYE: Yeah. There's one right there. I'd just
15 like to have a copy of the statement.

16 MR. SHAFFER: Okay.

17 MR. MAYE: Thank you. If you'd make me a copy, that'd
18 be fine.

19 (Off the record briefly.)

20 THE COURT: All right. Let's go ahead and bring the
21 jury back out. And Defense Exhibit No. 4 is in evidence
22 without objection.

23 (Whereupon, Defendant's Exhibit 4 was entered into
24 evidence.)

25 THE COURT: Ladies and gentlemen, thank you for your

CROSS-EXAMINATION BY MR. SHAFFER - LAKEISHA STALLWORTH 190

1 patience. We took up that matter. It didn't take us as
2 long as you've been out for us to take up that matter. We
3 took up the matter, and then I felt like, since you were
4 already out on break, that I'd give court personnel a
5 little bit of break; let them use the restroom and do stuff
6 like that. So we -- we took a short break to take
7 advantage of your -- your being out. So all right. We're
8 -- we're back on the record now. Mr. Shaffer has moved
9 Defense Exhibit No. 4 into evidence, and so that is in
10 evidence without objection. And I'll allow him to proceed
11 with his cross-examination.

12 CROSS-EXAMINATION

13 BY MR. SHAFFER:

14 Q Ms. Stallworth -- Keisha ---

15 A Uh-huh.

16 Q --- prior to us taking that break, you testified that
17 you're absolutely sure that you weren't drinking; you're
18 absolutely sure that you weren't doing any dope; absolutely
19 sure that you -- you went there and that Steven was -- that
20 Steven never -- or that Hydrick never touched Steven?

21 A Yes.

22 Q And you also testified that you were absolutely sure
23 that Antonio had left and that you were standing there?

24 A Yeah.

25 Q And you said all that, that you were absolutely sure

CROSS-EXAMINATION BY MR. SHAFFER - LAKEISHA STALLWORTH 191

1 of, right?

2 A When I -- when I said him -- Hydrick putting his hands
3 on him, I said I don't remember. That was -- this
4 happened, like, two/three years ago. It's a long time ago.

5 Q Okay. But you've had a chance to read Defense Exhibit
6 4; is that ---

7 A No, I ---

8 Q --- correct?

9 A --- haven't.

10 Q Well, go ahead and take the opportunity to read over
11 it.

12 A All right.

13 Q That's your signature on it?

14 A Yes.

15 Q That's your statement?

16 A (Nodded head up and down.)

17 Q And you said that -- previously, you said that Hydrick
18 wasn't outside when Antonio was there. You said you were
19 absolutely sure about that, right?

20 A Yeah.

21 Q And -- and in your statement it says that after he hit
22 him, you jumped out of the car; is that right?

23 A That's what the statement say.

24 Q Is that not correct? Were you lying to the jury?

25 A I'm not lying to nobody. I don't remember.

CROSS-EXAMINATION BY MR. SHAFFER - LAKEISHA STALLWORTH 192

1 Q Oh, you don't remember? Okay.

2 Do you remember talking to my investigator last week?

3 A Yes.

4 Q You talk to him?

5 A Yes, I did.

6 Q And you told him Antonio was there, right?

7 A Yeah, I told him that.

8 Q But you don't remember now -- you remember for two
9 years, and you don't remember now; is that right?

10 A (No audible response.)

11 Q You know this is a serious matter, right?

12 A Yes, I do know it's serious.

13 Q He's charged with murder, right?

14 A Yes.

15 Q And you told them Antonio doesn't want to get
16 involved, right?

17 A Yes, I did.

18 Q And because of that, because Antonio doesn't want to
19 get involved, you're not going to sit there and -- you're
20 going to sit there and say that he was not in there --
21 there, right?

22 A No. Antonio was there.

23 Q Okay. So you just lied to the jury?

24 A I mean, I didn't want to put Antonio in it, because he
25 told me he didn't want to -- he don't want to have nothing

REDIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 193

1 involved.

2 Q Did you lie to the jury a second ago or not?

3 A (No audible response.)

4 Q You did, right?

5 A (No audible response.)

6 MR. SHAFFER: Your Honor, could you instruct her to
7 answer the question?

8 THE COURT: Just answer the question, ma'am.

9 A Yes, sir.

10 Q Could you speak a little louder?

11 A Yes.

12 Q Okay.

13 MR. SHAFFER: Court's indulgence?

14 THE COURT: Yes, sir.

15 MR. SHAFFER: No further questions.

16 THE COURT: Anything on redirect?

17 MR. MAYE: Yeah. Just a couple.

18 THE COURT: Yes, sir.

19 REDIRECT EXAMINATION

20 BY MR. MAYE:

21 Q Now, Ms. Stallworth, according to this statement here,
22 you said, actually -- you had a chance to review that
23 statement to ---

24 A Yes, sir.

25 Q --- refresh your memory?

REDIRECT EXAMINATION BY MR. MAYE - LAKEISHA STALLWORTH 194

1 A Yes, sir.

2 Q Okay. You actually said that Mr. Otts -- that's "Ox,"
3 right?

4 A Uh-huh.

5 Q That Mr. Otts pushed Hydrick after he was trying to
6 calm him down, right?

7 A Yes.

8 Q So Hydrick came out and tried to calm him down
9 speaking to him?

10 A Yes.

11 Q And in response to that, Mr. Otts pushed him?

12 A Yes.

13 Q Okay. And you said even after that, he was still
14 trying to calm him down?

15 A Yes.

16 Q And that's when you said Ox turned around and punched
17 him?

18 A Yes.

19 Q Is that right?

20 A (Nodded head up and down.)

21 Q (As read): "Hydrick hit the ground, so I jumped out
22 of the truck and tried to help him." Is that what you ---

23 A Yeah.

24 Q --- in your statement?

25 A (Nodded head up and down.)

RECROSS-EXAMINATION BY MR. SHAFFER - LAKEISHA STALLWORTH 195

1 Q (As read): "So Ox was trying to, I guess, help." You
2 don't know what he was trying to do, though ---

3 A No ---

4 Q --- do you?

5 A --- I don't.

6 Q But he dropped him on his head?

7 A (No audible response.)

8 Q Okay. Ms. Stallworth, they asked you something about
9 whether or not Antonio was there or not?

10 A Yes.

11 Q And you said Antonio didn't want to be in this; you
12 didn't want to put him in this?

13 A Yes, sir.

14 Q Is there anything else that you've told the jury up
15 here under oath that is, in any way, different from what
16 actually happened?

17 A No, sir.

18 Q You're absolutely certain?

19 A Yes, sir.

20 MR. MAYE: Nothing else. Thanks.

21 THE COURT: All right. Recross?

22 RECROSS-EXAMINATION

23 BY MR. SHAFFER:

24 Q The state just asked you if you were absolutely
25 certain that there was anything else that you said that was

RECROSS-EXAMINATION BY MR. SHAFFER - LAKEISHA STALLWORTH 196

1 not consistent. You said you are; is that right?

2 A Yes.

3 Q But you also said you don't remember, right? You
4 don't remember if he was there. That's something
5 different, isn't it? Because then you said that no, he
6 didn't; is that correct? Or am I wrong? If my
7 recollection's wrong, please tell me.

8 A Can you rephrase your question?

9 Q Okay. What I'm -- what I'm asking you ---

10 A Uh-huh.

11 Q --- is this ---

12 A Uh-huh.

13 Q --- the state just said other than Antonio being
14 there, you didn't lie about anything else, right?

15 A No, I didn't.

16 Q And you said you didn't remember, right?

17 A There's a lot of stuff I don't remember.

18 Q Okay. Okay.

19 A But yeah. I did say that Antonio wasn't there,
20 because he told me that he didn't want -- he didn't want to
21 be involved. And that's the only thing.

22 Q And you also said that I -- on the scene -- when --
23 when'd you write this statement?

24 A I wrote this statement the day after.

25 Q Huh?

RE CROSS-EXAMINATION BY MR. SHAFFER - LAKEISHA STALLWORTH 197

1 A The morning.

2 Q The morning of?

3 A (Nodded head up and down.)

4 Q Okay. And in that statement you said that you thought
5 Steven was trying to help Hydrick ---

6 A I guess.

7 Q --- whenever he came over.

8 Is that what you said in the statement?

9 A I guess. Uh-huh.

10 Q Didn't you just read it? I mean, is it "yes" or is it
11 "no"?

12 THE COURT: She said "yes."

13 MR. SHAFFER: Okay. I -- I thought she said, "I
14 guess." I apologize, Your Honor.

15 THE COURT: All right. Yeah.

16 MR. SHAFFER: Your Honor, may I publish the statement
17 to the jury?

18 THE COURT: Yes, sir.

19 MR. SHAFFER: Thank you.

20 (Whereupon, Defendant's Exhibit 4 was published to the
21 jury.)

22 THE COURT: All right. Any further questions for this
23 witness?

24 MR. SHAFFER: None, Your Honor.

25 THE COURT: Thank you very much, ma'am. You ---

DIRECT EXAMINATION BY MR. MAYE - ANGELA CREECH 198

1 THE WITNESS: Thank you.

2 THE COURT: --- may step down.

3 (Whereupon, the witness exited the witness stand.)

4 THE COURT: All right. Mr. Maye, you may call your
5 next witness.

6 MR. MAYE: Angela Creech.

7 THE COURT: All right. (To the bailiff) Will you get
8 Ms. Creech, please.

9 (Whereupon, Mr. Maye and Mr. Shaffer conferred.)

10 (Whereupon, the witness came forward.)

11 ANGELA CREECH, having been first duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MAYE:

15 Q Angela, you go by "Creech" now; is that right?

16 A Yes, sir.

17 Q You've gotten married since the events of the 27th of
18 January?

19 A Yes, sir.

20 Q Okay. Ms. Creech, just will -- if you will, speak up
21 as loud as you can. Tell them what your name is now.

22 A My name is Angela K. Creech.

23 Q Okay. Ms. Creech, tell the ladies and gentlemen of
24 the jury: Where are you from?

25 A I'm from Saluda, South Carolina.

1 Q So you're from Saluda?

2 A (Nodded head up and down.)

3 Q Where in Ridge Spring do you live now?

4 A Orchard Park Apartments.

5 Q In Orchard Park Apartments?

6 A (Nodded head up and down.)

7 Q Were you living there back on January the 27th of
8 2011?

9 A Yes, sir.

10 Q Okay. I want you to help me out just a little bit.
11 I'm going to hold this up and try to get out of the way of
12 the jury here. I want you to look right here at the
13 buildings, the three buildings. Which one of these
14 apartment buildings do you live in? Can you get oriented?
15 If it's up here; side street comes in and turns around this
16 way.

17 A I stay there.

18 Q You stay in this building right here?

19 A (Nodded head up and down.)

20 Q Okay. And that's where your apartment was when --
21 back in January were you living in the same apartment in
22 this building?

23 A Yes, sir.

24 Q Okay. All right. Ms. Creech, let me ask you this:
25 Are any of the people that were involved in this that

1 night, are they real tight friends of yours, one way or
2 another?

3 A No.

4 Q Okay. Let's talk about that night, on January the
5 27th of 2011. What first attracted your attention and
6 alerted you that something was going on? What was
7 happening?

8 A We heard noise outside, like people yelling and stuff.

9 Q Okay. As a result of hearing that noise, what did you
10 do?

11 A No. I was inside. The girls ---

12 Q Okay.

13 A --- knocked at my door and told me to come outside.
14 And that's when I started seeing ---

15 Q All right.

16 A --- everything.

17 Q Did a lot of people come out of their apartments at
18 that point in time?

19 A Yes, sir.

20 Q Okay. What did you do to get -- gain a vantage point
21 to see what was going on? Where did you go?

22 A I went upstairs, like, across from [REDACTED] And
23 me and two other girls, we stood up there and watched
24 everything.

25 Q Okay. From where you were standing, did you have a

1 good, clear view of the parking lot?

2 A I could see everything.

3 Q You could see everything?

4 A (No audible response.)

5 Q Did being up high give you a better vantage point than
6 if you'd have been on the ground?

7 A It's a better view.

8 Q It's a better view?

9 A (Nodded head up and down.)

10 Q Okay. Let me see if I can point this out. Is this
11 your apartment building here?

12 A (Nodded head up and down.)

13 Q What number building is that? What do they call that
14 one?

15 A Building 2.

16 Q That's Building 2?

17 A (Nodded head up and down.)

18 Q Okay. And the parking lot where the vehicles are, was
19 it here?

20 A Right there.

21 Q Okay. And so you were standing up here on the
22 elevated balcony ---

23 A Uh-huh.

24 Q --- right, where you could see the whole parking lot?

25 A (Nodded head up and down.)

1 Q All right. Tell them what you saw as you were
2 standing up there on the parking lot.

3 A I saw, I guess, the car -- the truck was green or
4 whatever. I don't even remember what color it was. But I
5 saw the -- a Jeep standing outside -- a Ford Explorer, I
6 guess, and a guy by the name of Steve and Saca out there,
7 arguing and tussling inside the vehicle.

8 Q Had you seen them before? Did you know them -- did
9 you see them?

10 A Yes. Yes, sir.

11 Q Okay. All right.

12 A And they was arguing and tussling inside the vehicle
13 as the car was moving. And the car finally stopped, and
14 they still tussling and arguing. And this guy named
15 Hydrick come outside of the ---

16 Q Okay. Now, wait a second. Tell the ladies and
17 gentlemen of the jury everything you could see and hear.
18 When you saw -- talk about ---

19 A Well, yeah.

20 Q --- the argument ---

21 A Yeah. They was ---

22 Q --- and tell ---

23 A They was just arguing. Both of them was just arguing.
24 And the licks that I heard sounded like they was, like,
25 this. (Demonstrated.)

1 Q You heard licks being passed?

2 A From the top. Uh-huh.

3 Q You could actually hear that?

4 A I can hear it. Yeah.

5 Q Okay.

6 A And ---

7 Q What was the man doing? Mr. Otts, what was ---

8 A Trying to ---

9 Q --- he doing ---

10 A --- get her -- trying to get Saca out of the vehicle.

11 Q But he ---

12 A And she ---

13 Q --- was passing ---

14 A --- trying to ---

15 Q --- licks?

16 A Yeah. It was fighting ---

17 Q And what else ---

18 A --- inside ---

19 Q --- was he doing?

20 A Pulling on her, trying to pull her out of the vehicle.

21 Q Was she resisting the efforts ---

22 A Yeah. She wasn't trying to get out, but he was trying
23 to get her out of it. And as they still tussling and
24 fighting, the vehicle was moving. And then, like I say,
25 finally, when it stopped, Hydrick comes outside of Building

1 3, walks around the truck, and was, like, telling them,
2 "Y'all stop. Y'all stop," you know, trying to stop them
3 from still fighting.

4 And finally, when he grabbed Ox, he put his hand
5 around him and just hold him. And as he hold him, he's --
6 Steve said out of his mouth, said, "When you let me go, I'm
7 going to knock your punk ass out."

8 Q What is exactly what he said? And it's all right.
9 Tell exactly what he said.

10 A "Motherfucker, when you let me go, I'm going to knock
11 your punk ass out."

12 Q Okay.

13 A So when he let him go, he just did like this --
14 Hydrick did like this, and he hit him. One blow, he fell
15 to the ground. And that was almost by our trash can when
16 he fell by the -- fell to the ground.

17 Q But you had a clear view of that?

18 A I'm standing right there. So I come from the top down
19 to the bottom. Us three ran from the top to the bottom.

20 Q And your absolutely positive ---

21 A And I still ---

22 Q --- about what ---

23 A --- can see ---

24 Q --- Mr. Otts told him?

25 A Yeah.

1 Q Okay.

2 A And I stood to the bottom. And I called 911.

3 Q Now, you said Hydrick was standing with his hands like
4 this ---

5 A He said ---

6 Q --- when he ---

7 A --- like this ---

8 Q --- got hit?

9 A Yep. He did just like this. (Demonstrated.) And he
10 hit him.

11 Q Okay. What did you see after he knocked out and he
12 fell to the ground? What -- what happened next?

13 A He fell down. And Steven ran over there. From the
14 looks of it, it was, like, he, like, pulled his shirt or
15 something, trying to get him back up. "Get up, man. Get
16 up, man." And as he pick him up, he fell back down like
17 this. (Demonstrated.) Ooh, Lord. He fell back down.

18 Q What did you say at that point in time when you saw
19 him jerking on him and picking him up?

20 A I said, "No, y'all. No." By me being a medical
21 assistant -- I said, "No, y'all. No. Leave him alone.
22 Leave him alone," you know, just yelling. But ---

23 Q Why were you trying to get him to leave him alone at
24 that point in time?

25 A Because when a person -- when you hit somebody, you

1 know, by being in the medical field, you know, you can do
2 something else to them. You know, when he pick him up and
3 fell back down, he's hitting his head on the cement. So
4 you don't know what's going on inside the body or the head,
5 you know. So . . .

6 Q So once he initially fell to the ground, could you see
7 what condition he was in at that point in time? What ---

8 A He was ---

9 Q --- was he doing?

10 A --- straight, flat, laying there.

11 Q Knocked out?

12 A Knocked out.

13 Q Okay.

14 A Then I think he went into a seizure. He start to go
15 into a seizure because he started shaking.

16 Q You could see him seizing and shaking ---

17 A Uh-huh.

18 Q --- from where you were?

19 A (Nodded head up and down.)

20 Q At what point in time did Steven Otts, the defendant
21 in this case -- at -- at what point in time did he take
22 off?

23 A I said, "I'm calling the police." And they gone. He
24 was getting ready to go.

25 Q You actually called 911, didn't you?

1 A I did.

2 Q And upon you informing him that you were calling the
3 police, what did he do?

4 A He ran to the woods. And Saca ran to Jamie Bruno
5 apartment.

6 Q So both he and Saca ---

7 A --- fled.

8 Q --- ran when you said you were calling the police?

9 A (Nodded head up and down.)

10 Q Did you call 911?

11 A I did.

12 Q Okay. And you reported it to the police, didn't you?

13 A I did.

14 Q Let me ask you this: When Mr. Otts took off and fled,
15 what was he wearing?

16 A I can't even remember.

17 Q Did he ---

18 A I don't know. I don't know.

19 Q Did he have any damage to any of the clothing on when
20 you saw him leave?

21 A No. Because Hydrick didn't touch him.

22 Q Okay. He didn't tear his jacket off of him, and his

23 ---

24 A No.

25 Q --- jacket wasn't in shreds?

CROSS-EXAMINATION BY MR. SHAFFER - ANGELA CREECH 208

1 A No.

2 Q Okay. And you're sure of that?

3 A Promise.

4 Q And you just saw Hydrick grab him, what, one time?

5 A One time, like bear hug.

6 Q Uh-huh.

7 A And then -- Hydrick is tall, and ---

8 Q Uh-huh.

9 A --- he's, like, short. That's how it was, like that.

10 Q Ms. Creech, you got anything for or against any of the
11 people in this, or they have any real significance to you?

12 A Never.

13 Q You're just testifying as to what you saw?

14 A Just what I seen.

15 MR. MAYE: Beg the Court's indulgence.

16 (Whereupon, Mr. Maye and Mr. Young conferred.)

17 Q Answer any questions the defense has for you. Thank
18 you.

19 CROSS-EXAMINATION

20 BY MR. SHAFFER:

21 Q Ms. Brooks, you didn't really want to talk to me, do
22 you?

23 A No.

24 Q You -- you didn't want to talk to me last week?

25 A No.

1 Q You don't particularly want to talk to me right now,
2 do you?

3 A Yeah.

4 Q I'm -- I'm just asking.

5 A Yeah.

6 Q You're okay talking to me now?

7 A I'm fine.

8 Q But you -- you didn't want to talk to me last week
9 when I asked to talk to you? Okay.

10 A No.

11 Q I apologize. I -- a -- a lot of this stuff, I -- I'm
12 sort of getting where -- where I didn't really know it
13 before, so I -- I'm going to go back through your story ---

14 A Okay.

15 Q --- okay?

16 You're saying that you saw -- you saw the car pulling
17 up? Is that correct, the Explorer?

18 A Yes.

19 Q And that you went outside -- well, you said you heard
20 -- heard a ruckus, right?

21 A You can hear inside our apartments.

22 Q Okay. Okay. And you heard -- heard a ruckus, and you
23 go outside, and there's a car still moving, and you heard
24 blows getting delivered, right? Is that right?

25 A Yes.

CROSS-EXAMINATION BY MR. SHAFFER - ANGELA CREECH 210

1 Q Okay. That's what you just testified to?

2 A (Nodded head up and down.)

3 Q And you went outside -- you live on the bottom floor,
4 right?

5 A Yes.

6 Q So you went outside and actually went up the stairs in
7 your apartment, right, like, to the balcony?

8 A Yeah. Up top.

9 Q Okay. And from there you heard blows getting
10 delivered, right?

11 A Yes.

12 Q And there was an Explorer that was moving, right?

13 A They was stopped. They was parked at first. So I
14 guess the guy was, like, trying to get -- move out or stop
15 them or whatever. I don't really know.

16 Q Okay. So it was -- but it was still moving when the
17 blows were getting delivered?

18 A Yeah.

19 Q Okay. Where were you when -- or where was -- where --
20 was everybody in the car when the blows were getting
21 delivered?

22 A They was in the car.

23 Q Okay. And you heard all of that from inside your
24 apartment?

25 A Standing on the top balcony.

1 Q Okay. But you heard a ruckus inside of your
2 apartment?

3 A I heard arguing.

4 Q And they were at -- were inside the car with the doors
5 closed -- car ---

6 A The doors was not closed.

7 Q Oh, okay. So the doors were not closed, but everyone
8 was inside the car?

9 A (Nodded head up and down.)

10 Q Okay. How many people were outside?

11 A I don't know.

12 Q Lots? Little?

13 A I don't remember. I know people came out of each
14 apartment.

15 Q How many apartments are there?

16 A Three.

17 Q So three -- there's only three apartments in that big
18 apartment complex?

19 A We got, like, a two-bedroom -- I mean, a Building 2,
20 Building 3, and a Building 4.

21 Q Oh. So there's three apartment buildings? But how
22 many ---

23 A Yeah.

24 Q --- individual -- or how many units are in each?

25 A Eight.

1 Q So there's about 24 apartments ---

2 A Yeah.

3 Q --- if my math is right?

4 A Yeah.

5 Q And you were saying people came out of basically all
6 of them?

7 A Everybody except for Building 4, because those are the
8 older people.

9 Q Okay. But you'd say more than ten people were
10 outside?

11 A Yes.

12 Q Okay. So there's more than ten people outside
13 watching this happen?

14 A (No audible response.)

15 Q And how long -- how long was that car there whenever
16 -- before Hydrick came out?

17 A I don't know.

18 Q How long were you outside before Hydrick came out?

19 A From the time they was fighting in the inside of the
20 car ---

21 Q Yeah.

22 A --- till the time Hydrick left here, I was out there.

23 Q I mean ---

24 A I don't ---

25 Q --- about ---

1 A --- know ---

2 Q --- how long ---

3 A --- I don't know how long that is. I don't know.

4 Q Okay. You don't really remember?

5 A Huh?

6 Q You don't really remember?

7 A No. Not all that.

8 Q Were you drinking anything at the time?

9 A Probably a couple beers or something. But I was in
10 the inside.

11 Q Okay. Were you doing any drugs?

12 A No.

13 Q Okay. I'm just checking, because I -- I didn't have a
14 chance ---

15 A Oh.

16 Q --- to ask you this before.

17 And when the police arrived, you -- you briefly spoke
18 to Quattlebaum, right?

19 A (No audible response.)

20 Q The police officer named Quattlebaum?

21 A I don't ---

22 Q You speak to any cops?

23 A I don't remember talking to no police.

24 Q You don't remember talking to any cops?

25 A Unh-unh. If I did, it was 2011, so, I mean, I don't

1 know.

2 Q Okay. When was the first time a cop talked to you
3 about this case?

4 A When Officer Taylor came to the house.

5 Q When was that? Wednesday of last week?

6 A Last week.

7 Q Okay. So this was 2011, and you didn't talk to any
8 cops until Wednesday of last week?

9 A (Shook head from side to side.)

10 Q You didn't give any written statements?

11 A I don't remember giving a statement. It ---

12 Q Okay.

13 A Unh-unh.

14 Q And I -- I'm just checking on some ---

15 A No.

16 Q --- of this stuff, so don't think I'm accusing you.

17 So Wednesday of last week is the first time you talked
18 to a cop and gave a statement, and that statement's
19 essentially the same as we have -- we're talking about now?

20 A Yes.

21 Q Okay. At the time what was your last name?

22 A At the time when 91 -- when I made the 911 call, I was
23 scared. And I said, "Angela Brooks."

24 Q Okay. What's your last name now?

25 A I'm married. I'm Angela Creech.

1 Q Okay. Isn't it true that your husband's related to
2 Hydrick in some way, right? Cousin -- second cousin?

3 A No.

4 Q No? Okay.

5 A I don't know.

6 Q And you're saying that the only time you remember
7 Hydrick touching him was when ---

8 A Bear hug.

9 Q Okay. And you're saying that you do not remember what
10 he was wearing?

11 A I really don't. No.

12 Q Okay. If I told you he was wearing a green army
13 jacket, would you say ---

14 A I'm not going ---

15 Q --- you wouldn't ---

16 A --- to tell you yeah, because I don't ---

17 Q Okay.

18 A --- know.

19 Q You don't know?

20 A (Shook head from side to side.)

21 Q Okay. But you know it wasn't torn up?

22 A It -- no. His clothes, no.

23 Q And you're basing that off of the fact that you just
24 said that Hydrick didn't touch him, right?

25 A That's it.

CROSS-EXAMINATION BY MR. SHAFFER - ANGELA CREECH 216

1 Q That's the reason you're basing it?

2 A (Nodded head up and down.)

3 Q You weren't paying particular attention to what he was
4 wearing at the time?

5 A No.

6 Q Okay. So you would dispute -- you wasn't dispute
7 whether the jacket was torn up; you'd just dispute whether
8 it was torn up by Hydrick, right?

9 A By Hydrick. That's it.

10 Q Okay. So if I said it had been torn up beforehand,
11 you would say you wouldn't have any knowledge of that?

12 A I don't know.

13 Q Okay. But you just know that Hydrick didn't touch him
14 a -- a ---

15 A No.

16 Q --- second time?

17 A True.

18 Q Who told you about the jacket: the state?

19 A I -- no. I saw the pictures.

20 Q Oh. You saw the picture?

21 A Yeah.

22 Q Okay. So you saw a picture of the jacket yesterday?

23 A Yes.

24 Q Okay. So I guess you knew about that yesterday?

25 A (Nodded head up and down.)

REDIRECT BY MR. MAYE/RE CROSS BY MR. SHAFFER - ANGELA CREECH217

1 Q Okay.

2 MR. SHAFFER: Court's indulgence.

3 (Whereupon, Mr. Shaffer conferred with the defendant
4 and Ms. Johnson.)

5 Q And once again, you -- you can't really speak to the
6 condition of his jacket prior to Hydrick walking out there?

7 A (Shook head from side to side.)

8 Q Okay.

9 A No.

10 Q You have no independent recollection of the jacket?

11 A (Shook head from side to side.)

12 Q That's fair. Thank you so much. I appreciate it.

13 A You're welcome.

14 MR. MAYE: Just one.

15 REDIRECT EXAMINATION

16 BY MR. MAYE:

17 Q He didn't have some jacket hanging in shreds all over
18 him, did he?

19 A No.

20 Q Okay. That's all right. Thank you.

21 RECROSS-EXAMINATION

22 BY MR. SHAFFER:

23 Q The one question I have for that is: You just said
24 that he didn't -- you don't have any independent
25 recollection of that, right?

RECROSS EXAMINATION BY MR. SHAFFER - ANGELA CREECH 218

1 A I have -- I did not see a jacket.

2 Q Okay. You ---

3 A But you ---

4 Q --- didn't pay ---

5 A --- could tell ---

6 Q --- attention ---

7 A --- if -- if I seen somebody with something hanging
8 all off them, I could say that. But ---

9 Q Okay.

10 A --- I can't.

11 Q But -- but you don't have any independent recollection
12 of what kind of clothing he was wearing?

13 A No.

14 Q Okay. Thank you very much.

15 THE COURT: All right. Thank you very much, ma'am.

16 THE WITNESS: Thanks.

17 THE COURT: You may step down.

18 (Whereupon, the witness exited the witness stand.)

19 THE COURT: Call your next witness.

20 MR. MAYE: Your Honor, as a matter of personal
21 privileges, I'd like to take a break for a brief moment.
22 I'd just like to go to the restroom, if I could.

23 THE COURT: Yeah. That's fine.

24 MR. MAYE: Thank you.

25 THE COURT: All right.

1 MR. MAYE: Appreciate it. Thank you.

2 THE COURT: We'll just -- we'll remain at ease and ---

3 MR. MAYE: Thank you.

4 (Off the record briefly.)

5 THE COURT: All right. You can call your ---

6 MR. MAYE: Your Honor, the state would call Gwen
7 Sibert to the stand, and they're going to retrieve her.

8 (Whereupon, Mr. Maye and Mr. Shaffer conferred.)

9 MR. SHAFFER: Your Honor, one moment before they
10 actually call the witness, which -- I guess they have
11 called her, but ---

12 THE COURT: They have, but go ahead.

13 (Whereupon, Mr. Maye and Mr. Shaffer conferred.)

14 (Whereupon, the witness came forward.)

15 GWEN SIBERT, having been first duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. YOUNG:

19 Q Get yourself comfortable and make that microphone work
20 for you.

21 A Okay.

22 Q And give us your full name, spell your last name, and
23 tell us where you work.

24 A My name is Gwen Sibert; spell my last name S-i-b-e-r-
25 t; and I work for Saluda County EMS.

1 Q Ms. Sibert, how long have you been working for EMS?

2 A Here in Saluda or altogether?

3 Q Oh, I don't care. How long you been doing it?

4 A About 12 years.

5 Q How long you been working for Saluda?

6 A I've been back five years and worked her two years
7 before.

8 Q Okay. Now, you -- you were -- as part of what you do,
9 you're headquartered, so to speak, in different places in
10 the county at times, right?

11 A Yes.

12 Q Okay. I'm going to draw your attention to a Thursday,
13 January 27th, 2011, okay? Let's go to the evening hours.
14 I want you to direct your attention to that time frame.
15 Where were you headquartered back then?

16 A Ridge Spring.

17 Q Okay. Where is that located in Ridge Spring?

18 A In -- right there on Main Street next to the dentist
19 office and drugstore.

20 Q So it's right there downtown?

21 A Uh-huh.

22 Q Okay. And that -- that's a real big spot, so there
23 ain't a whole lot to it.

24 All right. Did you get a call that night to go to
25 Orchard Park Apartments?

1 A Yes.

2 Q Okay. Do you recall what time you got that call?

3 A I'm not sure exactly.

4 Q Okay. You got your report with you, don't you?

5 A I do. You want ---

6 Q How about ---

7 A --- me to ---

8 Q --- you refresh your recollection, look at your
9 report, and tell me, after looking at that report, if it
10 helps you. Just look at it and tell me if you recall when
11 you went. And you might as well -- while you're at it, I'm
12 going to ask you when you went, when you got there, when
13 you did all the transporting, and so forth.

14 A We were ---

15 Q No. Don't -- wait a minute, now. Don't read from the
16 report.

17 A Okay.

18 Q Just tell me if you -- read it and tell me if that --
19 if your memory is reflect -- recollected now and you
20 refreshed and you can recall when you did and when you
21 went.

22 A Okay.

23 Q You -- you good on that now?

24 A Yeah.

25 Q Is your memory refreshed?

1 A Okay.

2 Q Okay. Tell me when you -- tell me when you were
3 dispatched.

4 A About 2100.

5 Q Okay. About nine-ish?

6 A Uh-huh.

7 Q All right. How long did it take you to get there?

8 A Not but a few minutes.

9 Q Okay. When you got there, what did you find?

10 A When we got there, law enforcement was on the scene.
11 Our patient was kind of sitting up against the curb of the
12 sidewalk in sitting position and just kind of swaying back
13 and forth.

14 Q Okay. Now, what's this guy's name or person's name?

15 A Hydrick.

16 Q You know what his last name is?

17 A Burno.

18 Q Okay. Now, this gentleman was seated, you said?

19 A Yes. He -- he was seated kind of with his back
20 towards the curb.

21 Q And you said he was swaying?

22 A Yes.

23 Q Did you start assessing him for any ---

24 A We did. We went up to him and started assessing him.

25 At that time he was able to tell us his name. Then we

1 proceeded to get a long spine board and lay him back and
2 put him on the spine board.

3 Q Okay. So you got him on the spine board. Now, why
4 did you do that?

5 A Because he had been injured to -- injury to the back
6 of his head. And anytime you have a possible spinal injury
7 or a head injury, we do that as a precaution.

8 Q All right. So you didn't really know everything that
9 was going on at that point; you just had something you had
10 to work with from what you saw?

11 A Yes.

12 Q Okay. Did -- at the time you're talking to this man,
13 could you smell anything on him?

14 A I could detect odor of alcohol.

15 Q All right. And while you were there with him and
16 assessing him and you put him on the spine board, what is
17 your impression at that time? At that -- that first
18 moment, so to speak.

19 A Well, you know, all -- like I -- he was able, like I
20 said, to tell us who he was. He was a little confused at
21 that time. And, you know, that -- that -- at that point I
22 wasn't sure whether it was the alcohol or the head injury.
23 But you do still have to treat it as it being a head
24 injury.

25 Q Okay. So you go with the more serious possibility?

1 A Yes.

2 Q So you went with the serious possibility, and you --
3 you placed him in what kind of position to treat him that
4 way?

5 A Well, we put him in C-spine. He was laying supine, on
6 his back. We were unable to get a C-collar on his neck, so
7 we improvised, using sheets to stabilize his neck; put head
8 blocks on and three straps; and then placed him in the
9 ambulance.

10 Q When you say "three straps," what you mean?

11 A We put straps across in three different locations on
12 the body to secure his body to the stretcher to keep him --
13 try to immobilize him to keep him from injuring himself any
14 further.

15 Q All right. So your initial assessment was a head
16 injury; you immobilize him and treat him for that?

17 A Yes.

18 Q And where -- what are you going to do with him once you
19 get him in that position?

20 A Well, after we get him in that position, we
21 transferred him to the stretcher and then put him in the
22 back of the ambulance.

23 Q All right. Now, don't you normally, as a part of
24 doing this, try to get some history on the person, what
25 he's got?

1 A He was not able to -- at -- to tell us any history.
2 His mother did arrive on scene while we still had him in
3 the back of the truck and ---

4 Q Okay.

5 A --- was able to tell us that he had high blood
6 pressure.

7 Q Okay.

8 A And ---

9 Q Now, so now you got a secondary concern?

10 A (Nodded head up and down.)

11 Q Head injury and high blood pressure together?

12 A Yes.

13 Q All right. So -- now, the reason I'm asking these
14 questions, did your impressions begin to change as you
15 started transporting him -- before we go further, let me --
16 what time did you transport him? How long were you there
17 before you moved him?

18 A Well, I'm -- I'm not sure exactly ---

19 Q Check your ---

20 A --- how long we're ---

21 Q Check your ---

22 A --- there and ---

23 Q --- report and tell me if you can recall, then. How
24 long had you been there?

25 A We were on scene probably about 17 minutes before we

1 left the scene.

2 Q All right. So you're assessing him and doing what you
3 got to do, and then you transport him?

4 A (Nodded head up and down.)

5 Q So as you start transporting him, you've got enough
6 history to know what you're going to try to do: deal with
7 high blood pressure ---

8 A (Nodded head up and down.)

9 Q --- deal with a -- a -- a head injury of some kind?
10 When you're transporting him, does he change his
11 behavior or his actions or his -- don't you use the word
12 "orientation"?

13 A He did. When we initially started talking to him,
14 like I said, he was able to tell us his name. And he was
15 able to tell us that he had drank something. But he
16 complied with what we asked him to do. He lied still. We
17 put him on oxygen. He accepted the mask being put on his
18 face; able to get a IV started. And he was compliant with
19 all that.

20 But then he started becoming real agitated. He
21 started being combative to my partner, trying to strike my
22 partner. He started pulling the blocks off, trying to come
23 up off the stretcher; could not understand anything that we
24 were telling him. He was just completely not understanding
25 why he was in the ambulance or didn't know anything about

1 what was going on ---

2 Q Does your ---

3 A --- and was ---

4 Q --- assessment ---

5 A --- just ---

6 Q --- start changing now that you ---

7 A At ---

8 Q --- start seeing ---

9 A --- at that ---

10 Q --- these things?

11 A --- point we know that -- that he probably -- we
12 assumed that he probably had a bleed and something was
13 going on to cause his confusion in his head, is what we --
14 you automatically assume that this is due to a head injury.

15 Q And ---

16 A And we ---

17 Q --- the -- the ---

18 A --- upgraded to Code 3 and ---

19 Q Okay.

20 A --- started going faster to the hospital because it
21 became more of a concern.

22 Q So then, the treatment protocol changes and you start
23 going faster?

24 A Yeah. I mean, we just -- we decided at this point
25 that it is more serious that -- and so we did upgrade to

1 Code 3.

2 Q All right. If I could, please, ma'am, I -- I want to
3 ask you: Where are you taking him?

4 A We took him to Lexington.

5 Q Okay. Which -- where in Lexington?

6 A Lexington Hospital to the ER.

7 Q Lexington Regional Medical Center?

8 A Yes.

9 Q Okay. Did you actually take him into the room itself?

10 A Yes. We actually called and asked for law enforcement
11 to meet us -- security to meet us out there because of his
12 combativeness. But by the time we got to the hospital, he
13 had stopped being combative. And he was still conscious,
14 but he just really wasn't responding to us talking to him.

15 By this time he had pulled the head blocks off. He
16 had pulled the -- the collar that we had made off. He was
17 still partially on the long spine board, but was -- had
18 tried to come off of that too.

19 And we took him to Room 11 and moved him over. And I
20 think they went ahead and took him off the spine board
21 because he really wasn't secured to -- it really wasn't
22 helping in the position that he was in. And when we left
23 the ER, he was still awake but he wasn't responding to --
24 to us or anything.

25 Q Awake but not responding?

1 A Yeah.

2 Q Okay. So he's just sitting there ---

3 A Yeah.

4 Q --- when you left?

5 A (Nodded head up and down.)

6 Q When you start -- when you start this process of
7 treating him, he's sitting up when you first see him?

8 A (Nodded head up and down.)

9 Q He seems to be responsive to your -- to your
10 questions? You can speak to him and get some answers, not
11 very good; is that the impression I'm getting, correct?

12 A Yes.

13 Q And then later it progresses into combativeness;
14 taking things off; pulling out the plugs, so to speak;
15 taking everything off of him that he can reach;
16 combativeness? And then ---

17 MR. SHAFFER: Objection ---

18 Q --- by the time ---

19 MR. SHAFFER: --- leading.

20 Q --- you get ---

21 MR. YOUNG: I'm just stating a progressive ---

22 MS. JOHNSON: I ---

23 MR. YOUNG: --- question, Your Honor.

24 THE COURT: Go ahead.

25 MR. SHAFFER: I apologize, Your Honor.

DIRECT EXAMINATION BY MR. YOUNG - GWEN SIBERT

230

1 THE COURT: No. Go ahead.

2 MR. SHAFFER: Well, it -- I -- withdrawn. It -- it's
3 Catherine's witness. I apologize.

4 THE COURT: All right.

5 Q I -- I'm trying to what you've told us so far.
6 Because the question I'm going to ask you is: By the time
7 he gets to the hospital and he's sitting there upright,
8 what has all of this told you up to that point?

9 A Well, that his injury has progressed and gotten worse,
10 because he went from being able to tell who he was to being
11 combative to not being able to really do much of anything.

12 Q So it's growing in severity?

13 A Yes.

14 Q By the time you leave him?

15 A Yes.

16 Q And would you -- would you say you had more --
17 compared to when you first saw him to when he was left at
18 the hospital, do you have more or less concern for his
19 well-being?

20 A I would have a lot more concern.

21 Q Okay. I think you -- did you indicate that you had --
22 you started out at what you called "Code 1"? Is that what
23 ---

24 A Yeah.

25 Q --- you said?

1 A Initially, other than his blood pressure being a
2 little high -- and his mother had told us that he had high
3 blood pressure -- he was -- his oxygen saturation was good;
4 his pulse was within normal range. And my partner, you
5 know, started off as going Code 1, which means with not --
6 not running lights and siren. But then when he started
7 becoming combative and more confused, it -- we became more
8 concerned. And so we went ahead and upgraded to Code 3,
9 lights and siren, to make sure we got him there as quick as
10 we could. And it ---

11 Q Did he ---

12 A --- wasn't very long in between the time that we left
13 the scene and the time that we upgraded.

14 Q And when you first saw him, just looking at him, what
15 kind of visible injuries did you see?

16 A The only thing that we saw when we first examined him
17 was an abrasion to the back of his head and a contusion
18 with minimal bleeding. It wasn't very much bleeding at
19 all. And then, he had a -- a contusion and a little
20 swelling of his right eye.

21 Q Okay. His ---

22 A But on ---

23 Q --- right eye?

24 A --- the outside it -- you couldn't see any really
25 significant injuries on that -- you know, by looking at him

CROSS-EXAMINATION BY MS. JOHNSON - GWEN SIBERT

232

1 on the outside.

2 Q If you have any more -- any questions -- please answer
3 any questions the defense has for you, please, ma'am.

4 A Okay.

5 CROSS-EXAMINATION

6 BY MS. JOHNSON:

7 Q Could you say your name one more time, your last name?

8 A My name is Gwen Sibert.

9 Q Sibert?

10 A Uh-huh.

11 Q Okay. Ms. Sibert, I guess I'm going to just go back
12 over some things with you, pretty much stuff that you've
13 already said here. So it -- is it correct that you -- you
14 got on the scene; you were aware that he had some injuries;
15 you're also aware that he had been drinking?

16 A Yes.

17 Q And you just told us you felt like his really erratic
18 behavior was attributable not to the alcohol, but was
19 attributable to the injury?

20 A I said initially, when we first got there ---

21 Q Uh-huh.

22 A --- I thought maybe his confusion had something to do
23 with the alcohol. You're really not sure. But then after
24 we got him in the back of the truck and saw how his
25 condition deteriorated, we, you know, became more concerned

1 about the head injury.

2 Q Okay. And so a lot -- what I'm hearing from you is
3 his condition really deteriorated from the time you got
4 there to the time that you arrived at the hospital?

5 A Yes, it did.

6 Q And not only did it deteriorate, but he went from
7 being combative to, you know ---

8 A --- to really ---

9 Q --- being real ---

10 A --- not being ---

11 Q --- not responsive ---

12 A Yes.

13 Q --- at all?

14 And when -- when you arrived on the scene, was -- was
15 he talking with the police?

16 A When I arrived on scene, the police were there and he
17 was sitting against the curb. And he had communicated with
18 the -- I think, with the police some and with bystanders
19 and was able to tell us his name. But he really wasn't --
20 we would ask him about medical history and stuff, and he
21 was just real confused about the questions we were asking
22 him.

23 Q So he really didn't know what you were -- who you
24 were, what you were doing ---

25 A No.

1 Q --- at all?

2 A I -- I don't think so.

3 Q Okay. Is it true that you could attribute his
4 deterioration or, you know, his level of responsiveness,
5 the change in his demeanor, to the EMS -- you guys
6 administering the same drug that Michael Jackson died from,
7 a sedative?

8 A We didn't give him any drugs, other than starting a
9 normal saline IV on the ambulance.

10 Q So there was nothing at all?

11 A No.

12 Q Basically, just the -- the ride from the -- the
13 location to the hospital and being strapped in, that --
14 that was what caused him to calm down, you think -- or, you
15 know, in -- in connection with all the other stuff that was
16 going on with him?

17 A Well, he -- he was -- I -- I mean, he was calm when we
18 got to the scene. When we arrived on the scene, he wasn't
19 really agitated or anything like that. That -- all the
20 agitation and combativeness started en route to the
21 hospital. The only thing we did was administer oxygen and
22 start a IV and put him on the monitor and take spinal
23 precautions.

24 Q Is it -- is it typical for someone -- you know, you've
25 been in this field for a long time, you said. Is it

1 typical for someone who has had a brain injury to become
2 combative?

3 A It is.

4 Q Is it typical for someone who's been drinking a lot of
5 alcohol to become combative?

6 A It is. But they usually don't act the same, usually.
7 I mean, it's not -- I -- I mean, I don't want to say don't
8 act the same. But in other words, if it would've -- I -- I
9 think, if it would -- the combativeness would've been from
10 the alcohol, he would've been more combative to begin with.
11 And he was -- he was more -- I don't -- answering -- like I
12 said, talking to us; answering us.

13 And then it just progressively became where he just
14 didn't understand what we were even saying. He was just
15 confused about where he was, what was going on, and
16 everything, you know. So I -- I mean, it just seemed more
17 like it was the head injury.

18 Q So you're -- what -- what you're saying is it probably
19 ---

20 A It's like he couldn't understand what we were saying
21 to him or -- or what was going on at all. And that's what
22 was making him upset, was he could not understand what was
23 going on.

24 Q I understand. So -- but ultimately, to summarize what
25 you're saying, you're saying that primarily, you believe

1 that that head injury was contributing to his being out of
2 it?

3 A I do.

4 Q But you also believe that his alcohol was probably a
5 factor, and you couldn't distinguish one or the other,
6 based on the circumstance?

7 A No. I just said my initial impression when I first
8 got there and -- and detect alcohol -- and he was able to
9 tell us that he had drank alcohol. So initially, I thought
10 that his confusion -- some of the confusion may be coming
11 from the alcohol. But as he progressed and the way he
12 acted, I became convinced it was due to the head injury.

13 Q But the alcohol in his system didn't just evaporate;
14 it was still there in -- in -- if -- if it was initially a
15 cause of his confusion, it probably was still contributing
16 to his ---

17 A I don't -- I don't think the -- I really don't think
18 that the alcohol was what was causing it. I'm just saying,
19 just as initial impression, you may think that alcohol had
20 something to do with it.

21 Q Uh-huh.

22 A But that was just the initial impression. And then, I
23 don't -- I don't -- after being with him, you know, for a
24 few minutes and seeing what was going on, it didn't seem
25 like that it was coming from the alcohol to me.

1 Q Well, the -- the -- what I'm getting at -- and I'm
2 sorry for not putting it better -- is more -- more of a
3 general thing. When -- if someone is -- is drinking
4 alcohol, there's a percentage of alcohol in their body.
5 Does -- does that affect their injuries? Does that -- it
6 -- would -- would they react differently? Their injuries
7 -- would they be different than someone whose injury -- who
8 was injured in the same ---

9 A Well, alcohol ---

10 Q --- situation ---

11 A --- affects different ---

12 Q --- as alcohol ---

13 A --- people different ways. So I really -- you know, I
14 -- I guess it could, but I'm really not qualified to really
15 tell you how somebody's going act because of that.

16 Q Do you know if alcohol makes someone -- someone bleed
17 faster?

18 A Well, it ---

19 MR. YOUNG: Your Honor ---

20 A --- I'm ---

21 MR. YOUNG: --- I'm going to object at this point.

22 She's been trying to establish this person as an expert on
23 the effects of ---

24 THE WITNESS: I'm not ---

25 MR. YOUNG: --- alcohol ---

REDIRECT EXAMINATION BY MR. YOUNG - GWEN SIBERT 238

1 THE COURT: And I ---

2 MR. YOUNG: --- upon bleeding and ---

3 THE COURT: Yeah. I'm ---

4 MR. YOUNG: --- other matters.

5 THE WITNESS: I'm not ---

6 THE COURT: And I don't ---

7 MR. YOUNG: I don't think ---

8 THE COURT: --- even know ---

9 MR. YOUNG: --- she's qualified.

10 THE COURT: --- what relevancy we -- we got going ---

11 THE WITNESS: Unh-unh.

12 THE COURT: --- here. So you need to either get to
13 the point or move on.

14 MS. JOHNSON: Okay. I think that -- that was my main
15 -- my main thing. All right. That's all I have.

16 THE COURT: All right. Anything on redirect?

17 MR. YOUNG: I -- I got one question.

18 REDIRECT EXAMINATION

19 BY MR. YOUNG:

20 Q Can you tell how long, from the time you got to that
21 patient until you delivered the patient to the hospital,
22 how long that was?

23 A I think it was around a half-hour, something like
24 that.

25 Q Check -- check your records and make sure of that for

1 a second.

2 A Oh. It's from the time we got to him ---

3 Q From the ---

4 A --- until we ---

5 Q --- time you got him until you got him to the
6 hospital.

7 A Okay. No. From the time we got on scene till the
8 time he got to the hospital was about 50 -- 50 minutes.

9 Q Okay.

10 A Uh-huh.

11 Q Thank you.

12 THE COURT: All right. Thank you, ma'am.

13 THE WITNESS: Okay.

14 THE COURT: You may step down.

15 (Whereupon, the witness exited the witness stand.)

16 THE COURT: The -- I don't know who you have. Have --
17 have you got a ---

18 MR. YOUNG: Your Honor, may we approach? I think
19 there's ---

20 THE COURT: Yeah. If you would, please. Thank you.

21 (Whereupon, a bench conference was held off the record
22 in the presence of the jury, but out of the hearing of
23 the jury.)

24 THE COURT: All right. Ladies and gentlemen, I was
25 just trying to get an idea of who the attorneys -- with

DIRECT EXAMINATION BY MR. YOUNG - KELLY ROSE

259

1 for lunch, the state was still presenting their case. And
2 so I'll recognize Mr. Young for the state's next witness.

3 MR. YOUNG: Thank you, Your Honor. Your Honor, the
4 state now calls Dr. Kelly Rose to the stand.

5 THE COURT: All right. Dr. Rose, if you would please
6 come around to be sworn, ma'am.

7 (Whereupon, the witness came forward.)

8 KELLY ROSE, having been first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. YOUNG:

12 Q Dr. Rose, I'd like for you to give us your full and
13 complete name ---

14 A Okay. Let me get out my ---

15 Q --- and ---

16 A --- notes here.

17 Q --- spell the last name.

18 A Okay. My full name is Kelly Rose, R-o-s-e, like the
19 flower.

20 Q And what do you do for a living?

21 A I am a forensic pathologist.

22 Q Okay. And how long have you been a forensic
23 pathologist?

24 A Since 2010. I was in training 2009 to 2010 for
25 forensics.

1 Q Okay. And as a forensic pathologist, what qualifies
2 you to become one?

3 A You have to go to medical school. You're actually a
4 medical doctor. After that you specialize in pathology,
5 and you do four years of residency, or after-medical-school
6 training in pathology. And then, if you happen to like
7 forensics, you do a full additional year in forensic
8 training.

9 Q And you're licensed in what states?

10 A South Carolina and Georgia.

11 Q Okay. And have you ever been qualified in the past as
12 an expert in forensic pathology and testified as such?

13 A Yes.

14 Q And where have you been qualified to do that?

15 A In South Carolina and Georgia.

16 Q Okay. How many times in South Carolina?

17 A This will be my fifth.

18 Q Fifth time?

19 So you've testified in general-sessions court four
20 prior times?

21 A Yes.

22 Q Okay. And in a Georgia -- some superior court, I
23 assume?

24 A Yes.

25 Q Okay.

DIRECT EXAMINATION BY MR. YOUNG - KELLY ROSE

261

1 A Atlanta, Fulton ---

2 Q Right.

3 A --- County.

4 Q Okay. Now, I -- I ---

5 MR. YOUNG: Your Honor, at this time I'm just going to
6 go ahead and offer her as an expert in forensic pathology.

7 THE COURT: All right. And I don't believe there's
8 any objection; is that correct, Mr. ---

9 MR. SHAFFER: No, Your Honor.

10 MR. YOUNG: Okay.

11 THE COURT: All right.

12 Q Now, ma'am, as a routine part of what you did, I'm
13 going to go back to the date of January 27th -- excuse me
14 -- during the January/February time frame of 2011. Where
15 were you employed at that time?

16 A I was employed at Newberry Pathology Associates in
17 Newberry.

18 Q Okay. And on the -- the date of Saturday, February
19 5th, 2011, did the coroner of Saluda County submit a body
20 to you of one Octavias -- Hydrick Octavias Burno?

21 A Yes, he did.

22 Q And the -- for -- for the purposes of autopsy?

23 A Yes, sir.

24 Q And, ma'am, before we get into that itself, can you
25 just tell the -- the jury what an autopsy does?

1 A Yeah, I'd like to. There's a lot of misconception
2 because of CSI on TV, unfortunately. But most people are
3 familiar with an autopsy.

4 In an actual autopsy, it -- I consider it a very
5 detailed medical exam that occurs after death. So, you
6 know, when you go to your doctor, you get your height and
7 weight, things looked at on the outside. They listen to
8 you on the inside.

9 We do the same thing in autopsy, except the difference
10 is we can actually open the body and look at organs, look
11 at bones directly. And so an autopsy -- a forensic autopsy
12 is performed to help determine cause of death.

13 Q And so is that your purpose in performing the autopsy
14 on Mr. Hydrick Burno?

15 A Yes.

16 Q Okay. Now, this autopsy that you performed on him, I
17 assume -- and I'm going to use that word "assume" because
18 -- at least for questioning -- there was a -- there was
19 some form of injury you were looking for or possibly
20 looking for; is that correct?

21 A Yes.

22 Q Did you find an -- significant injury or traumatic
23 injury to the body of Hydrick Burno?

24 A To his head, the brain.

25 Q Okay. What -- what was it that you were looking at

1 when you saw that brain and when you saw the head?

2 A At first, you know, on external review, no real
3 significant findings; we're seeing there was some bruising.
4 However, we actually will take your scalp and reflect it so
5 we can see underneath. And when I did that, I saw several
6 bruises underneath the scalp.

7 And after that we actually will take a saw and remove
8 the top part of your skull, like your skull cap, and open
9 it and look directly at the brain. And that's when I saw
10 the severity of the injuries which were -- there was
11 bleeding. Some brain tissue was -- we call it "macerated,"
12 which means kind of looks like it's chewed up. And there
13 were some skull fractures identified that way.

14 Q Okay. Now, we're going to get specific in a moment.
15 But in looking at this person's brain, I -- you prepared a
16 diagram, did you not, about these fractures that you found?

17 A Yes.

18 Q Okay. Is that -- would that help you to explain where
19 these fractures were?

20 A Yes.

21 Q Okay. It's been previously admitted as State's
22 Exhibit No. 20. This is something you recognize?

23 A Yes.

24 Q What is that?

25 A This is a drawing of your skull. And I don't know if

1 y'all can see that.

2 Q I'll hold it for you.

3 A What this is, this is the top of your head. It's the
4 skull cap. And you hear people refer to it as "skull cap."

5 This is the skull cap turned over so you're looking
6 down at the underside of the skull cap. This is what your
7 skull looks like after you take off the skull cap and
8 you're looking down. The brain rests right here. So it's,
9 like, where the brain sits in your head, this area.

10 And that whole area we call the "basilar skull."
11 People think, Oh, that means back. It really means bottom.
12 The bottom of the skull is where your brain rests.

13 Q Okay. And I -- there's some red areas that you've ---

14 A Uh-huh.

15 Q --- marked?

16 And you've oriented that -- you have an "L" and an
17 "R"?

18 A Right.

19 Q What is the "L"?

20 A Front and back. "L" is left; "R" is right.

21 Q Okay.

22 A This is the back of the skull. This is the front.
23 It's your forehead area. This is where your brain stem
24 connects with your brain. And then, from that your spinal
25 cord comes down.

1 Q That's the dark area at the very center?

2 A Yeah. That's actually a hole that leads to -- to your
3 spinal column. And your spinal cord lives in that.

4 Q Okay.

5 A With these red marks, I've indicated where I saw
6 fractures. And we call them "basilar skull fractures"
7 because that's where they are. They're on that part of the
8 brain. They're not on this part.

9 We had several kind of irregular-shaped ones here; and
10 then, one pretty much straight one right there.

11 Q Okay. Now, so you found these two fractures ---

12 A Uh-huh.

13 Q --- when you opened the top of the skull?

14 A And took out the brain.

15 Q Took the top off?

16 A I had to take out the brain. You have what -- what we
17 call "dura matter." You know, you'll hear that term
18 perhaps. It's just a thick, fibrous covering that, before
19 your actual brain sits on this, it's kind of like -- if
20 this is the bed for the brain, the dura are the sheets.

21 And it's really thick. And so you have to pull that
22 back to actually recede the bone. So I saw some
23 hemorrhage. And we pulled that dura off and saw those
24 fractures.

25 Q Okay. Now, before you -- I think you used the word

1 "reflected."

2 A Yes.

3 Q Reflected the skin off the skull?

4 A Yes.

5 Q And you did some -- you -- you start, where, at the
6 front of the skull or something and ---

7 A Start, like, around here and you cut across, and then
8 you pull this way and that way.

9 Q Okay. So as you reflect this, did you see anything in
10 the skin area of Mr. Burno's head that indicated to you
11 that he suffered any significant trauma?

12 A There were some bruises. We call those "subgaleal
13 bruises." "Galeal" is a fancy word for scalp. So they
14 were underneath the scalp. Like, you couldn't necessarily
15 see them, you know, on the outside. And then, when we
16 pulled it back, there were bruises.

17 Q Okay. Now, I want to ask you about this bruise. Any
18 specific large area of bruising?

19 A It -- the subgaleal patches were -- I mean,
20 hemorrhages were patching. When we -- I reflected -- you
21 have a muscle; it's called your "temporalis muscle,"
22 because here's the -- your temples.

23 There's a muscle that runs across it. We actually
24 will reflect that and pull that back. And when I did that
25 on the left, that entire muscle was hemorrhagic ---

1 Q What does ---

2 A --- so ---

3 Q --- that mean?

4 A --- bruised.

5 Q Bruised?

6 A Bloody. Yes. And then, once we took the skull cap
7 off, there were -- was about 200 cc's of blood on this --
8 the -- this side of his brain under the dura.

9 Q Now, you -- you were holding your hand up to one side
10 of your head. What side of your head are you holding your
11 hand up to?

12 A Left.

13 Q Left side? Okay.

14 So it was on the left side of the head?

15 A This -- yes.

16 Q Okay. And this area that you're referring to that's
17 -- it -- is it, what, above your ear if you want to use a
18 reference of your ear?

19 A Uh-huh. It is right about here.

20 Q Right about there.

21 Now, would -- could you -- ordinarily, just if a
22 person was just looking at a human being, any ordinary
23 human being, would you normally be able to see that through
24 the skin?

25 A You can't -- no. That's under the scalp. I mean,

1 that's under the skull bone. So you can -- there's no way
2 you can see that through the skin.

3 Q Okay. So that is something you couldn't see from the
4 outside?

5 A No.

6 Q So a person, if they received a blow ---

7 A Uh-huh.

8 Q --- to that area, you wouldn't necessarily see any
9 blood at the time?

10 A Oh, no. No. So -- and that's kind of common with
11 head injuries.

12 Q Okay. So we're talking about all this bleeding
13 happening ---

14 A Internal.

15 Q --- inside the brain, inside the scalp ---

16 A Yes.

17 Q --- all of that?

18 A (Nodded head up and down.)

19 Q Okay. Now, you -- you have two areas of injury that
20 are ---

21 A Uh-huh.

22 Q --- marked in red. Could you ---

23 A Uh-huh.

24 Q --- hold that diagram back up again -- show the
25 diagram again?

1 A (Complied.)

2 Q All right. The one that you -- you said had the
3 hematoma, or the bruising, which side was that?

4 A The left side had some -- on the outside of the scalp
5 -- I mean, on the outside of the -- the skull, there's the
6 muscle. There was bleeding in that. Underneath that,
7 actually, after we took off the top of his skull cap, there
8 was more blood on the outside of the brain. That ---

9 Q Okay.

10 A --- is where that was.

11 Q All right. So now, the -- obviously, you've had this
12 marking on the inside?

13 A Right. So you want me to just go layer by layer?

14 Q Sure.

15 A So after we saw the bruising underneath the scalp, we
16 saw the bruising in the muscle. After we took off the
17 skull cap, we saw bruising around the brain in two
18 different spots. There's several layers that cover your
19 brain, so two different -- one was a lot more than the
20 other. Once we took the whole brain out, I saw some
21 hemorrhage, some bleeding, on the -- this part of the skull
22 -- the brain's out -- and reflected that covering and then
23 saw fractures.

24 Q So this is after going layer by layer through the
25 person's ---

1 A Yes.

2 Q --- body to find those conclusions?

3 A Yeah.

4 Q All right.

5 A It's -- it happens at the end of autopsy; takes a long
6 time. And you have to peel off lots of different layers to
7 make sure you find all the injuries.

8 Q Now, did you take photographs of that area?

9 A I did.

10 Q Okay. Now, I'd like you to refer first, if you don't
11 mind, to the area -- well, let me ask -- of the -- of the
12 two injuries that you have marked there ---

13 A Uh-huh.

14 Q --- which is the most significant, if -- for purposes
15 of determining what may have caused his death?

16 A The left-sided injury is because the brain, underneath
17 that part of the skull and resting on that part of the
18 skull, was damaged. The brain tissue itself was damaged.

19 Q Okay. What does that mean for a person who might
20 subsequently die from such an injury? What does that mean
21 for that person?

22 A It ---

23 Q Well, let me -- let me rephrase it. Let me rephrase
24 it. If you found that kind of injury in a living human
25 being ---

1 A Okay.

2 Q --- a person who just, say, just started -- just had
3 the injury, would there be a -- a normal progression
4 leading toward death that you would want ---

5 A No.

6 Q --- to see? What -- what ---

7 A Well ---

8 Q --- would you ---

9 A --- there's ---

10 Q --- normally see?

11 A --- a -- a progression that's usually seen.

12 Q Yes.

13 A Oftentimes, you get a head -- a blow, an injury of
14 some sort, and you get knocked out, just like the boxers on
15 TV. You can come to and you can be kind of aware for a
16 while and talking. And -- but what is going on is your
17 brain is starting to bleed and swell. Just like if you get
18 punched in the arm, your arm swells. But you have this
19 soft tissue, this soft skin, that can kind of swell with
20 it.

21 The problem with the brain is there's no room for that
22 swelling to go. It can't push out through the skull. So
23 often, head injury victims deteriorate, are worse towards
24 the end than at the beginning. The beginning signs and
25 symptoms don't necessarily correspond to the -- you know,

1 how severe that head injury really is.

2 And what happens is, because of your skull and the
3 tissue that's swelling not being able to go anywhere, it
4 goes down this hole. And when it does that, pressure is
5 put on your brain stem, which controls vital functions:
6 breathing, heart rate, temperature regulation, everything
7 that makes you able to be alive.

8 And as the swelling in the -- in that -- and the
9 swelling just doesn't happen there. It happens all over.
10 And as that swelling gets worse, the brain itself can't get
11 blood to it because it -- there's too much pressure. The
12 -- the blood in the arteries can't get there by -- get
13 through that pressure. And so the whole brain becomes
14 ischemic and just shuts down. "Ischemic" means doesn't
15 have oxygen.

16 Q Thank you. Thank you. I'm glad you explained that.

17 All right. Now, you did take some pictures, and I
18 want to go back to the pictures now, if you would, please.
19 I would like for you to begin with the picture that was not
20 significant, in your opinion, as matters ---

21 A Okay.

22 Q --- developed, for purposes of determining cause of
23 death.

24 A I mean, it -- this certainly wasn't the injury that I
25 concluded was the cause of death. Here is a single

1 fracture here. This is the photograph that corresponds to
2 that.

3 Q All right. Could I refer now to that particular
4 photograph you're holding up and take it from you so I can
5 put in the record ---

6 A Sure.

7 Q --- which one you're holding?

8 All right. This is State's Exhibit No. 12. Well, let
9 me see -- yeah. It is. I don't have my glasses on, but
10 it's 12.

11 A And you can see it corresponds to the diagram. This
12 is just a close-up of this one ---

13 Q Okay.

14 A --- that one.

15 Q All right. Now, if you would, hold the other
16 photograph up in relation to -- which portion of the
17 diagram does that relate to?

18 A This, I want to say, is a picture of this area now.

19 Q And you're ---

20 A And ---

21 Q --- referring to the ---

22 A --- here ---

23 Q --- left side of the head?

24 A Yes. It's here you'd see these areas of hemorrhage.

25 And if you were able to look real closely, there's some --

1 like, bones. We call it "radiating," just kind of
2 fractures going out like this in this area.

3 Q And you were using your hand to describe -- and if I
4 could put in the record what I saw you do with your hand;
5 you tell me if it's wrong. Use your -- use your fingers to
6 spread out in an ---

7 A It goes ---

8 Q --- open-handed ---

9 A --- like ---

10 Q --- fashion so all your fingers went out as far as
11 they could stretch?

12 A Right. Now, it didn't go in necessarily. It went
13 like this through the -- the skull bone. It -- there was a
14 force of some form that caused, like, a ripple effect when
15 you throw something in the river and it starts to ripple, a
16 wave effect. That's what these kind of injuries are.

17 And that can -- your brain is not that far away from
18 your skull. And when you get an injury like that, you're
19 going to have vessels torn. You're going to have actual,
20 you know, trauma to the brain tissue itself.

21 Q And is that what you found in his head?

22 A Yes.

23 Q His brain actually had ---

24 A Yes.

25 Q --- injury to the brain matter itself?

1 A Yes.

2 Q Okay. Now, ma'am, I don't -- and you're holding up --
3 what exhibit number is that, looking on the back of the
4 page?

5 A Nineteen -- State's Exhibit 19.

6 Q Okay. Thank you. Now, both those photographs had a
7 -- what was referred to as FA11089.

8 A -089.

9 Q What does that number come from that's on the
10 photograph?

11 A "FA" means forensic autopsy; "11" is the year, 2011;
12 and "089," it was the 89th case that year.

13 Q Okay. So that's just a reference number for your
14 purposes?

15 A Yes.

16 Q Okay. All right. Now, this is a situation in which
17 you also submitted certain -- certain matters for
18 toxicological examination; is that correct?

19 A Yes.

20 Q Now, that's -- what does that mean, the word
21 "toxicological"?

22 A It means relating to drugs or medication or -- and
23 drugs being prescription or alcohol or illicit. We want to
24 know what chemicals are in the blood.

25 Q Okay. Now, and you, in fact -- and you, in fact,

1 found after the fact, did you not, that there were an --
2 that there was an elevated level of alcohol in this man's
3 body, what, some -- well, at the time of your autopsy, it
4 had been more than a week ---

5 A Uh-huh.

6 Q --- correct?

7 A Roughly ---

8 Q You know ---

9 A --- eight days later.

10 Q Right. Now, I -- I realize that that -- that may
11 sound unusual. Is there an explanation for that?

12 A I also see in that level -- wanted to know what the
13 predeath alcohol level was. And I was able to review that
14 and find out what it was. And at the level that it was
15 when -- like, when he was admitted to the hospital, so
16 before he died. It should've taken about 18 to 20 hours
17 for the alcohol to be out of his system. But in this case,
18 it was only about half but -- the normal level, the actual
19 level at the end when they got him to the hospital. It had
20 only gone down half.

21 And that can occur due to the injuries to the brain.
22 Your brain controls everything. If your brain is injured
23 and isn't working, your body is going to follow suit and
24 not work. And it's not going to -- he's not going to be
25 eating. His tissues are going to be breaking down because

1 he's not eating. All of this plays into how a drug is
2 eliminated. So you ---

3 Q Okay.

4 A --- he, you know ---

5 Q So in essence, are you -- is it your testimony that he
6 is not able to process the alcohol out of his system due to
7 the -- due to the brain injury?

8 A That would be the reason.

9 Q Okay. Now, I am going to -- I'm going to ask you
10 these questions. And I -- I want you to -- to understand
11 that both the questions I'm going to ask you is -- all the
12 questions I'm going to ask you from this point forward, I'm
13 going to absolutely make certain that you're giving an
14 opinion based upon your medical training and experience and
15 to reasonable degree of medical certainty.

16 Having examined everything there is with regard to the
17 -- to the death of Hydrick Burno, examining his body in --
18 in the most intricate way you did, do you have an opinion
19 as to the manner and cause of death?

20 A Okay. Cause of death was -- that I put on the death
21 certificate was "brain herniation due to cerebral edema."
22 And that's just a fancy way of saying the brain was so
23 swollen that it pushed down through this hole and cut off
24 all your vital life process -- processes.

25 Q Okay.

1 A That was due to blunt-force head trauma, meaning it
2 was a blunt force. It wasn't anything sharp.

3 Q And that was to the side -- the left side of the head?

4 A Yes.

5 Q And -- and let me make sure I understand this. Is it
6 your opinion that the -- the -- the -- the cause of this
7 death was that blunt-force trauma?

8 A That is what started the -- initiated the sequence of
9 events that ended up in this man losing his life.

10 Q Irregardless of what he'd been drinking?

11 A Right.

12 Q And so if he'd been drinking and he got that kind of
13 blow and the swelling occurred like it did, he was going
14 ---

15 A Yeah.

16 Q --- to die?

17 A That brain swelling would've killed him.

18 Q Okay. And so the manner of death, in your opinion, is
19 what?

20 A It's homicide.

21 Q Now, if -- if I could recount something, when he was
22 initially presented to you for examination, did he carry on
23 his -- just that we verify this is what you found, did he
24 carry on his person or look upon -- when you looked upon
25 him, could you tell he'd been in -- under treatment of some

1 kind?

2 A Definitely. I mean, he was a organ and tissue donor.
3 But so he actually had the bones of his legs removed.
4 There were big sutures down there, going up and down. He
5 had medical instrumentation on his body: a tube coming out
6 of his mouth to help him -- you know, that they would put
7 your respirator to breathe for him.

8 He had a tube coming out of his left nostril, which
9 connects with the stomach, and it sucks out your stomach
10 acids. Because when you can't eat, you're not any
11 digestion. Your stomach acid builds up. And when people
12 that are unconscious, there's a high risk of you inhaling
13 that acid. And that's really bad for your lungs, so they
14 just suck it out so that can't happen. So he had that.

15 He had some, you know, heart-monitor pads attached to
16 him. He had a -- a -- an intravenous catheter in his neck
17 so they could have access directly to put in fluids. You
18 know, when you go get your blood drawn at the doctor's,
19 it's just one little needle and a tube. This actually is
20 something that can stay in and has three different outputs
21 where you can put three different things in at once, if
22 need be. He ---

23 Q So ---

24 A --- had that.

25 Q So he -- from -- from what you could see, he was

1 receiving the totally appropriate medical care prior ---

2 A Yes.

3 Q --- to his death? Okay.

4 (Whereupon, Mr. Maye and Mr. Young conferred.)

5 MR. YOUNG: (To the court reporter) Would you mark
6 that please, ma'am.

7 (Whereupon, State's Exhibit 21 was marked for
8 identification.)

9 (Whereupon, Mr. Young and Mr. Shaffer conferred.)

10 Q Dr. Rose ---

11 A Yes.

12 Q --- I'm going to have you take a look at what's been
13 marked State's Exhibit 21 for identification and tell me if
14 ---

15 A Okay.

16 Q --- you can recognize that.

17 MR. SHAFFER: We'll stipulate to it, Your Honor. If
18 they want to put it into evidence, we'll stipulate to it.

19 THE COURT: What is this, now?

20 MR. YOUNG: State's Exhibit No. 21. I'm going to have
21 her identify it.

22 THE COURT: All right.

23 A This is my autopsy report.

24 Q That's -- all right.

25 MR. YOUNG: Your Honor, at this time we would offer

DIRECT EXAMINATION BY MR. YOUNG - KELLY ROSE

281

1 State's Exhibit 21 into evidence as the autopsy report
2 prepared by Dr. Kelly Rose.

3 THE COURT: All right. Any objection to that report
4 being ---

5 MR. SHAFFER: No objection, Your Honor.

6 THE COURT: There's no objection.

7 MR. YOUNG: Thank you.

8 THE COURT: It's in -- in evidence.

9 (Whereupon, State's Exhibit 21 was entered into
10 evidence.)

11 MR. YOUNG: And, Your Honor, at this time we would
12 like to ---

13 (Whereupon, Mr. Maye and Mr. Young conferred.)

14 MR. YOUNG: Your Honor, at this time we'd like to
15 publish the stipulation that we've reached between the
16 defense and the state concerning ---

17 THE COURT: All right.

18 MR. YOUNG: --- the cause of death in this case.

19 THE COURT: Ladies and gentlemen, let me just explain
20 to you what Mr. Young is referring to. Throughout trials
21 there are several matters and issues where the lawyers can
22 agree on certain issues. And in a -- and that -- the word
23 "stipulation" simply means an agreement.

24 In this case the state, through Dr. Rose's testimony,
25 and -- and is going to bring out the state believes that

1 the cause of death in this case was the blunt-force trauma
2 to the left side of the head. The defense in this case
3 agrees with that. And so there's no issue as to the cause
4 of death because the defense agrees, or stipulates, to Dr.
5 Rose's findings with regards to the cause of death. All
6 right.

7 MR. YOUNG: Thank you, Your Honor. I have no further
8 questions of Dr. Rose.

9 Q Dr. Rose, would you please answer any questions that
10 the defense may have for you?

11 A Yes, I will.

12 CROSS-EXAMINATION

13 BY MR. SHAFFER:

14 Q Good afternoon, Dr. Rose.

15 A Hello.

16 Q Going back to your medical training a little bit ---

17 A Yes.

18 Q --- you were in medical school for four years?

19 A Yes, sir.

20 Q Did you have to do a internship before your residency
21 or not?

22 A No.

23 Q Okay. In medical school did you participate in any
24 clinicals?

25 A Oh, yes. In our whole third and fourth year,

1 clinicals.

2 Q And what ---

3 A Excuse me.

4 Q --- do you do for the clinicals?

5 A You rotate through all -- all the specialties of
6 medicine, kind of shadowing other doctors in training --
7 excuse me -- and help participate in medical decision --
8 decisions.

9 Q And you rotated through the emergency room?

10 A Yes, I did.

11 Q So it's fair to say that you've seen a few patients?

12 A Yeah. Yes. Pathologists, we're not just nerds behind
13 desks. We've seen a lot of patients. In fact, we get
14 often called by clinicians -- that's the doctors that are
15 out and about seeing patients -- to come, "Hey, have a look
16 at this," or, "What do you think of this?"

17 Q Okay. Have -- in your experience have you seen a lot
18 of blunt-force trauma wounds?

19 A Yes.

20 Q A lot of blunt-force-trauma wounds to the head?

21 A Yes.

22 Q Could you estimate how many blunt-force-trauma wounds
23 to the head?

24 A It would be over 500.

25 Q Over 500?

1 How many of those were caused by punches?

2 A Now, this is going to be a -- an average because I
3 don't have my books in front of me, but 25 at least.

4 Q At least 25?

5 A (Nodded head up and down.)

6 Q And how many of those 25 from punches -- well, I --
7 let me say this: Of your live patients, how many people
8 have you seen punched?

9 A Including my brother? I've seen -- I've probably seen
10 about -- only about 10 clinical patients that were beaten
11 or punched.

12 Q Okay.

13 A And on the 25 that I stipulated was cases of my own.
14 In training I saw a bunch of other cases of head trauma
15 that were not my case; I just was observing.

16 Q So talking about in training, how many of those head
17 traumas from being punched would you say died from it?

18 A Well, all of the ones that I saw in autopsy training
19 were dead.

20 Q Obviously.

21 A Clinically, I'm -- I wouldn't be able to give you that
22 answer. It -- it also often depends on the severity of the
23 -- of the trauma.

24 Q Because sometimes people can get punched in the eye

25 ---

1 A Uh-huh.

2 Q --- or the mouth ---

3 A Right.

4 Q --- and it's not necessarily bad for them, right?

5 A Right.

6 Q Or ---

7 A I mean, they don't -- it's ---

8 Q Well ---

9 A --- not legal.

10 Q --- they're injured but ---

11 A It's -- it doesn't kill them.

12 Q Okay. And a lot of that depends on the intensity of
13 the punch, right?

14 A The intensity of the punch; the placement of the
15 punch; the state of the individual or -- receiving the
16 punch; the state of -- you know, when I say "state," I mean
17 the -- you know, their physical state -- of the person
18 delivering the punch, how much of an expert is someone at
19 punching.

20 Q So regarding the physical state of the person getting
21 punched ---

22 A Right.

23 Q --- that could affect it too, right?

24 A That -- it can affect if and how long after you're
25 going to die. People vary.

1 Q So, for example, if -- you know, if someone had a --
2 certain injuries or certain conditions, it might make it
3 more -- more likely that they would die?

4 A That's true.

5 Q Okay. It might make it more likely they died from the
6 actual head trauma as well, right?

7 A In -- I think, in this case, you might be referring to
8 the ---

9 Q Yeah.

10 A --- fact that it was on -- most of it was on one side.

11 Q And ---

12 A Is that what you're referring to?

13 Q Yeah. Well ---

14 A Well, I'm just confused. Could you rephrase the
15 question?

16 Q I apologize. That -- I -- that question probably
17 wasn't that good. I'm actually going to get on a different
18 subject.

19 A Okay.

20 Q Okay?

21 I'm going to show you a -- an exhibit. This -- would
22 you say that this is similar to -- similar anatomically to
23 the out -- at least appearance-wise, to a person?

24 A It's similar enough.

25 Q Similar enough?

1 A I mean, I won't get into details. But it -- you can
2 tell it's a human head.

3 Q Okay.

4 MR. YOUNG: Your Honor, could we ask that the record
5 reflect what he's doing so he can read into the record he's
6 providing a dummy upper torso; lower portion's the -- looks
7 like it's a big black box. And it's flesh-colored in terms
8 of pinkish color and no hair, other than the location for
9 hair might be. And the back's open, and it's just an upper
10 torso.

11 THE COURT: All right. I think you've just done it.

12 MR. SHAFFER: That's better than I would have done.

13 Q Dr. Rose ---

14 THE COURT: And in my terms, it would be a kickboxing
15 dummy.

16 MR. SHAFFER: That would be correct.

17 THE COURT: Okay.

18 Q I was wondering if you could do me a favor.

19 A Uh-huh.

20 Q Could you point out with a marker ---

21 A Uh-huh.

22 Q --- the location of the injuries or the major injuries
23 -- the impacts?

24 A The -- the -- I can point out the overlying area that
25 corresponded to the internal injuries that ---

1 Q Yeah.

2 A --- I saw.

3 (Whereupon, the witness exited the witness stand.)

4 THE COURT: Dr. Rose, you -- if -- as you do that, if

5 ---

6 THE WITNESS: Uh-huh.

7 THE COURT: --- since you won't be near the

8 microphone, if you'd keep your ---

9 THE WITNESS: I'll ---

10 THE COURT: --- voice elevated.

11 THE WITNESS: --- speak up.

12 THE COURT: Thank you.

13 A All righty. So this is -- I get to turn that way.

14 This is the left side of the head. And just some

15 preliminary stuff: Your brain is here. And then, it kind

16 of goes like that, kind of like the way -- shape of your

17 hair. And then, down here you have structures related to

18 your nose and ears and such.

19 So this inside of the skull is kind of like a ledge.

20 It goes, wrnnntt (phonetic), and down. And the brain sits

21 like this. And then, your frontal lobes come up this way,

22 towards your eyes.

23 When I took -- reflected the scalp -- can I write on

24 this for a minute?

25 Q Oh, of course.

1 A The area where most of the damage was, was right about
2 here. And that actually corresponds to one of the -- right
3 before the drop-off. And it's where some vital structures
4 are, in this region. So . . .

5 Q And there was an injury to the back of the head as
6 well?

7 A Yes. There was one right here.

8 Q But the injury to the back of the head was not the
9 fatal one?

10 A Right. The injury to the back of his head, which I
11 saw internally, which I showed you on the diagram, that was
12 more consistent with the fall, like you fall back and hit
13 your head on something. And the underlying brain tissue
14 itself was not nearly as damaged. It looked, you know,
15 mildly damaged compared to the other area.

16 Q So you ---

17 A And this is the temple where the -- your mama would
18 say, you know, watch your temples, this area.

19 Q So it's your opinion that the -- the left side of the
20 head is where -- that ---

21 A Yeah.

22 Q --- injury right there?

23 A Yes.

24 Q Okay. That was the deadly wound?

25 A That is what -- that was the lethal blow.

1 Q Okay. I -- I think that's all for the ---

2 A Okay.

3 Q --- dummy at least.

4 (Whereupon, the witness reentered the witness stand.)

5 Q Now, Dr. Rose, how often is it -- is it that you see
6 people with injuries that -- punch wounds ---

7 A Uh-huh.

8 Q --- single punch wounds ---

9 A Uh-huh.

10 Q Well, first of all, let me ask you this: Is there
11 anything that would injured that he was hit more than two
12 times?

13 A No.

14 Q Okay. And how often do you see people with single-
15 punch wounds?

16 A In all the cases that I've done and/or observed, I've
17 seen three or four times.

18 Q Three or four out of about 500?

19 A Yeah.

20 Q And all of your -- the people you've seen are -- most
21 of them are dead, correct?

22 A Right.

23 Q Okay. And that -- those were single-punch wounds?

24 A Uh-huh.

25 Q Okay. So if you hit the exact right spot, it can ---

1 A It can ---

2 Q --- happen?

3 A --- happen. Yeah.

4 Q Okay. Is it necessarily fatal?

5 A That's a hard question to answer because there are so
6 many variables. Maybe to one person; maybe not to the
7 other. Depends on how long it took to get medical
8 attention. I mean, he had severe brain injury. Had this
9 occurred right outside of Johns Hopkins Neurosurgery, would
10 he have died? I don't know.

11 Q And it also contend -- it is based off of his
12 condition, correct? Or it might be based, in part, on his
13 ---

14 A Everyone's ---

15 Q --- condition?

16 A --- different. Yes.

17 Q Okay. And the state mentioned a little bit about
18 alcohol.

19 A Yes.

20 Q Could that contribute to the swelling?

21 A The exact role alcohol plays in head trauma is still
22 uncertain. It -- it can make someone bleed more, kind of
23 like aspirin does. So it's not like until they have
24 absolute cirrhosis, which this guy did not, they don't --
25 they bleed about as much as someone that takes aspirin --

1 alcohol.

2 Now, alcohol is also a neurotoxin. And we're still
3 understanding its effects on the brain. So there are some
4 studies that suggest that when alcohol -- the brain of
5 someone who is drunk or has high levels of alcohol is less
6 resilient, I should say, to injury. And the exact
7 mechanism, why that is, they're not sure. There's been
8 several case reports. There's never been a big study done.
9 So I can't say with absolute certainty that it didn't make
10 the decedent -- that it didn't make him more vulnerable to
11 head injury.

12 Q Would hypertension make him more vulnerable to head
13 injury?

14 A Depends on what level, how high. I mean, that tends
15 to make you much more vulnerable for stroke. Those are --
16 when it's really high levels. And that's a different type
17 of injury.

18 Q Okay. The state -- you -- you drew blood, right?

19 A LifePoint drew blood, the ---

20 Q Okay.

21 A --- people that -- yes.

22 Q So -- and -- and that was tested, right?

23 A Yes.

24 Q And the state alluded to that. And what was the test
25 of that? Do you know -- do you know the results from that?

- 1 A Oh, from the blood that they tested?
- 2 Q Yes.
- 3 A I mean, as far as alcohol and drug or ---
- 4 Q Or the -- the one that you did.
- 5 A His alcohol level that ---
- 6 Q Blood-alcohol level.
- 7 A Yeah. The blood-alcohol level on that was 0.15.
- 8 Q Okay. And during -- during the initial -- well, let
- 9 me as you this: I provided you with the medical ---
- 10 A Yes.
- 11 Q --- records?
- 12 And you've reviewed those?
- 13 A Yes.
- 14 Q What is -- of the initial hospital, what was the --
- 15 the blood-alcohol level when he initially arrived?
- 16 A It was 0.274, I believe.
- 17 Q 0.274?
- 18 A Uh-huh. I can double-check.
- 19 Q You have any idea what the legal limit it?
- 20 A 0.08 in South Carolina.
- 21 Q Okay. So about 3 1/2 times ---
- 22 A Three and ---
- 23 Q --- the legal ---
- 24 A --- half times, yeah.
- 25 Q Okay. You're familiar with the effects of alcohol,

1 right?

2 A I think any college student is.

3 Q Okay. I -- I think you're right. And at 0.27 you'd
4 say that you were drunk, correct?

5 A That -- yeah. That person is very drunk. I've seen
6 it worse. But that -- these are in chronic, chronic
7 drinkers, end-stage drinkers. I've seen it worse. But
8 that is a significant level for anyone.

9 Q Okay. I guess, let me ask you this: Is it likely
10 that -- is it likely that a blow to the head would cause
11 death -- one blow to the head?

12 A It happens. But it -- it's not common. It's not that
13 it can't happen, but it's not common.

14 Q Okay.

15 A It -- and to qualify that a little more, it --
16 usually, you see multiple wounds to a head. Again, it
17 depends on the location of the blow, the -- who received,
18 who took it, and -- but if you were to average people that
19 died from fistfights, the majority of them would have more
20 than one blow.

21 Q I guess it'd also be fair to say that the majority of
22 people who get in fistfights don't die, right?

23 A Yeah. I -- I don't have those exact statistics, but I
24 think there'd be a lot more dead people.

25 Q Okay. Tell me this one last thing: What -- what's

1 the approximate size of Hydrick Burno? How -- how big was
2 he?

3 A He was around 200 pounds and, I want to say, 69
4 inches. I'd have to have a look.

5 Q But that was after harvesting of the ---

6 A Oh, yeah.

7 Q --- organs?

8 A That was ---

9 Q Okay.

10 A Yeah. That was a -- that's why I was -- I don't say
11 "height." I usually say how ---

12 Q Well ---

13 A --- long they are. And sometimes I don't even do that
14 after they have their bones removed, because you can't
15 tell.

16 Q Okay. But -- but you -- you're uncertain how -- how
17 big he was before they ---

18 A Right. It's hard to tell.

19 Q Okay. One last thing: You -- you had said that the
20 cc's of blood in the left hand ---

21 A Yeah.

22 Q --- you said 200 cc's. Approximately how much blood
23 is that?

24 A I wish I had some sort of a container. But it's --
25 meh.

1 Q But there's a -- there was swelling ---

2 A Oh. Swelling ---

3 Q --- obviously.

4 A --- was all over the brain.

5 Q Okay.

6 A But then, there was just, like, this extra kind of
7 jelly-like blood that had been sitting there.

8 Q Okay.

9 MR. SHAFFER: Court's indulgence.

10 (Whereupon, Mr. Shaffer and Ms. Johnson conferred.)

11 Q I keep saying "one last question." I don't actually
12 ask just one more question so ---

13 A That's okay.

14 Q You've mentioned that if he was outside of, like,
15 Johns Hopkins as soon as it happened ---

16 A Right. Who knows?

17 Q --- it might -- who knows?

18 The -- did they -- did they attempt to relieve the
19 swelling in any way? I mean, did the -- is there ---

20 A I mean ---

21 Q --- any way ---

22 A --- they did ---

23 Q --- to relieve the ---

24 A Yeah.

25 Q --- swelling?

REDIRECT EXAMINATION BY MR. YOUNG - KELLY ROSE

297

1 A Well, besides drilling a hole in the head, they can
2 use medicines. And I believe he was treated medically.

3 Q Okay.

4 MR. SHAFFER: All right. No further questions.

5 THE WITNESS: Okay.

6 MR. SHAFFER: Thank you.

7 REDIRECT EXAMINATION

8 BY MR. YOUNG:

9 Q Dr. Rose, to eliminate any confusion, did a blood-
10 alcohol level of 0.274 kill Hydrick Burno?

11 A No.

12 Q Did a blow to the side of his head kill him?

13 A Yes.

14 Q If a person of ordinary firmness received such an
15 injury to the side of their head, would it kill them?

16 A Repeat that question.

17 Q Ordinary human being ---

18 A Uh-huh.

19 Q --- getting a blow to the side of the head consistent
20 with the injury you saw in this case, would it kill them?

21 A I'm trying to figure out the right way to say this.
22 That amount of brain swelling would kill somebody. Now,
23 whether everybody develops that amount of brain swelling,
24 only God knows.

25 Q Okay.

1 A But the brain swelling that I saw would kill anyone.

2 Q Okay. And the maceration of the brain is what? The
3 type of chewed-up piece of brain?

4 A That is all tied into the brain swelling, because
5 swollen tissue starts to die. It -- and get -- you know, I
6 mean, it worsens the injury that was there. It's -- didn't
7 just -- you can't just hit one side of your brain and not
8 affect the whole thing. Everything starts to go bad.

9 Q But it killed him in this case?

10 A Yes, it did in this case.

11 Q And not the alcohol?

12 A Not the alcohol.

13 MR. YOUNG: No further questions.

14 MR. SHAFFER: Just briefly.

15 RECROSS-EXAMINATION

16 BY MR. SHAFFER:

17 Q And I guess I'm -- I wasn't trying to say that the
18 alcohol actually killed him.

19 A Right.

20 Q But you said everyone's different, right?

21 A Yes.

22 Q And if everyone's different, the same exact blow to
23 the head might not kill one person, where it might kill
24 one?

25 A Correct.

RECROSS-EXAMINATION BY MR. SHAFFER - KELLY ROSE 299

1 Q But -- because they might not develop the same -- same

2 ---

3 A Unh-unh. Their ---

4 Q --- hemorrhage?

5 A --- bodies might react differently.

6 Q Okay. No further questions. Thank you.

7 THE COURT: Thank you very much, Dr. Rose.

8 THE WITNESS: Okay. Thank you.

9 THE COURT: You may step down now.

10 (Whereupon, the witness exited the witness stand.)

11 THE COURT: Any objection to Dr. Rose being excused?

12 MR. YOUNG: No, sir.

13 MR. SHAFFER: None, Your Honor.

14 THE COURT: All right.

15 MR. YOUNG: And we appreciate her attendance.

16 THE COURT: Thank you very much.

17 THE WITNESS: Thank y'all. I've gathered up my stuff.

18 (Off the record briefly.)

19 MR. YOUNG: Your Honor, we call Coroner Keith Turner.

20 THE COURT: All right.

21 (Whereupon, the witness came forward.)

22 (Whereupon, Mr. Young and the court reporter
23 conferred.)

24 (Whereupon, State's Exhibit 22 was marked for
25 identification.)

DIRECT EXAMINATION BY MR. YOUNG - KEITH TURNER 300

1 KEITH TURNER, having been first duly sworn, testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. YOUNG:

5 Q Sir, would you give us your full and complete name and
6 spell the last part?

7 A Name's Brian Keith Turner, T-u-r-n-e-r.

8 Q Are you an official of the -- this -- this county?

9 A Yes, sir. I'm the ---

10 Q What -- what do you do for a living, so to speak, for
11 the county?

12 A I'm Saluda County coroner. Have been since January 1,
13 1993.

14 Q Yes, sir. And are you familiar with one Hydrick
15 Octavias Burno?

16 A Yes, sir.

17 Q What do you do as a coroner when it comes to a person
18 who dies in the county?

19 A I'm a -- a -- determine the cause and manner of the
20 death.

21 Q Yes, sir. Do you make a decision, sir, as whether a
22 person needs to be autopsied or not?

23 A Yes, sir.

24 Q Did you direct an autopsy in this case?

25 A Yes, sir.

1 Q Was one performed?

2 A Yes, sir.

3 Q Okay. At the conclusion of that autopsy and
4 conclusions reached by the medical examiner, did you issue
5 a death certificate in this case?

6 A Yes, sir.

7 Q Let me show you what's been marked as State's Exhibit
8 No. 22.

9 A Uh-huh.

10 Q You recognize that?

11 A Yes, sir, I done that.

12 Q What is that?

13 A That's a brain herniation [sic] and -- and a closed-
14 head injury.

15 Q Who's it pertain to?

16 A Hydrick Burno.

17 Q Is this the death certificate you issued on this case?

18 A Yes, sir, I did.

19 MR. YOUNG: We offer State's Exhibit No. 22, Your
20 Honor.

21 MR. SHAFFER: No objection, Your Honor.

22 THE COURT: All right. Without objection.

23 (Whereupon, State's Exhibit 22 was entered into
24 evidence.)

25 MR. YOUNG: Any questions? Please answer any

1 questions he has.

2 MR. SHAFFER: Just a couple questions.

3 CROSS-EXAMINATION

4 BY MR. SHAFFER:

5 Q You -- you base this off of the record that's given to
6 you, right?

7 A Off the autopsy report. Yes, sir.

8 Q Okay.

9 MR. SHAFFER: No further questions.

10 THE COURT: All right. Anything further for this
11 witness?

12 MR. YOUNG: No, sir.

13 THE COURT: Thank you very much, sir.

14 THE WITNESS: Thank you.

15 THE COURT: You may step down.

16 (Whereupon, the witness exited the witness stand.)

17 MR. MAYE: Your Honor, the state rests.

18 THE COURT: All right. Ladies and gentlemen, the
19 state has rested their case. At this point I have to take
20 up some matters of law that are required at the close of
21 the state's case. So I'm going to ask you, if you would,
22 to step into your jury room and have no conversation about
23 the case. I'll take up these matters of law, and then I'll
24 get you back out here quickly. Okay?

25 (Whereupon, the jury exited the courtroom at 3:42

1 p.m.)

2 (Off the record briefly.)

3 THE COURT: All right. At this time I'll take up any
4 motions at the close of the state's case from the defense.

5 MR. SHAFFER: Your Honor, we move for a directed
6 verdict in this case. I don't believe that they can
7 overcome their burden of proof in this matter.

8 THE COURT: All right, sir. I'm going to respectfully
9 deny that motion at this time. Mr. Shaffer, I think it's a
10 factual question for the jury to decide. And -- and
11 therefore, I -- I think it's appropriate that it go to the
12 jury for their consideration.

13 MR. SHAFFER: Thank you, Your Honor. It -- can I just
14 preserve that a little bit better than I actually did?

15 THE COURT: Go ahead. That's fine.

16 MR. SHAFFER: What -- what -- what I had intended on
17 saying is that I don't believe that they can come up with
18 any evidence of malice. I don't think that there is any in
19 this case. Because of that I don't think that they've met
20 their burden for murder, Your Honor.

21 THE COURT: All right. Well -- and -- and I -- again,
22 that -- my ruling remains the same because -- and -- and it
23 -- and it's the same reason. It -- I mean, there was
24 evidence. And -- and, of course, at this point, the Court
25 is only concerned about the existence of evidence and not

1 the weight of the evidence. That's to be done by -- or to
2 be done by the jury.

3 And in this case there is evidence in the record,
4 depending on how the jury will view that evidence,
5 regarding comments allegedly made by the defendant while
6 this process was going on and whether the jury believes
7 those -- those statements or -- or what weight they give to
8 those statements is certainly, I think, a jury issue. And
9 therefore, I'm going to respectfully deny your motion.

10 MR. SHAFFER: Thank you, Your Honor.

11 THE COURT: Anything further at this time?

12 MR. SHAFFER: Before we bring the jury back in, for
13 scheduling purposes, it's quarter till four. Your Honor,
14 I'm taken a little aback by -- I -- I had expected at least
15 one more witness from the state prior to this. I was
16 wonder if there's any way that we could actually present
17 the -- our case possibly -- go ahead and advise him of
18 what's impeachable and what's not and advise him of his
19 right to testify and then possibly pick up tomorrow
20 morning.

21 THE COURT: Okay. Well -- well, you certainly -- have
22 -- have y'all looked at -- I -- I don't -- have y'all
23 looked at the prior record and talked about it?

24 MR. MAYE: I think we've got two that we -- I think we
25 both agree are impeachable offenses.

1 THE COURT: What we'll ---

2 MR. MAYE: Because I -- I can certainly be here at
3 9:30 to ---

4 THE COURT: Sure.

5 MR. MAYE: --- do that.

6 THE COURT: We'll start at ---

7 MR. MAYE: Thank you.

8 THE COURT: --- 9:30 in ---

9 MR. MAYE: I appreciate that.

10 THE COURT: --- the morning.

11 Mr. Shaffer, you talk with your client; go over his
12 rights with him regarding his -- his rights regarding
13 testifying or not testifying. I know you have some other
14 witnesses, but obviously, you need to go over with Mr. Otts
15 his rights. And then, of course, I'll review them with him
16 as well before we get started.

17 MR. SHAFFER: Your Honor, and could we do -- the
18 charge conference is the only thing that I could see taking
19 a little while, Your Honor. I understand you probably have
20 charges you use all the time. I ---

21 THE COURT: I -- I've -- I mean, I've ---

22 MR. SHAFFER: --- might have ---

23 THE COURT: --- got some ---

24 MR. SHAFFER: --- some of ---

25 THE COURT: --- charges. But I'm certainly -- and --

1 and if you have any proposed charges you would like to
2 submit, I -- I'd -- I'd ask that you do that.

3 MR. SHAFFER: I -- I will, Your Honor. I think that,
4 at least for the self-defense, it's a little premature,
5 depending on how the testimony goes tomorrow with one of
6 our witnesses. The involuntary, I'm -- I'm, of course,
7 okay with, at least on that one, the Ralph King Anderson
8 book charge. And I'm not sure what charges you generally
9 go off of or if you have your complete own set of charges.

10 THE COURT: Well, you -- you can submit any request
11 that -- that you'd like to make. I -- I do use some of
12 Judge Anderson's language; some, I don't. It -- it -- but
13 I -- I was -- I had put together a draft of a proposed
14 charge. But I'll -- I will -- I'll consider anything you
15 want to submit. If I have it, great; if I don't and it's
16 appropriate, we'll -- we'll incorporate it.

17 MR. SHAFFER: All right. Thank you, Your Honor.

18 THE COURT: All right. All right. Well, then, we'll
19 -- we'll start back at 9:30 in the morning.

20 MR. MAYE: Thank you, Your Honor.

21 MR. SHAFFER: Thank you.

22 (Whereupon, the proceedings were adjourned at 3:54 p.m.)
23
24
25

DIRECT EXAMINATION BY MR. SHAFFER - RUSS PADGETT 318

1 MR. SHAFFER: Okay.

2 THE COURT: --- you'd like.

3 MR. SHAFFER: Thank you, Your Honor.

4 THE COURT: From this officer?

5 MR. SHAFFER: Yes, Your Honor.

6 THE COURT: All right. Officer, come on around and --
7 and we'll go ahead and place you under oath and -- and let
8 Mr. Shaffer proffer whatever testimony he would like to
9 proffer.

10 (Whereupon, the witness came forward.)

11 RUSS PADGETT, having been first duly sworn,
12 testified as follows:

13 THE COURT: All right. Go ahead.

14 MR. SHAFFER: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. SHAFFER:

17 Q Officer Padgett, now, what time were you dispatched to
18 the scene of this incident?

19 A We received the call and I was dispatched at 2154.

20 Q And what time did you arrive?

21 A At 2203.

22 Q So you arrived about six minutes later -- seven/eight?

23 A Nine.

24 Q Nine minutes later. I apologize. My math is bad.

25 And whenever you got to the scene, what -- what was

1 going on? Would you describe the scene for us?

2 A Someone come running up to my car and was telling me
3 what happened. And that person kind of disappeared on me.
4 And I seen Mr. Burno and Ms. Stallworth over by the
5 sidewalk. And Mr. Burno was sitting up, and he was real
6 dizzy and confused-acting.

7 I asked him what happened, at which time he told me
8 that Mr. Otts had punched him.

9 MR. MAYE: Now, Your Honor, I'm going to preserve any
10 objection to hearsay on all of it. And I wouldn't normally
11 be allowed to go into any of that. But just for the
12 purpose of this hearing -- but I'd still want to preserve
13 that.

14 THE COURT: Yes, sir.

15 MR. MAYE: I would object to that coming forth from
16 the jury on the grounds that it's hearsay with no
17 exception.

18 THE COURT: All right, sir. You may proceed. And I'm
19 -- I've noted this objection. The -- right now we're just
20 in -- just for the record, the jury is not present and this
21 is testimony that is being proffered by the defense. So
22 I'll note the state's objection to the hearsay and allow
23 you to proceed and have him answer questions.

24 Q And you said somebody came running up to tell you what
25 happened?

DIRECT EXAMINATION BY MR. SHAFFER - RUSS PADGETT 320

1 A Yes.

2 Q Okay. What did they tell you happened?

3 A That Steven Otts had hit the guy that was sitting on
4 the ground.

5 Q Okay. Did they tell you anything else?

6 A No. I went -- I went over to deal with him because, I
7 mean, it was obvious that he was very hurt.

8 Q Okay. And he -- he was sitting up and conscious at
9 that time?

10 A Yes. But he was kind of swaying and his -- his eyes
11 was real glassy-looking and he ---

12 Q Did he smell like alcohol?

13 A I don't -- I don't remember if he did ---

14 Q Okay.

15 A --- or not. I mean, it was 20 or 30 people out there
16 and ---

17 Q There were 20 or 30 people?

18 A (Nodded head up and down.)

19 Q Did you hear -- did the victim speak to you or speak
20 in your presence?

21 A Yes.

22 Q What did he speak to?

23 A He told me what happened.

24 Q He told you what happened? What ---

25 A Yeah.

1 Q --- did he tell you happened?

2 A That he went there to intervene on behalf of his
3 cousin getting beat up by Steven Otts, and that's when Mr.
4 Otts hit him.

5 Q Okay. And ---

6 MR. SHAFFER: Court's indulgence just a moment.

7 (Whereupon, Mr. Shaffer and Ms. Johnson conferred.)

8 Q It -- but he did indicate at some point that he didn't
9 want to press any charges, right?

10 A Yeah. He -- he did say that. And when asked to sign
11 the victim's form, he was unable to sign due to his
12 injuries. And he just -- he put a line on the victim's
13 form.

14 Q Okay.

15 A So I ---

16 MR. SHAFFER: I have no further questions, Your Honor.

17 THE COURT: All right. Mr. Maye, anything?

18 MR. MAYE: Just a couple.

19 CROSS-EXAMINATION

20 BY MR. MAYE:

21 Q Officer, in this case he was confused and addled --
22 you said in this case he was confused and addled; when you
23 got there, you could tell that he was messed up?

24 A Yes, sir.

25 Q Okay. He wasn't in an excited state; he was just

1 confused and addled, unable to sign the victim form?

2 A Right.

3 Q Okay. Would you have given much regard to anything he
4 said at that point in time ---

5 A No.

6 Q --- in regard to influencing your decision one way or
7 another?

8 A No.

9 Q Any more so than if he'd have said, "I want to put him
10 in jail for the rest of his life and prosecute it to the
11 full extent of the law"? At that point in time, would you
12 have given it much credence?

13 A It -- it'd have been the same charge.

14 MR. MAYE: Thanks, Your Honor.

15 MR. SHAFFER: I appreciate you letting me proffer him.
16 Does he need to just stay up there when the witness [sic]
17 comes up?

18 THE COURT: No. I -- well, what we'll do is I'll get
19 you to have a seat, officer.

20 THE WITNESS: Okay.

21 THE COURT: And we'll just come back up. But I --
22 I'll ---

23 THE WITNESS: Want me to leave this here?

24 THE COURT: You can if you'd like. Yeah. But -- and
25 I'll just remind him that he's -- he's still under oath.

1 (Whereupon, the witness exited the witness stand.)

2 MR. SHAFFER: Thank you, Your Honor. I appreciate
3 that.

4 MR. MAYE: Your Honor, briefly, the state's position
5 on this is, like I said, I don't think it's in -- I think
6 that Your Honor's ruling was correct that it's not relevant
7 evidence. And I thought about it this morning. And it's
8 no more relevant than the line that I just asked the
9 officer.

10 Had he blurted out at that point in time, "I want this
11 guy put in jail for the rest of his life; I want y'all to
12 throw the book at him," that's no more relevant evidence
13 this of whether or not the assault took place that is the
14 subject of the murder case that we're here for this
15 morning.

16 And I -- I think that the Court's ruling is completely
17 on point in this case. It's no more relevant than that
18 statement would have been. And it just doesn't fall under
19 any hearsay exception.

20 This individual -- there's no indication that it was
21 some present-sense impression or -- I -- I looked at the
22 law on present-sense impression and excited utterance. And
23 it appears to almost overlap. But there's no evidence that
24 this was a guy who was blurting out things that would give
25 it that inherent truthfulness that make it a -- a hearsay

1 or excited-utterance exception.

2 In fact, the officer has said that the person was so
3 confused and addled, he was almost unable to sign the
4 victim's form in this case. So it certainly would not have
5 that indicia of reliability that would enable us to have an
6 exception to the hearsay rule.

7 We did not attempt -- or were not going to attempt in
8 the state's case to proffer any of that information because
9 we knew it just didn't fall under any exception to hearsay.

10 THE COURT: All right.

11 MR. SHAFFER: Your Honor, I'm just going to rely on my
12 previous argument. I'm not going to argue any further. I
13 -- I understand the Court's ruling. And, you know, I -- I
14 -- I basically just wanted to proffer him, Your Honor.

15 THE COURT: Sure. Yeah.

16 MR. SHAFFER: I ---

17 THE COURT: And that ---

18 MR. SHAFFER: --- I ---

19 THE COURT: --- and that's not a problem. I'm glad --
20 glad you did that. And -- and you -- and -- and after
21 hearing the proffered testimony -- and so I'm sure this
22 will come in no -- is no surprise to you -- it -- it
23 doesn't really alter the -- my ruling. I -- I think my
24 ruling will -- will stand, based on the -- the reasons I
25 gave earlier.

DIRECT EXAMINATION BY MR. SHAFFER - RUSS PADGETT 326

1 morning. Hope everyone had a good night's rest, ready to
2 go back to work. If you recall, yesterday when -- when you
3 were here, we -- the state had rested their case. And I
4 just thought it was a -- with the time we had left in the
5 afternoon, it was a good time just to break; let me take up
6 the motions that I needed to take up, with regards to the
7 -- any motions at the close of the state's case. And
8 rather than have you sit while I do that, I just had you
9 come back to -- this morning.

10 So we are now ready to proceed with the jury trial.
11 And I would recognize Mr. Shaffer on behalf of the defense.
12 Mr. Shaffer?

13 MR. SHAFFER: Thank you, Your Honor. The defendant
14 calls Russell Padgett to the stand.

15 THE COURT: All right. Officer, if you'd please come
16 around and -- you can come around and have a seat.

17 (Whereupon, the witness came forward.)

18 THE COURT: Remember, sir, that you are still under
19 oath.

20 THE WITNESS: Yes, sir.

21 DIRECT EXAMINATION

22 BY MR. SHAFFER:

23 Q Officer Padgett, you responded to the scene that
24 night, correct?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. SHAFFER - RUSS PADGETT 327

1 Q And you were dispatched in reference to a argument or

2 ---

3 A The ---

4 Q --- a fight?

5 A The dispatch was for an assault.

6 Q Okay. And when you arrived on the scene, could you
7 describe the scene for us?

8 A It was 20 or 30 people in the parking lot. People
9 were yelling, and it was very obvious that the victim in
10 this case was hurt. My main concern was to secure the
11 scene so EMS could come get him. And I did that. And then
12 EMS came.

13 Q Okay. And was the victim conscious when you got
14 there?

15 A He was.

16 Q Okay. Now, when EMS came to the scene, they
17 transported the victim, right?

18 A Yes.

19 Q And did you see Ms. Coleman there -- Saca Coleman?

20 A I don't -- I don't remember if she was out there or
21 not.

22 Q Okay. Do you have a copy of your incident report?

23 A Yes, I do.

24 Q Could you read over that and refresh your recollection
25 as to whether she was there or not?

1 A Yes, she was -- Ms. Coleman was there.

2 Q Okay.

3 A I spoke with her.

4 Q You spoke with Ms. Coleman there?

5 A I did.

6 Q And this has been a long time ago, right?

7 A Yeah.

8 Q So ---

9 A Two years.

10 Q It -- it's understandable that you might forget?

11 Could you ---

12 A Yeah.

13 Q Okay. But you would -- you would rely on your
14 statement probably -- I mean, your -- your report?

15 A Right.

16 Q Okay. And everything in your report would be
17 accurate?

18 A Yes, sir.

19 Q Actually, going into reports -- well, tell us a little
20 bit about your job, police officer.

21 A Yeah. At this time or currently?

22 Q Well, yeah. At this -- at that time.

23 A All right. I was the night-shift supervisor for the
24 county at that time. We answered calls for service. And
25 once we complete a call for service, we go back to the

DIRECT EXAMINATION BY MR. SHAFFER - RUSS PADGETT 329

1 office and do a report so that it's still fresh on our mind
2 and that way we can put as much detail as possible in the
3 report.

4 Q Okay. And I guess it's important to put those details
5 in the report?

6 A Yes.

7 Q Okay. And you're trained actually to put details in
8 reports, correct?

9 A That's right.

10 Q Okay. You went to the academy and they actually teach
11 a class in proper way to write a report, correct?

12 A They do.

13 Q Okay. And you attended that class?

14 A Yes, sir.

15 Q Okay. Now, this happened -- or what time did this
16 occur? What -- what day and time did this occur?

17 A It occurred January 27th, 2011, at Peach Leaf Curl in
18 Ridge Spring, which is in Saluda County. And I was
19 dispatched at 9:54 p.m. And I arrived on scene at 10:03
20 p.m.

21 Q Okay. Now, you -- you had also said that when you
22 arrived, there were a lot of people there. Could you
23 estimate the number?

24 A Probably 20 -- 20 or more. The ---

25 Q Twenty ---

1 A --- parking lot ---

2 Q --- or more people?

3 A The parking lot was pretty full.

4 Q Okay. And that's why you had to secure it for EMS?

5 A Right. Well, anytime there's a call for EMS and it's
6 involving a fight, they wait for law enforcement to get
7 there to make sure the scene is secure for their safety ---

8 Q So they're ---

9 A --- or for ---

10 Q --- actually ---

11 A --- their ---

12 Q --- waiting down the road ---

13 A Yes.

14 Q --- if they get there first?

15 Okay. Now, what day was Steven Otts arrested for
16 this?

17 A I'm not sure. I don't have a booking here.

18 Q You said you don't have his booking sheet?

19 A I do not.

20 Q It's safe to say that -- well, you spoke to him on the
21 31st, right?

22 A Yes.

23 Q Do you remember what time you spoke to him?

24 A At eleven o'clock at night is what time he signed his
25 waiver-of-rights form.

DIRECT EXAMINATION BY MR. SHAFFER - RUSS PADGETT 331

1 Q Eleven o'clock in the morning?

2 A At night.

3 Q Oh, at night. Okay.

4 A Yes, sir.

5 Q So was he in custody at that point?

6 A Yes, he was.

7 Q And so we know that by January 31st, he was in
8 custody, right?

9 A Right.

10 Q And you spoke to him and he gave you a statement?

11 MR. MAYE: Your Honor ---

12 A He did.

13 MR. MAYE: --- I'm going to object to anything that he
14 said as -- on ---

15 A He did ---

16 MR. MAYE: --- grounds of hearsay.

17 A He did ---

18 THE COURT: All right.

19 A --- give me a statement.

20 MR. SHAFFER: I -- I wasn't ---

21 THE COURT: Sustained.

22 MR. SHAFFER: --- planning on getting into it at the
23 moment.

24 THE COURT: All right.

25 MR. SHAFFER: Your Honor, I was going to have

1 something marked for ID purposes only and not ask on the
2 hearsay. It'll ---

3 THE COURT: You can have it marked ---

4 MR. SHAFFER: --- you -- you'll ---

5 THE COURT: --- for ID.

6 MR. SHAFFER: --- understand later.

7 THE COURT: All right.

8 MR. SHAFFER: Thank you, Your Honor. I'd like this
9 marked Defense Exhibit -- I'm not sure which -- 5?

10 (Whereupon, Defendant's Exhibit 5 was marked for
11 identification.)

12 (Whereupon, Mr. Maye and Mr. Shaffer conferred.)

13 MR. SHAFFER: I apologize to the Court. I only had
14 two copies, and I needed ---

15 THE COURT: That's okay.

16 MR. SHAFFER: --- one of them ---

17 THE COURT: That's fine.

18 MR. SHAFFER: --- Your Honor.

19 Q I'm showing you what's been marked Defense Exhibit 5
20 for the purposes of identification. Is that a statement
21 that you took from Steven Otts?

22 A Yes.

23 Q And you took that on the -- the 31st?

24 A Yes.

25 Q I'm going to show you wants been marked Defense

DIRECT EXAMINATION BY MR. SHAFFER - RUSS PADGETT 333

1 Exhibit 1 for the purposes of identification. Does that
2 picture appear to -- or are you familiar with the inside of
3 the detention center in Saluda County?

4 A I am.

5 Q Does that picture appear to be taken from the inside
6 of the Saluda County Detention Center?

7 A It appears to be in the booking room.

8 Q In the booking room?

9 A Yes.

10 Q And is that a secure facility? I mean, I -- I
11 couldn't just walk in off the street and open a door and go
12 there, right?

13 A No, sir.

14 Q Okay. I would have to get past the guard to get in
15 there, right?

16 A Right.

17 Q Okay. After speaking with Mr. Otts -- and I'm not
18 asking you what he said. But after speaking with him, did
19 you examine any of his personal property?

20 A I did not.

21 Q You did not?

22 A No.

23 Q Okay. Now, I'm not asking you what anyone said. But
24 did you charge anyone with criminal domestic violence as a
25 result of the incident that you arrived to? That night,

1 the 27th, as a result of that incident, did you charge
2 anyone with criminal domestic violence?

3 A I did not.

4 Q Okay.

5 MR. SHAFFER: No further questions, Your Honor.

6 THE COURT: All right.

7 CROSS-EXAMINATION

8 BY MR. MAYE:

9 Q Investigator Padgett, you went out there that night,
10 right?

11 A Yes, sir.

12 Q When you got there, you could tell that the victim in
13 this case, Hydrick Burno, was very seriously injured, could
14 you not?

15 A Yes, sir.

16 Q Okay. In fact, you went over and examined him and he
17 seemed very confused and you could tell that he had been
18 the subject of some sort -- sort of very serious trauma, in
19 fact, couldn't you?

20 A Yes, sir.

21 Q Okay. But you went around at that point in time and
22 you secured the scene to make sure that he was safe and
23 everyone else was safe, correct?

24 A Yes, sir.

25 Q Then you also went around and talked to as many people

1 as you could to try to gather information about what had
2 occurred, given the fact that Hydrick Burno, the victim in
3 this case, was so severely injured, did you not?

4 A That's right.

5 Q Okay. But as is often the case, even with 20 or 30
6 people around when something happens, sometimes it's
7 difficult to get anybody to tell you anything as a police
8 officer, isn't it?

9 A Yes, sir.

10 Q Okay. No matter how many people see things sometimes,
11 it's just hard to get people to talk to you, isn't it?

12 A Yes, sir. They just don't want to get involved.

13 Q Okay. But the bottom line is you were able to gather
14 information on what happened in this case, weren't you?
15 You talked to Ms. Stallworth, didn't you?

16 A I did.

17 Q Okay. And you got information from her. And let's
18 talk about not just at the scene, but prior to you getting
19 the charges in this case -- because you did institute
20 charges in this case, correct?

21 A Yes, I did.

22 Q Okay. You talked with Ms. Lakeisha Stallworth, didn't
23 you?

24 A I did.

25 Q And she told you that Hydrick Burno had come out and

1 -- to try to assist his cousin in this case that ---

2 MR. SHAFFER: Objection ---

3 Q --- was being assaulted.

4 MR. SHAFFER: --- Your Honor.

5 THE COURT: All right. Hold on.

6 MR. SHAFFER: Hearsay. I think ---

7 MR. MAYE: The statement's in evidence, Your Honor.

8 MR. SHAFFER: Oh. I -- I apologize. You're right.

9 MR. MAYE: The statement's in evidence.

10 MR. SHAFFER: Okay. I ---

11 THE COURT: Okay.

12 MR. SHAFFER: For some reason, I was thinking of a
13 different witness in my head, so ---

14 THE COURT: All right.

15 MR. SHAFFER: --- I apologize.

16 THE COURT: Well ---

17 MR. MAYE: And in this ---

18 THE COURT: --- so you withdraw the objection and ---

19 MR. SHAFFER: Yeah. I ---

20 THE COURT: --- we'll move on.

21 MR. MAYE: And in ---

22 MR. SHAFFER: --- I withdraw ---

23 MR. MAYE: --- this case ---

24 MR. SHAFFER: --- Your Honor.

25 MR. MAYE: --- Your Honor, both of these witnesses

1 have already testified and been subjected to cross-
2 examination in the court here. And the matters that they
3 have stated are not hearsay because they have made these
4 statements and it's been subject to cross-examination in
5 this case, Your Honor, in both instances with both of the
6 witnesses in ---

7 MR. SHAFFER: You ---

8 MR. MAYE: --- this case.

9 MR. SHAFFER: --- Your Honor, I -- if he goes into
10 that stuff, I'd definitely disagree and have a matter of
11 law at that point. It -- I mean, I -- I think that that's
12 a overly broad view of what hearsay is and what hearsay
13 isn't.

14 It might not be confrontation at that point, but it
15 certainly is hearsay, Your Honor. And I -- if -- if ---

16 THE COURT: Well, if he ---

17 MR. SHAFFER: --- if he goes ---

18 THE COURT: --- if he ---

19 MR. SHAFFER: --- into ---

20 THE COURT: --- goes into ---

21 MR. SHAFFER: --- it, I'll make the objection.

22 THE COURT: All right.

23 MR. SHAFFER: Thank you, Your Honor.

24 MR. MAYE: Okay.

25 Q But Ms. Stallworth, in fact, told you that Hydrick

1 Burno came out to assist his cousin and to try to calm what
2 she said was Ox down. But that's Mr. Otts, the defendant
3 in this case, right?

4 A Right.

5 Q And she said to start with, he just tried to talk to
6 him; he tried to calm him down, right?

7 A That's right.

8 Q She actually gave you information that Mr. Otts pushed
9 him as a result of trying to do that, didn't she?

10 A Right.

11 Q Okay. And further, that he didn't stop; that he
12 continued this assault on his girlfriend, Saca Jawa; isn't
13 that right?

14 A That's right.

15 Q Okay. She said that he continued to try to calm him
16 down and talk to him even further after that; isn't that
17 right?

18 A Right.

19 Q Okay. But you had information that he had been
20 punched, right?

21 A Yes.

22 Q Okay. And you've been asked in this case already
23 about the charges: you know, when the charges were served
24 and all of that. But what -- based on your investigation
25 and talking with everyone that would talk with you and

1 looking at the victim and doing all of the things that you
2 did to investigate, what charges did you institute against
3 Mr. Otts, the defendant in this case?

4 A I charged him initially with assault and battery with
5 intent to kill -- I mean, assault and battery of a high and
6 aggravated nature, which they had just changed the law. It
7 used to be assault and battery with intent to kill.

8 Q Okay.

9 A So anything short of murder would be assault and
10 battery of a high and aggravated nature.

11 Q And I was going to ask you about that, because you
12 misspoke immediately because you'd been a police officer
13 for a long time at that point in time already ---

14 A Right.

15 Q --- correct?

16 And prior to the change in the law -- and I believe it
17 was earlier that month ---

18 MR. SHAFFER: Objection ---

19 Q --- isn't that right?

20 MR. SHAFFER: --- Your Honor.

21 A It ---

22 MR. SHAFFER: The name of the statute, it really isn't
23 relevant.

24 THE COURT: Well, I'm going to overrule. He can
25 testify ---

1 MR. SHAFFER: Thank you.

2 THE COURT: --- to his ---

3 A They -- they changed it just a few months prior to
4 this. I think it was in 2010.

5 Q And it's now called "assault and battery of a high and
6 aggravated nature"?

7 A Right.

8 Q But prior to that time, it would've been the same
9 thing; it's assault and battery with intent to kill?

10 A That's right.

11 Q Okay. So you did you investigation in this case out
12 at the scene, correct?

13 A Yes, sir.

14 Q Okay. And you charged him with assault and battery of
15 a high and aggravated nature, which was the same thing as
16 the old assault and battery with intent to kill, right?

17 A Right.

18 Q Okay. In this case you found that Hydrick Burno was
19 coming out to assist his cousin, correct?

20 A That's right.

21 Q Okay. Did you factor into your consideration of what
22 charge to give that he was coming in defense of another
23 person, a family member?

24 A That's right.

25 Q Okay.

1 A I'm -- you ---

2 Q Because there were other charges you could've charged
3 him with, correct?

4 A Right. And someone has the right to defend their
5 family members.

6 Q Okay.

7 MR. SHAFFER: Objection, Your Honor. He can't stay --
8 Your Honor, he -- he's giving a -- a statement of law.
9 He's a fact witness. He's not ---

10 THE COURT: All right.

11 MR. SHAFFER: --- that's an opinion.

12 THE COURT: Sustained. Yeah. We'll ---

13 MR. SHAFFER: Thank you, Your Honor.

14 THE COURT: --- strike that.

15 Q But that's what you charged him with initially ---

16 A Right.

17 Q --- the ABHAN, which was the old ABWIK, right?

18 A Right.

19 Q Okay. Then you discovered that Hydrick Burno died as
20 a result of his injuries in the hospital, correct?

21 A Correct.

22 Q And prior to us being up here, the charge was changed
23 to murder, correct?

24 A Correct.

25 Q All right. That's all the questions I have for you.

1 Thanks.

2 REDIRECT EXAMINATION

3 BY MR. SHAFFER:

4 Q Investigator Padgett ---

5 A Yes, sir.

6 Q --- you've been an officer for a long time?

7 A Since 2005.

8 Q Since 2005?

9 A Yes, sir.

10 Q How many people have you arrested for simple assault?

11 A I have no idea. Numerous.

12 Q More than one?

13 A Yes.

14 Q Many?

15 A Yes.

16 Q Okay. And how many people have you arrested for
17 what's now -- what used to be simple assault, which is now
18 assault and battery-third, right?

19 A Yes.

20 Q And where are those charges taken care of at?

21 A Magistrate court.

22 Q Because they're misdemeanors, right?

23 A Right.

24 Q Okay. Whenever somebody punches somebody one time and
25 they don't have a fractured skull and they don't have a --

REDIRECT EXAMINATION BY MR. SHAFFER - RUSS PADGETT 343

1 they don't go to the hospital, is your inclination to
2 charge them with a higher charge or charge them with simple
3 assault or assault and battery-third?

4 A Depends on their injuries.

5 Q If their injuries are not as bad, just a bruise, would
6 you have charged -- or would you general charge simple
7 assault?

8 A Yes.

9 Q For one punch? Or assault and battery-third ---

10 A It -- it don't matter how many punches it is. If
11 there's no injuries, it's simple assault.

12 Q So you charged him with assault and battery of a high
13 and aggravated nature based off the fact he went to the
14 hospital?

15 A Right.

16 Q Okay.

17 A And it ---

18 Q Because ---

19 A --- was a ---

20 Q --- his injuries?

21 A --- life-threatening injury.

22 Q Okay.

23 A Correct.

24 Q All right.

25 MR. SHAFFER: No further questions.

1 MR. MAYE: Nothing else from the state.

2 THE COURT: Thank you very much, officer. You may
3 step down, sir.

4 THE WITNESS: Yes, sir.

5 (Whereupon, the witness exited the witness stand.)

6 THE COURT: All right. You may call your next
7 witness.

8 MS. JOHNSON: Your Honor, we'd like to call Ms. Saca
9 Jawaia Coleman.

10 THE COURT: All right. Is Ms. Coleman present? It
11 ---

12 MS. JOHNSON: I believe she's outside.

13 THE COURT: All right. We need to send -- we need Ms.
14 Coleman to step in, please.

15 MR. SHAFFER: Your Honor, can we approach real quick?

16 THE COURT: Yes, sir. Uh-huh.

17 (Whereupon, a bench conference was held off the record
18 in the presence of the jury, but out of the hearing of
19 the jury.)

20 (Whereupon, the witness came forward.)

21 THE COURT: Ms. Coleman, if you would -- ma'am, please
22 come around to be sworn.

23 SACA JAWEA COLEMAN, having been first duly sworn,
24 testified as follows:
25

DIRECT EXAMINATION BY MS. JOHNSON - SACA JAWEA COLEMAN 345

DIRECT EXAMINATION

BY MS. JOHNSON:

Q Ms. Coleman, please state your full name.

A Saca Jawea Denise Coleman.

Q Okay. Are you -- are you part-Indian?

A No.

Q How'd you get a name like Saca Jawea?

A My auntie gave it to my ma.

Q Okay. You seem a little unsettled today. What's ---

A Uh-huh.

Q --- going on with you?

A Well, one, I'm nervous. And I have a heart condition.
I'm scared.

Q Well, I'm a -- I'm a little nervous too. This is my
first direct examination. And I just want to say that I'm
aware that you have the heart condition and if you ---

MR. MAYE: Your Honor, that's not a question. I
object to that. That's just ---

THE COURT: Yeah.

MR. MAYE: --- a statement.

THE COURT: Let's just ---

MR. MAYE: Irrelevant.

THE COURT: --- just go on with your examination.

MS. JOHNSON: Okay.

Q Can you tell me how January 27th, 2011, started out?

DIRECT EXAMINATION BY MS. JOHNSON - SACA JAWEA COLEMAN 346

1 A First started out with me, Lakeisha, and Antonio
2 hanging out, riding around, drinking, sitting in our yard.

3 Q Okay. So who all was drinking?

4 A Me, Lakeisha, and Antonio.

5 Q Okay. And how much did y'all have to drink?

6 A A lot, over ten.

7 Q Over ten ---

8 A --- drinks.

9 Q Ten -- ten alcoholic beverages?

10 A Yes.

11 Q And -- yeah. How long were y'all there out in the
12 yard?

13 A For a long time. We started at, like, 3:30/4.

14 Q Three-thirty/four ---

15 A --- in the afternoon.

16 Q P.m.?

17 A Uh-huh.

18 Q Did Keisha go to work that day?

19 A No.

20 Q Okay. How do you know she didn't go to work?

21 A Because we was together. I -- she stayed in the
22 apartments right across from my grandma.

23 Q Okay. Was Steven in the yard with y'all, drinking?

24 A No.

25 Q Tell me: How did you end up at the apartments?

DIRECT EXAMINATION BY MS. JOHNSON - SACA JAWEA COLEMAN 347

1 A At which apartments?

2 Q The --the apartments that are on this board right
3 here, these Peach ---

4 A Orchard Park?

5 Q Yeah.

6 A We left this dude named CA house; went to apartments
7 and got Steven; and went to Orchard Park Apartments.

8 Q Okay. So why -- why were you going to the apartments?

9 A That's where Steven was staying at the time.

10 Q Okay. Tell me what happened when you got to the
11 apartments.

12 A He wanted me to get out the car -- out the truck, and
13 I wasn't ready to go. I wasn't finished partying yet. So
14 ---

15 Q Okay.

16 A --- he was, like, "Come on. Let's go."

17 Q All right. And did -- did Steven assault you that
18 night?

19 A No.

20 Q Did Steven punch you that night?

21 A No.

22 Q I'm not trying to embarrass you. But were you wearing
23 a shirt that night?

24 A Yes.

25 Q Were you wearing a shirt that could've been mistaken

DIRECT EXAMINATION BY MS. JOHNSON - SACA JAWEA COLEMAN 348

1 as a jacket?

2 A No.

3 Q Did he pull your shirt off?

4 A No.

5 Q Were you wearing a coat?

6 A No.

7 Q Did -- so there was no coat to pull off?

8 A No.

9 Q How -- how did Hydrick get involved in this?

10 A He came out the door. Someone went and got him; he
11 came out the door.

12 Q Is Hydrick your cousin?

13 A No. My uncle married his mom.

14 Q So your -- your uncle on your mom or your dad's side?

15 A My dad's side.

16 Q Your uncle on your dad's side married Hydrick's
17 mother?

18 A Uh-huh.

19 Q And y'all are -- y'all don't have any blood
20 connection?

21 A No.

22 Q Okay. But do you consider Hydrick to -- did you --
23 I'm sorry. Did you consider Hydrick to be your friend?

24 A Yes. My friend.

25 Q Did you care about him?

DIRECT EXAMINATION BY MS. JOHNSON - SACA JAWEA COLEMAN 349

1 A Yes.

2 Q Okay. Tell me what happened when Hydrick came.

3 A He came and he was, like, "Come on" -- well, he called
4 him "Dirt" -- "Come on, Dirt. Calm down. Let's just go in
5 the house." And he kept grabbing on him and grabbing on
6 him.

7 And Steven was, like, "Get off me, man. Get off me."
8 And he just kept grabbing on him.

9 Q Okay. How tall was Hydrick -- how -- how tall and how
10 much did he weigh? How big was he, relative to Steven?

11 A Hydrick weigh about two-something. And I think me and
12 him should be same height, which I'm five-eleven -- five-
13 nine/five-eleven.

14 Q Okay. Let's see. Was Hydrick holding Steven when
15 Steven punched him?

16 A I didn't see that part. That was behind the truck
17 when that happened.

18 Q Okay. Did Steven say, "When you let me loose, I'm
19 going to knock you out"?

20 A He said, "If you don't let me go, I'm going to hit
21 you."

22 Q Okay. So he -- you're saying he said, "If you don't
23 let me go, I'm going to hit you"?

24 A Yes.

25 Q Was Steven wearing a jacket that day?

DIRECT EXAMINATION BY MS. JOHNSON - SACA JAWEA COLEMAN 350

1 A Yes.

2 MS. JOHNSON: Court's indulgence?

3 THE COURT: Yes, ma'am.

4 (Whereupon, Mr. Shaffer and Ms. Johnson conferred.)

5 Q I am going to show you a -- a piece of -- a photograph
6 that has been identified but hasn't been admitted into
7 evidence for identification purposes. Is this the jacket
8 that Steven was wearing that night?

9 A Yes.

10 Q Okay.

11 MS. JOHNSON: Please let the record reflect that this
12 is the same jacket that the officer testified about
13 previously.

14 MR. MAYE: Your Honor, I can save her time. If they
15 want to put the picture in, if they want to put the jacket
16 in, any of that stuff they want to do, I'm -- they're
17 welcome to it.

18 THE COURT: Well ---

19 MR. MAYE: I'll stipulate ---

20 THE COURT: And -- and let me ---

21 MR. MAYE: --- to any of that.

22 THE COURT: --- let me just say this: that I -- I
23 can't -- I can't -- the officer never -- he -- no one ever
24 identified that jacket.

25 MR. SHAFFER: I -- I understand, Your Honor. We'll --

DIRECT EXAMINATION BY MS. JOHNSON - SACA JAWEA COLEMAN 351

1 we'll stipulate, Your Honor. We'll -- if the state's
2 willing to stipulate at this point.

3 MR. MAYE: They can put it in, Your Honor. It doesn't
4 ---

5 MR. SHAFFER: Okay.

6 MR. MAYE: --- matter to me. They can ---

7 MR. SHAFFER: Can we ---

8 MR. MAYE: --- they ---

9 MR. SHAFFER: --- put ---

10 MR. MAYE: They're welcome to put them in.

11 MR. SHAFFER: Can we ---

12 THE COURT: All right.

13 MR. SHAFFER: --- put both of them in, Your Honor?

14 MR. MAYE: Sure. Right now, as defense exhibits. I
15 can save y'all the time.

16 MS. JOHNSON: Okay.

17 THE COURT: All right.

18 MR. SHAFFER: Thank you.

19 MS. JOHNSON: We'd like to enter into evidence Defense
20 Exhibit No. 1.

21 THE COURT: All right. Defense 1, without objection.
22 And have you marked the jacket itself yet?

23 MR. SHAFFER: I believe so, Your Honor.

24 THE COURT: They can mark the bag. They don't have to
25 mark the jacket -- or ---

DIRECT EXAMINATION BY MS. JOHNSON - SACA JAWEA COLEMAN 352

1 MR. SHAFFER: Oh, they've ---

2 THE COURT: --- she can ---

3 MR. SHAFFER: --- marked it.

4 THE COURT: Okay. Good.

5 MR. SHAFFER: So ---

6 THE COURT: And that's defense what?

7 MR. SHAFFER: This is Defense Exhibit 2, Your Honor.

8 THE COURT: All right. One and 2 are both in without
9 objection.

10 (Whereupon, Defendant's Exhibits 1 and 2 were entered
11 into evidence.)

12 MS. JOHNSON: So I can hand that to the ---

13 THE COURT: You can.

14 MS. JOHNSON: Okay.

15 Q Let's see. Where was I? Okay. So I had -- had just
16 asked you was Steven wearing a jacket that day.

17 A Yes.

18 Q And you say "yes." And you said this is the jacket he
19 was wearing?

20 A (No audible response.)

21 Q And the -- my question is: Was that jacket
22 malfunctioning in any way prior to that day?

23 A No.

24 Q Okay. Tell me what happened when Hydrick went down.

25 A When he went down, the people that was outside was,

DIRECT EXAMINATION BY MS. JOHNSON - SACA JAWEA COLEMAN 353

1 like, "Oh, oh, you know."

2 And Steven went over there and tried to help him out.
3 He grabbed him by his hands and was, like, "Come on. Come
4 on, Hydrick. Get up. Stop playing. Get up, Hydrick."
5 And he -- he wasn't moving.

6 Q Did Steven pick Hydrick up?

7 A No.

8 Q Did you give a statement to the police regarding this
9 incident?

10 A Yes.

11 Q Was Steven's jacket ripped when he left?

12 A Yes.

13 Q Okay. Tell me what happened after, you know -- we're
14 up to the point where Hydrick is on the ground. You --
15 you've testified Steven did not pick him up. Tell me what
16 happened next.

17 A After that Steven seen that he wouldn't get up, and he
18 left. He ran.

19 Q Okay. Okay. What -- what did you do next?

20 A Next, me and Lakeisha got back in the truck -- because
21 we had stood out at that point in time -- got in the truck;
22 went to her apartment; got her car; and came back to the
23 scene.

24 Q And why did you -- why'd you get a car?

25 A Because we didn't have any other transportation ---

DIRECT EXAMINATION BY MS. JOHNSON - SACA JAWEA COLEMAN 354

1 Q Okay.

2 A --- to leave from Orchard Park.

3 Q Okay. What'd you do after returning?

4 A After returning, someone was holding Hydrick up. And
5 we walked over there to where he was. And he was, like,
6 "What happened? What happened?"

7 And then I walked to the apartments where his aunt
8 live and got her, and she came outside.

9 Q Okay. All right. This part, you know -- I'm not --
10 I'm not trying to embarrass you, not trying to harass you,
11 or shame you. But in a situation like this case ---

12 MR. MAYE: Your Honor, I object. That's not a
13 question. It's just a narration.

14 THE COURT: All right. Now, just ask ---

15 MR. MAYE: I -- I -- she ---

16 THE COURT: --- your question.

17 MR. MAYE: --- needs to frame it in the form of a
18 question, not ---

19 THE COURT: Just ask ---

20 MR. MAYE: --- some ---

21 THE COURT: --- your question.

22 MR. MAYE: --- narration.

23 THE COURT: She understands she's a witness on the
24 witness stand.

25 MS. JOHNSON: All right.

DIRECT EXAMINATION BY MS. JOHNSON - SACA JAWEA COLEMAN 355

1 Q Were -- were you convicted in Edgefield for a
2 misdemeanor, filing a false police report, in January 18th,
3 2011?

4 A Yes.

5 Q Were you convicted in Batesburg of a misdemeanor,
6 giving false information, July 21st, 2009?

7 A Yes.

8 Q Okay. Are you telling the truth?

9 A Yes.

10 Q Okay. Is it your testimony that Antonio, Lakeisha,
11 and you were partying pretty much most of that day?

12 A Yes.

13 Q Is it your testimony that y'all picked up Steven later
14 on in the evening?

15 A Yes.

16 Q Is it your testimony that you and Steven proceeded to
17 argue at the ---

18 MR. MAYE: Your Honor ---

19 Q --- apartments?

20 MR. MAYE: --- these questions were asked and
21 answered. This is a recitation of questions previously
22 asked and answered. And they've already been asked one
23 time and answered. I object to ---

24 THE COURT: What -- what's ---

25 MR. MAYE: --- going through ---

DIRECT EXAMINATION BY MS. JOHNSON - SACA JAWEA COLEMAN 356

1 THE COURT: --- your question ---

2 MR. MAYE: --- the same ---

3 THE COURT: --- ma'am?

4 MR. MAYE: --- questions.

5 MS. JOHNSON: I -- I think these questions have --
6 have been asked in a different way, but we're asking them
7 -- they're not exactly the same questions, Your Honor.

8 THE COURT: Well, ask the question. Let me hear the
9 question.

10 MS. JOHNSON: The question was: Is it your testimony
11 that you picked up Steven?

12 THE WITNESS: Yes.

13 THE COURT: Did she testify to that earlier?

14 MS. JOHNSON: Yes, she did.

15 THE COURT: Well, then, that is the same question.

16 MS. JOHNSON: Okay. I'm sorry. All right. Well,
17 this -- the next questions I haven't asked.

18 Q You proceeded to argue at the apartments?

19 A Yes.

20 Q Okay. You -- you can attest to the fact that Hydrick
21 came to stop the verbal argument?

22 A Yes.

23 Q You can attest to the fact that Steven did not hit
24 you?

25 A Yes.

CROSS-EXAMINATION BY MR. MAYE - SACA JAWEA COLEMAN 357

1 MR. MAYE: Your ---

2 Q That ---

3 MR. MAYE: --- Honor ---

4 Q --- night ---

5 MR. MAYE: --- that's asked and answered.

6 Q Okay. You can -- Steven hit Hydrick one time ---

7 A Yes.

8 Q --- correct?

9 A Correct.

10 Q And he -- he turned himself in when he was charged,
11 correct?

12 A Yes.

13 Q Okay. Let's see. I think that's all I have. Thank
14 you.

15 THE COURT: Mr. Maye?

16 CROSS-EXAMINATION

17 BY MR. MAYE:

18 Q Ms. Coleman, Mr. Otts is your boyfriend; isn't that
19 right?

20 A Yes.

21 Q He was then and he still is now, isn't he?

22 A Yes.

23 Q In fact, you live with him over in Batesburg; isn't
24 that right?

25 A Yes.

1 Q And that's continued right on since the events of
2 January the 27th; isn't that right?

3 A Yes.

4 Q Y'all been talking about this case since ---

5 A No.

6 Q --- this -- January the 27th, when he struck Hydrick?

7 A He was locked up.

8 Q Since that time, prior to you coming up here today,
9 y'all been talking about this case?

10 A I mean, we talk about it.

11 Q You been talking about what you were going to testify
12 to?

13 A No.

14 Q Okay. So the fact that he's your boyfriend, and even
15 though Hydrick came to try to save you and got killed for
16 his trouble, y'all have just carried right on, haven't you?

17 A Yes.

18 Q Because you recognize the fact that Hydrick, whether
19 or not he was your cousin by blood or not, but somebody
20 that you were very close to came out to try to save you
21 that day, didn't he?

22 A Yes.

23 Q And Mr. Otts punched him in the head and killed him;
24 isn't that right?

25 A Well, I didn't see the punch. That was behind the

CROSS-EXAMINATION BY MR. MAYE - SACA JAWEA COLEMAN 359

1 vehicle.

2 Q Okay. I was going to ask you about that, because one
3 time you said you didn't see anything; isn't that right?

4 A That's right.

5 Q Okay. But you answered that question two different
6 ways when you just testified. You first say you didn't see
7 any punch, right?

8 A Right.

9 Q And then, the second time when this lawyer over here
10 asked you about it, you said, "Oh, yeah. He punched him
11 one time." Were you just agreeing with her just to agree?

12 A No.

13 Q Well, that's what you said. You said that he punched
14 him one time, but you first said you didn't ---

15 A Yes.

16 Q --- see it.

17 A I said that. And I didn't see it.

18 Q So it's not the second way; you were just agreeing
19 with her the second time you answered?

20 A I mean ---

21 Q Because if you didn't see a punch, you don't know
22 whether it was one punch thrown or not ---

23 A True.

24 Q --- do you?

25 A True.

1 Q Okay. Bottom line is after Hydrick got punched, you
2 took off, Mr. Otts you?

3 A Me and Lakeisha and Antonio.

4 Q You were so concerned about Hydrick, who had come out
5 there to your aid and your assistance, that after he was
6 struck with what turned out to be a fatal blow, you just
7 left him lying there and took off and went about your merry
8 way ---

9 A We came ---

10 Q --- is that ---

11 A --- back.

12 Q --- right?

13 But you left, didn't ---

14 A Yes.

15 Q --- you?

16 A Yes, we did.

17 Q Uh-huh. Mr. Otts left too, didn't he?

18 A Yes.

19 Q He was concerned about Hydrick that he took off
20 running just as soon as anybody said they were calling the
21 police; isn't that right?

22 A Yes.

23 Q He took flight and hightailed it out of there, didn't
24 he?

25 A Yes.

CROSS-EXAMINATION BY MR. MAYE - SACA JAWEA COLEMAN 361

1 Q You did too. You took off too, didn't you?

2 A Not with him. I got back in the truck.

3 Q You didn't think it was significant to stay there and
4 to try to do anything to help this person that had come to
5 your aid?

6 A I was scared. I just left.

7 Q You were -- why were you scared?

8 A Because he's my friend, and he wouldn't -- he wouldn't
9 wake up. So me and Lakeisha went and got her car and came
10 back.

11 Q Did you beat him in the head and kill him?

12 A No.

13 Q Well, then, why were you scared?

14 A Because he's my friend.

15 Q You were scared for your friend, and so you took off
16 and ran at that point ---

17 A I ---

18 Q --- in time?

19 A --- didn't run. I got in the vehicle.

20 Q Whether or not you ran on your feet or got in a
21 vehicle and went away from there, immediately after people
22 said the cops were coming, you hit the road, didn't you?

23 A Me and Lakeisha and Antonio. Yes.

24 Q Now, let's talk about your testimony a little bit.

25 You said up here on your direct examination that y'all just

1 had a little disagreement of whether or not that you were
2 going to keep partying or not and that was what was what,
3 just a little verbal altercation, right?

4 A Yes.

5 Q But this argument was so loud and what was going on
6 was such a commotion, people poured out of the Orchard Park
7 Apartments in January with it freezing cold to see what was
8 going on. You're saying that was just a little
9 disagreement that y'all had?

10 A Yes.

11 Q Well, if y'all were having just a little disagreement
12 between a boyfriend and girlfriend, how in the world did it
13 kick up such a ruckus and a commotion that people came
14 without being summoned from out of three apartment
15 buildings?

16 A Yeah. I don't know.

17 Q That's not a very fair characterization you gave of
18 this on your direct examination. That doesn't make any
19 sense, does it?

20 A I mean, yeah. We was loud. People going come out and
21 see.

22 Q Okay. So different from what you've previously said,
23 it wasn't just a little verbal altercation in between the
24 two of you. It was something so loud and so violent that
25 people came out of the apartments in January to see, lo and

CROSS-EXAMINATION BY MR. MAYE - SACA JAWEA COLEMAN 363

1 behold, what in the world was going on; isn't that right?

2 A I mean, we was just loud. It -- it was nothing that
3 was just -- we were just arguing real loud.

4 Q But you've previously tried to just characterize it as
5 just a discussion between the two of you.

6 A It was a ---

7 Q You were downplaying it to start with, weren't you?

8 A It was a argument.

9 Q But I'm -- answer my question. You -- when you got up
10 on direct, you were downplaying this, weren't you?

11 A No.

12 Q Bottom line is he tried to drag you out of that car,
13 didn't he?

14 A No.

15 Q He hit and punched and beat on you, didn't he?

16 A No.

17 Q And everybody around at the apartment complex could
18 see everything that was going on; isn't that right?

19 A No.

20 Q Apartment complex was full of people at that point in
21 time, because people came pouring out of the building;
22 isn't that right?

23 A Yes, they did.

24 Q And your testimony up here under oath in front of this
25 jury is they just came pouring out because y'all were just

1 arguing back and forth?

2 A We was just arguing back and forth.

3 Q No licks passed?

4 A No licks passed.

5 Q Uh-huh. He didn't touch you?

6 A He grabbed my arm.

7 Q He grabbed your arm?

8 A Yes.

9 Q How'd he grab your arm?

10 A Just, "Come on, Saca. Let's go."

11 Q Oh, just, "Come on. Let's go"?

12 A Yes.

13 Q Didn't hurt?

14 A No.

15 Q You didn't struggle with him?

16 A No.

17 Q You're as sure about that as you are everything else
18 you've told up here under oath to these 12 people?

19 A Yes.

20 Q Bottom line is Steven Otts in this case cared so
21 little about what went on, when he found out how bad
22 Hydrick was hurt and the cops were coming, he ran off in
23 the woods; isn't that right?

24 A He ran.

25 Q Stayed gone for days; the police couldn't find him,

CROSS-EXAMINATION BY MR. MAYE - SACA JAWEA COLEMAN 365

1 could they?

2 A Yeah, they couldn't.

3 Q Nowhere to be found when you came back that night.

4 You're saying that you just went and came back with this
5 young lady. Wasn't anywhere around, was he?

6 A No.

7 Q He was so concerned about Hydrick, he took off and
8 fled and was gone for days, wasn't he?

9 A Yes.

10 Q Oh, and you're positive that his jacket was tore all
11 to pieces if that -- it wasn't -- it was tore all to pieces
12 when he left, right?

13 A Yes.

14 Q Okay. You couldn't even see whether or not there was
15 a punch thrown or not, but you're absolutely certain that
16 that jacket was just shredded. Let's see where that thing
17 is.

18 MR. SHAFFER: I believe it's up there.

19 MR. MAYE: Where is it?

20 MR. SHAFFER: (Indicated.)

21 MR. MAYE: Thank you.

22 Q You're certain that this jacket here was tore all up
23 like this and just hanging in tatters on him when he left?

24 A Yes. Because ---

25 Q You ---

1 A --- I was ---

2 Q --- saw that clearly?

3 A Yes. Because I was out the vehicle.

4 Q Uh-huh. When you were taking off running and he was
5 taking off running when the cop said, but you're positive
6 it was tore all to pieces like this?

7 A Yes. Because I didn't run. I got in the vehicle.

8 Q Uh-huh. Well, however when you got out of there,
9 you're positive this jacket was just tore all to pieces
10 like this?

11 A Yes.

12 Q Okay.

13 MS. JOHNSON: Objection: Asked and answered.

14 THE COURT: All right. Sustained.

15 Q In three days before the police got back up with Mr.
16 Otts again, how many times did y'all talk about what went
17 on? How much -- how much contact and communication did
18 y'all have during that three-day time period?

19 A What three-day time period?

20 Q Well, in between the time, on January the 27th of
21 2011, that Mr. Otts punched and killed Hydrick and when he
22 went up to the police department wearing that shredded-up,
23 tore-up jacket?

24 A We didn't talk none. He only came by the house before
25 turning hisself.

CROSS-EXAMINATION BY MR. MAYE - SACA JAWEA COLEMAN 367

1 Q And y'all didn't talk about what y'all were going to
2 discuss or say or nothing?

3 A No.

4 Q What'd y'all talk about?

5 A He just asked me to ride with him to the police
6 station to turn hisself in.

7 Q And y'all didn't say one word about this whole
8 incident?

9 A No.

10 Q Didn't even discuss it?

11 A No.

12 Q Not one word?

13 A All he said was, "Ride with me to turn myself in."

14 MS. JOHNSON: Objection: Asked and answered.

15 THE COURT: All right.

16 MS. JOHNSON: He's badgering the witness.

17 THE COURT: Overruled. He's all right.

18 Q And you're as sure about that ---

19 A Uh-huh.

20 Q --- as everything else you've told this jury up here
21 under oath, that y'all never even talked about ---

22 A Yeah. We ---

23 Q --- this incident?

24 A --- talked about it.

25 Q Just as likely that he tore that jacket up running

1 through the woods getting out of there, isn't it?

2 A No.

3 Q Just as likely, he tore that jacket up to try to
4 concoct a story before he went up to the police department
5 too, isn't it?

6 A No.

7 Q Ms. Stallworth was partying and drinking with you all
8 day; she didn't even go to work that day; is that right?

9 A No. She didn't go to work.

10 Q Uh-huh. And all that time later, you can tell this
11 jury up here y'all had more than ten drinks; isn't that
12 right?

13 A I said we had about ten drinks. We had ten drinks.

14 Q Boy, y'all were going at it, then. Ten drinks?

15 A Yeah. We drink.

16 Q You drinking and carrying on like that?

17 A Yes.

18 Q Who else was drinking and carrying on with you like
19 that?

20 A Her and Antonio.

21 Q Just her and Antonio?

22 A Yes. We was together.

23 Q Uh-huh. Not Mr. Otts?

24 A No. He wasn't with us.

25 Q Y'all just came and got Mr. Otts just right before

REDIRECT EXAMINATION BY MS. JOHNSON - SACA JAWEA COLEMAN 369

1 this took place, right?

2 A Right.

3 Q So he wasn't carrying on and partying and drinking
4 with y'all that day, right?

5 A No.

6 Q Ms. Coleman, I don't have any more questions for you.

7 THE COURT: Anything on redirect?

8 (Whereupon, Mr. Shaffer and Ms. Johnson conferred.)

9 REDIRECT EXAMINATION

10 BY MS. JOHNSON:

11 Q Ms. Coleman, did you see the punch?

12 A No.

13 MS. JOHNSON: Okay. No further questions.

14 THE COURT: Thank you very much, ma'am.

15 THE WITNESS: Uh-huh.

16 THE COURT: You may step down.

17 (Whereupon, the witness exited the witness stand.)

18 MR. SHAFFER: Your Honor, may we approach?

19 THE COURT: Yeah.

20 (Whereupon, a bench conference was held off the record
21 in the presence of the jury, but out of the hearing of
22 the jury.)

23 MR. SHAFFER: Defense calls Steven Otts.

24 THE COURT: Mr. Otts, if you'd please come around to
25 be sworn, sir.

1 (Whereupon, the witness came forward.)

2 STEVEN OTTS, having been first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SHAFFER:

6 Q Morning, Mr. Otts.

7 A Good morning.

8 Q Mind if I call you Steven?

9 A No, I don't mind.

10 Q Okay. I've been calling you Steven all throughout the
11 trial.

12 A Yes.

13 Q Where are you from, Steven?

14 A Batesburg, South Carolina.

15 Q Batesburg?

16 A (Nodded head up and down.)

17 Q And how old are you?

18 A Thirty-two.

19 Q Thirty-two?

20 A (No audible response.)

21 Q How far did you get in school?

22 A Tenth.

23 Q Tenth grade?

24 And tell us about that night, the 27th of January,
25 2011. What were you doing earlier that evening?

DIRECT EXAMINATION BY MR. SHAFFER - STEVEN OTTS 371

1 A Earlier that evening I was in the apartments, Orchard
2 Park. I walked to a guy named Charles Roby house. I sat
3 out there with them for a while.

4 Q And about what time did you leave Orchard Park?

5 A Maybe three/four o'clock in the evening.

6 Q You were staying in Orchard Park at that point?

7 A Yes.

8 Q Okay. I'm going to show you State's Exhibit 1. These
9 are the Orchard Park Apartments. Are you familiar with it?

10 A Yeah. Yes, I am.

11 Q Okay. Which building were you staying in?

12 A I believe it would be this one here -- right here.

13 Q And you'd been staying there a couple of months?

14 A Yes. Several months.

15 Q Who were you staying with?

16 A Ms. Jane Burno and Charles Rayford.

17 Q So that's Hydrick's aunt and uncle?

18 A Yes, ma'am -- I mean, yes, sir.

19 Q Okay. You and Hydrick are friends, right?

20 A Yes, we are.

21 Q How long y'all been friends?

22 A Several years.

23 Q Okay. And that night what time did you leave Orchard
24 Park?

25 A I left that afternoon.

1 Q About ---

2 A And I ---

3 Q --- what time?

4 A Like -- like I say, about three or four o'clock. I
5 know it was, like, in the evening. It was ---

6 Q Okay.

7 A --- afternoon.

8 Q And -- and where'd you walk to?

9 A Like I said, I walked to a guy named Charles Roby
10 house. I stayed there for a minute. Then I went to the
11 apartments. Saca uncle -- her grandmother -- her uncle
12 stayed with her grandmother at the time. I went over there
13 with him.

14 Q Okay. But that's not at Orchard Park?

15 A No, it's not.

16 Q How far away is it from Orchard Park, walking?

17 A Maybe five minutes, walking.

18 Q Okay. And from there where'd you go?

19 A From the apartments?

20 Q Yeah.

21 A Like I said, I went to Charles Roby house. Then I
22 went to -- it's ---

23 Q Or ---

24 A --- another apartment on Merritt Street. I don't know
25 the name of them. That's where -- like I said, Lakeisha

1 stay there; Saca's grandmother and her uncle.

2 Q Okay. And were you drinking anything?

3 A Yes. I had a few drinks.

4 Q What do you mean by a "few drinks"?

5 A I had a couple 24-ounce.

6 Q Couple being?

7 A Two.

8 Q Two?

9 A (No audible response.)

10 Q Twenty-four ounces of what?

11 A Busch Light.

12 Q Is that all you had to drink?

13 A Yes. As I can recall.

14 Q So you had two 24-ounces of Busch Light?

15 A Uh-huh.

16 Q Over about how long of a period?

17 A Hour or two.

18 Q Okay. At some point you met up with -- with Saca,
19 right?

20 A Yes.

21 Q When'd you meet up with Saca?

22 A When her and Antonio and a guy named C.A., they all
23 pulled up to the apartment complex where we were.

24 Q Okay. So there were five people there -- or there
25 were four people there, other than you?

1 A Yeah.

2 Q Okay. And they pulled up at the apartment where you
3 were. What'd you do next?

4 A I mean, we all was out there, socializing or whatever.
5 And I think they took -- they got in the truck and took the
6 guy named C.A. back home. He stayed down the street. I
7 don't know exactly where, but they came back. That's when
8 I got in the truck.

9 Q And what time was that?

10 A I don't know exactly what time. It was dark. I know
11 it was -- it was -- might've been ---

12 Q , How long ---

13 A --- after eight.

14 Q --- before the -- the incident at Orchard Park was
15 that?

16 A It was only a couple minutes. Because, like I said,
17 when they came back, we talked; then I got in the truck.
18 We went to the apartment.

19 Q Where were you heading that night?

20 A Home.

21 Q And home being Orchard Park?

22 A Yes.

23 Q With Hydrick's aunt and uncle, right?

24 A Yes.

25 Q Okay. Now, what happened while you were in the car?

DIRECT EXAMINATION BY MR. SHAFFER - STEVEN OTTS 375

1 Well, first, tell me this: What's the condition of the
2 people in the car?

3 A (No audible response.)

4 Q Did they seem okay?

5 A No. Everybody was intoxicated. And then, everybody
6 was drinking.

7 Q A little bit drunk? A lot drunk?

8 A I would say a lot.

9 Q So you'd say that about all of them?

10 A Yes.

11 Q Okay. And while you're riding -- riding home, what
12 happens?

13 A Like I said, we pull up to the apartment. And I
14 proceeded to get out. And I told Saca, you know, "Let's go
15 in." I mean, "Let's go in the house." I mean, "We don't
16 need to party because we have been drinking."

17 But she didn't want to go. She want to continue to go
18 drink some more, I guess. So we got in an argument. And I
19 did get real loud. I admit that.

20 Q She get loud?

21 A Yes, she did.

22 Q Did you hit her?

23 A No, I did not.

24 Q Did you slap her?

25 A No, I did not.

1 Q Did you jerk her out of the car?

2 A No, I did not.

3 Q Did you touch her?

4 A I touched her at one point.

5 Q And what'd you do?

6 A Like I said, I grabbed her arm, like, "Come on. Just
7 come on. Let's go."

8 MR. SHAFFER: Now, if the Court will allow me, I'd
9 like him to actually demonstrate what he means by "touching
10 her" on me.

11 THE COURT: That's fine.

12 MR. SHAFFER: Thank you, Your Honor.

13 Q If you would, step down.

14 A (Complied.)

15 Q Could you demonstrate how you touched her?

16 A (Demonstrated.) "Come on. Let's go in the house."

17 Q And what did she do at that point?

18 A She snatched away.

19 Q Okay. Now, where were you whenever you touched her
20 like that?

21 A Say it again, now.

22 Q Where were you at -- where were you located at?

23 A I was standing -- the passenger-back door at the time.

24 Q Okay. And did she -- she said -- you said she
25 snatched away.

DIRECT EXAMINATION BY MR. SHAFFER - STEVEN OTTS 377

1 A Uh-huh.

2 Q Was she inside the car?

3 A Yes, she was.

4 Q Okay. And I'm going to show you this diagram again,
5 State's Exhibit 1. And if you could, step down and show us
6 approximately where y'all are parked at, at this point.

7 A (Indicated.)

8 Q Are -- are y'all moving or you parked? I'm ---

9 A We parked.

10 Q --- assuming ---

11 A We parked by that time.

12 Q Okay.

13 A We parked somewhere up in here.

14 Q Okay. Here, could you stand to the side? Actually,
15 I'll give you a blown-up version back. It's State's
16 Exhibit 2.

17 A We was parked somewhere along here, facing this
18 building here. See, that's where we -- that's the building
19 I was staying in.

20 Q Okay. And you know Angela Creech, one of the
21 witnesses that testified earlier?

22 A I know of her, but I don't know her like that.

23 Q What do you -- do you -- you know who she is?

24 A Yeah.

25 Q Do you know where she lives?

1 A Now. She stays in this building here.

2 Q Here, could you step to the side so ---

3 A Oh, I'm ---

4 Q --- the whole ---

5 A --- sorry.

6 Q --- jury could see?

7 A She stay in this building right here.

8 Q Okay.

9 A I think it's downstairs in the front in the -- of this
10 building here.

11 Q Downstairs in the front of this building?

12 A Yeah.

13 Q Okay. So back to the story, you -- you had touched
14 Saca; she pulled away?

15 A Uh-huh. Yes.

16 Q And when she pulled away, did y'all continue to argue?

17 A Yes, we did.

18 Q Was Hydrick out there at this point?

19 A Not at the time. Not that I recall. I don't -- I
20 didn't see him at that time. I mean, he came eventually.

21 Q How long had y'all been arguing whenever he came out?

22 A Maybe a minute or two.

23 Q Okay. And were you -- you said you were at the back-
24 passenger door?

25 A Yes.

DIRECT EXAMINATION BY MR. SHAFFER - STEVEN OTTS 379

1 Q Tell us what happened whenever Hydrick first came out.

2 A Well, I was, like I said, arguing. We was -- I was
3 getting loud. Hydrick did come out and, like, "Come on,
4 man. Come on."

5 He started grabbing me, pulling on me, whatever. And
6 I said, "Hydrick, what are you doing? I'm just talking to
7 my old lady. Leave him alone. I mean, it's nothing."

8 Q And what do you mean by "he was grabbing on you"?

9 A He was jerking on me. I mean, at one point he did --
10 he picked me up off my feet. He grabbed me a bear hug and
11 actually carried me away from the truck.

12 Q Could you approximate on me what -- what you mean by
13 "grabbing you in a bear hug"?

14 A Like this here. (Demonstrated.) And he take me off
15 my feet.

16 Q Okay.

17 A Yeah.

18 Q Is Hydrick bigger than you?

19 A Yes, he is.

20 Q Is he stronger than you?

21 A Yes, he is.

22 Q And he picked you up off your feet?

23 A Yes, he did.

24 Q That wasn't that comfortable, was it?

25 A No, it wasn't.

1 Q Was he squeezing you?

2 A Yes, he was.

3 Q So he was hurting you?

4 MR. MAYE: Objection to the leading.

5 THE COURT: Sustained.

6 Q How'd you feel whenever he picked you up?

7 A I kind of felt defenseless. I mean, I couldn't do
8 nothing. I mean, I was -- at the time all kind of thoughts
9 were going through my head.

10 I mean, he had been drinking. I don't know -- I
11 didn't know what he was getting ready to do, you know.

12 Q You said that he had been drinking. Could you tell he
13 had been drinking?

14 A Yes. By the way he was talking.

15 Q Okay. And you -- have you ever been around Hydrick
16 whenever he was intoxicated?

17 A Yes, I have.

18 Q Do you know how he acts whenever he -- he's
19 intoxicated?

20 A Yes.

21 Q Was he acting that way then?

22 A Yes, he was.

23 Q So after -- how do you get out of the bear hug?

24 A I just -- I wiggled out of the bear hug, I mean, best
25 way I could. I mean, it's no simple -- I couldn't explain

DIRECT EXAMINATION BY MR. SHAFFER - STEVEN OTTS 381

1 a way to get out of it. I mean, just, I guess . . .

2 Q What did you tell Hydrick while you were in the bear
3 hug?

4 A "Hydrick, if you don't let me go, I'm going to hit
5 you."

6 Q Could you say that one more time? I ---

7 A "Hydrick, if you don't let me go, I'm going to hit
8 you."

9 Q "Hydrick, if you don't let me go" -- or "Don't let me
10 go"?

11 A "Hydrick, if you don't let me go, I'm going to hit
12 you."

13 Q "If you don't let me go, I'm going to hit you"?

14 A Uh-huh.

15 Q Okay. Now, when you -- when you get out, what happens
16 after that?

17 A After I wiggled out, I was walking back to the truck.

18 Q Okay.

19 A That's when Hydrick ---

20 Q And -- hold on a second. About how far away from
21 y'all are -- the truck ---

22 A Yeah.

23 Q --- at this ---

24 A By that time it was a car parked near us, besides us,
25 whatever. He had took me around to the other side of the

1 car -- the other car.

2 Q Did he pull you around or ---

3 A Yeah. He carried me.

4 Q Oh, okay. So he -- he moved you away from the truck?

5 A Yes.

6 Q Okay. And you said you walked back toward the truck.

7 What happened at that point?

8 A He grabbed me again; ripped my coat. That's when I
9 turned and just threw a punch.

10 Q Okay. So you said you felt -- you -- he grabbed you
11 from ---

12 A Yeah.

13 Q --- the back?

14 He grabbed your coat?

15 A Yes.

16 Q Could you demonstrate that on me?

17 A (Demonstrated.)

18 Q Approximately where did you feel the pull from? Where
19 you think he pulled you from?

20 A It's more like here. (Demonstrated.)

21 Q On the shoulder?

22 A Yeah.

23 Q Okay. And you said that you turned around and punched
24 him?

25 A Yes, I did.

DIRECT EXAMINATION BY MR. SHAFFER - STEVEN OTTS 383

1 Q Why'd you punch him?

2 A I was basically trying to get away, I mean.

3 Q Were you angry at him?

4 A No, I wasn't.

5 Q Were you angry at Saca?

6 A No, I wasn't.

7 Q You were trying to get away?

8 A Yes.

9 Q What did you think might happen if you didn't get
10 away?

11 A At the time, like I say, I didn't -- I didn't know
12 what he was going to do, I mean. I was thinking a million
13 thoughts at the time. I mean, he could've hurt me. I was
14 just basically trying to get out the situation.

15 Q Were you trying to kill him?

16 A No, I was not. I never meant to hurt him.

17 Q You never meant to hurt him?

18 A Never.

19 Q Did you mean to knock him out?

20 A No, I did not. I mentioned it in my statement that I
21 gave to the cop.

22 MR. MAYE: Objection, Your Honor, as to any ---

23 MR. SHAFFER: Objection ---

24 MR. MAYE: --- prior statement that he's made.

25 MR. SHAFFER: Yeah.

1 THE COURT: All right.

2 MR. SHAFFER: We -- that is ---

3 THE COURT: Sustained.

4 MR. SHAFFER: --- fine, Your Honor.

5 Q After you hit him, what'd you do after that?

6 A I walked back over to Saca.

7 Q Did y'all continue to argue or did you ---

8 A Before ---

9 Q --- take off ---

10 A --- I get ---

11 Q --- running?

12 A Before I could get to her, someone holler out, "You
13 knocked Hydrick out."

14 I turned around and said, "No, I didn't. I didn't
15 even hit him that hard."

16 Q And what happened then?

17 A I went back over to Hydrick. And he appeared ---

18 Q What ---

19 A --- he appeared to be knocked out.

20 Q Okay. You went back over to him?

21 A Uh-huh.

22 Q He appeared to be knocked out?

23 A (Nodded head up and down.)

24 Q What'd you do at that point?

25 A I grab him by the hands, like, "Hydrick, come on, man."

1 Stop playing. Get up. I didn't hit you that hard. I
2 didn't hurt you, man. Come on."

3 Q You said he appeared to be knocked out, though?

4 A Yes.

5 Q But you said what to him?

6 A "Come on, man. Stop playing." I thought he was --
7 like I said, I thought he was just playing around. I mean,
8 we were friends, you know. I thought it was just . . .

9 Q Well, and I'm sure Mr. Maye's going to ask you this,
10 but which way is it? Is it -- did you -- did he appear to
11 be knocked out or did, you know -- did you think he could
12 be playing? What do you mean by that, that he ---

13 A I mean ---

14 Q --- appeared ---

15 A --- he had his ---

16 Q --- to be knocked out?

17 A He had his eyes closed, so ---

18 Q Okay.

19 A --- I mean, somebody laying on the ground with -- not
20 moving with their eyes closed, you would assume they are
21 sleep or knocked out, whatever you want to call it, I mean.
22 I mean, I had did -- did hit him, and he hit the ground.

23 Q He -- okay. And did you try to -- you said you had
24 him by the hands.

25 A Uh-huh.

1 Q Was he laying on his back?

2 A Yes.

3 Q And did you pick him up?

4 A No, I did not.

5 Q Did you try to lift him at all?

6 A Besides pulling on his hand, I didn't try to lift him.
7 I mean, if his -- his head might've came off the ground at
8 the time. That's about far as I picked him if, like -- if
9 you say I picked him up.

10 Q Okay.

11 A If you ---

12 Q So his ---

13 A --- say ---

14 Q --- head might've came off the ground ---

15 A Yeah.

16 Q --- or did come off the ground, which one?

17 A I don't recall.

18 Q You don't recall?

19 A No.

20 Q Okay. Did you intentionally slam him back down on the
21 ground?

22 A No, I did not.

23 Q Okay. After you -- you went over to check on him,
24 what did you do?

25 A Like I said, I said -- try to get him up. He wouldn't

DIRECT EXAMINATION BY MR. SHAFFER - STEVEN OTTS 387

1 get up. And everybody started screaming at me, whatever.
2 I mean, it's a whole lot of people outside by this time, so

3 ---

4 Q What do you mean -- what do you mean, "everybody
5 started screaming at you"? Who -- who was out there?

6 A It was a lot of people. I can't say who it was all,
7 but they was like just coming to the situation like this
8 here. It was all getting loud, I mean.

9 Q Did you push Hydrick before you hit him?

10 A No, I did not.

11 Q Did you put your hands on him?

12 A No, I did not.

13 Q Did he put his hands on you?

14 A Yes, he did.

15 Q After you left, where did -- where did you go?

16 A To my sister house.

17 Q And at some point you turned yourself in to the
18 police, right?

19 A Yes, I did.

20 Q When was that?

21 A I guess the night he talked -- so that would be the
22 31st.

23 Q Okay. So you turned yourself in?

24 What time did you turn yourself in?

25 A It was in the afternoon.

1 Q Okay. Did you tear up your coat before you turned
2 yourself in?

3 A No, I did not.

4 Q Who tore up your coat?

5 A Hydrick.

6 Q Is this your coat?

7 A Yes, that's my coat.

8 Q Defense Exhibit 2. Was it like this before that
9 night?

10 A No, it was not.

11 Q Was it basically like this after that night?

12 A Yes, it was.

13 Q What caused this big tear in the back of your coat?

14 A Hydrick grabbing on it.

15 Q Okay.

16 (Whereupon, Mr. Shaffer and Ms. Johnson conferred.)

17 Q So you were incarcerated on the 31st of January of
18 2011?

19 A Yes.

20 Q What time did you hire me to represent you?

21 A (No audible response.)

22 Q About a year later?

23 A Yeah.

24 Q Do you recall ---

25 A I was ---

1 Q --- this picture?

2 A Yes.

3 Q What is this a picture of?

4 A My coat in the booking room.

5 Q Who took that picture?

6 A You did, I assume.

7 Q From the time you went in on the 31st until the time
8 you hired me and that picture was taken ---

9 A Uh-huh.

10 Q --- I'm wondering if you were ever out of jail or ever
11 had access to that coat.

12 A No, I did not. You don't have access to your
13 property.

14 Q So this coat in this condition is how it was whenever
15 you went in the booking room, certainly?

16 A Yes.

17 Q Okay. And it's how it was it -- that night, whenever
18 ---

19 A Yes.

20 Q --- you left?

21 A Yes.

22 Q Because Hydrick tore it?

23 A Yes.

24 Q Did you mean to punch Hydrick hard?

25 A No, I didn't. Never meant to hurt Hydrick.

1 Q Tell me this: In 1999 were you convicted of receiving
2 stolen goods?

3 A Yes.

4 Q And in 2010 were you convicted of giving false
5 information?

6 A Yes.

7 Q Are you lying today?

8 A No, I'm not.

9 MR. SHAFFER: Your Honor, we do have a -- I imagine
10 we'll have a matter of law on something from the state. We
11 can approach, if you'd like.

12 THE COURT: Prior to cross-examination?

13 MR. SHAFFER: Huh?

14 THE COURT: Prior to cross-examination?

15 MR. SHAFFER: I imagine that -- that there will be an
16 objection in a second.

17 THE COURT: All right. Well, let me -- let me do
18 this: I'm going to excuse the -- the panel. But before I
19 do this, Mr. James Bird?

20 JUROR: Yes, sir.

21 THE COURT: Mr. Bird, would you be willing to serve as
22 the foreman of the jury for me, please?

23 JUROR: Yes, sir.

24 THE COURT: Thank you, sir.

25 Now, let me explain a little bit about that, ladies

1 and gentlemen. A foreperson of a jury is -- anytime you
2 have a group of folks, it's -- it's just -- it's easier for
3 the group and for the Court if -- if I just have to deal
4 with one person on behalf of the group so that if you have
5 any questions about anything, Mr. Bird will basically be
6 the spokesperson for the group and -- and just present that
7 question to me and I'll either respond to him or I'll bring
8 all of you out and respond to it. But basically, the
9 foreperson is the communication person between the jury
10 panel and the Court.

11 The other thing is that when you do begin your
12 deliberations in this case, I will tell you now that
13 everybody must be present for those deliberations so that
14 if any one person needs to excuse themselves, like, for
15 example, to use the restroom or whatever, then, Mr. Bird,
16 you would stop the deliberations and wait for that person
17 to return and then you'd start back. You just need
18 somebody to start and stop the deliberations once -- once
19 you begin that -- that process.

20 Your verdict in this case must be unanimous. So
21 therefore, the fact that one person serves as the
22 foreperson of the jury does not give that person any more
23 weight or credibility than any of you. You are all equal
24 members of the jury. So one person's vote or opinion
25 carries no more weight than anyone else on the jury. All

1 of you are equal members of the jury pool.

2 So the foreperson, although they start and stop the
3 deliberations and make sure things are -- are flowing, it
4 is a unanimous decision that must be made by all the
5 members of the jury. Okay?

6 So what I'm going to do, as -- as I've indicated
7 before I spoke with Mr. Bird, I am going to get you to step
8 back in the jury room while I take up this matter of law.
9 If you need anything -- soft drink, snack, or whatever --
10 let the bailiff know. Excuse me. And as soon as I take up
11 this matter, I'll bring you back out. Okay?

12 Now, when you return back out here, ladies and
13 gentlemen, Mr. Bird, I'm going to get you to sit in this
14 first seat over here.

15 JUROR: Yes, sir.

16 THE COURT: And then, the rest of you sit wherever
17 you'd like, okay?

18 (Whereupon, the jury exited the courtroom at 11:27
19 a.m.)

20 (Off the record from 11:27 a.m. until 11:30 a.m.)

21 THE COURT: All right. So what -- where we at here,
22 Mr. Shaffer?

23 MR. SHAFFER: I was about to ask that State's Exhibit
24 5, for the purposes of ID, be admitted. It's a statement
25 from Steven Otts. The reason I want to admit it is not --

1 and I know that I've made this argument before on a
2 different issue, and you corrected me. And I -- I believe
3 you're probably right on the truth of the matter asserted
4 for the other issue. But on this particular issue, I'm
5 actually not admitting it for the truth of the matter
6 asserted.

7 Steven Otts made a statement. It doesn't reference
8 anywhere in there that his coat was torn. If the state
9 alleges basically that -- that the coat was -- that he
10 fabricated it before he turned himself in -- essentially,
11 he fabricated/made up the evidence, tore his own coat, as
12 they have implied -- seems like, to me, that he likely
13 would have included that in his statement, if he had
14 actually done that. And that's the reason I'm admitting
15 it.

16 THE COURT: Whoa ---

17 MR. SHAFFER: If the ---

18 THE COURT: --- whoa, whoa.

19 MR. SHAFFER: --- state ---

20 THE COURT: Wait a minute. I'm not -- I don't follow
21 you.

22 MR. SHAFFER: Uh-huh.

23 THE COURT: Nowhere in the statement he gave to law
24 enforcement does he mention the coat ---

25 MR. SHAFFER: And ---

1 THE COURT: --- is that correct? I'm ---

2 MR. SHAFFER: That ---

3 THE COURT: --- I'm asking.

4 MR. SHAFFER: --- is absolutely correct, Your Honor.

5 THE COURT: All right. So what relevance ---

6 MR. SHAFFER: The -- the state of mind, Your Honor.

7 If he -- if he's giving a statement to try to tell his side
8 of the story ---

9 THE COURT: Right.

10 MR. SHAFFER: --- and his side of the story, he just
11 fabricated by ripping apart a coat right before he went in
12 there to give this statement, it seems to me that he
13 probably would've included that fact in the statement.

14 THE COURT: Well -- but, I mean, here's what I don't
15 understand. You've got him on the stand.

16 MR. SHAFFER: If ---

17 THE COURT: Why can't you ask him: "Now, when you
18 went -- you -- you turned yourself in; is that correct?"
19 "Yeah."

20 MR. SHAFFER: Yeah.

21 THE COURT: "What did you tell the police?"

22 MR. SHAFFER: What I would imagine is that -- and I'm
23 not 100 percent ---

24 MR. MAYE: Your Honor ---

25 MR. SHAFFER: --- sure ---

1 MR. MAYE: --- I'm just ---

2 MR. SHAFFER: I think ---

3 MR. MAYE: --- going to ask this: Is his cross-
4 examination over? Has he stopped his cross -- I mean, has
5 he stopped ---

6 MR. SHAFFER: No.

7 MR. MAYE: --- his direct?

8 THE COURT: Well, no. I don't know. I think ---

9 MR. SHAFFER: Oh, I ---

10 THE COURT: --- we took ---

11 MR. SHAFFER: --- apologize.

12 THE COURT: --- a break ---

13 MR. SHAFFER: Do you ---

14 THE COURT: --- because ---

15 MR. SHAFFER: --- need ---

16 THE COURT: --- he was -- he was wrapping up. But
17 before he turned it over to you, he wanted to address this
18 issue.

19 MR. SHAFFER: Does he need to be sent somewhere? I
20 think that's what the state's saying.

21 THE COURT: Who?

22 MR. SHAFFER: Is that what you're saying?

23 THE COURT: Who?

24 MR. MAYE: No. I'm saying ---

25 MR. SHAFFER: Okay.

1 MR. MAYE: --- that I don't want you to engage in a
2 coaching expedition up here or getting a guidance thing as
3 to what next -- is the next question to ---
4 THE COURT: No.
5 MR. MAYE: --- ask him.
6 THE COURT: Here -- here's what ---
7 MR. SHAFFER: Oh.
8 THE COURT: --- I'm saying.
9 MR. SHAFFER: I apologize.
10 MR. MAYE: I'd like ---
11 THE COURT: Here ---
12 MR. MAYE: --- the defendant to walk out or us to this
13 in chambers, because I think you're just ---
14 MR. SHAFFER: That's fine.
15 MR. MAYE: --- helping him answer the questions by
16 getting a ---
17 MR. SHAFFER: I ---
18 THE COURT: Well ---
19 MR. MAYE: --- advisory opinion.
20 MR. SHAFFER: Your Honor, if -- if you would like, we
21 can -- do you -- I -- and I -- I don't want to -- I -- I --
22 I don't want to -- I -- I understand the state's point.
23 That's what I'm saying -- about not having the defendant in
24 here.
25 THE COURT: All right. All right. Here's what we're

1 going to do. Because the court staff probably needs a
2 little bit of a break as well. We're going to step back in
3 chambers and we'll come back out on the record and put on
4 the record what my ruling is. And we'll -- but we'll talk.

5 And while we're doing that, ladies and gentlemen,
6 we'll be at ease and y'all can take a break.

7 (Off the record from 11:33 a.m. until 11:48 a.m.)

8 THE COURT: All right. Is the state ready for the
9 jury to return?

10 MR. MAYE: Yes, Your Honor. The state's ready.

11 THE COURT: Defense ready?

12 MR. SHAFFER: Yes, Your Honor. Let me just put on the
13 record that in chambers we -- we were -- or I -- I had
14 asked to move in State's ID -- I mean, Defendant's ID 5
15 into evidence. But then, after the state informed me that
16 they planned on indicating that he had not told the officer
17 at that time, after that, I -- I decided to withdraw that
18 request, Your Honor.

19 THE COURT: All right. Okay.

20 MR. SHAFFER: Thank you.

21 THE COURT: And where's Mr. Otts and Ms. Johnson?

22 MR. SHAFFER: Mr. Otts is on the stand. Oh ---

23 THE COURT: Oh.

24 MR. SHAFFER: --- Ms. Johnson is ---

25 THE COURT: Oh, I'm sorry. You're here. Where --

1 okay. We can start. As long as we got ---

2 MR. SHAFFER: Yes ---

3 THE COURT: --- Mr. Otts ---

4 MR. SHAFFER: --- Your Honor.

5 THE COURT: --- here, we're ---

6 MR. SHAFFER: I believe we can go ahead.

7 THE COURT: That's fine. All right. (To the bailiff)

8 Let's bring the jury in.

9 (Whereupon, the jury entered the courtroom at 11:49
10 a.m.)

11 THE COURT: All right. Ladies and gentlemen, we'll --
12 we'll -- I'm sorry. We will go ahead and then resume with
13 Mr. Shaffer's direct examination.

14 DIRECT EXAMINATION

15 BY MR. SHAFFER:

16 Q Mr. Otts -- Steven -- I'm sorry -- on January 31st,
17 2011, did you give a statement to the police? I'm not
18 asking you what you said.

19 A Yes, I did.

20 Q Okay. You gave a -- gave a written and verbal
21 statement to Mr. Padgett?

22 A Yes. It was a couple officers that was in the room.
23 But he ---

24 Q Okay.

25 A --- was -- I guess he was the supervisor.

DIRECT EXAMINATION BY MR. SHAFFER - STEVEN OTTS

399

1 Q Was that after you had gotten locked up?

2 A Yes.

3 Q Did you know Hydrick had died at that point?

4 A No, I did not.

5 Q Now, if you could -- and I know I got you to
6 demonstrate some stuff earlier.

7 A Uh-huh.

8 Q But if you could demonstrate -- okay. Mr. Otts, if
9 you would, take off that coat and put this jacket on.

10 A (Complied.)

11 Q If you could, turn around and show the jury.

12 A (Complied.)

13 Q Now, you said that he grabbed you from the shoulder?

14 A Correct.

15 Q And he ripped your jacket?

16 A Correct.

17 Q And at what point -- or what -- what did you do at
18 that point?

19 A That's when I just turned and swung.

20 Q You just swung?

21 A Yes.

22 Q Were you aiming at anything in particular?

23 A Not in particular.

24 Q And why were you swinging?

25 A Because I was trying to get away.

1 Q Did you mean to cause his death?

2 A No, I did not.

3 Q You can take that off and sit back down and answer any
4 questions Mr. Maye has for you.

5 CROSS-EXAMINATION

6 BY MR. MAYE:

7 Q Mr. Otts, you say you were staying with Jane Burno,
8 Hydrick's aunt and uncle?

9 A Yes.

10 Q Why were you staying with them?

11 A I mean, they said I could live with them at the time.
12 I wasn't doing so well.

13 Q You weren't working?

14 A No.

15 Q Okay. Let me get this straight. You said that you
16 remember what you had. You testified on direct up here
17 some two years later. You had two beers. You even know
18 what kind it was; is that right?

19 A Correct. I mean, that's what I drank.

20 Q Okay. Are you positive up here? You only had two
21 beers to drink, right?

22 A Yes.

23 Q When did you catch up with Antonio and Ms. Stallworth
24 and Saca that night?

25 A At the apartments on Merritt Street.

1 Q About when was that?

2 A Like I said, it was dark. I'm assuming it had to be
3 eight/nine.

4 Q And then you went back -- y'all then go to Orchard
5 Park Apartments, right?

6 A Correct.

7 Q Okay. Tell the ladies and gentlemen of the jury why
8 it was that you wanted Saca to stay there and not leave.

9 A I mean, she's my girlfriend, I mean. She was
10 drinking.

11 Q Who else was drinking?

12 A I was drinking.

13 Q Who else was drinking?

14 A Lakeisha ---

15 Q Uh-huh.

16 A --- and Antonio.

17 Q So what was your argument about? She didn't want to
18 go, right?

19 A Correct.

20 Q And you wanted her to go?

21 A Say again?

22 Q And you wanted her to stay with you, right?

23 A Correct.

24 Q Okay. Why didn't you just let her go?

25 A I felt like she had enough to drink that night. I

1 mean, starting ---

2 Q Are you stating -- are you telling the jury that you
3 were concerned about her well-being, her going off with
4 drunk people? Your concern for her was making you do this?

5 A Yes, at the time.

6 Q Well, you're arguing with her. Y'all had this big
7 blowout argument. Why is it that you're so insistent that
8 she's going to do what you say and not go with them?

9 A I don't ---

10 Q Must've been pretty important.

11 A I don't understand what you're saying. Say it again?

12 Q Why is it such a big issue with -- with you that she
13 not go off with them, that she stay with you, to the extent
14 that you had this big blowup argument? Why is that so
15 important to you?

16 A I mean, I figured she didn't need to go drink no more,
17 I mean.

18 Q You didn't want her to go drinking with them?

19 A No.

20 Q And all of them had been drinking?

21 A Yes.

22 Q Okay.

23 A They had been drinking all day.

24 Q Uh-huh. And you worry about her ---

25 A Yes ---

1 Q --- going ---

2 A --- I do.

3 Q --- off with them, right?

4 A Yes, I do.

5 Q You were so worried that -- old Loopy, you got in the
6 car with him and your girlfriend and everybody else and
7 rode with him back over to the apartments, right?

8 A Correct. They gave me a ride.

9 Q And you're getting up and trying to say that he was so
10 drunk, you were worried; didn't want this girlfriend going
11 off with him. But you jumped right in the car and let him
12 drive; isn't that right?

13 A I made -- I made a bad choice. I mean, that was a bad
14 decision.

15 Q You're saying ---

16 A I mean ---

17 Q --- you were fine as wine and he was -- these people
18 are just terribly ---

19 A No. I ---

20 Q --- drunk.

21 A --- never said I was fine as wine. I never said that.

22 Q You just told this jury, "I only had the proverbial
23 two beers; I was fine."

24 A Don't mean I wasn't feeling myself.

25 Q But bottom line is she didn't want to go and you

1 wanted her to, right?

2 A Correct.

3 Q And she's got to do what you say; isn't that right?

4 A No, she do not.

5 Q Well, if she said -- she's a grown woman, isn't she?

6 A Yes ---

7 Q At that ---

8 A --- she is.

9 Q --- point in time, on January the 27th of 2011, she
10 wasn't a child; she was a grown woman, right?

11 A Yes, she is.

12 Q But she wasn't your child, was she?

13 A No, she's not.

14 Q And she didn't have to do anything that you said, did
15 she?

16 A No, she had -- didn't.

17 Q But when she wouldn't do what you told her to do, you
18 got mad; isn't that right?

19 A I didn't get mad. I mean, I argued my point. I mean,
20 that's why we was arguing. It's ---

21 Q You were calmly arguing with her, making your point?

22 A Now, I'll say I got loud. I mean, may have caused a
23 scene.

24 Q You may have caused a scene?

25 A Well, I did cause a scene. That's what I'm guessing.

1 That's ---

2 Q People ---

3 A --- what ---

4 Q --- poured out of three apartment buildings to see
5 what was going on, and you may have caused a scene?

6 A I caused a scene. Well, we caused a scene.

7 Q Because she wouldn't do what you told her to do,
8 right?

9 A It's not what I told her to do, I mean.

10 Q She ---

11 A I mean ---

12 Q --- said no?

13 A Yes, she did.

14 Q You said she was going, and that's what y'all were
15 arguing about with you, right? You were going with her and
16 she was going where she wanted to, and that's what the
17 argument was about ---

18 A Yes.

19 Q --- right?

20 A Yes.

21 Q Because when people don't do what you say, you put
22 their hand -- your hands on them, don't you?

23 A No. That's not correct.

24 Q Well, you sure did. You didn't say, "If you don't
25 want to go with me, you're a grown woman and you can get in

1 that car and leave." You hollered; you yelled; you cussed.

2 You made a scene, didn't you?

3 A I made a scene.

4 Q And even by your admission, you put your hands on her,
5 whether or not it was a tap or you were beating on her or
6 yanking on her and pulling on her and dragging her clothes,
7 or it was just this loud argument. When she wouldn't do
8 what you told her to do, you even grabbed hold of her,
9 didn't you?

10 A I grabbed her arm at one point.

11 Q Just calmly grabbed her arm; just reached out and just
12 got her hand gently, right?

13 A No. I didn't grab her hand. I grabbed her arm, like,
14 "Come on. Let's, you know" ---

15 Q You gently tugged on her and said, "Come on and go
16 with me; I'm concerned" ---

17 A Oh, at the time ---

18 Q --- "about your" ---

19 A --- I probably ---

20 Q --- "well-being"?

21 A --- like I said, I was -- I was causing a scene. I
22 wasn't actually hurting her.

23 Q You weren't hurting her?

24 A No.

25 Q But when she wouldn't do what you wanted her to, it

1 ends up you grabbing ahold of her, trying to force her to
2 do what you wanted her to do; isn't that right?

3 A Say that again.

4 Q When she wouldn't do what you wanted her to do, when
5 you told her verbally, you're going put your hands on her
6 and make her do what you wanted her to do; isn't that
7 right?

8 A What you mean by "put my hands on" -- by grabbing her?

9 Q Yeah. Absolutely. She told you no; you won't admit
10 yes. So you grabbed hold of her ---

11 A Yes.

12 Q --- right?

13 A She also snatched away from me.

14 Q But that didn't deter you all. You kept right on,
15 didn't you? You didn't ---

16 A No. I ---

17 Q --- stop.

18 A --- touch her no more after that. We -- we kept
19 arguing.

20 Q Why didn't you just stop, mind you business, and go in
21 the house?

22 A I mean, that's my girlfriend. I mean, what I'm
23 supposed to just ---

24 Q Let her do what she wanted ---

25 A Just ---

1 Q --- to do.

2 A --- give up on her, I mean? Just, Okay. You go
3 ahead. Go have -- get drunk. Have fun tonight. I mean --
4 I mean, she was already drunk.

5 Q She's got to do what you say. Is she your property
6 that you can tell ---

7 A No. She's ---

8 Q --- her what ---

9 A --- not ---

10 Q --- to do?

11 A --- my property.

12 Q Why didn't you, then, go in the house and say, "Leave.
13 Go on and do what want to"? Why did you keep on?

14 A Because I care about her.

15 Q You care about her?

16 A Yes, I do.

17 Q And that's the way you show how you care about her?
18 You're going make her do what she doesn't want to do?

19 A I would -- I don't make her do anything. I mean ---

20 Q Well, you ---

21 A --- we're still ---

22 Q --- were trying to ---

23 A --- together ---

24 Q --- make her ---

25 A --- now.

1 Q --- do something that night. You were even going put
2 your hands on her when she wasn't going to do what you
3 wanted her to do. You've already told that jury up here
4 that's the way it was.

5 A I grabbed her arm, I mean.

6 Q Why didn't you go in the house and let her go?

7 A Because I was concerned.

8 Q You were concerned?

9 A Yes.

10 Q You weren't mad?

11 A No, I wasn't.

12 Q You were screaming and yelling and hollering and
13 cussing to the point that people came out of three
14 buildings in -- on January the 27th, and ---

15 A I ---

16 Q --- you were just concerned.

17 A I was agitated.

18 Q You weren't mad?

19 A I was agitated. I wasn't mad.

20 Q What's the difference between being mad and agitated?
21 One sound better than the other for this jury?

22 A No, I mean. I wasn't mad. I wasn't angry.

23 Q You weren't angry, the man who wouldn't take no for an
24 answer?

25 A (No audible response.)

1 Q Along with all the other people came out there that
2 night, Hydrick came out too, didn't he?

3 A Correct.

4 Q He first tried to talk you out of either an attack on
5 her or, as you would posit it, a -- a -- just a little
6 argument or -- or disagreement that you were calmly having
7 with her, but he came out too, didn't he?

8 A Yes, he did come out. But he didn't talk to me
9 directly. He started grabbing on me.

10 Q He asked you several times to leave her alone, didn't
11 he?

12 A While he was grabbing on me.

13 Q Your testimony under oath is he came out and just went
14 to grabbing on you right away; didn't say anything to you
15 at all about, "Man, just leave her alone"?

16 A Correct.

17 Q And you told him, "Get your fucking hands off of me."

18 A No, I did not.

19 Q Nothing that he did deterred you or stopped you from
20 trying to keep Saca there, did it?

21 A I told Hydrick, "Come on, man. Let me go. I'm
22 talking to my old lady. It's -- you know, it's not that
23 serious. I'm just talking to my old lady."

24 Q People have poured out of three buildings in the night
25 and it's not that serious?

1 A I mean, it's apartment complex. Anything happen in
2 apartment complex, people's just come out -- I guess, be
3 nosy, I would call it.

4 Q He came out to help her, didn't he?

5 A I'm assuming.

6 Q In defense of her; isn't ---

7 A I guess ---

8 Q --- that right?

9 A From my understanding, he came out to calm us down.

10 Q He came out because you were attacking his cousin ---

11 A I was ---

12 Q --- or his ---

13 A --- never ---

14 Q --- good friend, whether they're related or not; isn't
15 that true?

16 A I was never attacking her.

17 Q And you're as sure about that as everything else
18 you've told ---

19 A Positive.

20 Q --- this jury under oath?

21 A Positive.

22 Q No matter what he did, you went right back to trying
23 to force her to say; isn't that right?

24 A I continued to talk with her.

25 Q You continued to talk with him?

1 A Argue -- talk/argue.

2 Q He had ever right to put his hands on you to stop you
3 from attacking his cousin ---

4 A I was ---

5 Q --- didn't he?

6 A --- not attacking her. We was only arguing.

7 Q Bottom line is he first tried to talk you out of it.
8 And when he couldn't talk you out of it, he grabbed ahold
9 of you; isn't that ---

10 A No.

11 Q --- right?

12 A He started grabbing me from -- soon as he came out.

13 Q And you told him, when he grabbed you, "Motherfucker,
14 when you let me go, I'm going to knock your punk ass out,"
15 didn't you?

16 A No. I said no such thing. Why would I say that to
17 him? I'm not mad at him, I mean.

18 Q Just like you weren't mad at Saca?

19 A Yes.

20 Q You're just as sure about that as what you've told
21 this jury up here about how ---

22 A Hydrick was ---

23 Q --- you weren't upset?

24 A Hydrick -- Hydrick was my friend. I mean, why would I
25 said, "I'm going to knock your punk ass out"? I mean, how

1 would I even know, if I was to hit him, I was going to
2 knock him out? I mean, how would I even know that? Why
3 would I say something like that?

4 Q Not why would you say something like that. You didn't
5 say something like that, didn't you?

6 A No, I did not.

7 Q No. What you said -- what did you tell him, then?
8 Tell the jury again what you -- what -- what you said.

9 A "Hydrick, if you don't let me go, I'm going to hit
10 you." Yes, I did ---

11 Q You calmly said, "If you don't let me go, Hydrick, I'm
12 going to hit you"?

13 A Yeah. I wasn't upset ---

14 Q That's the ---

15 A --- with him.

16 Q --- way you ---

17 A That's ---

18 Q --- talk?

19 A I wasn't upset with him.

20 Q You were calm?

21 A I mean, at the time I -- I might've been -- my voice
22 might've been high-tempered. But -- but I wasn't upset
23 with Hydrick.

24 Q He was absolutely in his right to try to keep you off
25 his cousin and for her to be able to go on her merry way to

1 ----

2 A I was ---

3 Q -- help her.

4 A I was never on her.

5 Q She couldn't leave, could she?

6 A Yes, she could have.

7 Q When ---

8 A She was ---

9 Q --- could she leave?

10 A She was still in the truck by the time Hydrick pulled
11 -- picked me up and tote me off. She was still in the
12 truck.

13 Q Just as soon as Hydrick let you go, which -- now, you
14 concede to this jury you said, "Let me go or I'm going to
15 hit you, right?

16 A Yes.

17 Q Okay. So he did exactly what you said.

18 A No, he ---

19 Q He let ---

20 A --- didn't.

21 Q --- you go.

22 A No, he didn't let me go.

23 Q And held his hands up, didn't he?

24 A No, he did not.

25 Q Did not let you go?

1 A No, he did not.

2 Q Well ---

3 A He ---

4 Q --- then, how ---

5 A --- he ---

6 Q --- did you ---

7 A --- said ---

8 Q --- kill him by punching him in the head if he didn't
9 let you go?

10 A He said, "Man, I'm not going let you go." That's when
11 I managed to wiggle loose and tried to walk back over to
12 Saca. He grabbed me again and ripped my coat. That's when
13 I spun around and hit him.

14 Q So even though this man had grabbed ahold of you and
15 you had to, as you're telling this jury, wrench your way
16 loose, you still weren't going stop going after Saca; you
17 were going right back after her; isn't that true?

18 A We was talking, I mean.

19 Q Why didn't you go in the house and let that girl go on
20 her way at that point in time? Her cousin is out there
21 with his arms around you, trying to stop you from
22 restraining her, fighting with her, doing whatever you were
23 doing. Undeterred after you're telling them, "I broke
24 loose," you still go right back after her, right?

25 A I went back over there and talked to her.

1 Q To continue this calm talk?

2 A Yes. At that time, yes. At that time I had done
3 calmed down.

4 Q Oh, you had calmed down after he had grabbed you and
5 torn your coat and gotten a bear hug on you and all of
6 that?

7 A Yeah. I had calmed down. Like I said -- because I
8 said, "We're just talking. What are you doing? We're just
9 talking."

10 Q And so after you got loose from him, you turned around
11 and punched him and knocked him out; isn't that right?

12 A After he grabbed me again.

13 Q Oh, you did it after he grabbed you again?

14 A Yes. He grabbed me on the shoulder, ripped my coat.
15 Like I said, I spun around and I just threw a punch. I
16 wasn't aiming for no particular spot.

17 Q Because he was trying to stop you from going after his
18 cousin, you threw a punch and hit him?

19 A I mean, technically, they're not related.

20 Q Do what?

21 A I said technically, they're not related.

22 Q Well, if it was some -- if it was -- it was a woman
23 that he was concerned about, correct?

24 A Correct.

25 Q And because he was trying to stop you, you punched him

1 in the face?

2 A I mean, he was trying to stop me from arguing. I
3 mean, what's the harm in arguing? I don't see no harm
4 arguing.

5 Q And you can do what you want to do, right?

6 A No, I cannot.

7 Q Well, obviously. When people don't do what you say,
8 you put your hands on them. You try to make them do what
9 you want them to do.

10 A No, I do ---

11 Q --- right?

12 A --- not. No. Incorrect.

13 Q Saca wouldn't do what you wanted to do, so you grabbed
14 ahold of her; isn't that right?

15 A Okay. She snatched away. I argued. We -- we -- if
16 they -- I mean, the situation went on, Saca -- if I'd have
17 argued, she probably would have left.

18 Q Hydrick wouldn't do what you wanted to do, so you
19 punched him right in the face and knocked him out and
20 killed him; isn't that right?

21 A No.

22 Q Is he dead from a blow from your ---

23 MR. SHAFFER: Objection ---

24 Q --- hand ---

25 MR. SHAFFER: --- Your Honor.

1 Q --- as we sit here?

2 THE COURT: All right. Hold on.

3 MR. SHAFFER: I -- I understand it's cross. But we've
4 been on the same subject for ---

5 THE COURT: We are.

6 MR. SHAFFER: --- at least ---

7 THE COURT: I'm ---

8 MR. SHAFFER: --- five minutes.

9 THE COURT: I'm going to let him answer this question;
10 then we're going to move on.

11 MR. SHAFFER: Thank you.

12 Q He's dead right now from a punch from your hand
13 because he wouldn't listen to you; isn't that right?

14 A No. He dead from a punch from my hand; I admit that.
15 I'm not saying because he wouldn't listen to me.

16 Q After he's knocked out, you go right back over towards
17 Saca, right?

18 A Correct.

19 Q And then people start hollering and yelling, is what
20 you've said, right?

21 A Someone yelled, "You knocked him out." I think it was
22 Ms. Stallworth.

23 Q You didn't even look to see whether or not you'd
24 knocked him out?

25 A Yeah. As soon as she said, I turned around. I said,

1 "No, I didn't. I didn't even hit him that hard."

2 Q Cracked his skull and killed him, but you didn't hit
3 him that hard?

4 A I mean, at the time I didn't know his skull was
5 cracked. I didn't know none of this.

6 Q Could you ---

7 A I mean ---

8 Q --- have hit ---

9 A --- he wasn't ---

10 Q --- him harder?

11 A --- dead. I mean, he wasn't dead at the time.

12 Q Well, you killed him. Could you have hit him harder?

13 A I don't know. I mean, like I said, I wasn't trying to
14 hit him hard. I ---

15 Q You weren't trying to hit him hard?

16 A No, I wasn't. I honestly said, "No, I didn't. I
17 didn't even hit him that hard."

18 Q You're just going to give him a little love tap?

19 A (No audible response.)

20 Q Bottom line is you hit him as hard as you can --
21 could, and you didn't care what happened to him; isn't that
22 right?

23 A No. No, it's not correct. I was never trying to hurt
24 him. I was just trying to get him off of me. I was never
25 trying to hurt Hydrick.

1 Q Were you just trying to hit him hard enough maybe to
2 paralyze him, not ---

3 A No ---

4 Q --- kill him?

5 A --- I wasn't.

6 Q Were you maybe just trying to maybe blind him in one
7 eye ---

8 A No, I wasn't.

9 Q --- by hitting him?

10 Maybe just give him a little mild brain damage?

11 A No, I was not.

12 Q The bottom line is when you punch somebody in the face
13 as hard as you can, whatever happens to them is just bad
14 news if they happen to die; isn't that right?

15 A Yes.

16 Q Because you shouldn't be punching people in the face,
17 should you?

18 A No, I shouldn't have. But I also have a right too. I
19 mean, people don't -- shouldn't be putting their hands on
20 me, I mean.

21 Q You're attacking a female, and nobody should put their
22 hands on you?

23 A I wasn't attacking her.

24 Q You're trying to keep somebody from leaving against
25 their will and nobody should put their hands on you?

1 A I wasn't -- like I said, I was trying to talk to her.
2 I mean, the situation went on. I hate this happened. I
3 really do. But like I said, if Saca would've left ---

4 Q If -- if everybody ---

5 A --- it'd have ---

6 Q --- had ---

7 A --- been fine.

8 Q --- just done what you said, everything would've been
9 fine?

10 A No. I said she would've left. She could have left
11 the scene. I mean, she could've went home or whatever and
12 ---

13 Q She couldn't ---

14 A --- it'd have been ---

15 Q --- leave because ---

16 A --- it'd have been ---

17 Q --- you wouldn't ---

18 A --- a new day.

19 Q --- let her.

20 A I mean, tomorrow be a new day. I might've been upset.
21 But next day, I mean . . .

22 Q So after you realized that you had knocked him out,
23 whenever that was, you didn't watch him fall? You didn't
24 do anything?

25 A No, I did not.

1 Q You punched this man in the face and you just turned
2 your back and didn't worry about him?

3 A Like I said, I wasn't trying to hurt him.

4 Q Well, you've told these ladies and gentlemen of the
5 jury about what a big man, what a big monster this is.

6 A I mean ---

7 Q And you ---

8 A --- he was ---

9 Q --- punched ---

10 A --- bigger ---

11 Q --- him in the face. You're not ---

12 A Compared ---

13 Q --- worried ---

14 A --- to me ---

15 Q --- that he was ---

16 A --- he -- he was ---

17 Q --- coming after ---

18 A --- bigger than ---

19 Q --- you?

20 A --- me.

21 Q Do what?

22 A I said compared to me, he was bigger than me.

23 Q And you punched him in the face and you're not worried
24 about what he's going to do to you at that point in time?

25 A No, I wasn't.

1 Q Well, you told this jury how afraid you were of him,
2 worried about how he was going to hurt you up. And you
3 punch him in the face. And your response is to turn your
4 back on him and walk away?

5 A I was retreating, I mean.

6 Q You were retreating?

7 A Yeah.

8 Q What would've stopped this big monster that you're so
9 afraid of from descending on you and killing you?

10 A I guess, if I wouldn't have knocked him out, nothing.

11 Q So after whatever point in time it comes to your
12 attention that he's knocked out, you go over and try to get
13 him up, right?

14 A I went over and tried to help.

15 Q Tried to help him?

16 A Help him up. Yes.

17 Q And then the first word that people are calling the
18 cops, you're running through the woods. That's how
19 concerned you were about your friend.

20 A I didn't run.

21 Q You didn't run?

22 A No, I did not.

23 Q This friend that you're so concerned about and is
24 lying there knocked out on the ground, whether you walked
25 or ran, you left?

1 A I mean, it started -- like I said, everybody started
2 coming around and yelling, screaming at me. I mean,
3 because I felt the situation escalated, so I thought the
4 best thing for me to do was to leave -- I mean, leave the
5 scene.

6 Q Nobody in this whole apartment complex was man enough
7 or was enough of a man to intercede with you attacking her
8 but Hydrick, and you're suddenly worried that you're going
9 to get attacked?

10 A I wasn't worried that I was going get attacked. I
11 mean, just keep the -- the -- the situation from
12 escalating.

13 Q Well ---

14 A I mean, his family started coming out.

15 Q Well, you're ---

16 A I mean ---

17 Q --- trying to intimate to this jury that you're
18 worried and that's why you left. Which way was it? Were
19 you worried or were you not worried?

20 A I just didn't want the scene -- I just -- it was --
21 like I said, it would just escalate. I mean, like, the
22 heat was rising, so I just left. I thought that was the
23 best thing to do. And like I said, I didn't think he was
24 hurt that bad. I didn't know he was hurt that bad.

25 Q But after ---

1 A I just ---

2 Q --- you found out he was knocked out and not coming
3 to, you were so concerned about your friend that you left?

4 A I mean, I have seen people been knocked out and they
5 wake up, I mean, later on.

6 Q Hydrick didn't wake up later on, though, did he? He
7 died.

8 A Correct. And I hate that happened.

9 Q So much so that you left him lying there?

10 A Poor judgment on my -- on my part.

11 Q A lot of poor judgment on your part that night, wasn't
12 there?

13 A Yes.

14 Q Stayed gone for three days. You knew people were
15 looking for you too, didn't you?

16 A No, I ---

17 Q Went on ---

18 A --- did not.

19 Q --- the run right then and stayed ---

20 A No, I ---

21 Q --- gone for three days?

22 A No, I did not. I didn't know I had a warrant on my
23 arrest until ---

24 Q Did you tear your jacket running through the woods?

25 A No, I did not.

1 Q That jacket got torn because old Hydrick tore your
2 jacket ---

3 A Yes.

4 Q --- attacking you?

5 A Yes.

6 Q That's what you're telling the ladies and gentlemen of
7 the jury up here ---

8 A Yes.

9 Q --- under oath?

10 Jacket got torn with him attacking you?

11 A Yes. I never ran through the woods. I was at
12 apartment complex.

13 Q Where'd you tear your coat, then?

14 A Hydrick tore my coat.

15 Q And this is January, right?

16 A Yes.

17 Q So you wore this tore-up coat around for three days?

18 A Yes, I did, honestly.

19 Q You wore that everywhere you went for three days?

20 A I didn't -- I'm saying, like -- well, like I said, I
21 went to my sister house. When I came outside of the house
22 or something, I put it on. I mean, she stay in the
23 country. Ain't like a whole bunch of people's going see me
24 with it on.

25 Q Even wore this up to the police department, too, to

1 make a show ---

2 A No, I ---

3 Q --- didn't you?

4 A --- actually carried it.

5 Q Do what?

6 A At -- at that time I was carrying it.

7 Q You were carrying it?

8 A Yes.

9 Q Why were you carrying it with you?

10 A Because I thought it was something they might need to
11 see after I heard the situation.

12 Q Okay. You thought it was something that the police
13 might need to see?

14 A Uh-huh.

15 Q You carried this to -- you wore this torn-up coat
16 around for three days?

17 A Uh-huh.

18 Q You even carried it carefully up to the police
19 department when you went and turned yourself in for the
20 charges that were levied against you, right?

21 A Yes.

22 Q That's significant, man. You wore it for three days
23 and you carefully carried it up to the police department,
24 right?

25 A Yes.

1 Q But when you talked to this officer here right then,
2 you never said one word about this torn jacket and how
3 significant it is and how it showed that Hydrick was
4 attacking you and you were just defending yourself. You
5 said absolutely nothing about this torn coat, did you?

6 A No, I did not. Because I didn't think that was
7 important at the time.

8 Q It's so important that you have worn this torn-up coat
9 for three days, and you have carefully carried it with you
10 to the police department and been booked into the police
11 department, and you never even mentioned it to the police?

12 A No, I did not. I mentioned it to my lawyer.

13 Q A year later ---

14 A No. It ---

15 Q --- after ---

16 A --- was first ---

17 Q --- you met with a ---

18 A Incorrect.

19 Q --- lawyer ---

20 A First lawyer ---

21 Q Let me finish. A year later after you met with a
22 lawyer, this torn-up coat suddenly becomes significant;
23 isn't that right?

24 A No, that's not correct.

25 Q Okay. Well, when, in your plan, did it become

1 significant?

2 A When I talked to Mr. Seigler.

3 Q Oh, the -- after you talked to the first lawyer, it
4 became significant?

5 A Correct. And by the time I thought about that I had
6 the coat in the property.

7 Q You'd already -- you've already told the ladies and
8 gentlemen of the jury that you thought it was so
9 significant on your own ---

10 A I honestly ---

11 Q --- prior ---

12 A --- forgot ---

13 Q Let me finish. Prior to coming to the police
14 department, you wore it for three days and you carried it
15 up there. You didn't need a lawyer's advice for that. If
16 you had already decided that at that point in time that it
17 was that significant that you were going bring it in there,
18 you didn't wait eight or nine months later till you met
19 with Mr. Seigler for this to be an issue, did you?

20 A I don't -- like I said, I don't know if I had
21 mentioned that to the officers or not. I don't know if
22 they took that into evidence. I didn't know who to give
23 the coat to. I thought when I first -- that's when I met
24 my attorney. That's when I talked to Seigler. I told him
25 about the coat.

1 Q You ---

2 A I didn't ---

3 Q --- gave a ---

4 A --- know I ---

5 Q --- written statement ---

6 A --- I didn't ---

7 Q --- and you ---

8 A --- know I ---

9 Q --- didn't say ---

10 A --- was supposed ---

11 Q --- one word ---

12 A --- to give to them or -- or who to give it to.

13 Q You gave ---

14 A But I ---

15 Q --- a written statement. You didn't say one word
16 about that torn-up coat, did you?

17 A No, I did not.

18 Q That you had already decided was so significant that
19 you carried it up there?

20 A I didn't think it was significant.

21 Q Why'd you bring it with you if it wasn't significant?

22 A Because what I was wearing, I mean, of the night of
23 the incident.

24 Q It's either one way or another. It was either
25 significant to you that night or it wasn't, when you went

1 up there and turned yourself in. Which is it? Tell the
2 ladies and gentlemen of the jury.

3 A It was significant, I mean.

4 Q But you -- it was so significant, you didn't tell them
5 anything in the statement; you didn't tell them anything
6 orally; you didn't tell them anything in writing. You
7 never mentioned it, did you?

8 A I mean, some things, you -- you wait till you get
9 attorney. You tell your attorney, I mean.

10 Q It's a secret?

11 A No, it's not a secret, I mean. You talk to your
12 attorney, I mean. That's who you supposed to talk to.

13 Q You're putting this up here into evidence and saying
14 that this is the evidence of a brutal attack on the part of
15 Hydrick, and you're giving your side of the tale. And
16 you're going hide that and keep that a secret?

17 A No. I don't know if I gave this coat to the officers,
18 whether it took missing. I don't know, I mean.

19 Q You were ---

20 A I felt ---

21 Q --- already thinking about that ---

22 A I felt the ---

23 Q --- they might've ---

24 A --- safe hands ---

25 Q --- destroyed it?

1 A --- to put it in was my lawyer.

2 Q You were already thinking about that that night?

3 A No, I ---

4 Q They might ---

5 A --- didn't ---

6 Q --- destroy it?

7 A --- I wasn't thinking about that.

8 Q That's just an explanation for the jury now?

9 A No, it's not.

10 Q You weren't thinking about it then at all? That's no
11 justification for you not telling them, if you weren't
12 thinking about it back then.

13 A Like I said, I might've mentioned it to them.

14 Q Oh, you might've mentioned it to them?

15 A I mean, they also got a verbal statement ---

16 Q One ---

17 A --- from me.

18 Q --- way or another, did you tell them or not?

19 A I can't recall. It's been two years ago. I don't
20 know what I said to them that night. I know what I wrote
21 down.

22 Q Okay. Let me show you Defendant's 5, then, your
23 statement. Where is it?

24 A This is what I wrote down. I also gave a verbal
25 statement. It's ---

1 Q And you told ---

2 A --- not in here.

3 Q Are you saying that you told this officer verbally
4 that, that night?

5 A I might have. Like I said ---

6 Q You might have?

7 A Might have. It was two years ago, I mean.

8 Q Your memory suddenly fuzzy?

9 A I mean, we said a couple things back and forth. I can
10 recall every word -- I -- no -- I mean, he said/I said? I
11 mean, but I can't, I mean. I can't do that.

12 Q Just out of ammo on that. Be helpful if you could
13 prove that because you didn't do it, didn't you?

14 A Like I said ---

15 Q But you can't ---

16 A --- I may ---

17 Q --- do it ---

18 A --- have ---

19 Q --- because it ---

20 A --- may not.

21 Q --- didn't happen.

22 A I may have; may not. I honestly don't remember. No.
23 I -- I do remember giving verbal statement, talking to the
24 officer.

25 Q Didn't say one word to that officer about that torn-up

1 coat, did you?

2 A Don't know. Don't remember.

3 (Whereupon, Mr. Maye and Mr. Young conferred.)

4 Q No more questions for you.

5 REDIRECT EXAMINATION

6 BY MR. SHAFFER:

7 Q Steven, you said you didn't have a job.

8 A No, I ---

9 Q --- at that time.

10 A --- didn't.

11 Q Okay. And you didn't have a job, right?

12 A No, I did not.

13 Q Did you have a car?

14 A No, I did not.

15 Q Had a house?

16 A No.

17 Q How many jackets did you have?

18 A At that time it was only that one.

19 Q Only this one?

20 A Yes.

21 Q And it was January?

22 A Yes.

23 Q If you weren't wearing this jacket, would you have
24 been cold?

25 A Yes, I would have.

REDIRECT EXAMINATION BY MR. SHAFFER - STEVEN OTTS 435

1 Q Okay. Did you tear this up before you walked into the
2 police department?

3 A No, I did not.

4 Q Okay. If you had torn it up when you walked into the
5 police department, wouldn't you have told them about it
6 maybe, if it was part of a big scheme?

7 A I'm assuming I would, I mean, if I -- if that's what I
8 was thinking. I wasn't thinking that.

9 Q So you -- but it -- we'll get to that in a minute.
10 When I went in the property room, took that picture of this
11 coat, I wasn't alone, was I?

12 A I think you with a correction officer.

13 Q So there was a member -- a correction officer standing
14 right beside me when I took that picture?

15 A Yes. Because they got the keys to all our property --
16 to the property room.

17 Q Did I say -- did -- did I tell you that ---

18 MR. MAYE: Your Honor ---

19 Q --- the coat ---

20 MR. MAYE: --- I'm going to ---

21 Q --- was important?

22 MR. MAYE: --- to anything that he said. I ---

23 MR. SHAFFER: Okay.

24 MR. MAYE: --- he's certainly not ---

25 MR. SHAFFER: All right.

REDIRECT EXAMINATION BY MR. SHAFFER - STEVEN OTTS 436

1 MR. MAYE: --- available. And it's certainly going to
2 be ---

3 MR. SHAFFER: I ---

4 MR. MAYE: --- hearsay, anything his lawyer said.

5 THE COURT: Correct.

6 MR. MAYE: I can't cross-examine him.

7 MR. SHAFFER: All right.

8 THE COURT: Sustained.

9 MR. SHAFFER: I -- I apologize, Your Honor.

10 THE COURT: All right.

11 Q You told me about this jacket, right?

12 A Yes, I did.

13 Q You told Mr. Seigler about it?

14 A Yes, I did.

15 Q Who's Mr. Seigler?

16 A He was a attorney that was appointed to me.

17 Q And when was he appointed to you?

18 A The first I had seen him was -- I want to say in March
19 or either May when the court term came around. That's the
20 first time I seen him. I mean, I'm guessing he was
21 appointed to me while I was incarcerated, I mean. That's
22 when I first met him, though.

23 Q At some point you did tell Officer Padgett about this
24 coat, right? Do you recall?

25 A I honestly don't recall. Like I said ---

REDIRECT EXAMINATION BY MR. SHAFFER - STEVEN OTTS 437

1 Q Okay.

2 A --- I don't.

3 Q One more time, just tell us how this coat got torn.

4 MR. MAYE: Your Honor, now, that's asked and answered.

5 THE COURT: All right.

6 MR. MAYE: He's gone ---

7 MR. SHAFFER: I apologize ---

8 MR. MAYE: --- through.

9 MR. SHAFFER: --- Your Honor.

10 THE COURT: That's nothing new and ---

11 THE COURT: Sustained.

12 MR. MAYE: --- asked and answered; outside of
13 redirect.

14 MR. SHAFFER: Thank you, Your Honor. No further
15 questions. I do have a quick issue.

16 THE COURT: All right. Anything further for this
17 witness?

18 MR. MAYE: Nothing else for him.

19 THE COURT: Thank you ---

20 MR. MAYE: Thank you.

21 THE COURT: --- very much, Mr. Otts. You may step
22 down.

23 (Whereupon, the witness exited the witness stand.)

24 MR. SHAFFER: We might want to address at the bench?

25 THE COURT: Yeah. If y'all would ---

1 THE COURT: Well, I mean ---

2 MR. MAYE: Yeah.

3 THE COURT: --- it -- I think -- I mean, I -- yeah. I
4 mean, I understand. I think it's a done deal, I mean, but
5 -- but I don't think -- I -- I -- I tend to remember the
6 testimony as Mr. Maye does: that the question was
7 regarding "you never told him that night."

8 MR. SHAFFER: And -- and I understand that. And
9 that's both the Court's recollection and Mr. Maye's
10 recollection. My recollection is just slightly different
11 than that. And perhaps I misheard it.

12 But I just don't want to get into a position where --
13 I don't want to get in a position where I don't put it on
14 the record, Your Honor.

15 THE COURT: All right. Well, you -- you -- and you've
16 done that. It's -- it's ---

17 MR. SHAFFER: Thank you.

18 THE COURT: --- on the record. And we'll -- that --
19 that certainly will protect that issue.

20 Let me ask, with regards to the charge -- no. Let me
21 back up. I'm getting ahead of myself. At this stage I
22 need to take up any motions at the close of the evidence.

23 MR. SHAFFER: Your Honor, we renew our motion for a
24 directed verdict based upon lack of malice, Your Honor. I
25 don't believe there's any evidence that he had malice.

1 THE COURT: All right. I'm not -- I'm going to
2 respectfully deny that motion, based at -- as my earlier
3 ruling. I think it's a question of fact for the jury to
4 decide, based on the testimony regarding what -- what --
5 what may have been -- what allegedly had been said, whether
6 they believe certain witnesses versus the other witnesses.
7 And -- and I think that's a issue of fact for the jury to
8 decide.

9 MR. SHAFFER: Thank you, Your Honor.

10 MR. MAYE: Thank you, Your Honor. Your Honor, I may
11 have some reply witnesses in this case, but I'm going to
12 need to do just a little bit of legwork on that prior to
13 knowing. I know ---

14 THE COURT: All right.

15 MR. MAYE: --- we hadn't broken for lunch. And I --
16 I'm cognizant of the fact we got a jury coming in at two.

17 THE COURT: Yeah.

18 MR. MAYE: And I was going ---

19 THE COURT: And ---

20 MR. MAYE: --- address the Court about -- not anything
21 about this trial, but about the scheduling on that.

22 THE COURT: Okay. All right.

23 (Off the record from 12:42 p.m. until 2:31 p.m.)

24 THE COURT: We're going to -- while we're waiting for
25 that witness, we're going to go ahead and start discussing

1 the -- the jury charge. And this is outside the jury's
2 presence. We're -- we're -- we're on the record, but we're
3 not formally before a jury at this point. We're just
4 discussing the charge.

5 Now, one of the things that -- one of the issues I
6 want to go ahead and address, if -- if we could, is I
7 think, Mr. Shaffer, you're -- you're asking for a charge on
8 self-defense, correct?

9 MR. SHAFFER: That's correct, Your Honor.

10 THE COURT: All right. And I want to hear from you on
11 that because I have some -- I -- and I'm -- and while I
12 speak with you, I've got what my -- what my typical charge
13 on self-defense would be. I've got that in front of me,
14 because I -- I'm not sure -- and I'll -- I'll hear from you
15 regarding whether or not in this case that that's an -- an
16 appropriate charge.

17 MR. SHAFFER: Yes, Your Honor. If you will, let me --
18 I'm bouncing all over the place, so I apologize.

19 THE COURT: That's all right. Go ahead and just
20 gather your thoughts there.

21 MR. SHAFFER: Your Honor, I believe that we've
22 certainly made out at least a bare minimum of self-defense.
23 Self-defense -- and I -- I think the hangup with the Court
24 -- and you can correct me if I'm wrong, but it's the fear
25 of losing his life or sustaining bodily injury, Your Honor.

1 I guess factor number two or element number two, the
2 issue with that is that it's actually two-part: There is a
3 subjective element, which I think we've met, based off the
4 testimony. And I understand Your Honor does not recall the
5 testimony that same way do. I believe he said that he was
6 in fear or that -- not in fear. I apologize. He said that
7 he was -- he could've gotten injured. And I think that
8 that presents the evidence, under the subjective prong.

9 But you could also do it objectively. And I think
10 that a reasonable person -- and I -- I think a reasonable
11 person, if they had gotten -- you know, if they were just
12 arguing with somebody and somebody came up and bear-hugged
13 them and then they wiggled out and they grabbed them again
14 and you turned and hit them, an ---

15 THE COURT: But ---

16 MR. SHAFFER: I apologize, Your Honor.

17 THE COURT: Well, here -- but here -- now, I -- I
18 don't know that that's correct, what you're saying. I
19 think what the -- the law says is that the person that the
20 defendant was -- was actually in imminent danger of death
21 or serious -- or serious bodily injury or that the
22 defendant actually believed he was in imminent danger of
23 death or serious bodily injury. And then, it talks about
24 the reasonable-person standard there: whether or not a
25 reasonable person would've been put in fear.

1 It -- so I -- and -- and the reason I -- and the
2 reason I mention that is what you've said, I don't think is
3 correct.

4 MR. SHAFFER: Your Honor, I'm ---

5 THE COURT: I don't think it's either/or. If you've
6 got a defendant who's on the stand and said, "I wasn't
7 afraid," I don't think you can then say, "Well, Judge, he
8 wasn't afraid, but a reasonable person might've been, so
9 we're entitled to it."

10 MR. SHAFFER: Your Honor, there is *State v. Wiggins*.
11 And I'm reading directly from *State v. Wiggins*.

12 MR. MAYE: And, Your Honor, I don't mean to interrupt.

13 MR. SHAFFER: Oh.

14 MR. MAYE: But I'm going to step outside and work with
15 this reply witness. And Mr. Young has got the charge part.

16 THE COURT: All right. Sound -- sounds ---

17 MR. MAYE: Thank you.

18 THE COURT: --- good. Thank you.

19 MR. SHAFFER: I -- I'm reading directly from *State v.*
20 *Wiggins*, Your Honor. And it says -- that's 330 South
21 Carolina -- S.C. 538. And it says (as read): The basic
22 definition of when a person is justified in using deadly
23 force in self-defense is composed of four elements: The
24 defendant was without fault in bringing on the difficulty,
25 (1); (2) the defendant must have actually believed he was

1 in imminent danger of losing his life or sustaining bodily
2 injury, comma, or he actually was in such imminent danger.

3 THE COURT: Right.

4 MR. SHAFFER: If he's -- that he actually was in
5 imminent danger is a objective view, Your Honor, because if
6 -- if you're in a situation where ---

7 THE COURT: It's no longer objective if he says, "I
8 wasn't afraid."

9 MR. SHAFFER: Your Honor, I -- I don't think he -- he
10 said that he was not afraid, Your Honor. I -- I don't
11 believe that he -- he testified to that. Regardless, even
12 if he had testified to that, the -- the issue is any
13 evidence. So even when you have cases like *Naughten*, where
14 -- *Naughten* -- and I might be butchering this because I
15 haven't read the case in probably six months or a year or
16 two. But *Naughten* basically is around 2000, South Carolina
17 Supreme Court. And essentially, it's -- it's enforcing
18 this any-evidence standard. So even though there --
19 there's evidence that the witness specifically denies an
20 element of -- of a lesser-included offense, which is the
21 same standard as we're using here, he's still entitled to
22 the charge if there's some evidence in the record.

23 So even if -- even if he said up and said self-defense
24 and he had given a statement that there was accident, he
25 would be entitled to both charges, even though he was

1 saying, "That statement's a lie." You -- you're still
2 entitled to the charge. And that's basically what happened
3 in -- in *Naughten*, Your Honor. I mean, it -- it really is
4 any evidence. And I think, whenever you have ---

5 THE COURT: Any reasonable evidence, though. Now, you
6 -- don't ---

7 MR. SHAFFER: Yes, Your Honor.

8 THE COURT: --- don't misquote, because the standard
9 is -- is -- is reasonable person.

10 MR. SHAFFER: Yes, Your Honor. I think that
11 reasonable person is the standard, but it's any evidence to
12 -- to make a reasonable person believe that.

13 MR. SHAFFER: It -- Your Honor, if there's a --
14 essentially, if the -- if the witness doesn't testify,
15 there's plenty of cases where it's -- a defendant won't
16 testify and the defendant never made a statement. And yet
17 you can make out a claim for self-defense through other
18 witnesses, Your Honor.

19 Because objectively, whenever someone comes up to you,
20 bear-hugs you, and then grabs you again when you try to
21 escape, you have the right to defend yourself. I mean,
22 that's -- I mean, you have the right to do that. As a
23 objective person, you might think that that person's going
24 to hurt you. Now, whether he thought it in his mind is
25 irrelevant. But I think that we established that through

1 the testimony that he did, Your Honor.

2 I would ask that the Court play back it. And I
3 understand the Court already denied that, but I want to ask
4 that on the record, that we asked that it -- it get played
5 back because I really recall him saying that he might get
6 injured, Your Honor. And that would be, certainly under
7 the subjective standard, enough to get past that prong.

8 THE COURT: All right. Well, let me ask you
9 something. Could you -- let me -- the -- this is where I
10 think you and I are -- are having a difficulty having a
11 meeting of the minds, so to speak. And I -- I'm just
12 reading the law. And it says the fear must be fear of
13 imminent danger of death or serious bodily injury, not fear
14 of any injury.

15 MR. SHAFFER: And, Your Honor, we do have a difference
16 of that. But I believe even under ---

17 THE COURT: Then -- then ---

18 MR. SHAFFER: --- your ---

19 THE COURT: --- we have a difference of the English
20 language.

21 MR. SHAFFER: Possibly so, Your Honor. But that is --
22 I believe ---

23 THE COURT: I mean, I ---

24 MR. SHAFFER: --- that even ---

25 THE COURT: --- read it to you ---

1 MR. SHAFFER: --- under ---

2 THE COURT: -- verbatim.

3 MR. SHAFFER: --- even if you're looking -- death or
4 serious bodily injury, there's some evidence in the record
5 that says whenever someone comes up, grabs you, and then
6 you wiggle out and do -- and they grab you again, that you
7 ---

8 THE COURT: No. No. You're wrong.

9 MR. SHAFFER: Okay.

10 THE COURT: You're -- no. It -- let ---

11 MR. SHAFFER: Your Honor ---

12 THE COURT: --- and I'm sorry.

13 MR. SHAFFER: --- I apologize.

14 THE COURT: I shouldn't just say -- I shouldn't say it
15 that bluntly. But you're -- you're trying to say that that
16 exists if anybody comes up behind me and grabs me in a bear
17 hug.

18 MR. SHAFFER: Your Honor, I think that at least
19 presents evidence where it's a question of fact for the
20 jury whether they can believe it or not, Your Honor. I --
21 whether they believe that a reasonable person would've been
22 in fear is question ---

23 THE COURT: Of serious ---

24 MR. SHAFFER: --- for the jury ---

25 THE COURT: --- bodily injury.

1 MR. SHAFFER: Yes, Your Honor.

2 THE COURT: And this -- and you know the definition of
3 that.

4 MR. SHAFFER: Yes, Your Honor. I -- I submit that if
5 -- if someone came up and bear-hugged me, that they could
6 be charged with assault, Your Honor. I mean, I -- I submit
7 that that ---

8 THE COURT: That's not ---

9 MR. SHAFFER: --- is a injury ---

10 THE COURT: That's not the issue.

11 MR. SHAFFER: And I -- I understand that.

12 THE COURT: That's not the -- you're right.

13 MR. SHAFFER: Yes. It ---

14 THE COURT: They could be charged with assault ---

15 MR. SHAFFER: Yes, Your Honor.

16 THE COURT: --- assault and battery. They could be.

17 MR. SHAFFER: Yes, Your Honor.

18 THE COURT: That -- that's not the standard for
19 whether or not you get a self-defense charge.

20 MR. SHAFFER: Your Honor ---

21 THE COURT: You have to be -- I'm reading it -- that
22 the defendant was actually in imminent danger of death or
23 serious bodily injury or that the defendant actually
24 believed he was in imminent danger of death or serious
25 bodily injury.

1 MR. SHAFFER: Your -- Your Honor, that he actually
2 believed, I'm not sure -- I -- I -- I'm not saying that it
3 doesn't say that. And I'm wondering ---

4 THE COURT: It does ---

5 MR. SHAFFER: --- where ---

6 THE COURT: --- say that. I just read it.

7 MR. SHAFFER: Well, I -- I understand, Your Honor.

8 Where -- where are you getting the language from? I'm --
9 I'm just wondering.

10 THE COURT: The South Carolina Supreme Court.

11 MR. SHAFFER: And I ---

12 THE COURT: These are the jury charges approved by the
13 South Carolina Supreme Court.

14 MR. SHAFFER: And, Your Honor, there are -- there is
15 the South Carolina Supreme Court also saying that there's
16 an objective -- there's the objective component to it ---

17 THE COURT: There is ---

18 MR. SHAFFER: --- which is ---

19 THE COURT: --- an objective component to it.

20 MR. SHAFFER: Actual danger, Your Honor, in -- in
21 *Wiggins*. It -- if ---

22 THE COURT: But if you want to get objective in this
23 case, that doesn't benefit you. Because objectively in
24 this case, there is no evidence of serious bodily injury or
25 death.

1 MR. SHAFFER: Your Honor, we submit that -- that it
2 does, based off of a -- a -- what -- Your Honor, I --
3 obviously, there's a difference of opinion. But we submit
4 that it does. I would ask that the Court replay the -- the
5 record to find out if it does say that he was -- he thought
6 that he might get injured, which I ---

7 THE COURT: That -- that's not the standard. It ---

8 MR. SHAFFER: Well ---

9 THE COURT: --- is that the standard?

10 MR. YOUNG: Serious bodily injury.

11 MR. SHAFFER: I believe that if it -- if ---

12 THE COURT: Because, then ---

13 MR. SHAFFER: --- he says ---

14 THE COURT: --- why would the -- why would the Court
15 specifically put "was in imminent danger of death or
16 serious bodily injury" if the standard is "any injury"?

17 MR. SHAFFER: Your Honor, I -- I understand that as
18 well. But I -- I believe that it establishes enough
19 evidence for them to actually make the determination of
20 whether it would've been serious injury or not serious
21 injury. They can look at the circumstances. The South
22 Carolina Supreme Court has looked at circumstances such as
23 physical disparity between the two -- between the victim
24 and the defendant in *State v. Dickey* -- in making this
25 exact determination, Your Honor.

1 Granted, the determination -- they -- they looked at
2 is as objectively in *Dickey* and subjectively, because they
3 were deciding as a matter of law. So they were applying a
4 different standard of proof. I understand that. But there
5 is a -- there is a objective component and a subjective
6 opponent [sic], Your Honor. And one thing that they look
7 at is difference in size and physical capabilities in
8 *Dickey*, Your Honor.

9 THE COURT: Solicitor, do you have a -- I -- I've not
10 allowed you to weigh in here, have I? You may not have --
11 you may not oppose a -- a ---

12 MR. YOUNG: Your Honor, I -- I ---

13 THE COURT: --- charge to this, but ---

14 MR. YOUNG: I actually -- I actually have been going
15 through this, looking in the light most favorable to the
16 defense, based on any evidence presented by either side
17 during the course of the trial and the facts presented from
18 the stand. I have -- I have notes where I -- I bracketed a
19 -- a -- a portion of the record when the testimony of the
20 defendant was up. Said "Hydrick was a threat to him" in
21 brackets, and that was a capsulized version of what, I
22 think, he was saying. "He thought he might hurt me," and
23 that he somehow thinks he's a physical threat. That was
24 the implication.

25 Now, Your Honor, I -- for the life of me, I -- I

1 cannot understand the legal standard being met by that for
2 purposes of self-defense. They don't have a burden of
3 doing anything other than putting up any evidence at all on
4 the topic -- or by -- by reference, we could put it up --
5 any evidence whatsoever that would support it.

6 I -- I don't see -- I never heard any testimony, to my
7 recollection, of -- of possible serious bodily injury
8 resulting as a result of that, quote, threat; nor did I
9 hear the possibility of death as a result of that threat,
10 which is the standard. And -- and when you couple that
11 with his statement that he was not afraid and the fact that
12 he didn't -- he -- he basically turned his back on the
13 victim after he struck him and turned his attention entire
14 back to -- the car, I believe, is what he testified he was
15 doing -- there's no evidence that I see that substantiates
16 a basis, even inferentially, to believe that there was a
17 threat of great bodily injury or death resulting from what
18 the victim -- what the defendant felt at the time or could
19 -- could be actually in danger. There's no actual or even
20 substantial believe that would arise from the facts that I
21 saw or heard from the stand.

22 So I -- I don't have a reason to believe that the
23 Court's wrong in its ruling at this point.

24 MR. SHAFFER: Your Honor, may I add one other thing?

25 THE COURT: Yes, sir.

1 MR. SHAFFER: The state has just indicated that there
2 might've been some testimony that he thought he was a
3 threat. And I think their -- essentially, their argument
4 is whether or not it would be great bodily threat or not.
5 I think there's circumstantial evidence, based off of the
6 disparity in size, disparity in strength. And I think that
7 that's established through *Dickey* as a reason for why one
8 might see it as great bodily threat versus lesser bodily
9 threat, Your Honor.

10 THE COURT: All right.

11 MR. YOUNG: Your Honor, there was no direct testimony
12 at all about the type of threat or the level of threat,
13 none whatsoever.

14 THE COURT: Okay.

15 MR. YOUNG: That -- that's my recollection. I do
16 recall the words "threat."

17 THE COURT: All right. Mr. Shaffer, let's talk about
18 you're asking for a charge on involuntary manslaughter; is
19 that ---

20 MR. SHAFFER: Yes ---

21 THE COURT: --- correct?

22 MR. SHAFFER: --- Your Honor, that's correct.

23 THE COURT: But you do not feel it would be
24 appropriate to charge voluntary manslaughter?

25 MR. SHAFFER: No, Your ---

1 THE COURT: Is that ---

2 MR. SHAFFER: --- Honor.

3 THE COURT: --- correct?

4 MR. SHAFFER: That's correct.

5 THE COURT: All right. Explain why -- why voluntary
6 manslaughter would not be an appropriate charge as a
7 lesser-included offense here.

8 MR. SHAFFER: Your Honor -- and I'm not sure if I sent
9 this to you or not. *State v. Starnes*, 388 S.C. 590, it is
10 opinion on voluntary manslaughter. And essentially -- and
11 I apologize. I -- I -- I was so worried about self-defense
12 that I haven't really highlighted this. But to warrant the
13 Court from eliminating a charge of manslaughter, there may
14 -- must be -- there must be no evidence. So I -- I
15 understand the standard, Your Honor.

16 But the problem is -- is that there's -- in this case
17 is that there's two separate elements to manslaughter. It
18 says, quote: We have consistently held that both heat of
19 passion and sufficient legal provocation must be present at
20 the time of the killing. The defendant is not entitled to
21 voluntary-manslaughter charge merely because there was heat
22 of passion. And essentially, conversely -- or it says:
23 Conversely, a defendant is not entitled to voluntary
24 manslaughter merely because there was legal provocation.
25 And it cites to *State v. Pittman*, Your Honor.

1 THE COURT: It must be both.

2 MR. SHAFFER: Yes, Your Honor.

3 THE COURT: I understand that.

4 MR. SHAFFER: I -- I don't believe that there is,
5 under *Smith* -- and I apologize. It would've been February
6 2012 -- probably February 6th, 2012. It -- it's January
7 2012, Your Honor -- 2011, Your Honor -- January 2011.

8 MR. YOUNG: What -- what's ---

9 MR. SHAFFER: South Carolina ---

10 MR. YOUNG: --- the name?

11 MR. SHAFFER: --- Supreme Court ---

12 MR. YOUNG: Could I ---

13 MR. SHAFFER: --- *Smith* ---

14 MR. YOUNG: --- ask for -- is there a citation?

15 MR. SHAFFER: I don't have that off the top of my
16 head.

17 MR. YOUNG: What's the name of the case?

18 MR. SHAFFER: *State v. Smith*. And it -- it would've
19 been an opinion from January 2011, toward the end of
20 January, from the South Carolina Supreme Court.

21 (Whereupon, Mr. Maye and Mr. Young conferred.)

22 MR. SHAFFER: I gave you the wrong date. I apologize.

23 MR. YOUNG: What's the date?

24 MR. SHAFFER: Huh?

25 MR. YOUNG: What is the date?

1 MR. SHAFFER: I -- it -- it would've been around -- it
2 was early 2011.

3 (Whereupon, Mr. Maye and Mr. Young conferred.)

4 MR. SHAFFER: I -- I'll find it for you and give you a
5 date in just a second, Your Honor. I apologize.

6 MR. YOUNG: All right. Is it a Court of Appeals
7 opinion?

8 MR. SHAFFER: It's Supreme Court.

9 MR. MAYE: It's cited earlier in *State v. Plemmons*.
10 Heat of passion alone will not suffice to reduce murder to
11 voluntary manslaughter. *State v. Plemmons* ---

12 THE COURT: Okay.

13 MR. MAYE: --- which is 1985 ---

14 THE COURT: Let me ---

15 MR. YOUNG: Your Honor ---

16 MR. MAYE: --- 386 ---

17 MR. YOUNG: --- I have ---

18 THE COURT: If -- if ---

19 MR. MAYE: --- S.C. 78.

20 THE COURT: --- if -- if this will be of any help ---

21 MR. YOUNG: Your Honor, that ---

22 THE COURT: --- I'm -- I'm ---

23 MR. YOUNG: --- the citation ---

24 THE COURT: --- well past that.

25 MR. MAYE: Okay.

1 THE COURT: There's no question in my mind, you have
2 to have both.

3 MR. YOUNG: Yes, sir.

4 MR. MAYE: Okay.

5 THE COURT: Sufficient legal -- legal provocation and
6 heat of passion.

7 MR. YOUNG: Yes, sir.

8 THE COURT: I think where Mr. Shaffer's going to try
9 to go here is to tell me that this case -- there's no
10 evidence of heat of passion.

11 MR. SHAFFER: That's correct, Your Honor.

12 THE COURT: And -- and I'm at the edge of my chair to
13 hear how you can, with a straight face, argue that.

14 MR. SHAFFER: And that's why ---

15 THE COURT: Based on the -- based on the testimony
16 that occurred in this case. I wasn't there, obviously. I
17 have no idea what went on. But I do know the testimony
18 I've listened to.

19 MR. SHAFFER: And -- and *Smith* actually somewhat goes
20 to it, Your Honor. And I have a cite for that. It's
21 actually February 7th, 2011. It's ---

22 MR. YOUNG: 391 S.C. 408.

23 MR. SHAFFER: There you go. Your Honor, just -- if
24 you'll give me just one second.

25 THE COURT: Sure. I'll tell you what -- I'll tell you

1 what we might want to consider. Gentlemen, think about
2 this. We got a reply witness that we need to do.

3 MR. MAYE: Yes, sir.

4 THE COURT: This jury has been sitting back there.
5 Let's -- let's -- let's get back away from the jury charge.
6 Let's -- let's finish the case.

7 MR. MAYE: Sure.

8 MR. SHAFFER: Thank you, Your Honor.

9 THE COURT: And then ---

10 MR. MAYE: We're ready.

11 THE COURT: --- we're not under any time restraint.
12 Let's then send this jury home. We'll argue and charge in
13 the morning. But we won't leave. We'll continue to work
14 on the charge until we've got where everybody's happy.

15 MR. MAYE: That's fine.

16 THE COURT: That work for everybody?

17 MR. SHAFFER: That's perfect, Your Honor.

18 THE COURT: All right. Let's do that. Because I --
19 again, I want to hear -- I want to hear from everybody.
20 But I want to also be considerate of the 14 people sitting
21 back there.

22 MR. MAYE: I'd like to be considerate of my reply
23 witness too. So thank you, Your Honor.

24 THE COURT: Oh, and -- and of course, your ---

25 MR. MAYE: Yeah.

1 THE COURT: --- reply witness ---

2 MR. MAYE: Thank you.

3 THE COURT: --- obviously. So let -- let's -- let me
4 get you to step up here, though, Mr. Shaffer.

5 (Whereupon, a bench conference was held off the record
6 outside the presence of the jury.)

7 THE COURT: All right. (To the bailiff) Let's --
8 let's bring the jury in.

9 (Whereupon, the jury entered the courtroom at 2:56
10 p.m.)

11 THE COURT: All right. Just when you thought it was
12 save to go in the water, the lifeguard brings you back in.
13 Ladies and gentlemen, thank you -- I'm thanking you for
14 something that I may not even have, and that is your
15 patience. Those of you are patient, thank you for that.
16 Those of you who are a little impatient with us, I
17 apologize.

18 But things do occur during trials. And -- and the
19 schedule is -- it has to be flexible. It has to be
20 pliable. It can't be rigid because things do occur.

21 We are not completely done, as I told you when I sent
22 you out. We do have -- the state is going to call a reply
23 witness, which they are entitled to do. And so you -- you
24 -- the state -- or excuse me -- the defense had rested
25 their case. And now the state has a witness in -- in reply

DIRECT EXAMINATION BY MR. MAYE - REBECCA SMITH 468

1 to an issue, and they are going to do that at this time.

2 So if you'd please, Mr. Maye.

3 MR. MAYE: The state would call Rebecca Smith to the
4 stand.

5 THE COURT: Ms. Smith, if you don't mind, come around
6 and be sworn, ma'am.

7 (Whereupon, the witness came forward.)

8 REBECCA SMITH, having been first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MAYE:

12 Q Ms. Smith, just state your name for the record, if you
13 would.

14 A Rebecca Smith.

15 Q Ms. Smith, where you employed?

16 A Urban Outfitters, Inc., in Trenton, South Carolina.

17 Q In Trenton, South Carolina?

18 A Yes.

19 Q Where around Trenton -- I know where Billy's Super
20 Store is. Where is Urban Outfitters in ---

21 A About ---

22 Q --- relation to that?

23 A --- two miles south on the lefthand side of the road
24 in the industrial park.

25 Q In the industrial park two ---

1 A Yes, sir.

2 Q --- miles south -- is that between 5 ---

3 A Yes.

4 Q --- Highway 25?

5 A Yes.

6 Q Okay. In what capacity are you employed there?

7 A I am the H.R. manager.

8 Q You're the human resources manager?

9 A Yes.

10 Q Does your company have regularly recorded business
11 records for employee attendance by hour and date?

12 A Yes, we do.

13 Q As the human resource manager there at that facility,
14 are you a custodian of those records, and do you have ready
15 -- ready access to those regularly recorded business
16 records?

17 A Yes, I do.

18 Q Okay. On January the 27th of 2011, was a Ms. Lakeisha
19 Stallworth an employee of your company?

20 A Yes.

21 Q Okay. And you have records that reflect that; is ---

22 A Yes.

23 Q --- that correct?

24 Okay. Did you bring with you today the record of
25 attendance for Lakeisha Stallworth for the date of January

1 the 27th of 2011?

2 A Yes, I did.

3 Q Okay. Could you tell me what time that she got to
4 work on January the 27th of 2011.

5 A She punched her clock at 4:28 p.m. on that day.

6 Q 4:28 p.m.?

7 A Yes.

8 Q Okay. What time did she leave on that day?

9 A Approximately eight o'clock.

10 Q Approximate -- could you tell me exactly? Do you have
11 any -- a printout exact -- let me ask you this: Is this
12 ---

13 A Yes. That's what I brought.

14 Q --- the business record?

15 A Yes ---

16 Q Could you ---

17 A --- it is.

18 Q --- refer to that and refresh your recollection ---

19 A Yes. She ---

20 Q --- and tell me the exact minute that she ---

21 A She ---

22 Q --- punched out?

23 A --- clocked out at -- at 7:58 p.m.

24 Q 7:58 p.m.?

25 A Yes.

1 Q So she was there, and ---

2 A Yes.

3 Q --- she got there at what time?

4 A At 4:28 p.m.

5 Q Okay. And she left at what time?

6 A At 7:58 p.m.

7 Q Okay. And she would've been a second-shift employee
8 at that time; is that ---

9 A Correct.

10 Q --- correct?

11 A Yes.

12 Q Okay. So she actually did leave early that day; is
13 that ---

14 A Yes.

15 Q --- correct?

16 A Often in our business, the latter part of the week, we
17 can have less work. And so we do dismiss the employees at
18 that time ---

19 Q Okay.

20 A --- once we're finished for the day.

21 Q Thank you so much.

22 A Okay.

23 THE COURT: Mr. Shaffer?

24 CROSS-EXAMINATION

25 BY MR. SHAFFER:

CROSS-EXAMINATION BY MR. SHAFFER - REBECCA SMITH 472

1 Q Were you present that day?

2 A Most likely, yes.

3 Q Okay. Do you remember that day?

4 A No, not exactly that day. But yes. We require --
5 each employee is required to clock in the -- for
6 themselves.

7 MR. SHAFFER: No further questions.

8 THE COURT: All right.

9 MR. MAYE: Thank you.

10 THE COURT: Thank you very much for being here, ma'am.

11 THE WITNESS: You're welcome.

12 (Whereupon, the witness exited the witness stand.)

13 MR. MAYE: Ms. Smith -- I asked that she be released.
14 And thank you for coming, Ms. Smith.

15 THE COURT: All right. Any objection?

16 MR. SHAFFER: None, Your Honor.

17 THE COURT: All right. Thank you very much, Ms.
18 Smith.

19 MR. MAYE: The state has no more reply witnesses, Your
20 Honor.

21 THE COURT: All right.

22 MR. MAYE: And that would be the end of the state's
23 reply. Thank you.

24 THE COURT: Thank you, Mr. Maye.

25 All right. Ladies and gentlemen, you have no idea, no

1 witnesses and asks that they be released?

2 MR. SHAFFER: No ---

3 THE COURT: Any objection?

4 MR. SHAFFER: None, Your Honor.

5 THE COURT: All right.

6 MR. YOUNG: Thank you.

7 THE COURT: They're -- they're released from their
8 subpoenas.

9 (Off the record briefly.)

10 THE COURT: Guys, y'all are more on top of this than I
11 -- than I am, probably. You know, when they redid the --
12 they completely reoverhauled the assault-and-battery
13 statutes? The assault and battery with intent to kill,
14 that went to a high and aggravated. Then, they had first-,
15 second-, third-degree and it -- in that statute, it -- is
16 that -- isn't it true that -- that -- did not the
17 legislature define, for purpose of the statute, serious
18 bodily injury?

19 MR. YOUNG: It does, Your Honor.

20 THE COURT: All right.

21 MR. MAYE: 16-3-600.

22 MR. YOUNG: It is -- it is within 16-3-600. Correct.

23 MR. MAYE: It's ---

24 THE COURT: All right.

25 MR. MAYE: --- the statute ---

1 MR. YOUNG: It's under first -- the first degree of --
2 of assault and battery.

3 THE COURT: All right. Well, let -- let -- let's go
4 get -- let's get back now, Mr. -- oh, I cannot -- all
5 right. Let's see. Mr. Shaffer, let's get back to you --
6 you were arguing and then I interrupted you about the . . .

7 MR. SHAFFER: Yeah. I'm -- I apologize, Your Honor.
8 I actually just left where I was at.

9 THE COURT: We were talking about voluntary
10 manslaughter and your belief that there was no evidence
11 that would support heat of passion.

12 MR. SHAFFER: Yes, Your Honor. I don't understand the
13 current -- I -- I don't see any evidence that would support
14 heat of passion as it relates to Hydrick, Your Honor.

15 THE COURT: Okay. It relates to who?

16 MR. SHAFFER: To -- to the victim, Hydrick.

17 THE COURT: Okay. Oh, I'm sorry. Yeah.

18 MR. SHAFFER: I don't see any evidence that would
19 support that, Your Honor. I -- I think that ---

20 THE COURT: In -- in light of the -- the testimony of
21 one of the witnesses -- and I'm not going to use that
22 language. But "Soon as you let go of me, m-f, I'm -- I'm
23 going to knock you out." I'm -- I mean, the screaming, the
24 profanity ---

25 MR. SHAFFER: I -- I think that perhaps that might be

1 evidence of -- when ---

2 THE COURT: Well, that's ---

3 MR. SHAFFER: --- I mean ---

4 THE COURT: --- all we're looking for.

5 MR. SHAFFER: Well, Your ---

6 THE COURT: I'm not ---

7 MR. SHAFFER: --- Honor, I'm ---

8 THE COURT: --- making the call.

9 MR. SHAFFER: Your Honor, I -- I apologize. I -- I --
10 I'm -- I -- what I was trying to say is I think it's
11 evidence of possibly malice. I don't believe it's evidence
12 of enraged, incapable of cool reflection, or acting under
13 an uncontrollable impulse to do violence, Your Honor.

14 THE COURT: All right. I'm not -- we're not going to
15 waste any time on that. Your -- your objection is noted
16 ---

17 MR. SHAFFER: Thank you, Your Honor.

18 THE COURT: --- and the reason for it. I disagree
19 with you. I think there's ample evidence in this case
20 whereby a jury may find that heat of passion was, in fact,
21 part of it. So I -- I -- I do intend to charge voluntary
22 manslaughter.

23 MR. SHAFFER: Thank you, Your Honor. I appreciate it.

24 THE COURT: And -- and so for everyone's benefit, it
25 looks like we're going to have a charge that involves

1 charging the jury on murder; the lesser-included voluntary
2 manslaughter; the lesser-included involuntary manslaughter;
3 and then, of course, not guilty. Those are the -- those
4 appear to be the four options that the jury will have under
5 the -- under the charge that -- that I intend to give.

6 Anything further, Mr. ---

7 MR. SHAFFER: Oh.

8 THE COURT: --- Shaffer?

9 MR. SHAFFER: Your -- Your Honor, related to self-
10 defense, I'm assuming that was denied; is that ---

11 THE COURT: No.

12 MR. SHAFFER: --- right?

13 THE COURT: No. I ---

14 MR. SHAFFER: Okay.

15 THE COURT: --- I'm -- in all honesty I -- I -- I'm --
16 I'm still -- I -- I'm going to need to look at some cases
17 on that. But I don't -- what I -- here's what I want to
18 do: Let -- let's let that one slide until the -- until we
19 get to the end. Because I'd like to give both of y'all my
20 ruling on that before you leave here so you can prepare
21 your arguments accordingly.

22 But let's -- of there -- is there anything else -- let
23 me -- is there anything else -- let me give you a -- just a
24 bullet point of what I've got, okay, so you'll have an idea
25 of what's kind of already -- obviously, I've got just an

1 introductory paragraph, telling them that Mr. Otts is
2 charged with this offense and -- and that his -- he has
3 pled not guilty and that he is entitled to that presumption
4 of innocence. I then go and talk about presumption of
5 innocence and explain to them how this is not just a mere
6 cliche; it -- it -- it's a very important rule of law that
7 -- that is part of our -- our constitution and that every
8 defendant is entitled to that presumption throughout the
9 course of the trial.

10 Reasonable doubt -- I then talk to them about
11 reasonable doubt and define reasonable doubt. I -- I do a
12 general charge on the -- the duties of the jury versus the
13 judge; their duty to determine the credibility and
14 believability of witnesses; that it's my job to charge the
15 law and they're to follow the law as given by the Court.

16 I have a charge here for direct and circumstantial
17 evidence, telling them that there's basically two types of
18 evidence that is generally presented during trials:
19 There's direct and circumstantial, and I define both of
20 those for them.

21 I talk about credibility of witnesses and -- and that
22 that's their job in determining the believability or
23 credibility of witnesses. I have a charge on expert
24 witnesses and their ability to go beyond that of a -- a lay
25 witness in giving their opinion but then go further to say

1 that their opinion is to be given no greater weight simply
2 because they're an expert; they're to be given whatever
3 weight the jury thinks is appropriate.

4 Then, I have the -- I call it "standard"; maybe
5 there's no such thing as standard. But I -- I've got a --
6 a -- what I typically charge, my murder charge, that talks
7 about the two elements and then defines those. I've got
8 the voluntary-manslaughter charge. I've got the
9 involuntary-manslaughter charge. And in this draft here,
10 I've got the self-defense charge, which may or may not
11 remain in.

12 And that's kind of the -- where I'm at on this draft.
13 And I know that there's been some submissions regarding
14 malice and -- and things that I -- I will tell you now: If
15 -- if -- in reading my charge and reading your submissions,
16 you know, I pretty much will add those if -- if it's, you
17 know, good case law and it's there. I don't want to make
18 it too terribly wordy. So if I say it -- the same thing
19 but maybe a little differently, I may go with mine or
20 yours.

21 But based on -- having that information, that's kind
22 of just the skeleton, the outline of what I got here. Is
23 there anything else, outside of what I went over, that
24 either side is looking to -- to add? Mr. Shaffer?

25 MR. SHAFFER: To add, Your Honor?

1 THE COURT: Add or -- or want to address.

2 MR. SHAFFER: I -- I want to preserve an argument
3 regarding circumstantial evidence, Your Honor. The ---

4 THE COURT: You think there should not be a charge on
5 direct and circumstantial evidence?

6 MR. SHAFFER: No, Your Honor. I believe that -- what
7 I would imagine your charge is going to be on it is that
8 they're weighed equally, because I think that's what just
9 about ---

10 THE COURT: No. I ---

11 MR. SHAFFER: --- everyone's ---

12 THE COURT: --- think that's what ---

13 MR. SHAFFER: --- charging.

14 THE COURT: --- the law says.

15 MR. SHAFFER: They're ---

16 THE COURT: I think that's what the law says.

17 MR. SHAFFER: I -- and ---

18 THE COURT: I know you don't like the law. I'm just

19 ---

20 MR. SHAFFER: I ---

21 THE COURT: I ---

22 MR. SHAFFER: --- I can't stand the law, Your Honor.

23 THE COURT: I -- I'm -- I'm kidding with you, Mr.

24 Shaffer. I -- I've known you a long time. I felt like you
25 could joke. And I know this isn't a joking matter. But I

1 -- but -- but seriously -- and -- and I -- and I -- let me
2 get to that real quick so I can address your -- I -- what
3 I've got, which is -- again, is approved by the Supreme
4 Court.

5 And it says here: "Now, the law makes absolutely no
6 distinction between the weight or value to be given to
7 either direct or circumstantial evidence, nor is -- is
8 there a greater degree of certainty required of
9 circumstantial evidence than of direct evidence. You
10 should weigh all of the evidence in this case and give it
11 whatever consideration you find appropriate."

12 That's kind of what I tell the jury.

13 MR. SHAFFER: And I -- I believe your -- your charge
14 is probably consistent with most -- most judges, Your
15 Honor. The argument that I was going to raise is -- and it
16 -- I believe it was probably the correct law until 2011.
17 There's a state -- there's a case called *State v. Bostick*,
18 I believe. And essentially, it goes back to they're --
19 it's currently on cert with the South Carolina Supreme
20 Court on this. The -- *Bostick*'s not on cert.

21 *Bostick* said, essentially, that the standard for
22 directed verdict based purely on circumstantial evidence is
23 substantial circumstantial evidence. It has been argued
24 that because of the fact that -- it requires higher
25 circumstantial evidence. And I can't remember the name of

1 the case -- because for about a hundred years in South
2 Carolina, the law was that you had to have substantial
3 circumstantial evidence up until about 1990. That changed.
4 They changed back to *Bostick*.

5 And, Your Honor, honestly, I -- I think that -- well,
6 I want to preserve an argument that we're objecting to it
7 because under *Bostick*, circumstantial evidence is no longer
8 equivalent to direct evidence. And that -- I -- I -- I
9 understand that your charge is consistent with just about
10 every other judge in the state, Your Honor.

11 THE COURT: We could all be wrong.

12 MR. SHAFFER: I ---

13 THE COURT: I've learned one thing if I've learned
14 anything since I've been on the bench. This robe gives us
15 no greater insight than we had before. It -- there's
16 nothing magical about it. And -- and we could all --
17 there's no question -- we could all be wrong.

18 I'll look at *State v. Bostick*.

19 MR. SHAFFER: Thank you, Your Honor. And it -- and
20 it's on -- it's -- it -- it's on -- you know, just so the
21 Court is fully aware, it's on directed-verdict standard,
22 not on this particular issue, Your Honor.

23 THE COURT: Okay.

24 MR. SHAFFER: Thank you.

25 THE COURT: All right.

1 MR. SHAFFER: Also ---

2 THE COURT: Anything further?

3 MR. SHAFFER: The state has requested a defense-of-
4 others charge.

5 THE COURT: Right.

6 MR. SHAFFER: We object to that under a couple
7 different issues. First, defense of other is a defense to
8 a charge. There was no charge in this case against the
9 victim. There's no -- I mean, it's -- so it makes it sort
10 of confusing that you would say ---

11 THE COURT: Well, I -- I'll ---

12 MR. SHAFFER: Yes, Your Honor.

13 THE COURT: --- I'll -- I'll agree with you here. And
14 I was going to ask Mr. Maye. What was submitted was: "If
15 one comes to the assistance of a friend or relative and
16 takes part in a difficulty in which a friend or relative is
17 engaged, he enters the combat on the same footing as the
18 person whose assistance he comes and under the same legal
19 status."

20 MR. MAYE: Your Honor ---

21 THE COURT: That -- I mean, that -- that may be a true
22 statement of the law. But how -- how is it -- what -- what
23 issue in this case does it affect?

24 MR. MAYE: I think it's -- Your Honor, I think it's
25 consistent in this case, especially if you're talking about

1 self-defense. In this case, clearly -- I don't think
2 there's any question -- from every witness, including the
3 defendant in this case, that Mr. Burno came to the aid of
4 Ms. Stallworth, who was in a vehicle. And, Your Honor,
5 there's evidence in this case that's was trying to be
6 extracted; she was trying to be assaulted.

7 You know, under the state of the law now, Your Honor,
8 with stand-your-ground law, Ms. Stallworth, had she
9 resisted his attempts, could've killed him and used deadly
10 force. I think that in order -- in this case, I think that
11 Mr. Burno, the victim in this case, enters the same legal
12 standard -- status that Ms. Stallworth had.

13 And I think a defense-of-others charges is
14 significant, Your Honor, for two reasons: One, if he
15 enters her shoes in this case, clearly, for voluntary
16 manslaughter -- I was looking at the language in voluntary
17 manslaughter. And, you know, you have to be without fault
18 in bringing on the difficulty, and there has to be
19 sufficient legal provocation. He would be able to do
20 anything that he needed to, Mr. Hydrick in this case,
21 standing in her shoes, coming to the aid of a relative in
22 this case. He could've used deadly force against the
23 defendant in this case. There'd be no issue of self-
24 defense on this -- on part.

25 It certainly would counter any self-defense issues,

1 because he stands in her shoes. He came there to aid and
2 assist her. He could've used deadly force and killed this
3 defendant in this case, Your Honor. He could've used
4 whatever force was necessary to stop that.

5 Because essentially, what we've got, in the light most
6 favorable to the state, he was attempting to confine,
7 constrain her, basically what'd amount to a kidnapping. He
8 was trying to confine her, hold her, drag her out of a
9 vehicle, Your Honor.

10 THE COURT: Stop her from ---

11 MR. MAYE: She could've resisted in any regard. I
12 think that defense of others is critical in this case
13 because I think it totally negates -- excuse me. Saca
14 Jawea Coleman, not Ms. Stallworth; I misspoke there. Ms.
15 Coleman was in the vehicle.

16 And I think Mr. Burno, given the fact that he came to
17 her aid and she was certainly -- there was some -- I had
18 asked both for *State v. Sales*: One has the right to
19 protect his relatives. But in this case, Your Honor, I
20 think *Brown* is more appropriate, where it's talking about a
21 friend or relative, because they disputed whether or not
22 there was blood relation. I think they -- there was a lot
23 of talk that they were cousins -- street talk that they
24 were cousins. But at the very least, they were friends.

25 And even out of the defendant's own concession in this

1 came, he came to her aid. He stood in her shoes. I think
2 it's vitally important, especially where they're trying to
3 assert a self-defense. I think it totally negates that.

4 MR. SHAFFER: Your Honor, regarding defense of others,
5 I -- I -- and -- and I want to get this before I -- I
6 actually forget it, and I'll go back to the argument that
7 was just raised. I believe that the whole friend-or-
8 relative part of their request is actually a charge on the
9 facts as well and prohibited because of that.

10 But related to what -- what he was just talking about
11 -- and I -- the only reason I raise that is I'll forget it
12 -- I'll forget it, if not.

13 THE COURT: Whoa, whoa. Let me back up. How -- how
14 is that a -- a charge on the facts?

15 MR. SHAFFER: Your Honor, I believe that ---

16 THE COURT: I'm not going to tell the jury that the
17 victim in this case was acting as a friend or relative.
18 I'm not going to charge that.

19 MR. SHAFFER: Your Honor ---

20 THE COURT: I would simply charge that the law
21 provides that if one comes to the assistance of a friend or
22 relative.

23 MR. MAYE: And it would be a jury question ---

24 THE COURT: It's a jury ---

25 MR. MAYE: --- as to ---

1 THE COURT: --- question of ---

2 MR. MAYE: --- whether or not ---

3 THE COURT: --- whether they ---

4 MR. MAYE: --- it was a ---

5 THE COURT: --- believe that ---

6 MR. MAYE: --- friend or relative.

7 THE COURT: --- occurred.

8 MR. SHAFFER: And, Your Honor, I -- I understand that.

9 I -- I just want secondary objection to it.

10 THE COURT: Well, I ---

11 MR. SHAFFER: And ---

12 THE COURT: --- you know, here -- let me ---

13 MR. SHAFFER: --- Your Honor ---

14 THE COURT: --- and -- and you are.

15 MR. SHAFFER: Uh-huh.

16 THE COURT: But these objections have to be made and
17 -- and ethically have to be made in good faith. And now,
18 what you're -- it sounds like what you're telling me is
19 that is no judge can charge this because it makes a comment
20 on the facts or the evidence in the case and it's
21 inappropriate.

22 It would if I charged the jury that Mr. Burno was a
23 friend or relative of the defendant -- or of the victim
24 and, therefore, under the law, he is allowed to stand in
25 her stead. If I testified -- if I charged under that

1 scenario, you're exactly right. That's completely
2 inappropriate.

3 But how else do you get the law out to the jury if you
4 don't tell the jury, "Ladies and gentlemen, based on your
5 view of the evidence, if one comes to the aid of a friend
6 or a relative and takes part in that difficulty . . ."? I
7 mean, I don't know how else you charge the law, period.

8 MR. SHAFFER: Your Honor, I -- I do understand your
9 point. I -- I think that it's -- I -- I -- well, I would
10 like to preserve the issue. But I don't -- I -- I do
11 understand where you're coming from, Your Honor. I -- I'm
12 -- my -- my personal look at it is that essentially, it's
13 undisputed that she was a friend or a relative. Everything
14 in the case says it's a friend or a relative.

15 THE COURT: Yeah. But I'm not going to say that.

16 MR. MAYE: It's a jury issue.

17 THE COURT: That's a -- that's a call they got to
18 make. I -- I can't make that call.

19 MR. SHAFFER: Yes, Your Honor. But whenever you have
20 a undisputed issue, it -- it essentially says -- and it's
21 not only undisputed; it's claimed by both sides.

22 THE COURT: Okay.

23 MR. SHAFFER: And whenever you have that, it's
24 essentially saying the exact same thing. It's saying,
25 well, he had the right to come to her aid because she's a

1 friend or a relative, Your Honor.

2 THE COURT: No.

3 MR. SHAFFER: And that's ---

4 THE COURT: I'm saying -- I -- I'm not saying that.
5 I'm saying that -- not -- not this case -- this is the law
6 of the land. A person who is found to be a friend or
7 relative and who takes part and comes to their aid, how
8 else would you charge the law, Tristan?

9 MR. SHAFFER: Your ---

10 THE COURT: How would you ever -- give -- give me your
11 rendition of this charge, which is appropriate. How do you
12 give that to a jury?

13 MR. SHAFFER: Your Honor, I believe that we could
14 possibly go to the -- to an actual -- there -- they've
15 picked one line out of it. And if the judge is -- if
16 you're inclined to actually grant it, Your Honor, what I
17 ask is that you make it more neutral language; essentially,
18 use more current language on defense of others.

19 THE COURT: Then ---

20 MR. SHAFFER: This is ---

21 THE COURT: --- you might to submit something to me,
22 because ---

23 MR. SHAFFER: I -- I can -- I -- I could -- I could
24 have something to you in just a second, Your Honor. But
25 I'm -- I'm objecting to the charge in and of itself because

1 -- and maybe -- maybe I'm wrong about this. But I can't
2 find a single case in the last 30 years at least -- I can't
3 find a single case in South Carolina. But I've done a
4 pretty exhaustive research of the last 30 years on -- on it
5 and every term that I could think of related to it, where
6 the state was able to get a defense based off of the
7 victim's actions, Your Honor.

8 And -- and that's -- and that's a major issue, because
9 he -- it's somewhat confusing to say, well, he had the --
10 had the right to come to her -- her aid. But, Your Honor,
11 it's -- it's confusing in the sense that they're saying
12 that he had a defense to that crime, Your Honor. And he's
13 not charged with any crime. Because that's what it's
14 saying: that you have a defense to a crime. And if he was
15 charged, I would understand.

16 THE COURT: No. It's ---

17 MR. SHAFFER: But the victim ---

18 THE COURT: It -- it says that -- it -- it is -- what
19 -- what he's saying is that it negates self-defense.

20 MR. MAYE: And, Your Honor, in 20 years ---

21 THE COURT: And that's their -- and that's their
22 burden. They -- they have the burden of negating self-
23 defense ---

24 MR. MAYE: And, Your Honor, in ---

25 THE COURT: --- if I ---

1 MR. MAYE: --- 20 years ---

2 THE COURT: --- charge it.

3 MR. MAYE: This is a Good Samaritan case. In 20 years
4 of being a prosecutor, almost every other fact scenario
5 I've ever had as being a prosecutor, I've never had this
6 before. I've never had a -- a Good Samaritan, defense-of-
7 others case. One of the reasons why it's not been cited,
8 it's such an unusual fact circumstance.

9 Here you have somebody that was murdered that -- from
10 the state's perspective, that was a Good Samaritan that
11 came to the aid of a family member to rescue. That's a
12 most unusual circumstance. And I understand -- I've never
13 asked for a charge of defense of others because it's such
14 an unusual fact circumstance. But this case is an unusual
15 fact-circumstance case.

16 But clearly in this case, he stands in her shoes. And
17 I thought about it to myself, you know, as we went through
18 this process. I said, if the tables had been turned and he
19 had killed Mr. Otts in this case, he'd be entitled to
20 complete and total immunity under the new stand-your-ground
21 statute, which is currently the of the land.

22 And I -- I -- I thought about that during the course
23 of this and what an unusual circumstance. But like I said,
24 it's vitally important, when they're trying to raise self-
25 defense, that he stands in her shoes. Because other than

1 that, if you took it in a vacuum, all -- he's just carrying
2 out and perpetrating an assault on this man. I mean, the
3 whole reason that he puts his hands on him was because he
4 was defending this young lady and coming to her aid.

5 Unusual fact pattern, but we Shepardized and looked.
6 *State v. Brown* is still good law. It's one of the few
7 statements -- I got it out of Ferguson's book -- that deals
8 with the -- the topic of defense on others. But it's
9 vitally important dead on point in this case. One of the
10 few fact patterns -- like I said, 20 years of being a
11 prosecutor, never had this; never had somebody that was
12 murdered while they came to the defense of a third party
13 that they had a right to defend.

14 MR. SHAFFER: Your Honor, I -- I think one of the
15 reasons you'll never -- or that I wasn't able to find it
16 cited in South Carolina -- and I'm not saying that we have
17 everything. But I'm sure this issue has come up. In fact,
18 it has come up in other cases. Not the issue of charging a
19 defense for a victim, but, you know, similar fact patterns
20 have come through, Your Honor.

21 There is absolutely no case that I have found -- and I
22 spent the better half of that break, which is a hour -- and
23 I'm not saying that's everything out there -- but where the
24 prosecution was entitled to any sort of a defense to
25 request a charge that's a defense to a criminal charge, in

1 order to justify victim conduct. I -- I -- I just don't
2 think it exists because I don't think it's the correct law,
3 Your Honor.

4 THE COURT: You agree that is their burden to refute
5 self-defense? You agree with that?

6 THE COURT: They have ---

7 MR. SHAFFER: I would ---

8 THE COURT: --- they have the burden of disproving
9 self-defense.

10 MR. SHAFFER: Yes, Your Honor, I would agree with
11 that. If ---

12 THE COURT: All right. And if this is an accurate
13 statement of the law, why would that not be appropriate in
14 their trying to carry out their burden to refute or to
15 disprove self-defense?

16 MR. SHAFFER: Your Honor, I -- I think it falls in the
17 category of general confused -- confusing jury charges
18 under *State v. Leonard*. There's a whole bunch of cases out
19 there that says basically you can't charge anything that --
20 that would confuse the jury on the issue. Whenever you're
21 charging them, saying the conduct is ---

22 THE COURT: I've never given a charge that wasn't
23 confusing to a jury, according to every either prosecutor
24 or defense lawyer I've ever had a case with. No. I know
25 what you're saying. I do. I understand what you're

1 saying.

2 But -- and again, I -- you know, I'm -- I'm going to
3 look at it. But I understand where the state's coming
4 from. If -- if I -- if I -- if I'm going to allow you to
5 argue self-defense, then they have the burden of disproving
6 that.

7 MR. MAYE: And we would certainly like ---

8 THE COURT: The ---

9 MR. MAYE: --- a statement from the judge that that's
10 the state of the law in this case. If they're entitled to
11 self-defense being posited before that jury and we know
12 that this is going to be -- I mean, we know legally that
13 this can be a defense to that. If -- if they're going to
14 get -- be entitled to a self-defense argument, I would say
15 this is a -- I'm -- I'm reminded -- one of my favorite
16 quotes from Judge McMahon is: "Gentlemen, this is a
17 search" -- or "Ladies and gentlemen" sometimes -- "this is
18 a search for the truth."

19 And I just think it's the -- the state of the law in
20 South Carolina. I think it's information that it would be
21 unfair for the jury not to have. I'm certainly going to
22 argue that.

23 But I think that for the judge to charge it, along
24 with it, where it is currently, it -- it -- the issue is, I
25 think, whether or not it's the state of the law in the

1 State of South Carolina. That's good and valid law, the
2 state respectfully maintains. And it's information that a
3 jury should have to make an informed decision, certainly
4 where they're being called upon to consider self-defense.
5 Because that is a total negation of the self-defense claim;
6 and also, Your Honor, a direct issue when you're talking
7 about a voluntary-manslaughter charge. Because if he's
8 standing in her shoes, that's out the window on voluntary
9 manslaughter.

10 THE COURT: Well, let me ask you this. Because I'm --
11 I'm not trying to put charges into this case that don't
12 belong. Does -- do -- does the state not want a voluntary-
13 manslaughter charge? Because I ---

14 MR. MAYE: Your Honor ---

15 THE COURT: --- they ---

16 MR. MAYE: --- I'm going ---

17 THE COURT: --- the defense ---

18 MR. MAYE: --- to argue ---

19 THE COURT: --- doesn't want one.

20 MR. MAYE: I'm going to argue in this case, Your
21 Honor, obviously, that it's not involuntary -- not
22 voluntary ---

23 THE COURT: Oh, you ---

24 MR. MAYE: --- manslaughter, but murder ---

25 THE COURT: You're going to ---

1 MR. MAYE: --- of course.

2 THE COURT: --- argue that it's murder ---

3 MR. MAYE: But ---

4 THE COURT: --- and nothing else.

5 MR. MAYE: --- a jury could find that. A jury could
6 find -- that's a jury question.

7 THE COURT: Right.

8 MR. MAYE: And a ---

9 THE COURT: I mean, that's ---

10 MR. MAYE: --- could ---

11 THE COURT: --- that's what ---

12 MR. MAYE: --- find that.

13 THE COURT: --- I thought.

14 MR. MAYE: And the standard for charging it is any
15 evidence. And a jury could find it.

16 THE COURT: Sure.

17 MR. MAYE: I'm going to argue that it's not there,
18 just like I'm quite sure that the defense is going to argue
19 that there's no malice and I'm going to argue there's
20 malice.

21 THE COURT: Right.

22 MR. MAYE: But like I said, a jury could find either
23 way. They could, you know, believe part of the testimony
24 or some of the testimony. They could believe it when he
25 maybe said, you know, I was somewhat afraid of him, you

1 know, or I -- I think they're jury issues in this case.
2 And I don't really have any strong objection to you
3 charging self-defense, as long as you charge defense of
4 others. And ---

5 MR. SHAFFER: Your Honor, is there any way that we
6 could approach for a second?

7 THE COURT: Sure.

8 MR. SHAFFER: I'm just wondering if we might be able
9 to figure something out.

10 THE COURT: You want to step back here?

11 MR. SHAFFER: Yes, Your Honor, if ---

12 THE COURT: That's fine.

13 MR. SHAFFER: --- if that'll work.

14 (Off the record from 3:37 p.m. until 3:58 p.m.)

15 THE COURT: All right. We're on the record now. Mr.
16 Shaffer has passed up to the Court a case, *State v.*
17 *Chapman*, which is a 1999 case -- South Carolina Supreme
18 Court case. And the language which he's underlined under
19 the condition of involuntary manslaughter is: "The
20 unintentional killing resulting from an unlawful assault
21 and battery not of a character of itself to cause death is
22 voluntary manslaughter." That came -- that -- that's just
23 a quote out of CJS. Okay. And I've got language in here
24 that basically states that. And it says: "To prove
25 involuntary manslaughter, the state must prove beyond a

1 reasonable doubt that the defendant unintentionally killed
2 the victim without malice but while engaged in an unlawful
3 activity not naturally tending to cause death or great
4 bodily harm or that the" -- and -- or -- and in the other
5 language, which I don't think applies in this case.

6 And then, it goes further. And it says:

7 "Unintentional means that the defendant did not intend for
8 anyone to be killed or seriously injured." And I think
9 that's the proper statement of the law, which I think is
10 what this says. But this takes it too far when it says
11 "not of a character of itself to cause death is involuntary
12 manslaughter."

13 Well, it is if the jury finds the evidence ---

14 MR. SHAFFER: I understand ---

15 THE COURT: --- supports that.

16 MR. SHAFFER: --- Your Honor. I -- and I -- regarding
17 your actual charge, that's exactly the language that I
18 would have put forward. I -- I would -- would've asked for
19 that to be included. And I just wanted you to note that
20 for the record. But ---

21 THE COURT: Okay.

22 MR. SHAFFER: --- I understand your ruling. Thank
23 you, Your Honor.

24 THE COURT: Sure.

25 MR. MAYE: Your Honor, I would state for the record

1 just -- and for the Court's information, it was raised that
2 the -- the charge on defense of others might be a -- a -- a
3 charge on the facts. And I -- I note in here in this 1918
4 case, the *State v. Brown*, it was raised in that case. That
5 was the very issue in this case: that this was a charge on
6 the facts, in violation of Article 5-60-26 of the
7 Constitution. And they said that it was not; that it was a
8 valid charge and that ---

9 THE COURT: Yeah.

10 MR. MAYE: --- it was not a comment on the fact. And
11 that was the very issue on appeal. And I just thought that
12 was interesting in this case. That was exactly what the
13 defense raised. That was the issue in this case. They
14 said that was not a charge on the facts and it was valid.

15 THE COURT: All right.

16 MR. SHAFFER: And, Your Honor, just -- and I know
17 we've already gone over all this. But I have handed the
18 Court some language. I'm trying to find the original. I
19 believe I gave you -- gave y'all the original. No. I have
20 the original, Your Honor. This was the self-defense charge
21 that I had e-mailed over. I gave y'all copy of it. And I
22 understand that most of it we're not going to be charging.
23 I -- I just wanted to submit it. I had planned on
24 submitting it for the record, Your Honor, the language from
25 that. And . . .

1 Would y'all prefer this to be a Court's exhibit or for
2 me to actually file it?

3 THE COURT: What's that, now?

4 MR. SHAFFER: This is the request to charge that I
5 have for self-defense. I understand y'all aren't going to
6 be charging most of it.

7 THE COURT: Well, I mean, I may be. I don't know.

8 MR. SHAFFER: Oh. Well, I -- maybe I spoke too soon,
9 Your Honor.

10 THE COURT: Right now it looks pretty ---

11 MR. SHAFFER: Part of that I know you're not going to
12 be charging, because you already said you're keeping
13 serious bodily injury in there, so this language does not
14 have serious bodily injury, Your Honor.

15 THE COURT: Well, where'd you get this language?

16 MR. SHAFFER: Most of it came from either Charleston
17 County Bar Web site or the -- sort of a mix between that,
18 Judge -- a couple things from Judge Anderson and a couple
19 things from cases.

20 THE COURT: Big group of criminal-defense lawyers that
21 got together and put together this charge; is that what
22 you're telling?

23 MR. SHAFFER: No. I -- Your Honor, actually, I -- I
24 put together this charge.

25 (Off the record briefly.)

1 THE COURT: You can make that a Court's exhibit -- you
2 can make that a Court's exhibit.

3 MR. SHAFFER: Thank you, Your Honor.

4 THE COURT: I'm going to show -- I'm going to -- as I
5 said, in a little bit, I'm going to give to y'all what I
6 have. And I think you'll find it's probably very similar
7 to what you propose, other than I've kept all the law in,
8 not just some of it.

9 MR. SHAFFER: Yes, Your Honor.

10 (Whereupon, Court's Exhibit 2 was marked for
11 identification.)

12 THE COURT: I tell you -- here's what I'm going to do
13 so that I don't waste any -- any of y'all's time any more
14 than I need to. I'm going to -- and this is not a final
15 draft at all. But it is just that: It's a draft. I'm
16 going to send you -- send this to you.

17 Now, keep in mind, when you get this, I -- I have not
18 had the opportunity to incorporate some of the changes
19 we've talked about: y'all's malice stuff; the -- self-
20 defense is in there, as I put it in there; defense -- the
21 defense of others is not in there, but I -- I have all
22 that. But I'm just going to give you kind of a boilerplate
23 thing that I've got here, which, hopefully, you'll be able
24 to -- it'll be helpful to you as you prepare your arguments
25 this evening.

1 (Off the record from 4:06 p.m. until 4:16 p.m.)

2 THE COURT: Is there anything else that we need to
3 take up this afternoon that would help us in getting
4 started in the morning?

5 MR. MAYE: Nothing from the state, Your Honor. Thank
6 you.

7 MR. SHAFFER: Your Honor, I -- I haven't actually made
8 it all the way through.

9 THE COURT: I didn't expect you to.

10 MR. SHAFFER: Okay.

11 THE COURT: Yeah.

12 MR. SHAFFER: But tomorrow morning I'll -- if there's
13 anything, I'll -- I'll raise it at that time, if that's ---

14 THE COURT: Okay.

15 MR. SHAFFER: --- okay, Your Honor.

16 THE COURT: If -- if anything that's substantial --
17 like in other words, if you need me to -- to add some
18 substantial language or whatever, do me a favor: E-mail
19 that to me this evening and give me an opportunity to look
20 at it and maybe do some cutting and pasting so that we
21 don't end up spending a lot of time in the morning doing
22 that.

23 MR. SHAFFER: Yes, Your Honor. I ---

24 THE COURT: Okay?

25 MR. SHAFFER: --- I can do that. Thank you.

1 MR. MAYE: And, Your Honor, it's my understanding,
2 you're going to decide if there's some other language that
3 you think is more appropriate for that defense-of-others
4 charge.

5 THE COURT: Well, I mean, I'm going to look at it.

6 MR. MAYE: Okay.

7 THE COURT: The -- this -- unless there -- and, you
8 know, also ---

9 MR. MAYE: I mean, I'm satisfied with it. And it's
10 been up and down -- it was 1918 but ---

11 THE COURT: Yeah.

12 MR. MAYE: --- it's still listed as good law. It's
13 still in Ferguson. We Shepardized it and didn't see
14 anything about it being overruled. And the interesting
15 thing is that's the whole issue in the case. Case is this
16 long. And you look at it and the -- the only issue is
17 whether or not it was error to charge that, and that was a
18 charge on that facts. They said ---

19 THE COURT: Yeah.

20 MR. MAYE: --- it was not. We Shepardized it; it said
21 it's still good law.

22 THE COURT: Well, I -- you know, I just -- I'm just --
23 I need to figure out that -- where in my charge to put it
24 so that it flows well. But I'll do that.

25 MR. MAYE: Thank you.

1 THE COURT: All right. Well, if there's nothing else,
2 we'll just stand down and be at ease, then, until 9:30 in
3 the morning.

4 MR. SHAFFER: Thank you, Your Honor.

5 (Whereupon, the proceedings were adjourned at 4:18 p.m.)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 in full. It -- it's -- it's up to Mr. Maye. But the
2 state, at -- at least as far as on the law, is to open
3 first. Then Mr. Shaffer will have an opportunity to
4 address you with his closing argument. And then Mr. Maye
5 will have an opportunity to stand back up and present his
6 closing remarks.

7 Once they've completed those -- their closing
8 arguments, ladies and gentlemen, I will then give you the
9 charge that is applicable in this case. And now, once you
10 have all that, you're then going to be in a position to go
11 back in your room and you can finally talk about the facts.
12 You can finally talk about the case and deliberate the case
13 and arrive at a verdict. Okay?

14 So if -- Mr. Maye, are you prepared to begin and we'll
15 open ---

16 MR. MAYE: May it ---

17 THE COURT: --- with the ---

18 MR. MAYE: --- please the Court, Your Honor.

19 CLOSING ARGUMENT BY MR. MAYE

20 MR. MAYE: Ladies and gentlemen, again, I appreciate
21 your patience. I'm very cognizant of the fact that you
22 been taken away from what you would've normally been doing
23 this week and what an imposition this is. But it is
24 vitally important, your role here. And I know you've been
25 playing [sic] close attention.

1 I'm being required to open on the law, so you're going
2 hear me talk twice. First time I'm going to get up and
3 talk with about the law in this case. But I submit to you,
4 let me tell you first and foremost in this case, the
5 ultimate arbiter of what the law is in this case is Judge
6 Russo. Judge Russo's going charge you with what the law is
7 in this case. But I'm going talk to you about what I
8 anticipate some of the issues and what some of the law is
9 in this case in a little bit more detailed of some general
10 charge that he's going to give you on the law.

11 When you go back in that jury room to deliberate --
12 and like I said, I'm not going to spend a lot of time going
13 over the facts. We'll come back and talk with you about
14 that in a minute. But you're going to have four possible
15 forms of verdict.

16 I told you, when I got up at the outset of this case,
17 that defendant in this case, Mr. Otts, is charged with
18 murder. And the state has the burden of proof in this
19 case, and we welcome it. And that's exact same thing I'll
20 tell you right now as I begin to talk to you about the law
21 in this case.

22 But you're going to have four possible forms of
23 verdict when you go back there. Judge is going to give you
24 a verdict form. You're going to have four possible choices
25 of verdict in this case.

1 First would be not guilty. Second would be guilty of
2 involuntary manslaughter. Third one would be guilty of
3 voluntary manslaughter. Fourth would be guilty of murder.

4 Told you the state's got the burden of proof in this
5 case. Judge is going to charge you. And I want you to
6 just go through it logically and clearly. I'm not going
7 get excited about talking with you up here about this.
8 We'll go through it logically and methodically.

9 In considering the first one, not guilty, in this
10 case, we're talking about self-defense. And the judge is
11 going to charge you with self-defense. Because I submit to
12 you, in this case under the law, the only possible way he
13 can be not guilty is if he was lawfully and validly
14 exercising his right for self-defense.

15 But the judge is going to charge you: In order for
16 him to be not guilty under self-defense, first and foremost
17 -- one of the first things the judge is going to charge you
18 is the defendant must be without fault in bringing on the
19 difficulty. You can stop right there. All of this
20 difficulty was brought on by the defendant in this case,
21 mostly by his own admission up here. All of this was set
22 in motion on the fault of and because of Mr. Otts, the
23 defendant in this case.

24 He was attacking his girlfriend; or, if you want to
25 believe he was trying to sell you, that they was just

1 having an argument. He was assaulting her. He was
2 attacking her. Hydrick Burno was the only person man
3 enough there to responsibly come out and defend her.

4 And one of the other things I'm going to talk with you
5 about on the law in this is the doctrine of defense of
6 others: that a person's got a right to defend a friend or
7 a family member. But I'm going to go through that with you
8 in a little more detail in a minute and talk with you about
9 some direct law on that. But that a person coming to the
10 defense of a friend or a family member stands in their
11 shoes and can exercise any rights that they have.

12 And when you're being attacked, a right that you have,
13 whether or not if somebody's standing in your space and
14 screaming and yelling at you, somebody trying to drag you
15 out of a car, or somebody beating on you, you can resist
16 that. You can try to stop it. And when Hydrick Burno came
17 out of the house there and tried to come to her defense, to
18 the defense of others, he stood in her shoes.

19 He can't exercise self-defense in that case. Because
20 Hydrick Burno, in this case, came out and initially just
21 tried to talk with him; to dissuade him; to come to the
22 defense of his relative or friend in this case; to just
23 merely talk to him and try to dissuade him. And when that
24 didn't work, he finally put his hands around him and held
25 onto him. But he didn't strike him or beat him or punch

1 him or put him in fear of imminent bodily harm or death.

2 You heard, from the defendant in this case, he wasn't
3 scared of him or anything else. Oh, I punched this guy,
4 and I just turned my back on him and walked away. Even if
5 you believe what he's saying, he had absolutely no fear
6 that he was imminent danger, which, I submit to you, the
7 judge -- he would charge you that that is the second part
8 of self-defense.

9 Second element of self-defense: that the defendant
10 was actually in imminent danger of death or serious bodily
11 injury or he believed he was in threat of imminent danger
12 of death or serious bodily injury, a man that came out to
13 try to talk with him; who put his hands around him; and
14 when demanded that he be released, released him and stood
15 with his hands up with open hands.

16 The state submits to you, you can scratch not guilty.
17 Because the only way he can possibly be not guilty is
18 validly exercising self-defense, and ---

19 MR. SHAFFER: Objection ---

20 MR. MAYE: --- neither of those ---

21 MR. SHAFFER: --- Your Honor.

22 MR. MAYE: --- elements are present.

23 THE COURT: Whoa.

24 MR. SHAFFER: He said the only way he can be found not
25 guilty is by exercising self-defense. That's not correct,

1 Your Honor. They still have the burden of proving it,
2 despite ---

3 THE COURT: Correct. You're correct.

4 MR. SHAFFER: Thank you, Your Honor.

5 MR. MAYE: You take the law ---

6 MR. SHAFFER: Could I ---

7 MR. MAYE: --- as the judge give ---

8 MR. SHAFFER: --- get a curative ---

9 MR. MAYE: --- you take ---

10 THE COURT: You're ---

11 MR. SHAFFER: --- instruction?

12 MR. MAYE: --- the law as the ---

13 THE COURT: Oh ---

14 MR. MAYE: --- judge gives it to you in this case,
15 ladies and gentlemen.

16 THE COURT: That -- that's going to be part of the
17 jury instruction ---

18 MR. SHAFFER: Thank you ---

19 THE COURT: --- that ---

20 MR. SHAFFER: --- Your Honor.

21 THE COURT: -- they have the burden of proving guilt
22 and that the state -- that the jury is charged with
23 deciding whether they've met that burden.

24 MR. SHAFFER: Thank you, Your Honor.

25 MR. MAYE: Let's talk about the next possible form of

1 verdict, the law in this case as the judge will charge it
2 to you. Involuntary manslaughter: unlawful killing of
3 another without malice with criminal negligence. Criminal
4 negligence is the reckless disregard of the safety of
5 others. Involuntary manslaughter at common law is
6 described as the killing of another without malice and
7 unintentionally.

8 You can stop right there. Unintentionally -- every
9 bit of evidence in this case points that this was an
10 intentional act. He absolutely intended to strike him, to
11 punch him. And that set in motion his death. It killed
12 him, the fatal blow.

13 He'll tell you up here himself: It was intentional.
14 It wasn't accidental. When we're talking about involuntary
15 manslaughter, that's something for an automobile accident.
16 That's when you're driving and do some criminal negligence,
17 which is one of the other elements of it here: criminal
18 negligence. I was just negligent; it was a accident.

19 This was no accident. When you know that this is an
20 intentional act, involuntary manslaughter is completely and
21 totally off the table. That's for somebody driving an
22 automobile ---

23 MR. SHAFFER: Objection ---

24 MR. MAYE: --- that does ---

25 MR. SHAFFER: --- Your Honor.

1 MR. MAYE: --- something reckless.

2 THE COURT: Wait.

3 MR. SHAFFER: That's also incorrect, Your Honor.

4 THE COURT: All right.

5 MR. MAYE: You take the law as ---

6 MR. SHAFFER: *State v.* ---

7 MR. MAYE: --- the judge ---

8 MR. SHAFFER: --- *Chapman*.

9 MR. MAYE: --- gives it to you.

10 THE COURT: Ladies and gentlemen, it's -- all right.

11 I'm going to note your -- your objection.

12 MR. SHAFFER: Thank you, Your Honor.

13 THE COURT: I -- I sustain your objection, and I will
14 give you the charge on the law when the time comes.

15 MR. MAYE: In this case, clearly, this was an
16 intentional act and clearly done with a -- with malice.
17 Because that's one of the other issues in this case:
18 without malice. Because for him to be guilty of
19 involuntary manslaughter, all of these elements have to be
20 there. You got to find all of them, and they're just not
21 there.

22 I saved that one for last because that gets down to
23 where the real crux of this is, whether or not this is
24 voluntary manslaughter or murder: malice. He brought on
25 all of this. All of this was because of his malice, his

1 meanness, depraved heart bent on wickedness.

2 He was going to force his girlfriend to stay there no
3 matter what anybody said or anybody wanted, other than
4 Steven Otts. Malice. Nobody was going stop him. Nobody
5 was going deter him. Nobody was going talk him out of it.
6 Malice. Meanness.

7 And when somebody had the nerve to interfere with
8 stopping him from attacking his girlfriend -- malice,
9 meanness -- what was his response? To turn around and
10 punch him in the head hard enough to crack his skull and
11 kill him. Malice.

12 He didn't get punched and back up and fall off a
13 cliff. He didn't get punched and fall on the ground. He
14 got punched so hard that that blow -- there's a stipulation
15 in this case -- that blow is what cracked his skull and
16 killed him. Malice.

17 It can't be involuntary manslaughter if there's
18 malice. We're not talking about criminal negligence.
19 We're talking about an intentional act. It's not there.

20 Judge is going to charge you, another possible form of
21 verdict in this case -- and I submit to you, the first two
22 are not even in the realm of possibility -- voluntary
23 manslaughter: unlawful killing of a human being in a
24 sudden heat of passion of mind soon after a legally
25 sufficient provocation, again, without malice, again. And

1 the fact that you got mad and this is some kind of heat of
2 passion, you all upset, never is sufficient to reduce to
3 murder to voluntary manslaughter. It's just not there.

4 So the fact that he got mad at Hydrick for putting his
5 hands on him and got upset and he was mad doesn't cut it,
6 not under the law. It just does not cut it. And it only
7 makes sense.

8 The classic voluntary manslaughter case is it's
9 basically something happens that it would just cause a
10 reasonable person to get so upset that they just lose
11 control. The classic manslaughter case is a man or a woman
12 that comes home and they find their spouse embraced in the
13 arms of another and fly into a sudden rage and kill them, a
14 sufficient legal provocation.

15 We don't have that in this case. We've got Mr. Otts
16 attacking his girlfriend. That's not sufficient legal
17 provocation. We've got Hydrick Burno, the only man there
18 -- because we've -- we can establish that. And I'll talk
19 with you more about that during argument. He's the only
20 real man there.

21 He came out to defend this woman in an appropriate and
22 responsible fashion. He didn't come out and start beating
23 on somebody. He came out and calmly tried to talk to
24 someone. And when that didn't work, he didn't attack this
25 man and try to beat him to death. He wrapped his arms

1 around him to try to stop him and put him in a bear hug.

2 Sure, it embarrassed him: that that man was able to
3 hold him and keep him from doing what he wanted to do. But
4 then he let him go and he held his hands up, universal sign
5 of submission and surrender. And what'd he get? He got
6 murdered for his trouble. Sufficient legal provocation.

7 And then, ladies and gentlemen, I submit to you, one
8 of the absolutely most important things in this case --
9 what an unusual case -- that you have someone that is
10 coming to the defense of a friend or family member. Lord
11 knows, you heard the police in this case. They couldn't
12 even get any witnesses. The parking lot full of people,
13 and nobody sees a thing. Lord, all the wrangling, trying
14 to keep from having to come here to tell what happened and
15 what they saw.

16 But in this case you have somebody actually
17 responsible enough and cared enough about their fellow man
18 or woman to come in and insert themselves and try to come
19 somebody else's defense. So that puts a very unusual twist
20 on this case. Because we've the doctrine and the law of
21 defense of others.

22 The law in that case is if one comes to the assistance
23 of his friend or relative and takes part in a difficulty in
24 which a friend or relative is engaged, he enters the combat
25 on the same footing as the person to whose assistance he

1 comes and under the same legal status. He didn't have
2 legally sufficient provocation at all. This man had every
3 right to intercede on behalf of a friend or loved one and
4 stood in her shoes.

5 And, ladies and gentlemen, you can -- you don't need a
6 charge on the law. You can use your common sense that the
7 12 of you brought in here from all the sum total of your
8 life experiences. And anyone knows, when you're attacked,
9 you can defend yourself.

10 If you're a young woman in a car and somebody's
11 beating on you and trying to forcibly drag you out of a car
12 and confine you and keep you from going where you want to,
13 you know you can defend yourself. Hydrick Burno stood in
14 her shoes because he came to the defense of others. What
15 an unusual thing in this day and age, that someone would
16 take it on themselves to try to help somebody. Three
17 apartment buildings empty out full of people, and only one
18 person had the human decency to intercede: Hydrick Burno.

19 So you can bet there's no legally sufficient
20 provocation on his part. And you can totally scratch that
21 off. Because in most cases the real crux of a legal
22 decision between murder and manslaughter only relies on
23 whether or not there was malice aforethought.

24 We'll get to that, but you can stop right here on
25 voluntary manslaughter. It was no sudden heat of passion.

1 And sudden heat of passion alone is not going to suffice.
2 That's why that doctrine of the law is in there.

3 You just get mad and get sudden heat of passion, that
4 doesn't cut it. That alone never reduces murder to
5 voluntary manslaughter. You've got to have a sufficient
6 legal reason to get mad. And in this case, clearly, he
7 didn't have it. This whole thing was his fault.

8 You heard over and over again in this case: Why
9 didn't you just let that woman go and go inside? Why, when
10 Hydrick Burno tried to talk you out of it, why didn't you
11 just stop and go inside? Why, when the man held you from
12 behind to try to -- to restrain you from going after this
13 woman, why didn't you just stop and go inside?

14 Even after he knocked this man cold and cracked his
15 skull and killed him, he didn't stop. Even by his own
16 admission, he went right back to her because nobody's going
17 stop him from doing he wants to do and exercising his will,
18 not Steven Otts.

19 Normal circumstance, when people get into a -- a
20 situation where there's a fatal blow struck like this, it's
21 normally just between two guys or two people. Here, he was
22 coming to the defense of others. Knocks it out here.
23 Well, let's go back and talk about it. We'll just forget
24 about this and talk about malice, and we're right back to
25 where we started in this case.

1 This whole thing was brought on by his malice. Think
2 about his statement. Think about what he said. Malice.
3 Meanness. Malice aforethought. That he thought about it
4 ahead of time.

5 You can tell from that statement that he uttered just
6 before he rendered the fatal blow, what he told the man:
7 "When you let me go . . ." And we'll talk about that more
8 when we go over the law with murder. But there was clearly
9 malice here. And there was clearly no legally sufficient
10 provocation. And that takes voluntary manslaughter
11 absolutely off the table. Never reduces murder to
12 voluntary manslaughter.

13 Judge is going charge you with what the law is on
14 murder. It's simple, three elements: killing of another
15 with malice aforethought.

16 Let's talk about that. The first element, killing
17 someone: One is deemed guilty of a homicide if the injury
18 inflicted contributes immediately to the death of the
19 deceased. Well, they don't have to die on the spot. He
20 didn't have to die right there. He died in the hospital,
21 in spite of all the efforts of everybody that treated him,
22 EMS and anybody else, to save him. He still died.

23 Pathologist got up and said, Well, you know, when -- I
24 mean, where speculation is if he got his skull cracked by
25 Mr. Otts right in the parking lot of Johns Hopkins

1 Hospital, you don't consider that. But certainly, he died
2 in this case. He stipulates in this case that he died at
3 his hands from a cracked skull from that blow. Certainly,
4 the injuries he received killed him.

5 The intentional infliction of an injury upon another
6 which is not intended to be fatal and which would not have
7 been fatal to one in normal health is nevertheless murder
8 where the injury caused the death because of the victim's
9 poor health. And I submit to you, you're going to hear
10 from the argument in this case -- because you heard all of
11 this -- Oh, they were working on the pathologist, Dr. Rose.
12 So oh, it wasn't the fact that somebody had a high blood-
13 alcohol level. Wouldn't that made them more susceptible to
14 dying? And that -- that old guy, he had high blood
15 pressure and he might not have died, you know, if he hadn't
16 had that high blood pressure.

17 That's not a legally -- that's not something that one
18 can legally consider. It wouldn't matter whether it was a
19 90-year-old person with all sorts of infirmities or an
20 infant that would be more -- much more susceptible to
21 injury in this case. You take your victim as you find him.
22 When you're so mean and malicious that you punch somebody
23 in the face so hard as it cracks their skull and kills
24 them, you take your chances as to what their physical
25 condition is. And that's what the law recognizes.

1 Everyone's on an equal footing. It's not your fault
2 that you have high blood pressure. In this case Hydrick
3 Burno had a high level of alcohol. But, you know, he was
4 there, relaxing at his own place there. He was there at
5 the apartment complex. He had every right to drink if he
6 wanted to.

7 And nothing in that contributed -- he certainly didn't
8 come out and show out. He calmly tried to talk to this man
9 and dissuade him. Alcohol -- and what Dr. Rose said is
10 alcohol didn't kill him. High blood pressure didn't kill
11 him. Getting punched in the head and having his skull
12 cracked by Mr. Otts is what killed him. And the law
13 recognizes that.

14 The high blood pressure of the victim in no way served
15 -- the intoxication of the victim in no way served to
16 render this anything less than murder.

17 Let's talk about malice. Malice is an essential
18 ingredient of murder; does not necessarily import ill will
19 towards the individual injured, but signifies, rather, a
20 general malignant recklessness towards the lives and safety
21 of others; or a condition of the mind which shows a heart
22 regardless of social duty and fatally bent on mischief. Is
23 there anybody that have -- could have demonstrated more of
24 a lack of social duty on that day than the defendant, Mr.
25 Otts?

1 He's there beating on, trying to restrain his
2 girlfriend, trying to make her do something she did not
3 want to do, which she had every right to do as an adult.
4 She wasn't his property, no matter what he thought. What's
5 his response? That's my girlfriend, just like he can make
6 her do anything he wants to do.

7 He certainly had a heart regardless of social duty,
8 the kind of heart that would have him, when someone's
9 trying to talk him out of attacking her, to respond with a
10 string of profanity; to be heedless of that; and to
11 continue on with what he was doing; to not respond when
12 somebody merely tried to restrain him -- not attack him,
13 but restrain him; fatally bent on mischief. That is an
14 awesome term in this case, because that's exactly what
15 you've got in this case: a man that's fatally bent on
16 mischief -- towards his girlfriend, towards Hydrick Burno,
17 who tried to intercede, who legally stood in her shoes.

18 Malice has been defined as the wrongful intent to
19 injure another and indicates a wicked or depraved spirit
20 intent on doing wrong. Not much better explanation to what
21 was going on that night, I mean, what he was doing.

22 Wrongful intent to injure another: And you listen to
23 him. Oh, I -- I didn't mean to hurt him. I didn't mean to
24 hit him that hard. He punched him with all his might. He
25 punched him with one punch sufficient to take a man of that

1 size and crack his skull and kill him. He hit him as hard
2 as he could.

3 He had absolutely no regard for this man; didn't care
4 what happened to him. Malice and meanness caused him to
5 punch that man as hard as he could, crack his skull, and
6 kill him. That's certainly a wrongful intent to injure
7 another.

8 Malice does not necessarily mean an actual intent to
9 take human life. It may be inferential or implied, instead
10 of positive. That's when the act which imports danger to
11 another one is done so recklessly or wantonly as to
12 manifest depravity of mind and disregard for human life.

13 And I'm sure you're going hear from the defense in
14 this case, Oh, he didn't mean to kill him. That doesn't
15 make any difference.

16 What did he meant to do? I asked him those questions
17 up here. Did you just want to paralyze him from the waist
18 down? You just want to blind him in one eye?

19 What a slippery slope to let him decide, when he
20 administers a fatal blow like that, what his intent was.
21 Oh, I didn't mean to kill him. Doesn't make a nickel's
22 worth of difference in this case. You take your chances
23 when you're so mean and malicious as you punch a man in the
24 head and crack his skull and kill him. You don't get to
25 decide on the backside what your intent was, that you

1 didn't mean to kill him. Law doesn't provide for that.

2 Again, in considering where there was malice
3 aforethought, there's no possible greater evidence than
4 defendant's own statement just prior to striking the fatal
5 blow. Malice.

6 I'm going to talk to you a little bit about Angela
7 Creech's testimony in a little bit. But you remember in
8 this case, when we're talking about the law in this case,
9 the statement of Steven Otts as Hydrick Burno was trying to
10 hold him from behind. And you know it embarrassed him that
11 that man was able to hold him from behind and hold him in
12 place. And he couldn't get go. He couldn't get loose in
13 this case.

14 That's clear from his own statements. He said,
15 "Motherfucker, when you let me go, I'm going knock your
16 punk ass out." He can't get loose, so that's his response.
17 Malice. Meanness. What language.

18 Now, he'd have you believe in this case, Oh, I calmly
19 told him something completely different. It rings and
20 reeks of the truth from an eyewitness. "Motherfucker, when
21 you let me go, I'm going to knock your punk ass out."
22 Could there be a more direct statement of a depraved heart
23 bent on wickedness than the words from his own mouth?

24 Certainly, that's malice. It's there. Aforethought,
25 kind of an old-timey word. But it's pretty simple. The

1 word "aforethought" is usually understood to refer to the
2 time when the evil is conceived. It need not exist for --
3 typo -- any appreciable period of time before the
4 commission of the act. Indeed, it may be conceived at the
5 very moment the fatal blow is given. It is sufficient in
6 law if the combination of evil intent and the act produced
7 the fatal result.

8 You know, usually, when people think about murder,
9 they think about somebody -- you know, it's premeditated
10 murder. They planned it. You know, they go out and they
11 buy them a gun. They lay in wait; they hide for somebody
12 outside their house. They think about it in the cool, calm
13 reflection of the days ahead. And they plan it and they
14 scheme it and they carry it out -- premeditated.

15 Law doesn't recognize that. It can be for any length
16 of time. It can be just before. The bottom line is:
17 There's malice, and it only has to exist for a moment
18 before. Malice beforehand -- aforethought: He thought
19 about it ahead of time. And that can be just before. It
20 doesn't have to be animus that festers and brews over weeks
21 and months with weeks of planning and scheming for it to be
22 murder.

23 The law recognized no appreciable period of time
24 before the commission of the act. It may be conceived at
25 the very moment the fatal blow is given. But we didn't

1 have that in this case. We didn't have it conceived at the
2 very time that it was delivered in this case, the fatal
3 blow.

4 And the law, again, says there's no particular length
5 of time, prior to killing, for malice to exist to be malice
6 aforethought. Well, you can bet in this case, ladies and
7 gentlemen, he was thinking about it when Hydrick Burno was
8 holding him and embarrassing him. "Motherfucker, when you
9 let me go, I'm going to knock your punk ass out."

10 His intent -- his thought, the aforethought, he was
11 thinking about it right then. And when he let him go and
12 Hydrick Burno stood with open hands, he administered that
13 fatal blow. He murdered him, killing of another with
14 malice aforethought. And you can bet, from the words out
15 of his own mouth, that it was malice and that he thought
16 about it ahead of time.

17 And anything about "I didn't want to do this; I didn't
18 mean to kill him" is an attempt to rewrite in on -- after
19 the fact. You take up arms and you punch somebody out of
20 malice and meanness and they die, it's murder.

21 Judge, again, is going to charge you with what the law
22 is in this case. I appreciate your close attention. You
23 listen to the judge when he charges you the law.

24 MR. SHAFFER: Your Honor, may we approach for a
25 moment?

1 THE COURT: Yes, sir.

2 (Whereupon, a bench conference was held off the record
3 in the presence of the jury, but out of the hearing of
4 the jury.)

5 THE COURT: Ladies and gentlemen, before I recognize
6 Mr. Shaffer for his closing remarks, I'm going to ask you
7 to step into the jury room. Have no conversation about the
8 case. Let me take up this matter of law, and I'll bring
9 you right back out, okay?

10 (Whereupon, the jury exited the courtroom at 11:02
11 a.m.)

12 THE COURT: All right. Mr. Shaffer?

13 MR. SHAFFER: Your Honor, at this point it -- well,
14 when the state comes up to get recognized again, we would
15 object to them being able to allow -- allow them to close
16 in full, Your Honor. And the reason that we're going to do
17 this is that Mr. Maye's opening on the law was actually a
18 opening on the facts and the law. He included many, many
19 arguments throughout it that are not legally based, Your
20 Honor.

21 And as a result, I believe that, essentially, it's
22 unfair to allow -- allow the state to open and close fully,
23 Your Honor. And we -- we would just object and only say
24 that the state would be allowed to reply to our closing,
25 Your Honor.

1 THE COURT: Mr. Maye?

2 MR. MAYE: Your Honor, briefly, I was required to open
3 on the law by the defense in this case. And certainly, my
4 comments on this case were limited directly to the law.
5 From what he's saying, all I would've been able to do was
6 get up and read your charge or read directly from the law
7 and make no comment whatsoever. But certainly, as to how
8 the facts integrate with the law, I went through line by
9 line and talked about how they integrated with each one.

10 There's no limitation in this case that you can't talk
11 about any of the fact scenario as it relates to the law and
12 opening on the law, that I'm aware of, in South Carolina.
13 And again, I was required by the defense in this case to
14 open on the law. And the argument that I have in this case
15 that'll go to the facts in this case is far more expansive
16 and wider-ranging than just talking about the law, as I did
17 in this case.

18 THE COURT: All right.

19 MR. MAYE: I think there's a case, *State v. Rodgers*,
20 204 S.C. 54 June 13th, 1977.

21 THE COURT: Hold on. 204 S.C. what?

22 MR. MAYE: 269 S.C. 22. And it said the trial judge
23 did not err in allowing the solicitor to argue facts of the
24 case during his initial closing argument to the jury. It's
25 on point, Your Honor.

1 And like I said, I limited it, certainly, as I thought
2 it interwove itself with the law in this case, Your Honor.
3 But that's been raised before. And in South Carolina I
4 don't think there's any real limitation on that.

5 THE COURT: All right. Here's what we're going to do:
6 I'm going to note your ---

7 MR. SHAFFER: Thank you ---

8 THE COURT: --- objection.

9 MR. SHAFFER: --- Your Honor.

10 THE COURT: I'm going to overrule it. But I think,
11 just so the record's clear, Mr. Shaffer, when you complete
12 your closing remarks and you have a seat, when I recognize
13 Mr. Maye, you can just -- just then, just briefly, just,
14 "Judge, I renew my objection." And that'll be a
15 contemporaneous objection.

16 MR. SHAFFER: Thank you, Your Honor. And -- and the
17 reason I had asked to approach, I -- I just had a idea
18 where it was going.

19 THE COURT: Yeah.

20 MR. SHAFFER: I didn't want to send the jury out. I
21 -- I apologize, Your Honor.

22 THE COURT: No. That's okay. I mean, it's -- listen,
23 Mr. Maye spoke for about 27 minutes. That's not a long
24 time, but, you know, a jury's fine get -- getting a short
25 break.

1 MR. SHAFFER: Thank you, Your Honor.

2 THE COURT: All right. Does ---

3 MR. SHAFFER: Do you mind ---

4 THE COURT: I'm going to ---

5 MR. SHAFFER: --- if I set up now?

6 THE COURT: Well, while you do that, the Court's going
7 to be at -- at ease for a few minutes in -- in case anyone
8 needs to step out and use the restroom or get a drink of
9 water or something like that.

10 (Off the record from 11:07 a.m. until 11:25 a.m.)

11 THE COURT: All right. The state ready to proceed?

12 MR. MAYE: The state's ready, Your Honor. Thank you.

13 THE COURT: Defense ready?

14 MR. SHAFFER: Yes, Your Honor.

15 THE COURT: Let's bring the jury out, please.

16 (Whereupon, the jury entered the courtroom at 11:25
17 a.m.)

18 THE COURT: All right, ladies and gentlemen. If you
19 would, please give your undivided attention to Mr. Shaffer
20 as he addresses you with his closing arguments. Mr.
21 Shaffer?

22 MR. SHAFFER: Thank you, Your Honor.

23 CLOSING ARGUMENT BY MR. SHAFFER

24 MR. SHAFFER: One punch isn't murder; not voluntary
25 manslaughter. It's not involuntary manslaughter. In this

1 case one punch is self-defense.

2 Now, when we started this case, I -- I remember
3 telling y'all something. I remember saying that y'all are
4 going to hear a whole bunch of different versions of what
5 happened. And I can tell you that I was correct. There is
6 not a single witness in this entire case, including my own,
7 that tells the exact same story of what happened.

8 Now, I understand little minor inconsistencies here or
9 there. But these are very, very different versions of what
10 happened. So what I'm going to do, I'm going to take y'all
11 through some of the witnesses that have testified. Then
12 we'll talk about some other matters.

13 First witness that testified was Keisha Stallworth.
14 Y'all remember Keisha. Keisha was the state's star
15 witness. You always put your first -- your best witness up
16 first.

17 Their star witness got up here and lied to y'all.
18 Remember that? She admitted she lied you. Their star
19 witness admitted she lied to you.

20 Now, remember she said at first it -- "Antonio wasn't
21 there. But I saw the whole thing. I was outside the car."
22 Remember that?

23 And then it turned into I read -- she read her
24 statement. And then -- then it turned into: "Oh. No.
25 Antonio was there." Antonio was there. Say, "I just

1 forgot. I'm not trying to deliberately lie to y'all. I
2 just forgot. It's been 2 1/2 years."

3 Then, of course, I reminded her that she talk to the
4 investigator last week. And the investigator, she told
5 that Antonio was there to him last week. And then she
6 finally broke down and said, "Yes. I was lying. But
7 everything else I said was true. Saw the whole thing from
8 inside the car."

9 Where did this happen? Where did everyone say it
10 happened? Not beside her -- the car, behind the car.

11 She also said in her statement that my client, Steven,
12 was trying to help him afterwards. She said that in her
13 statement. Y'all will have this back there with you.
14 Y'all can read it.

15 There's one really important thing about her being in
16 the car versus not in the car. The reason it's important
17 is that Saca Coleman said she was inside the car. She said
18 she saw part of it, but she didn't see the punch. Punch
19 happened behind the car.

20 Now, I've been in a Ford Explorer. She testified she
21 was in the front-passenger seat. This happened in the
22 back, behind the passenger, back behind the car. You
23 really think she had a good view of what happened?

24 She also says that he never touched him. Hydrick
25 never touched Steven. That's what she said. The state

1 doesn't even buy that. They don't even buy their own star
2 witness that he never touched him. Mr. Maye just got up
3 here and said that he put him in a bear hug.

4 Then they had their backup star witness, I guess --
5 their new star witness, their surprise witness. And that's
6 Ms. Creech. You remember her? The lady with the -- the
7 super ears, hear everything? She's inside her apartment.

8 She is inside her apartment. There was testimony that
9 her apartment was right there and that this happened over
10 here. Okay? Inside this apartment, bottom floor, and she
11 heard yelling. Now, that's believable enough.

12 She -- she also said she heard punches being delivered
13 from inside her apartment.

14 MR. MAYE: Your Honor, I object to that. Now, that's
15 -- that -- I -- I'm going to object to that fact that she
16 said that. I'm going to specifically dispute that. I'm
17 just ---

18 THE COURT: The ---

19 MR. MAYE: --- noting that for the record.

20 THE COURT: The jury will have their recollections of
21 the testimony.

22 MR. SHAFFER: Remember? She said, "I heard blows
23 getting passed. Went outside my apartment; went upstairs
24 to the balcony so I could see everything that was going
25 on." She heard blows getting passed.

1 Even Keisha Stallworth doesn't say that she was
2 getting hit. She was in the car.

3 Now, there's one other thing. She said -- and her
4 ears -- or her eyesight might not be quite as good as her
5 ears are, because she said that she could -- she could tell
6 it wasn't torn up. But she had no idea what kind of jacket
7 he was wearing.

8 She said that to y'all. "Oh, I know it wasn't torn
9 up." And I said, "Could you tell me if it was a green army
10 jacket?" She says, "I have no recollection of the jacket."
11 How'd she know it got torn up if she -- if she didn't have
12 any recollection of it?

13 If she can't tell the difference between this and a
14 green army jacket, how can she say it wasn't torn up? How
15 can she sit up there and swear under oath to y'all in this
16 murder trial? Given -- you know, given the fact that
17 Keisha lied, she's now the star witness. How can she say
18 that she knows for a fact that this wasn't torn up whenever
19 he left? She can't say that.

20 But, you know, I guess I better be careful what I say
21 about, you know, Ms. Creech. She's probably in Ridge
22 Springs in her apartment, listening to every word we're
23 saying right here.

24 The next witness we have is -- next fact witness was
25 my client's girlfriend, Saca Coleman. Now, she came up

1 here, and I know exactly what the -- well, I don't exactly
2 know what they're going to say. But I imagine this is what
3 Ervin's about to get up and say -- one of two things.
4 First thing may be: "She's a victim. She's a victim of
5 this evil man. He's making her say all these things."
6 There's no evidence of that.

7 He's either going to say that or: "She loves him.
8 She loves him and doesn't want him to go to prison for
9 murder," one of those two reasons.

10 Now, clearly, something doesn't add up with her -- her
11 testimony because she says that Ms. Stallworth -- Keisha
12 was there all day. Keisha has the time card. They called
13 that rebuttal witness. You see, they have the right to
14 call witnesses to rebut anything I have -- my -- my -- any
15 -- any testimony I have. So if they have a specific
16 problem that they didn't cover before, they can call new
17 witnesses to rebut that.

18 Then, we have my client, Mr. Otts. He got up here;
19 testified to y'all. He didn't have to. You have the right
20 to remain silent, and you don't have to get up in most
21 trials. In fact, I advise people not to. I'm supposed to
22 try a murder case in two weeks. Client will not get on the
23 stand.

24 He got up on the stand, and he told y'all what
25 happened. And Mr. Maye had a chance to cross-examine him.

1 Now, my client has a tenth-grade education. I don't expect
2 y'all to like him. Like I said, I like him. I don't
3 expect y'all to have to like him.

4 But he has a tenth-grade education. Mr. Maye has four
5 years of college ---

6 MR. MAYE: Now, Your Honor, I object to him inserting
7 my qualifications or anything. That's wholly ---

8 THE COURT: Sustained.

9 MR. MAYE: --- inappropriate ---

10 MR. SHAFFER: Okay.

11 MR. MAYE: --- and I object.

12 THE COURT: Sustained.

13 MR. SHAFFER: I apologize.

14 Mr. Maye had a chance to cross-examine him. And I
15 think that Mrs. -- Mr. Maye's cross-examination speak --
16 skills speak for themselves. He cross-examined him for a
17 long time, I'd say about 30 minutes.

18 In that entire time, he did not falter, did not change
19 his story in any meaningful way. Now, I'm sure Mr. Maye
20 asked him the same question about four different times.
21 And some of those times, he -- he phrased it slightly
22 differently. And my client might've said something, but in
23 any meaningful way.

24 Y'all -- y'all know what y'all saw. He didn't change
25 his testimony at all. He's going to say, "Well, he's had 2

1 1/2 years to think about that; planned this whole thing
2 out." Most people do. Mr. Maye's still -- skills speak
3 for themselves.

4 Now, what do you do whenever everybody's telling
5 different stories? How do you figure out what's going on?
6 One good way of figuring out what's going on is by looking
7 at the stuff that people aren't -- aren't able to lie about
8 that was there beforehand.

9 Look at her statement. Y'all will have that in
10 evidence, Keisha's statement. And look at this picture of
11 that coat that was taken at the jail. And you know how he
12 died.

13 And you know that Ms. Stallworth was not -- Keisha was
14 not out the entire day. But remember what Steven's
15 testimony was as well? Steven's testimony was not -- he
16 might've said she was out that day. But remember he said,
17 "I met up with them right beforehand. They were all
18 together beforehand."

19 He didn't -- he didn't have -- based off the -- what
20 he testified to, he didn't have actual knowledge of whether
21 or not she was at work that day. He said she was
22 intoxicated. And I'm sure Mr. Maye's about to get up there
23 and say, "Well, how'd she get so drunk in the matter of an
24 hour?"

25 I don't know. I don't know. He said that she

1 appeared intoxicated. Remember, his story was that he met
2 up with them right before they -- they took him back. He
3 didn't say he was out with them six/seven o'clock. He
4 didn't say that. He said he met up with them right
5 beforehand.

6 Now, the state's going to say, "Forget about the coat.
7 Don't worry about the coat." He was away and on the run,
8 they phrase it -- he left the scene. He did leave the
9 scene. But he went to his sister's house. He said that.

10 And he said he had all this time to fabricate the --
11 this coat. He turned himself on -- on the 31st. And on
12 the 31st he spoke with Officer Padgett. And when he spoke
13 to Officer Padgett -- and this is in the record. Most of
14 his statement is not, but this is in the record. He never
15 once mentioned that coat. On the 31st he never once
16 mentioned it.

17 I ask y'all this. Really think about it. If you went
18 through all the trouble to fabricate some evidence to back
19 up your story, would you not tell the cops -- would you not
20 tell the cops about the evidence? Would you not say, "Hey,
21 my jacket got torn up. See? I'm telling the truth."

22 If this was your -- your key out of jail, your key for
23 self-defense, wouldn't you at least tell them about it?
24 Would you just sit on the evidence? "Oh, I'm just going to
25 sit here for however long it takes me to go to trial, and

1 then I'll bring it up."

2 No. No. You would tell the cop. He would've told
3 Padgett.

4 Now, y'all already heard the a good bit about the law.
5 And a lot of it, I dispute. Mr. Maye got up here and
6 talked to y'all for about 30 minutes about the law; put in
7 some facts. Tried to apply the facts to the law.

8 There's a -- one thing that I don't dispute, one thing
9 that he said that I do not dispute. And that one thing is
10 that in no way, shape, or form is this a case of voluntary
11 manslaughter. He said that; I agree. No way, shape, or
12 form is this a case for voluntary manslaughter. Because in
13 order to for it to be a case of voluntary manslaughter, he
14 has to be mad. He has to be enraged by something that
15 Hydrick did.

16 There's absolutely no evidence that he was enraged by
17 something Hydrick did. And you're going to hear a little
18 bit about voluntary manslaughter. But -- and y'all are
19 going to get a copy of this charge, which is a great thing
20 about Judge Russo. He's actually going to give y'all a
21 copy of it so y'all can read it back there.

22 Read it for yourself, the definition of voluntary
23 manslaughter. And one part that I think is very important
24 to this is that a person -- or the sudden heat of passion
25 -- basically, what happens is you have to have some sort of

1 event, some sort of provocation by Hydrick, in order to
2 find voluntary manslaughter. You would have to find that
3 he -- he somehow provoked him in some way. And you would
4 have to find that because of that, he got enraged, so
5 enraged that he would not be able -- he had a -- he was
6 acting under an uncontrollable impulse to do violence.

7 That's what you have to find to find voluntary
8 manslaughter: that Hydrick did something to cause Steven
9 to act under a uncontrollable impulse to do violence. And
10 that's why I agree that in no way, shape, or form is this
11 case ever about voluntary manslaughter, which Mr. Maye
12 already agreed too.

13 Now, let's talk about murder. Murder is the killing
14 of another with malice aforethought. I told y'all from the
15 beginning to watch out for that malice, because that's all
16 that matters in this case: malice; whether he was
17 unlawfully acting and whether there was malice.

18 Now, I didn't tell y'all about lesser-included charges
19 because it would've been inappropriate for me at that time
20 to -- to address that. But malice is what y'all need to be
21 looking at in determining there was murder.

22 And Mr. Maye cited a few things. And y'all will get
23 the law -- the full law where y'all can read it. And I ask
24 y'all each to read it carefully.

25 And I -- I read this part to you before. But I'm

1 going to read it again, because it's that important.
2 Malice is hatred, ill will, or hostility toward another
3 person. It's the intentional doing of a wrongful act
4 without just cause or excuse with the intent to inflict an
5 injury under circumstances that the law will -- will infer
6 an evil intent.

7 Evil, hatred, ill will. There has been absolutely no
8 evidence that Steven Otts hated Hydrick. They were
9 friends. They were buddies.

10 Now, briefly, I'll discuss involuntary manslaughter.

11 THE COURT: Mr. Shaffer, let me ---

12 MR. SHAFFER: Yes, Your Honor.

13 THE COURT: --- I don't mean to interrupt. Let me get
14 you to step up here real quick on the -- I apologize for
15 doing this but ---

16 (Whereupon, a bench conference was held off the record
17 in the presence of the jury, but out of the hearing of
18 the jury.)

19 MR. SHAFFER: Mr. Maye talked about a classic case of
20 voluntary manslaughter. He also stated that you had to
21 have -- you had to have this -- that a classic case would
22 be hitting someone in a car. He didn't mention other
23 classic cases of voluntary manslaughter, like accidental
24 shootings. Whenever you recklessly discharge a firearm,
25 that's a classic case of involuntary manslaughter.

1 There's a classic case of involuntary manslaughter
2 that an assault -- unlawful assault that's not the type of
3 assault that would kill somebody is involuntary
4 manslaughter. Involuntary manslaughter is a very, very old
5 law. And it encompasses a whole bunch of different things.
6 So don't think that just because he wasn't driving a car
7 and killed him, that that's not involuntary manslaughter.
8 Because there's a bunch of ways you can meet involuntary
9 manslaughter.

10 And the judge is going to charge you on the law. And
11 whenever he does, you will -- you will see -- and you will
12 see whenever you get back in that jury room that there is
13 ways that -- that things could be involuntary manslaughter
14 that are outside of the scope of what Mr. Maye just told
15 you. It's unintentional killing.

16 Unintentional killing, now, that sounds mighty good
17 for this case, you would think. You would think. But it's
18 not. Because this is a case of self-defense.

19 Mr. Maye is going to phrase it like, "Oh, well, he
20 just wanted an involuntary charge. He's trying to get you
21 to convict him." No, I'm not. I'm not trying to get him
22 convicted of involuntary manslaughter. That's ridiculous.
23 But I'll bet you he'll say something like that.

24 I'm not trying to get him convicted of involuntary
25 manslaughter because it's a case of self-defense. Because

1 whenever a man comes up and bear-hugs you -- drunk man,
2 larger man than you, comes up and bear-hugs you from
3 behind, pulls you several feet away around a car, and you
4 wiggle free and he grabs you again, you have the right to
5 turn around and punch him.

6 This, ladies and gentlemen, is evidence of that.

7 Oh, yes. Oh, yes. Let's talk a little bit about what
8 we didn't hear in this case. The state has the burden of
9 proof. They welcome that burden, they say.

10 What did we not hear in this case that would've been
11 helpful? We didn't hear from Antonio. Didn't hear from
12 Antonio. Antonio was driving the car. Turns out that he
13 was there. Witnessed it. Eyewitness -- just as good of a
14 vantage point as Keisha or Saca -- just as good of a
15 vantage point, inside the car. Didn't hear from Antonio.

16 We didn't hear from over 20 other witnesses -- 20.
17 They presented two: the lady who lied to you and the woman
18 with super ears. That's all they presented in this murder
19 trial: two witnesses.

20 They didn't even present the officer who responded to
21 the scene who was sitting at the table with them the whole
22 time. I had to call him. Why? Because they didn't want
23 you to know that there were 25 people out there who
24 witnessed this.

25 You know what we didn't hear too? We didn't hear from

1 any rebuttal witnesses to my client's testimony. We didn't
2 hear from Officer Padgett to get up there and say, "He's
3 lying. He told me something different."

4 You hear it on TV all the time: Everything you say
5 can and will be used against you in the court of law -- if
6 it can -- if it can be used against you. If he would have
7 said something different, don't you think we would've heard
8 that? We didn't hear it. We didn't.

9 What else didn't we hear? Oh, the state's going to
10 talk about the assault, the alleged assault. Saca's
11 statement doesn't mention the assault. I mean -- excuse
12 me. Keisha's statement did not mention the assault on
13 Saca. Keisha's statement does not mention an assault.
14 Written statement night of never mentioned the assault.
15 Why do y'all think that is?

16 Then she comes up here and says, "Oh, she was pulling
17 her so hard, the shirt ripped off the top of her head."
18 Shirt ripped off of her.

19 And then, you have Angela -- ears, super hearing --
20 "Oh, he was beating on her."

21 But you had Officer Padgett get up here on the stand.
22 And I know my -- my questions to him were confusing. But
23 you had Padgett get up on the stand. Did he mention any --
24 he talked to Saca that night. He talked to Keisha that
25 night. Did he mention one time that he saw bruises on

1 Saca? Did he mention one time that he saw her shirt
2 ripped? Did he mention one time that he saw a black eye or
3 a bloody lip? No. He didn't.

4 Did he mention that he charged him with CDV? He said,
5 "No. I didn't charge anybody with domestic violence."
6 It's because it didn't happen. There's no evidence of it.
7 The only evidence of it is the statement that Keisha comes
8 up with now, not -- not in her original statement -- no --
9 not in her original statement; the statement she comes up
10 to 2 1/2 years later.

11 Oh, yeah. And there's also -- excuse me. Keisha's
12 statement doesn't say that. I apologize.

13 It's Angela's statement. Angela, who never gave a
14 statement to the police -- super ears never gave a
15 statement to the police -- she was there that night, though
16 -- till last week. And I'm to blame for that partially.
17 Saw her name in a random form. Said, "Go talk to her."
18 Said, "What -- what's going on with her?"

19 So she comes up here. And she gives a story about
20 hearing the blows. She never a gave a statement until
21 then. Now, I know what Mr. Maye is going to say about
22 that. You know, he's going to say, "Well, it's hard to get
23 people, when you're a cop, to talk to you. People don't
24 want to get involved."

25 That's true. Nobody wants to get involved. But is it

1 really that hard to get people to talk to you? Over 20
2 people witnessed this. And they called two. Twenty
3 people; they called two.

4 "Oh, nobody wants to talk to us. And there were so
5 many people out there. It's hard to get statements."

6 You know where they live. They all live right there.
7 You had 2 1/2 years. Why didn't they get one statement
8 from any of the other people there? They didn't. They
9 didn't present any of that. They didn't present anything
10 to show, from any of the other, except two, witnesses.

11 Regarding people getting involved, nobody wants to
12 talk to us. We're the police. Nobody wants to get
13 involved. Do you think that human-resources lady wanted to
14 get involved? No. She didn't want to get involved. They
15 went down and picked her up. She didn't want to get
16 involved.

17 You're the police. You can do that. You can subpoena
18 people and actually enforce it, versus me. I can hand a
19 subpoena to somebody and they can just go, "Pfftt." And
20 then I ---

21 MR. MAYE: Your Honor ---

22 MR. SHAFFER: --- have to go ask a ---

23 MR. MAYE: --- Your Honor, I object. There's nothing
24 in the ---

25 THE COURT: Sustained.

1 MR. MAYE: --- record to be ---

2 MR. SHAFFER: Okay.

3 THE COURT: That ---

4 MR. MAYE: --- supported ---

5 THE COURT: That's incorrect.

6 MR. MAYE: --- whether or not she came ---

7 MR. SHAFFER: I apologize.

8 MR. MAYE: --- here willingly or not.

9 THE COURT: And -- and that's an incorrect ---

10 MR. SHAFFER: I apologize ---

11 THE COURT: --- statement.

12 MR. SHAFFER: --- Your Honor.

13 I guess I should've asked her the question of whether
14 or not she was there or not. Should've done that -- or
15 whether or not she wanted to be here.

16 But they're still the police. And they still have the
17 ability to go talk to people. They still have
18 investigators. They have the entire Saluda County
19 Sheriff's Department for 2 1/2 years, 20 witnesses, all
20 right here. And they present to you a woman who lies to
21 you about where she was at -- the vantage point she was at.

22 Now, it's not important that she was lying about
23 Antonio or not, other than the fact she was lying. The
24 problem is -- is her vantage point. Her vantage point was
25 inside the car. They presented her, and then they

1 presented the woman with supersonic ears.

2 Now, they didn't present a single witness that would
3 say -- other than the -- the two that presented to begin
4 with, those two, they didn't come up with any rebuttal
5 witnesses for my client.

6 Now, let's talk a little bit about Angela's story,
7 because I think that's what the state's going to hang their
8 hat on. Oh, she was -- she's a completely independent
9 witness. Angela hearing it -- completely independent
10 witness, had nothing to do with it. Why would she lie?
11 That's what they're going to tell y'all. I'm sure of it.

12 I don't know. But let's look at her actual story.
13 First, about the jacket -- and we've talked about the
14 jacket. So I'm not going to go back through her
15 recollection of the jacket. She knew it wasn't torn, but
16 it wasn't -- she doesn't know what color, anything about
17 it.

18 She says -- she said that -- her version of the facts
19 is that Hydrick went up behind him; put him in a bear hug.
20 Steven said -- now, Hydrick's a big guy. And he's strong.

21 And they talk about life experiences. And I'm sure a
22 lot of y'all have life experiences. Big drunk guy goes up
23 behind Steven -- bigger, stronger -- said, "I don't care if
24 you want to come inside or not. I'm taking you inside."

25 And he goes, "Let me go. Let me go." Okay? This is

1 Angela's story.

2 And she claims that he then says not, "Let me go or
3 I'll punch you." She claims it was, "Let me go -- if --
4 when you let me go, I'm going to punch you."

5 And then immediately he goes, "Go ahead." Puts his
6 hands up like that. She demonstrated it. Hands up like
7 this; demonstrated it.

8 Y'all saw her on the stand. And I'm not saying this
9 is impossible. But let's think about what happens when
10 your hands go up. Let's think about the kind of force that
11 would be needed to make a wound right there with your hands
12 up.

13 I'm not saying it's impossible. I'm not. Because I
14 wasn't there that night. And I can't see.

15 But don't y'all think that if his hands are right
16 here, like she demonstrated, that if he's punching, some
17 way he's going to hit the hand. And if you hit your hand
18 before you make that punch, even if they're in front of his
19 face, some way it's going to hit that hand.

20 You ever see those Thai kickboxing guys? They -- they
21 hold their hands up like that. And it's blocking against
22 big-old roundhouse kicks to the side of the head. They
23 hold their hands up like that. But he's holding his hands
24 up like that, according to Angela.

25 You got to get a lot of force to make that wound. And

1 it needs to come that way. It doesn't need to go that way.
2 I mean, I guess he could've put his hands up but he turned
3 his head to the side. But that doesn't make a whole lot of
4 sense. "Let me go or I -- and I'm going to hit you."
5 Okay. Doesn't make a whole lot of sense, does it? It's
6 because it didn't happen that way.

7 I'm a firm believer in the fact that when you should
8 assume that the most likely thing that is going to occur
9 did occur. When you don't know all the facts, generally,
10 the most likely thing that -- to happen is what happened.

11 And let's think -- talk about what the most likely
12 thing that happened is. He's going to get -- it's
13 undisputed that they were arguing in the car. Saca and
14 Steven were arguing in the car. And they got loud. That's
15 undisputed. Okay?

16 Friend of both, Hydrick, comes out there and says -- I
17 don't know what he says. I wasn't there. But I imagine it
18 could've been something like, "Y'all need to calm down."
19 Most people said he was trying to calm down the situation.

20 And then Steven decides: "No. I'm not calming down.
21 We're arguing. Leave me alone, Hydrick."

22 Big drunk dude then says, "Well, fine. Don't calm
23 down. I'm just going to take you." So he takes him.

24 And he goes, "Hydrick, let me go. Let me go." And he
25 wiggles away. He wiggles away.

1 He wiggles away, and he grabs his right shoulder -- I
2 mean, his -- excuse me -- his left shoulder. He grabs his
3 left shoulder and pulls. So what did Steven do? He turns
4 around and punches him to the side of the head.

5 Hydrick falls. Hydrick's hurt. Steven didn't mean to
6 hurt him. They're friends. But Hydrick's hurt.

7 Steven was just trying to get away, trying to make
8 sure that this guy, who's bigger and stronger -- a lot
9 drunker, 0.27 drunk -- "3 1/2 times the legal limit" drunk
10 -- he was trying to make sure this bigger, stronger,
11 drunker man than him did not hurt him. He was trying to
12 get away.

13 So he goes back over. And then hears, "You hurt him."
14 So he runs back and, just like she said, tried to help him.

15 "Dude, get up. Stop playing around. Get up. I
16 didn't even punch you that hard. Get up."

17 But there was nothing he could do. And he left.

18 Ladies and gentlemen, that is -- that's sad. That's a
19 tragedy. A friend killed another friend. And he'll live
20 with that.

21 But you know what? It ain't murder. It ain't
22 voluntary manslaughter. He didn't hate him. He didn't
23 have any ill will toward him. And it's not involuntary
24 manslaughter, because he was defending himself.

25 And I believe, whenever y'all go back in that jury

1 room and y'all listen to the charge, y'all read the charge,
2 y'all will agree with me. Thank you.

3 THE COURT: Thank you, Mr. Shaffer. Mr. Maye?

4 MR. SHAFFER: And ---

5 MR. MAYE: Thank you.

6 MR. SHAFFER: --- note my objection for the record,
7 Your Honor, for that ---

8 THE COURT: All right. Your objection -- your
9 objection ---

10 MR. SHAFFER: Thank you, Your Honor.

11 THE COURT: --- is noted and overruled. Mr. Maye, you
12 may ---

13 MR. MAYE: Thank you.

14 THE COURT: --- proceed.

15 CLOSING ARGUMENT BY MR. MAYE

16 MR. MAYE: Told you at the outset of this case -- I
17 know it's been a long, long time y'all been listening.
18 Bottom line is: The 12 of you, the collective wisdom of
19 all of you that are going go back in that jury room,
20 outstrip that of any one person. Y'all got the sum total
21 of all of your life experiences: listening to people
22 either tell you lies or telling the truth; weighing what
23 people have got to say; what their motives, what their
24 biases are; looking at them; seeing how they answer
25 questions. I ought to just be quiet and sit down. Y'all

1 know the score in this case. This is not complicated.

2 It's patently obvious what happened that night.

3 Steven Otts was showing out. Wanted that girlfriend
4 to stay, no matter what she wanted. Went to fighting; went
5 to beating on her. Whatever he was doing to her, he was
6 trying to make her stay there against her will. It created
7 such a ruckus that people poured out of those apartments in
8 January at night to see what in the world was going on.

9 And I'm going to start and hit one thing right to
10 start with. Ms. Creech -- and I'll talk about her in great
11 detail in this case, because this is -- they're trying to
12 take the sting out of it to begin with. She's the only
13 truly independent witness in this whole case. And they
14 brought that up and harped on it. Oh, I'm sure the state's
15 going tell you -- because nothing could be further from the
16 truth. That's why they brought it up first: tried to take
17 the sting out of it.

18 She is the only person involved in this got nobody to
19 reward or punish and no ax to grind. What they
20 disparagingly call her, "old super ears"? Let's get this
21 straight to begin with.

22 That's what the defense was trying to get her to agree
23 to on cross-examination. She came out on the balcony. She
24 heard a commotion. She came out on the balcony. She saw,
25 heard ---

1 MR. SHAFFER: Objection ---

2 MR. MAYE: --- viewed ---

3 MR. SHAFFER: --- Your Honor.

4 MR. MAYE: --- everything ---

5 MR. SHAFFER: That's not ---

6 MR. MAYE: --- that ---

7 THE COURT: All right.

8 MR. MAYE: --- went in ---

9 THE COURT: Hold on.

10 MR. SHAFFER: Your Honor, that -- that's not in
11 evidence. He just misstated what she had said, Your Honor.

12 THE COURT: All right. Here's the thing.

13 MR. SHAFFER: I understand.

14 THE COURT: Ladies and gentlemen of the jury, you've
15 heard the testimony. You're going to go on your
16 recollection of the testimony and not what the lawyers tell
17 you, but on your recollection of the testimony. I -- I
18 can't remember what all was said, so I don't know how --
19 whether he ---

20 MR. SHAFFER: Thank you, Your Honor.

21 THE COURT: --- that's accurate or not. But -- but
22 ladies and gentlemen will have their recollection of the
23 testimony. All right. You may proceed.

24 MR. MAYE: That lady never once said that she was
25 anywhere other than on the balcony when she heard the blows

1 raining down in this case. That's just an attempt to
2 disparage her, trying to get her to agree with the way they
3 want the facts to be in this case, not how they actually
4 were. That's crazy.

5 Such a ruckus that people poured out of the buildings;
6 he was attacking her. No other way around it; he was
7 trying to force her to stay. The truth's not in him, and
8 it's certainly not in that young lady. We know that.

9 Maybe she wasn't somebody worthy of somebody coming to
10 her defense. She chose her sides pretty quickly when she
11 bolted and ran, when she kept staying with him. Oh, they'd
12 have you to believe, Oh, you know, they hadn't been talking
13 about it, just like they said, Oh, they never even
14 mentioned it to each other: "When I went and turned myself
15 in, we didn't talk about this. We've never discussed
16 this."

17 He's living with her right straight on. She picked
18 her sides right then. Maybe she wasn't somebody that was
19 worthy of being protected. But it was obviously somebody
20 he cared enough about to come out of the apartment and to
21 try to do something to help her when this man put his hands
22 on her, when this man's trying to force her to stay against
23 her will. He came to the defense of a friend or family.
24 Maybe she wasn't worthy, but that's not relevant to this
25 case.

1 And then, Hydrick Burno did -- and they said there's
2 one thing that's completely obvious in this case. However
3 many people were out there, there was only one real man
4 there that night that acted appropriately and reasonably.

5 They want you to believe this is some drunk monster
6 that was perpetrating an attack. That's not what happened.
7 There's absolutely no evidence of that. Everybody in this
8 case -- even the defendant in this case is saying, well, he
9 came out and tried to talk to him to start with. You know,
10 he came out and he tried to diffuse the situation. He
11 didn't come out and roll into it and start beating the fool
12 of him. He tried to stop him and talk him out of it and
13 exercise some reason.

14 And as I told you before, at any point in time, he
15 could've let her go. He could've gone about his merry way.
16 He could've minded his business.

17 But this is all about -- all of the evil that took
18 place this night is all laid right there at the feet of
19 Steven Otts, the defendant in this case, who's nothing but
20 mean, malicious. He wants things his way. And how dare
21 anybody take a contrary view: not his girlfriend, not
22 anybody that was hollering at him, bystanders, not her
23 cousin or friend or however they were related that came out
24 and tried to talk to him -- nobody. When he wanted his
25 way, it was going be that way or no way. And he's going

1 carry it out whether or not he's got to put his hands on
2 somebody, where he's got to hit, punch, strike, cuss at
3 them, scream and yell, whatever it is. It's going be his
4 way or no way, whatever it takes.

5 That's what resulted in the murder and the death of
6 Hydrick Burno. Because that's the way it's going be with
7 Steven Otts: his way or no way, whatever it takes to carry
8 it out, undeterred. Tried to talk him; undeterred. Kept
9 right on going with what he was doing. Was not going stop
10 until his property, his girlfriend -- he wouldn't even
11 relent up here at the stand. He never would back off.

12 I kept asking him over and over again, "Why didn't you
13 just go in the house?" "Well, she was my girlfriend." He
14 can't even stop up here during a murder trial. That's just
15 ingrained in him. That's just the way he is. That's his
16 character.

17 "That was my girlfriend. I'm absolutely right in what
18 I did. Nobody could stop me from making her stay." How
19 dare he try to intercede; try to help this young lady; try
20 to do the reasonable, responsible thing; come to the
21 defense of someone else. How dare he, when I want
22 something different.

23 And he didn't stop. And Angela Creech, like I said,
24 the only truly independent witness in this whole case,
25 thank goodness the police found her. No friends to reward;

1 no enemies to punish. Clearly, somebody that saw it;
2 somebody that cared enough to call 911 that was concerned
3 enough about Mr. Burno to actually do something and to call
4 the police there, as she well and truly should have, as any
5 responsible citizen should've done.

6 The only person that was smart enough to tell them
7 quit yanking on this man that's hurt, that's in a seizure,
8 she told you she had medical training. The only voice of
9 reason, the only independent and truly reliable person that
10 was there that night and a person that was responsible
11 enough to come down here under oath and testify as to what
12 happened, in spite of there being -- again, we don't
13 disagree with what the defense says in this case: 20 or 30
14 people. Absolutely.

15 But you know good and well, they're not going get
16 involved. They don't want to come down here. Because they
17 all know each other. They got to live around there. Takes
18 a lot of courage to do that. Ms. Creech exercised that.

19 When he couldn't talk him out of it, he put his hands
20 around him. He didn't attack him. He didn't punch him.
21 He didn't take a baseball bat and bust his head open. He
22 didn't shoot him. Put his hands around him to restrain
23 him.

24 And like I said, there's another issue to this case:
25 pride. I'm a bad man. He couldn't get loose. Sure, it

1 embarrassed him and humiliated him. Made him mad, so much
2 so, by his own comments -- he couldn't get loose, or he
3 wouldn't have said this. "Motherfucker, when you let me
4 go, I'm going knock your punk ass out."

5 He couldn't get loose. Even he says. Now, his was a
6 greatly cleaned-up version. Because -- and, oh, if you
7 believe him -- if the truth is in him at all, you believe,
8 "Oh, I was just having a little discussion."

9 But, you know, he kept backpedaling with everything.
10 "Well, you know, maybe I was loud. Maybe I exercised some
11 poor judgment. Maybe it wasn't a little more than that.
12 You know, I -- I just held her hand."

13 Arrogance. Utter arrogance for somebody to get up --
14 because it takes a lot of arrogance to get on the stand and
15 try to sell a bill of lies to 12 people who bring into this
16 courtroom the sum total ---

17 MR. SHAFFER: Objection.

18 MR. MAYE: --- of their life experiences.

19 THE COURT: All right.

20 MR. SHAFFER: Vouching. Can't -- he ---

21 THE COURT: I'm sorry?

22 MR. SHAFFER: Your Honor, he -- he can't directly
23 state -- it's vouching, Your Honor. It's a comment on
24 credibility.

25 THE COURT: All right.

1 MR. SHAFFER: He can't ---

2 THE COURT: Sustained.

3 MR. SHAFFER: --- put that as a prosecutor.

4 MR. MAYE: You take his credibility and believability
5 as you believe. You saw him up here on the stand. You
6 heard everything he had to say. You judge what his
7 credibility and believability is.

8 He couldn't get loose, even by his version. Had to
9 ask to get loose. But told him, "I'm going punch you,"
10 even with his version, not with what rings of the truth,
11 not with what came out of Steven Otts' mouth, that foul
12 language on that night.

13 And she remembered it. It made enough of an
14 impression on Angela Creech that she remembered exactly
15 what he said verbatim. And do you think that's the way
16 Steven Otts talks, that polite term that he did -- you
17 really think, out there on that night, a man who won't even
18 let his girlfriend leave, you really think he said, "Well,
19 you know, if you don't let me go, I'm going strike you"?
20 Didn't happen that way.

21 And the only way he got loose was he let him go.
22 What'd Ms. Creech tell you? Let him go. Universal sign of
23 submission and surrender.

24 It was obvious that he didn't want to fight. It was
25 obvious that he didn't want to pursue anything else. He

1 let him go, as he requested. And what'd he get for his
2 trouble? Malice, meanness, just absolutely sorriness.

3 Man with his hands up, sucker-punched him; cracked his
4 skull; and kill him. And that's just long and short of
5 what happened here. That is nothing but malice and
6 meanness.

7 And it can't be anything else but murder when malice
8 is involved. All of those charges -- now, they're playing
9 games with that. "Oh, it can't be voluntary -- oh, just
10 find him guilty of" -- you know, that's just game-playing.
11 It can't be anything else but murder when you've got
12 malice, no other way, only charge.

13 He hits him with one punch. And that's even
14 stipulated. What killed this man was one punch to the
15 skull, administered by Steven Otts. Of that there is no
16 doubt.

17 His skull was cracked; he didn't his head when he
18 fell. There was nothing that happened to him about getting
19 picked up or pulled on or dropping. Like I said before, he
20 didn't get hit and stagger back off a cliff and fall. He
21 died at that man's hands from a malicious punch to the head
22 with no justification, absolutely wrong.

23 We don't settle our differences that way in a
24 civilized society. That's why the 12 of you ultimately are
25 in here. That is not the way we settle our differences.

1 MR. SHAFFER: Objection, Your Honor. *State v.*
2 *Liberte*, you -- Your Honor, he -- he can't -- he -- he
3 can't state that. He can't ---

4 THE COURT: Overruled.

5 MR. SHAFFER: --- Your Honor, the -- can we approach?

6 THE COURT: Yeah.

7 (Whereupon, a bench conference was held off the record
8 in the presence of the jury, but out of the hearing of
9 the jury.)

10 THE COURT: All right. I'm going to sustain the
11 objection, strike that last statement, and allow Mr. Maye
12 to continue.

13 MR. MAYE: Defendant's case would have you believe at
14 that point in time, "Oh, I didn't mean to hurt him." The
15 state submits to you in this case, she can substitute -- I
16 didn't intend to have to answer for my actions and suffer
17 the consequences. That's what he's sorry for in this case.
18 He's not sorry for anything that he did. He's sorry that
19 he's having to suffer the consequences.

20 Because his actions after he hit this man in the head
21 and killed him speak volumes as to that. Because what'd he
22 do? Once he killed him by punching him in the head and
23 knocked him out and left him laying there, he turned right
24 back to that woman. He was so concerned for this man --
25 now, he's -- he is only sorry now that there are negative

1 ramifications for him, that he faces a murder charge in
2 this case, because there was no regard for that that night.

3 Because what'd he do? He went right back after that
4 woman. Only when people started to scream and yell that he
5 was laying there and continued to lay there did he go back
6 over there.

7 And what'd he do? Oh, he'd tell you, if you believed
8 his version of -- "You know, I didn't even get him off the
9 ground. I just reached over to check on him." Oh, he was
10 really concerned about him. He was so concerned that when
11 any talk arose from Ms. Creech that she was calling the
12 cops, what did he do? Flight. Took flight.

13 He was so concerned about this man that he ran into
14 the woods. He was so concerned about this man, he stayed
15 on the run for three days. That's how much concerned he
16 was about this man, as he lay struggling for his life in
17 the Lexington Hospital.

18 He was really concerned. He's really sorry. He's
19 sorry that consequences have befallen him. That's what
20 he's sorry for.

21 "Oh, I didn't mean to kill him." Again, when you
22 punch somebody in the head like that, when you land a
23 haymaker on someone like that, you've got to answer for it.
24 You can't decide after the fact what you meant to do. What
25 he obviously meant to do at that point in time was hit him

1 as hard as he possibly could. Because it would've taken
2 one more blow crack a man's skull like that and kill him.

3 And, oh, there was talk and cross-examination of Dr.
4 Rose. Oh, well, that -- this just doesn't happen that
5 frequently. What doesn't happen that frequently is
6 somebody get punched that hard one time.

7 How many times would he have punched him? To --
8 obviously, knocked him out. He told Ms. Creech what he was
9 going do. He was going knock him out. Told everybody
10 there. Told Hydrick what he was going do. He's going
11 knock him out. However many punches that took, but it
12 didn't take but one.

13 And once he knocked him out, he was right back onto
14 his girlfriend, till he fled -- until he ran. And flight's
15 evidence of guilt. What kind of scene do people flee from?
16 They don't flee from a scene of justifiable self-defense.
17 They flee from a crime scene, from a murder scene. That's
18 what he fled from.

19 Comes in there afterwards -- finally does come down.
20 Like I said, he's gone for three days. Talks to the police
21 and he tells you -- and that's when we get into this
22 jacket. Oh, man, this magic coat. What a revelation.

23 He's got that coat. Says he wears it around for three
24 days. But tell you up here on the stand he realized the
25 significance of it. They want to tell you, "Oh, he was a

1 poor man. Just had that coat, that's all he could afford."

2 He said himself up here -- and like I said, the story
3 bounced around all over the place, just depending on which
4 way he wanted to run. So I asked him in this case, "Well,
5 what'd you do?" "Oh, well, you know, I knew this was
6 important, so I brought it up here with me."

7 So important, when he got up and told his side of it,
8 he never said one word to this officer. There's nothing --
9 and you've got his statement. He didn't say one word to
10 this officer about this coat that's so significant up here
11 now.

12 That coat didn't become significant until a year later
13 after he started meeting with lawyers. The state submits
14 to you, that coat -- that torn coat didn't become
15 significant in this case until he's trying to figure out a
16 way out of this. Because what has changed and what is
17 different in between the time he came in three days later
18 and now? This case went from the assault and battery of a
19 high and aggravated nature or the old assault and battery
20 with intent to kill to murder, because this man died.

21 That's what all these lies are about. That's what all
22 this attempt to make this coat be relevant in this case.
23 Said, "Oh, it was torn there." Witnesses have told you,
24 and Ms. Creech told you, "I didn't see it torn."

25 She said, "I don't know what kind of jacket it was."

1 You don't think people would've noticed this when he was
2 there at the scene? They'd have you believe he tore this
3 by putting his hands and arms around him?

4 He more likely than not tore this running through the
5 woods, taking flight, or whatever else he got into in the
6 next three days in his flight to walk away and leave this,
7 to absolve himself of responsibility. Nowhere around to be
8 found when the police got there. That's the level of
9 concern that Steven Otts had for the victim in this case,
10 Hydrick Burno, as he lay dying in the hospital. Never
11 looked back, running away from it.

12 Not much for me to say. You can evaluate the
13 credibility and believability of the witnesses in this
14 case. But again, I submit to you, what Ms. Creech said --
15 and you can go through what her testimony was. You know
16 it. Twelve of you certainly have a great recollection of
17 what she said. And she went through it line by line.

18 She called 911. She was concerned. He ran into the
19 woods just as soon as she said she was calling the cops.
20 And she said that she was in a vantage point where she
21 could hear the blows raining down.

22 But what happened to her doesn't matter. Even if it
23 was a simple assault and battery, it wouldn't make any
24 difference what was happening to his girlfriend. He came
25 to the defense of another person, and he stood in her

1 shoes.

2 Steven Otts had no legal justification for what he
3 did, absolutely none. No moral, legal, ethical
4 justification for what he did that night. Absolute
5 meanness and maliciousness, nothing else. That is why
6 Hydrick Burno, the only real man out there that night, is
7 dead.

8 They brought up all of these things in the case. And
9 I submit to you, what your role as a jury, it's about
10 justice. It's not about mercy.

11 Jurors in South Carolina don't sentence people, with
12 the exception of a capital case, where the submit the
13 verdict of life or death if someone -- after someone's
14 convicted of murder in a capital case. Jurors do mete out
15 punishment then. What they're asking you for in this case
16 is mercy, not justice.

17 MR. SHAFFER: Objection, Your Honor. That's not what
18 we asked for at all. And he's burden-shifting as well.

19 THE COURT: All right.

20 MR. SHAFFER: It's misstating law. He's doing a lot
21 of things, Your Honor.

22 THE COURT: Overruled. Go ahead.

23 MR. SHAFFER: Thank you.

24 MR. MAYE: Justice is what the jury is up here about,
25 following the law ---

1 MR. SHAFFER: Objection ---

2 MR. MAYE: --- in this ---

3 MR. SHAFFER: --- Your Honor.

4 MR. MAYE: --- case. (To Mr. Shaffer) It was
5 overruled.

6 MR. SHAFFER: But that's a different objection, Your
7 Honor.

8 THE COURT: Sustained as to that ---

9 MR. SHAFFER: Thank you ---

10 THE COURT: --- that objection ---

11 MR. SHAFFER: --- Your Honor.

12 THE COURT: --- right there. Ladies and gentlemen,
13 strike that statement that Mr. Maye just made.

14 MR. MAYE: Again, ladies and gentlemen, you've got all
15 the facts in this case. And it's obvious. The defense in
16 this case would point out for you, Oh, they didn't bring
17 this person or that person in reply. We brought you one
18 reply witness to negate anything that his girlfriend, who's
19 obviously scheming and conspiring with him. There's no
20 question about it.

21 She sold -- tried to sell you a bill of goods. Oh,
22 they're going try to discredit -- and that's what this is
23 all about: discrediting any witnesses from the state in
24 this case.

25 Oh, Ms. Stallworth, she spent the day drinking and

1 partying and carrying on and didn't even go to work that
2 day. Absolutely not a word of truth in that. All the rest
3 of it, like I said, you can use your common sense to tell.
4 Truth's not in here.

5 You can evaluate his believability and credibility of
6 what he said. He said nothing but arrogance. "I'm smart
7 enough to scheme and think me a way out of this and deceive
8 12 people." Nothing but arrogance. Just doesn't work that
9 way.

10 You've got all of the evidence in this case. State --
11 to go back through the law again, you know, in this case,
12 what the possible forms of verdict are. They're trying to
13 tell you it can't possibly be manslaughter. Fine.

14 If it's not manslaughter, fine. Don't find him guilty
15 of manslaughter. But it's murder, because malice is at the
16 core of that. And there was clearly malice that night.
17 Any of those other charges, if malice is there and present,
18 it can't be any of the other charges.

19 You take the judge's charge -- as I told you again, it
20 certainly can't be self-defense because the defendant's got
21 to be without fault in bringing this on. He's solely at
22 fault for everything that happened that night. It can't be
23 self-defense.

24 You've got to believe he's in imminent danger of death
25 or serious bodily injury. Even he concedes that's not the

1 case. He'd have you believe he punched this man and was so
2 unconcerned ---

3 MR. SHAFFER: Objection, Your Honor. That concession
4 was not in the record as well.

5 THE COURT: Overruled.

6 MR. SHAFFER: Thank you.

7 MR. MAYE: Even the defendant in this case would have
8 you believe that he punched this man that he would
9 characterize as a "big-old drunk monster" in the face and
10 just calmly turn his back and walk away. He wasn't in
11 imminent threat of anything. Self-defense is not there.

12 As to involuntary manslaughter, it's not there because
13 malice is present, the kind of malice that somebody would
14 manifest by the words out of his own mouth. And I'm not
15 going go back through them again, exactly what he said.

16 Criminal negligence is what they're trying to tell you
17 this is. "It was an accident. I didn't mean to do it."
18 It was an intentional act. And when it's an intentional
19 act, it's not involuntary manslaughter.

20 MR. SHAFFER: Objection, Your Honor. That's a
21 misstatement of the law too ---

22 THE COURT: All right.

23 MR. SHAFFER: --- under *Chapman*.

24 THE COURT: Sustained.

25 MR. MAYE: They're trying to get you to believe that

1 he was merely criminally negligent in this case, just a
2 disregard for someone else's safety. This was an
3 intentional act. He punched him as hard as he could
4 intentionally. There's no possible way that this is
5 involuntary manslaughter.

6 Told you at the outset: The only real and meaningful
7 consideration is whether or not this is murder or
8 manslaughter. And manslaughter doesn't fit either. This
9 wasn't an accident.

10 Manslaughter, sudden heat of passion, they're telling
11 you no sudden heat of passion. I agree, absolutely.
12 Legally sufficient provocation, absolutely not. He stood
13 in the shoes of the victim in this case, that girlfriend.
14 That totally negates that.

15 MR. SHAFFER: Objection, Your Honor. That's arguing
16 transferred intent, involuntary.

17 THE COURT: Overruled.

18 MR. SHAFFER: Thank you.

19 MR. MAYE: Without malice aforethought -- for him to
20 be guilty of anything other than murder, no malice. With
21 anything other than murder, nothing else fits because it
22 was done with malice. It's murder because this was
23 malicious. It's that simple.

24 Ladies and gentlemen, you've got all the evidence in
25 this case. You've heard it. Collectively, y'all are going

1 to remember a thousand different things that I didn't bring
2 out here. Just come back with a verdict that does justice
3 in this case. That's all that anybody can ask of you.

4 The state has the burden of proof -- of proving that
5 Steven Otts is a murderer in this case. And we submit to
6 you, we've done that. Appreciate your attention.

7 THE COURT: All right. Ladies and gentlemen, I'm
8 going to give you the charge on the law. But let me ask of
9 you first: My charge I'm going to give you, it -- it --
10 it's not terribly long. But it's probably going to take
11 about 15 or 20 minutes. Do -- do you want a short break
12 before you receive that? Some are nodding yes.

13 Why -- why don't we just take a short break now. If
14 you need to use the restroom or get something to drink,
15 great; do that. But I'm going to get you right back out.
16 I'm not -- we're not going to take a break. We're -- we're
17 going to let you take a break, and then we'll get started
18 in -- in just about five minutes. Okay? So don't have any
19 discussion about the case.

20 (Whereupon, the jury exited the courtroom at 12:34
21 p.m.)

22 (Off the record from 12:34 p.m. until 12:42 p.m.)

23 THE COURT: All right. Ladies and gentlemen, we're
24 going to start back. If you would, get your seats and
25 we're going to bring the jury out. Is the state ready?

1 MR. MAYE: State's ready, Your Honor. Thank you.

2 THE COURT: Defense ready?

3 MR. SHAFFER: Yes, Your Honor.

4 THE COURT: Let's bring the jury out, please.

5 (Whereupon, the jury entered the courtroom at 12:43
6 p.m.)

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, let me -- you heard from the attorneys, and now it's
9 time for me to charge you on the law. Typically, what I
10 do, ladies and gentlemen, is I come down there to the -- to
11 the rail and I -- I get a little podium. And I come down
12 there with -- to be with you to give you the charge on the
13 law. The -- this huge brace and these crutches make that a
14 little difficult, so I'm going to stay up here, which is
15 not typical for me. I'm not as comfortable up here as I am
16 down there with you.

17 But -- and I -- I tell juries all the time: The
18 reason I come down there to give you the charge on the law
19 is because, you know, prior to me giving you the charge on
20 the law, I told you earlier when we started this case that
21 I'm not to interfere or be a part of anything regarding the
22 facts of this case, because that's your role. And so it's
23 appropriate for me to be up here and out of the -- the way
24 of the lawyers while they present to you the facts.
25 Because that's between you and the attorneys.

1 But now we've reached the portion of this trial where
2 you and I are in this together: you as the triers of the
3 facts and me as the trier of the law. So I just think it's
4 appropriate for me to come down and be with you while I
5 give you this. But if you'll excuse me, I'm going to stay
6 here and I'm going to give you the charge on the law.

7 CHARGE OF THE COURT

8 THE COURT: Mr. Foreman and members of the jury, you
9 have heard all of the evidence and the arguments of both
10 parties. I will now explain to you the law which applies
11 to this action.

12 The indictment charges the defendant, Steven Dewayne
13 Otts, with the offense of murder. I remind you that the
14 fact that the defendant was arrested, charged, and indicted
15 in this case is not evidence in this case and it cannot be
16 considered by you as evidence of guilt; nor does it create
17 any presumption or inference of guilt. The indictment is
18 imply the formal written instrument which contains the
19 charge made against the defendant. It is the formal
20 document by which this case is brought into court.

21 Now, I am going to give you a copy of these
22 instructions in written form to have with you in your jury
23 room. During your deliberations, you may refer to these
24 instructions to guide you in your decision-making.
25 However, you must consider the instructions as a whole and

1 not follow some portions and ignore other portions.

2 Now, the defendant has pled not guilty to the
3 indictment and to the charge. And that plea puts the
4 burden on the state to prove the defendant guilty. A
5 person charged with committing a criminal offense in South
6 Carolina is never required to prove him- or herself
7 innocent.

8 I charge you that it is an important rule of law that
9 the defendant in a criminal trial, no matter what the
10 seriousness of the charge may be, will always be presumed
11 to be innocent of the crime for which the indictment was
12 issued unless guilt has been proven by evidence satisfying
13 you of that guilt beyond a reasonable doubt. This
14 presumption of innocence does not end when you begin your
15 deliberations, but it accompanies the defendant throughout
16 the trial until you reach a verdict of guilt based on
17 evidence satisfying you of that guilt beyond a reasonable
18 doubt.

19 The presumption of innocence is not a mere legal
20 theory. It's not just a legal phrase. It is a substantial
21 right to which every defendant is entitled unless you, the
22 jury, are satisfied from the evidence of the defendant's
23 guilt beyond a reasonable doubt.

24 As I've told you, the state has the burden of proving
25 the defendant guilty beyond a reasonable doubt. So what is

1 a reasonable doubt in the law?

2 Some of you may have served as jurors in civil cases,
3 where you were told that it is only necessary to prove that
4 a fact is more likely true than not true, such as by the
5 greater weight, or the preponderance of the evidence. In
6 criminal cases, the state's proof must be more powerful
7 than that. It must be beyond a reasonable doubt.

8 Proof beyond a reasonable doubt is proof that leaves
9 you firmly convinced of the defendant's guilt. There are
10 very few things in this world that we know with absolute
11 certainty. And in criminal cases the law does not require
12 proof that overcomes every possible doubt. The state's
13 burden simply requires proof beyond any reasonable doubt.

14 I remind you that during this trial, you and I have
15 certain duties to perform. As the trial judge, it is my
16 responsibility to preside over the trial of this case. And
17 I also have the duty to rule on the admissibility of the
18 evidence offered during this trial.

19 You are to consider only the competent evidence that
20 is before you. You are to consider only the testimony
21 which has been presented from the witness stand, any
22 exhibits which have been made a part of this record in the
23 case, and any stipulations or agreements of counsel.

24 I have the additional duty to charge you the law that
25 applicable to this case. As the presiding judge, I am the

1 sole judge of the law in this case. And it is your duty as
2 jurors to accept and to apply the law as I now state it to
3 you.

4 If you already have any idea as to what the law is or
5 what the law ought to be and it does not agree with what I
6 now tell you the law is, you must abandon your idea,
7 because you are sworn to accept the law and to apply the
8 law exactly as I state it to you.

9 In every case tried in this Court before a jury, the
10 jury becomes the sole and the exclusive judge of the facts
11 of a case. A trial judge cannot intimate, state, comment
12 on, or make any statement to a trial jury about the facts
13 in a case. Since you, the jury, are the sole judge of the
14 facts in this case, you are not to infer, from what I have
15 said during the progress of this trial in ruling upon the
16 admissibility of evidence or otherwise or anything that I
17 say now during the course of this instruction to you, that
18 I have any opinion about the facts in this case.

19 The law does not allow me to have an opinion about the
20 facts. That is a matter solely for you, the jury, to
21 determine. As jurors it is your duty to determine the
22 effect, value, weight, and truth of the evidence presented
23 during this trial.

24 Now, there are two types of evidence which are
25 generally presented during a trial. There's direct

1 evidence and there's circumstantial evidence.

2 Direct evidence is the testimony of a person who
3 claims to have actual knowledge of a fact, such as an
4 eyewitness. It is evidence which immediately establishes
5 the main fact to be proved.

6 Circumstantial evidence is proof of a chain of facts
7 and circumstances indicating the existence of a fact. In
8 other words, it is evidence which immediately establishes
9 collateral facts from which the main fact may be inferred.
10 Circumstantial evidence is based on inference and not on
11 personal knowledge or observation.

12 Now, the law makes absolutely no distinction between
13 the weight or the value to be given to either direct or
14 circumstantial evidence, nor is there any greater degree of
15 certainty required of circumstantial evidence than of
16 direct evidence. You should weigh all of the evidence in
17 this case and give it whatever consideration you find
18 appropriate.

19 Necessarily, you must determine the credibility of the
20 witnesses who've testified in this case. It becomes your
21 duty as jurors to analyze and to evaluate the evidence and
22 determine which evidence convinces you of its truth. And
23 credibility simply means believability.

24 In evaluating eyewitness testimony, you should
25 remember that the state must prove the identity of the

1 defendant as the person who committed the crime and must do
2 so beyond a reasonable doubt.

3 In determining the believability of witnesses who have
4 testified in this case, you may believe one witness over
5 several witnesses or several witnesses over one witness.
6 You may believe a part of the testimony of a witness and
7 reject the remaining part of that testimony. You may
8 believe the testimony of a witness in its entirety or
9 reject that testimony in its entirety.

10 You may consider whether any witness has exhibited to
11 you any interest, bias, prejudice, or other motive in this
12 case. You may consider whether a witness is seeking a
13 personal gain as well as the appearance and the manner of a
14 witness while on the witness stand.

15 Now, the rules of evidence ordinarily do not permit
16 witnesses to testify to opinions or conclusions. There's
17 an exception to this rule that exists for witnesses that we
18 call "expert witnesses." A witness who, by education and
19 experience, has become an expert in some art, science,
20 profession, or calling may state an opinion as to relevant
21 and material matter in which that witness claims to be an
22 expert and may also state the reasons for that opinion.

23 You should consider any expert opinion received in
24 evidence in this case and, like any other evidence, give it
25 the weight that you think it deserves. And expert

1 witness's testimony is to be given no greater weight than
2 that of any other witness simply because that witness is an
3 expert. Furthermore, you are not required to accept an
4 expert's opinion even though it's not contradicted.

5 Now, in this case Mr. Otts is charged with the crime
6 of murder. The following are the elements that the state
7 must prove beyond a reasonable doubt to prove murder: (1)
8 that the defendant killed another person; and (2) that he
9 did so with malice aforethought.

10 "Malice" is defined as ill hatred, ill will, or
11 hostility towards another person. It is the intentional
12 doing of a wrongful act without just cause or excuse and
13 with the intent to inflict an injury or under circumstances
14 that the law will infer an evil intent. A formed design
15 to take the life is not necessary to make a killing a
16 murder.

17 Malice aforethought does not require that malice
18 exists for any particular time before the act is committed.
19 But malice must exist in the mind of the defendant just
20 before and at the time that the act is committed.
21 Therefore, there must be a combination of the previous evil
22 intent and the act.

23 The word "aforethought" is usually understood to refer
24 to the time when malice is conceived. It need not exist
25 for any appreciable period of time before the commission of

1 the act. Indeed, it may be conceived at the very moment
2 the fatal blow is given. It is sufficient in law if the
3 combination of the malice and the act produce a fatal
4 result.

5 Malice aforethought may be express or implied. These
6 terms, "express" and "implied," do not mean different kinds
7 of malice, but merely the manner in which malice may be
8 shown to exist. That is either by direct evidence or by
9 inference from the facts and circumstances which are
10 proved.

11 Express malice is shown when a person speaks words
12 which express hatred or ill will for another or when the
13 person prepared beforehand to do the act which was later
14 accomplished. For example, lying in wait for a person or
15 any other acts of preparation going to show that the deed
16 was within the defendant's mind would be express malice.

17 Implied malice may be found to exist when
18 circumstances demonstrate a wanton or a reckless disregard
19 for human life or when a reasonably prudent person would
20 have known that according to common experience, there was a
21 plain and strong likelihood that death would follow the
22 contemplated act.

23 If you find that the state has failed to prove beyond
24 a reasonable doubt that the defendant committed murder, you
25 may consider whether the state has proved beyond a

1 reasonable doubt that the defendant committed voluntary
2 manslaughter.

3 The South Carolina Code of Laws defines "manslaughter"
4 as the killing -- the -- excuse me -- the unlawful killing
5 of another without malice, express or implied. Voluntary
6 manslaughter is the unlawful killing of a human being
7 without malice in sudden heat of passion upon sufficient
8 legal provocation. Both heat of passion and sufficient
9 legal provocation must be present at the time of the
10 killing to constitute voluntary manslaughter.

11 Sudden heat of passion may for a time affect a
12 person's self-control and temporarily disturb a person's
13 reason. The sudden heat of passion must be the type that
14 would make an ordinary person unable to coolly reflect on
15 his actions and would produce an uncontrollable impulse to
16 do violence.

17 Sufficient legal provocation necessary to justify a
18 manslaughter charge must come from the victim. Sufficient
19 legal provocation must be the type that would make a person
20 of ordinary reason and caution become enraged and to lose
21 control temporarily. The provocation needed for voluntary
22 manslaughter must come from some act of or related to the
23 victim.

24 Words alone, however vulgar or insulting, are not
25 enough to be legal provocation. Where death is caused by

1 the use of a deadly weapon, the words must be accompanied
2 by some overt, threatening act which could have produced
3 that heat of passion. The exercise of a legal right, no
4 matter how offensive it is to another, is never sufficient
5 legal provocation for voluntary manslaughter.

6 If the heat of passion had cooled or if there was
7 enough time between the provocation, if any, and the
8 killing for the passion of a reasonable person to cool, the
9 killing would not be voluntary manslaughter. In deciding
10 whether a reasonable person would've had enough time to
11 cool off, you should consider all of the circumstances
12 surrounding the killing. You may consider the nature of
13 the provocation, if any; the defendant's mental and
14 physical state; and the circumstances and relationships
15 between the parties.

16 Now, if you find that the state has failed to prove
17 beyond a reasonable doubt that the defendant committed
18 murder or voluntary manslaughter, you may consider whether
19 the state has proved beyond a reasonable doubt that the
20 defendant committed involuntary manslaughter.

21 To prove -- excuse me -- to prove involuntary
22 manslaughter, the state must prove beyond a reasonable
23 doubt that the defendant unintentionally killed the victim
24 without malice, but while engaged in an unlawful activity
25 not naturally tending to cause death or great bodily harm

1 or that the defendant unintentionally killed the victim
2 without malice while engaged in a lawful activity but with
3 reckless disregard for the safety of others.

4 "Unintentional" means that the defendant did not
5 intend for anyone to be killed or seriously injured.

6 Reckless disregard for the safety of others is more
7 than mere negligence or carelessness. Mere negligence or
8 carelessness is the failure to use that care that a person
9 of ordinary reason would use under the same circumstances.
10 Recklessness is a conscious failure to use ordinary care.

11 Recklessness, a -- a -- a reckless disregard for the
12 safety of others means that you are not interested in the
13 consequences of your act or the rights and the safety of
14 others.

15 In all three offenses above, the state must prove
16 beyond a reasonable doubt that the defendant's act was the
17 proximate cause of death. Proximate cause is the direct
18 cause. It is the immediate cause. It is the cause without
19 which the death of the victim would not have resulted.
20 There must be a chain of causation from the time of the
21 injury inflicted by the defendant until the time of the
22 victim's death. Proximate cause does not necessarily mean
23 that it occurred immediately prior to the death.

24 There may be more than one proximate cause. The
25 defendant's act may be regarded as the proximate cause if

1 it is a contributing cause to the death of the victim. The
2 fact that other causes also contribute to the death of the
3 victim does not relieve the defendant from responsibility.
4 The defendant's act need not be the sole cause of the
5 death, but must be a proximate cause contributing to the
6 death of the victim.

7 It is not a defense to show that the victim might have
8 recovered had he been treated according to most approved
9 surgical or medical standards or as a reasonably prudent
10 doctor would have treated in the case or even by showing
11 that the treatment was negligent. If, however, the death
12 was caused not by the wound or the injury that the victim
13 had, but was caused by the gross, erroneous, willful,
14 deliberate treatment, then the defendant would not be
15 liable.

16 In other words, negligence on the part of someone else
17 would not relieve the defendant from liability if the
18 injury was the proximate cause of the victim's death.
19 However, gross negligence or intentional activity on the
20 part of the practitioners would relieve the defendant of
21 liability. The -- the propriety of the medical procedures
22 is an integral question in determining causation.

23 The violation of a statute, if it the proximate cause
24 of an injury, is evidence of recklessness.

25 Now, the defense has raised the defense of self-

1 defense. Self-defense is a complete defense. And if it is
2 established, you must find the defendant not guilty. The
3 state has the burden of disproving self-defense by proof
4 beyond a reasonable doubt.

5 If you have a reasonable doubt of the defendant's
6 guilt after considering all of the evidence, including the
7 evidence of self-defense, then you must find the defendant
8 not guilty. On the other hand, if you have no reasonable
9 doubt of the defendant's guilt after considering all of the
10 evidence, including the evidence of self-defense, then you
11 must find the defendant guilty.

12 The following elements are required to establish self-
13 defense. First, the defendant is without fault. The
14 defendant must be without fault in bringing on the
15 difficulty. If the defendant's conduct was the type which
16 was reasonably calculated and did provoke a deadly assault,
17 the defendant would be at fault in bringing on the
18 difficulty and would not be entitled to an acquittal based
19 on self-defense.

20 Two, imminent danger: The second element of self-
21 defense is that the -- the defendant was actually in
22 imminent danger of death or serious bodily injury or that
23 the defendant actually believed he was in imminent danger
24 of death or serious bodily injury.

25 If the defendant was actually in imminent danger, it

1 must be shown that the circumstances would have warranted a
2 person of ordinary firmness and courage to strike the fatal
3 blow to prevent death or serious bodily injury. If the
4 defendant believed he was in imminent danger of death or
5 serious bodily injury, it must be shown that a reasonably
6 prudent person of ordinary firmness and courage would have
7 had the same belief.

8 In deciding whether the defendant actually was or
9 believed he was in imminent danger of death or serious
10 bodily injury, you should consider all the facts and the
11 circumstances surrounding the crime, including the physical
12 condition and the characteristics of the defendant and of
13 the victim.

14 The defendant does not have to show that he was
15 actually in danger. It is enough if the defendant believed
16 he was imminent danger and a reasonably prudent person of
17 ordinary firmness and courage would've had that same
18 belief. The defendant has the right to act on appearances,
19 even though the defendant's beliefs may be mistaken. It is
20 for you to decide whether the defendant's fear of immediate
21 danger of death or serious bodily injury was reasonable and
22 would have been felt by an ordinary person in the same
23 situation.

24 Three, no other way to avoid the danger: The final
25 element of self-defense is that the defendant had no

1 probable way to avoid the danger of death or serious bodily
2 injury other than to act as the defendant did in this
3 particular instance.

4 A person cannot be required to make an exact
5 calculation as to the degree or amount of force which may
6 be needed to avoid death or serious bodily harm.

7 Therefore, in self-defense the defendant has the right to
8 use the force needed to avoid death or serious bodily harm.

9 The force used in self-defense does not have to be limited
10 to the degree or the amount of force used by the victim.

11 The defendant has the right to use so much force as
12 appeared to be necessary for -- excuse me -- for complete
13 self-protection, and which a person of ordinary reason and
14 firmness would have believed to be needed to prevent death
15 or serious bodily harm.

16 Now, under South Carolina law, if one comes to the
17 assistance of a friend or a relative and takes part in a
18 difficulty in which a friend or a relative is engaged, he
19 enters the combat on the same footing as the person whose
20 assistance he comes and under the same legal status.

21 Now, Mr. Foreman and ladies and gentlemen of the jury,
22 as you retire to begin your deliberations, I want to
23 express to you the hope that each of you will be mindful of
24 the importance of your responsibility. You're not called
25 upon to serve as jurors very often. And the proper

1 performance of the duty requires each of you to reach the
2 height of freeing your mind of all improper influences.

3 As the presiding officer of this Court, I am vitally
4 concerned that whatever verdict you find will be the result
5 of your going into that jury room, confining your
6 considerations to the evidence and to the law that you've
7 heard in this courtroom, weighing it fairly and
8 impartially, as I have every confidence you will do.

9 Your verdict in this case cannot be based on sympathy,
10 compassion, prejudice, or emotion, or some other
11 consideration that is not found in the evidence. And
12 remember, ladies and gentlemen, your verdict in this case
13 must be unanimous.

14 Now, Mr. Bird, I -- this -- when you go back for your
15 deliberations, I'm going to send this notebook back with
16 y'all. The charge is in here that I just read. But also,
17 in the front cover of this notebook is the verdict form.

18 Once the jury has completed its deliberations and
19 you've arrived at a verdict, you'll take this verdict form.
20 And I'm going to go over that with you real quick. It's a
21 very simple form. It's just simply -- lists what your --
22 what the options of your verdict are, and you will check
23 the option that is the decision of the jury.

24 And it says: "As to Indictment 2011-GS-41-288, we,
25 the jury, find the defendant, Steven Dewayne Otts," -- and

1 then, it lists the options: either not guilty; or guilty
2 of murder; or guilty of voluntary manslaughter; or guilty
3 of involuntary manslaughter. And then, you'll sign it as
4 the foreperson.

5 FOREPERSON: Yes, sir.

6 Once you have received a verdict, you'll then knock on
7 the door; let the bailiff know that you've -- you've
8 reached a verdict; and we'll bring you back out and receive
9 that.

10 Now, before you -- well, I going to send you back into
11 the jury room. But before you begin deliberations, do not
12 start deliberations until you've received this notebook and
13 the exhibits. I'm going to send you back there without
14 these things for just a moment. Let me discuss with the
15 attorneys to make sure that I've covered everything.

16 If I've missed anything or have misquoted anything and
17 I need to bring you back out, I'll do that. But if
18 everything is good with the charge, I'll then send this
19 notebook and those exhibits in the back room. And when you
20 receive these items, that's your cue to begin your
21 deliberations. Okay?

22 Now, we -- we've ordered lunch for you. So I'm going
23 to let y'all do with that what you want. In other words,
24 start your deliberations when you receive these items.
25 When lunch arrives, if you want to stop deliberating and

1 eat, you can do that. Or if you want to deliberate while
2 you eat, that's up to y'all. It's whatever y'all want to
3 do, okay?

4 FOREPERSON: (Nodded head up and down.)

5 So if you would, step back in the jury room and don't
6 begin your deliberations till you receive these items.

7 (Whereupon, the jury exited the courtroom at 1:14
8 p.m.)

9 (Off the record briefly.)

10 THE COURT: All right. Any objections or exceptions
11 to the charge from the state?

12 MR. MAYE: None from the state, Your Honor. Thank
13 you.

14 THE COURT: From the defense?

15 MR. SHAFFER: Your Honor, just note my previous
16 objections. I -- I believe they're all in the record at
17 this point.

18 THE COURT: We -- we reviewed those prior to the
19 charge. And -- and I -- I note that you are renewing those
20 objections at this time. And they're certainly noted, and
21 you're protected on that, so ---

22 MR. SHAFFER: Thank you, Your Honor.

23 THE COURT: Okay.

24 MR. SHAFFER: Appreciate it.

25 THE COURT: Gentlemen, if y'all would do me a favor:

1 a unanimous verdict?

2 FOREPERSON: We have, Your Honor.

3 THE COURT: All right. If you would, pass that form
4 to Ms. Holmes here.

5 FOREPERSON: (Complied.)

6 THE COURT: All right. Ms. Holmes, if I could get you
7 to please publish the verdict of the jury.

8 VERDICT OF THE JURY

9 CLERK OF COURT: (As read): "*State of South Carolina*
10 *v. Steven Dewayne Otts*, Indictment No. 2011-GS-41-288, we,
11 the jury, find the defendant, Steven Dewayne Otts, guilty
12 of murder. James Bird, Foreman."

13 THE COURT: All right. Ladies and gentlemen of the
14 jury, you've heard Ms. Holmes publish your verdict. If
15 this is, in fact, your verdict, please raise your right
16 hand.

17 (Whereupon, all jurors raised their right hands.)

18 THE COURT: All right. Thank you very much. Let the
19 record reflect that all 12 members of the jury have agreed
20 that to be their verdict.

21 Ladies and gentlemen -- any -- any request for polling
22 for the jury?

23 MR. SHAFFER: No, Your Honor.

24 THE COURT: Ladies and gentlemen, I want to thank you
25 for your service this week. Jury service, as you probably

1 (Whereupon, the jury exited the courtroom at 2:51
2 p.m.)

3 (Off the record from 2:51 p.m. until 2:54 p.m.)

4 THE COURT: All right. Before we go any further, I'm
5 going to -- before we proceed with any sentencing, I'm
6 going to take up any motions from the defense at this
7 point.

8 MR. SHAFFER: Your Honor, at this point we just renew
9 a directed-verdict motion on the murder. I -- I would
10 appreciate a -- the full ten days. I -- I -- I would like
11 to submit an actual written motion for a new trial on it,
12 if -- if you'll grant me the full ten days to do that, Your
13 Honor.

14 THE COURT: All right. What I'm going to do is I'm
15 going to respectfully deny your renewal of your motion for
16 directed verdict. I'm going to give you the ten days to
17 submit any written motions that you wish to submit. Now,
18 if you would please do me a favor, once you've completed
19 those and you submit them to the Court, also submit a copy
20 to Mr. Maye and the solicitor's office. And I'll give
21 them, if -- if they -- if they choose to file a response,
22 I'll -- I'll give them that opportunity as well and then
23 I'll -- I'll consider those at that time.

24 MR. SHAFFER: Thank you, Your Honor.

25 THE COURT: All right. Is -- is the state ready to

1 certainly are welcome to if you'd like.

2 THE DEFENDANT: I'd like to apologize to the family.
3 Sorry all this ever happened. I apologize to my family.

4 THE COURT: It's -- it -- it's difficult. I -- you
5 know, I wasn't there. And I -- I'm -- I'm not going to
6 make any comments about the facts. I -- I just -- and I
7 know this is difficult for everyone involved. You got the
8 families of the victim, who they've lost their loved one.
9 And then, you've got Mr. Otts's family, who's going to lose
10 him for -- for some period of time.

11 I -- I don't have it front of me. It -- and the --
12 they're going to generate one. But so that I don't hold
13 everybody up, this -- this charge carries a sentence of 30
14 years to life. It is a sentence that is not parolable. It
15 is a day-for-day sentence, is my understanding. There is
16 no early release. But it is a mandatory minimum of 30
17 years up to life.

18 SENTENCE OF THE COURT

19 THE COURT: I am -- based on all the evidence that has
20 been presented, I'm -- on -- on Indictment 2011-GS-41-288,
21 the sentence of the Court is that you be committed to the
22 South Carolina Department of Corrections for a period of 30
23 years. You are to be given credit for any time that you
24 have served up to this point, since the charge -- since you
25 were arrested on the charge. Good luck to you, Mr. Otts.

SALIDA COUNTY SHERIFF'S OFFICE

J. Booth, Sheriff

VOLUNTARY STATEMENT

STATEMENT OF Laketha Stallworth PAGE 1

As we pull up to the apartments. Shara and Ox was arguing. As they were arguing some one went and told Hydric and he came out and was trying to calm Ox down. As he was ~~was~~ doing that Ox pushes Hydric and he was still trying to calm him down. That's when Ox turned around and punched him. Hydric hit the ground. So I jumped out the truck and tried to help. So Ox was trying to I guess keep him ~~down~~ but he ~~was~~ to was pulling on Hydric and that's when Hydric hit his head on the pavement and busted his head.

JS

DEFENDANT'S
EXHIBIT

4

07/23/13

WA

I, the Sheriff, do hereby certify that the foregoing is a true and correct copy of the statement of the defendant.

Laketha Stallworth

Signature of Defendant

Notary Public - State of New Mexico

Date

NCIG

DDQ	ENTD

INCIDENT TYPE		COMPLETED		FORCED ENTRY		PRESSURE TYPE		UNITS ENTERED		TYPE VICTIM	
1. 13A - Aggravated Assault		☒ YES ☐ NO		☐ YES ☐ NO		16:20(Parking Lot/Garage;				☐ Individual ☐ Business ☐ Financial ☐ Government ☐ Relig. Org. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.	
2.		☐ YES ☐ NO		☐ YES ☐ NO							
3.		☐ YES ☐ NO		☐ YES ☐ NO							
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE		WEAPON TYPE			
Ridge Spring, SC						29129		40-Personal Weapons (Hands, Fists,			
INCIDENT DATE		24 HR. CLOCK		DATE		24 HR. CLOCK		SEARCH/ARREST/INVEST. DATE		LOCATION NO.	
01/27/2011		21:53		01/27/2011		23:25		01/27/2011 21:54		22:32	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)						RELATIONSHIP TO SUBJECT		RESIDENT		RACE	
						J O U		B		M	
ADDRESS						CITY		STATE		ZIP CODE	
						Monetta		SC		29105	
VICTIM'S NAME (LAST, FIRST, MIDDLE)						RELATIONSHIP TO SUBJECT		RESIDENT		RACE	
BURNS, HYDRICK OCTAVIA						A O		J O U		B	
HEIGHT						WEIGHT		HAIR		EYES	
6'01"						251		BLK - Black		BRO - Brown	
ADDRESS						CITY		STATE		ZIP CODE	
						Monetta		SC		29105	
VIOLENCE (VICT. 1) ☒ YES ☐ NO ☐ EXPLAIN - 1 - Possible Internal Injury						COMPLAINT OF NON-VIOLENCE INJURY: ☐ YES ☒ NO					
VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK ☐ DRIVER ☐ YES ☒ NO ☐ UNK ☐ TYPE:											
TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/PLANT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ * J - This Jurisdiction S - State O - Out of State U - Unknown											
☐ SUSPECT						NAME (LAST, FIRST, MIDDLE)		RACE		SEX	
☐ RUNAWAY						OTTS, STEVEN DEWAYNE		B		M	
☐ WANTED						FACIAL MARK, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ECT.		AGE		ETH.	
☐ WARRANT								31		N	
☐ ARREST						ADDRESS		CITY		STATE	
☐ JAIL								BATESBURG		SC	
☐ SURETIES						SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK ☐ ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO ☐ DATE/TIME OF OFFENSE		01/27/2011		21:53	
ON JANUARY 27, 2011 REPORTING OFFICER RESPONDED TO 101 PEACH LEAF CURL IN REFERENCE TO AN ASSAULT THAT TOOK PLACE IN THE PARKING LOT OF THE PEACH ORCHARD APARTMENTS. UPON ARRIVAL, THE VICTIM, HYDRICK BURNS, WAS SITTING ON THE GROUND WITH A SMALL AMOUNT OF BLOOD ON HIS LIP. REPORTING OFFICER ASKED THE VICTIM WHAT HAPPENED TO HIM AND HE STATED THAT THE SUBJECT, STEVEN OTTS, AND SACA WAS ARGUING AND HE ATTEMPTED TO STOP THEM FROM ARGUING AT WHICH TIME THE SUBJECT HIT HIM CAUSING HIM TO FALL TO THE GROUND. THE VICTIM ADVISED THAT THE SUBJECT THEN FLED THE SCENE ON FOOT. DEPUTY COCKRELL COMPLETED A VICTIMS FORM AND ADVISED THE VICTIM OF HIS RIGHTS AND HE STATED THAT HE DIDN'T WANT TO PRESS CHARGES. THE VICTIM WAS TRANSPORTED BY SALUDA COUNTY EMS TO LEXINGTON HOSPITAL. REPORTING OFFICER SPOKE WITH THE TWO WITNESSES WHO BOTH STATED THAT THE SUBJECT WAS ARGUING WITH MS COLEMAN AND THAT THE VICTIM ATTEMPTED TO INTERVENE. THE WITNESSES THEN STATED THAT THE SUBJECT HIT THE VICTIM ONCE WITH HIS FIST AND "KNOCKED HIM OUT." THEY STATED THAT THE VICTIM THEN HAD A SEIZURE AND BIT HIS TONGUE. THEN THE VICTIM REGAINED CONSCIOUSNESS AND OFFICERS						JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		TOTAL VALUE	
TYPE (GROUP)											
STOLEN											
DAMAGED											
BURNED											
RECOVERED											
SEIZED											
COUNTERFEIT											
SUBJECT IDENTIFIED						SUBJECT LOCATED		☐ ACTIVE ☐ ADL. CLOSED		☐ ARRESTED UNDER 18	
☒ YES ☐ NO						☐ YES ☐ NO		☐ UNFOUNDED		☐ EX-CLEAR UNDER 18	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY						DATE		LAST NUMBER		DATE	
C13 - MD RUSS PADGETT						01/27/2011		C13			
C18 - PFC RICHARD COCKRELL											
FOLLOWUP INVESTIGATION						OFFICER					
☐ YES ☒ NO											

AGENCY I.D.
SC0410000

SUPPLEMENTAL INCIDENT REPORT
Saluda County Sheriff's Office

CASE NUMBER
201101-208

NIC
INQ. ENTH.

☐ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIM	☐ ADDITIONAL STOLEN PROPERTY	PAGE 2 of 3 PAGES
☐ MODIFIED ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENSE	☐ ADDITIONAL RECOVERED PROPERTY	

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE) COLEMAN, SACA JAWEA		VICTIM RELATIONSHIP TO SUBJECT #1 #2 #3		RESIDENT ☒ YES ☐ NO	RACE B	SEX F	AGE 32	D.O.B.	ETH N
	☐ VICTIM #	HEIGHT 5'11"		WEIGHT 210		HAIR BLK - Black		EYES BRO - Brown		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ECT.	
	☐ SUBJECT #	ADDRESS		CITY JOHNSTON		STATE SC	ZIP CODE 29832	LOCATION NO.		HOME PHONE (803) 278-3774	EMPLOYER PHONE
	☐ RUNAWAY	VICTIM NO.		VEHICLE INJURY: ☐ NO ☐ YES		COMPLAINT OF NON-VEHICLE INJURY: ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		TWO-MAN VEHICLE ☐ DETECTIVE/PLASMY ☐ ALONE	
	☐ WANTED	EXPLAIN		CRIMES: ☐ NO ☐ YES		UNK		ONE-MAN VEHICLE ☐ OTHER		ASSISTED	
	☐ WARRANT	SUBJECT NO.		USING ALCOHOL: ☐ NO ☐ YES		UNK		USING DRUGS: ☐ NO ☐ YES		TYPE: ☐ UNK	
	☐ ARREST	NAME (LAST, FIRST, MIDDLE) STALLWORTH, LAKEISHA LSHAY		VICTIM RELATIONSHIP TO SUBJECT #1 #2 #3		RESIDENT ☒ YES ☐ NO	RACE B	SEX F	AGE 20	D.O.B.	ETH N
	☐ JAIL	HEIGHT 5'05"		WEIGHT 187		HAIR BLK - Black		EYES BRO - Brown		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ECT.	
	☐ SURRENDER	ADDRESS		CITY RIDGE SPRING		STATE SC	ZIP CODE 29129	LOCATION NO.		HOME PHONE (803) 685-6428	EMPLOYER PHONE
	☐ WITNESS	VICTIM NO.		VEHICLE INJURY: ☐ NO ☐ YES		COMPLAINT OF NON-VEHICLE INJURY: ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		TWO-MAN VEHICLE ☐ DETECTIVE/PLASMY ☐ ALONE	

ARRIVED. WITNESSES ADVISED THE SUBJECT WAS WEARING A CAROLINA PANTHER'S JACKET AND BLUE JEANS.

REPORTING OFFICER OBTAINED THE WITNESSES INFORMATION. REPORTING OFFICER CHECKED THE NEARBY STREETS AND WAS UNABLE TO LOCATE THE SUBJECT.

REPORTING OFFICER RECEIVED A CALL FROM SGT JIMMY GLEATON OF THE LEXINGTON MEDICAL CENTER POLICE DEPARTMENT STATING THAT THE VICTIM'S DOCTOR ADVISED THAT THE VICTIM HAD A FRACTURED SKULL AND WAS IN CRITICAL CONDITION AND HAD BLEEDING INSIDE THE SKULL.

SUPPLEMENT #1 MD RUSS PADGETT - C13 01/28/2011 05:37

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
STATUS	TYPE	VEH AND/OR LICENSE NO.	BOAT HULL NO. AND/OR REG. NO.
☐ STOLEN	☐ VEHICLE	SERIAL AND/OR OWNER APPLIED NO.	STATE
☐ RECOVERED	☐ GUN	YEAR OF REGISTRATION	YEAR OF EXPIRATION
☐ FOUND	☐ BOAT	MAKE	TYPE
☐ TOWED	☐ LICENSE PLATE	MODEL	STYLE
☐ SUSPECT	☐ DISBURSED/BONDS, STOCKS	COLOR	BRAND NAME
☐ VICTIM	☐ ARTICLE	ISSUER	SECURITY DATE
MISCELLANEOUS			

TYPE (GROUP)						TOTAL VALUE
STOLEN						
DAMAGED						
SURRENDER						
RECOVERED						
SEIZED						
COUNTY/STATE						

SUBJECT IDENTIFIED ☒ YES ☐ NO	SUBJECT LOCATED ☒ YES ☐ NO	ACTIVE ☐ UNFOUNDED	ADM. CLOSED ☐ ARRESTED UNDER 18	EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENSES DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY				
REPORTING OFFICER(S) C13 - MD RUSS PADGETT	DATE 01/27/2011	UNIT NUMBER C13	APPROVING OFFICER FOLLOW-UP INVESTIGATION OFFICER	DATE C13
C18 - PFC RICHARD COCKRELL ☐ YES ☒ NO				

AGENCY I.D.
SC0410000SUPPLEMENTARY INCIDENT REPORT
Saluda County Sheriff's Office

CASE NUMBER

201101-208

NCIC

INQ. ENT.

☐ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 3 of 3 PAGES

ON JANUARY 31, 2011 REPORTING OFFICER SPOKE WITH THE SUBJECT AT THE SALUDA COUNTY DETENTION CENTER. REPORTING OFFICER ADVISED THE SUBJECT OF HIS MIRANDA WARNING AND HE SIGNED A WAIVER OF RIGHTS FORM. THE SUBJECT THEN ADVISED THAT HE AND HIS GIRLFRIEND, MS COLEMAN, WERE ARGUING AND THAT THE VICTIM CAME OUT AND GRABBED HIM. THE SUBJECT STATED THAT HE TOLD THE VICTIM SEVERAL TIMES TO LET HIM GO AND THE VICTIM WOULD NOT. THE SUBJECT STATED HE PULLED AWAY FROM THE VICTIM AND THE VICTIM GRABBED HIM AGAIN AT WHICH TIME THE SUBJECT STATED HE HIT THE VICTIM AND THE VICTIM FELL TO THE GROUND. THE SUBJECT STATED HE BEGAN TO WALK OFF AND SOMEONE YELLED AT HIM STATING THAT HE HURT THE VICTIM. THE SUBJECT STATED THAT HE TOLD THEM THAT HE DIDN'T AND HE WENT BACK AND ATTEMPTED TO HELP THE VICTIM GET UP AND TOLD HIM TO STOP PLAYING AROUND AND GET UP. THE SUBJECT STATED THE VICTIM DIDN'T RESPOND AND HE LAID THE VICTIM BACK ON THE GROUND AND LEFT THE SCENE. REPORTING OFFICER OBTAINED A WRITTEN STATEMENT FROM THE SUBJECT AND CLEARED.

SUPPLEMENT #2 MASTER DEPUTY JESSE QUATTLEBAUM - C14 01/28/2011 10:03

R/O WENT TO 210 MERRIT AVE IN RIDGE SPRING TO FOLLOW-UP ON THE INCIDENT ABOVE. R/O SPOKE WITH LAKEISHA STALLWORTH WHO GAVE R/O A WRITTEN STATEMENT OF THE INCIDENT. MS. STALLWORTH INDICATED THE VICTIM WAS TRYING TO INTERVENE IN AN ARGUMENT BETWEEN THE SUBJECT AND SACA COLEMAN. MS. STALLWORTH STATED THE SUBJECT PUSHED THE VICTIM AND THE VICTIM WAS STILL TRYING TO SEPARATE THE SUBJECT AND MS. COLEMAN. MS. STALLWORTH THEN STATED THE SUBJECT PUNCHED THE VICTIM IN THE FACE CAUSING HIM TO FALL TO THE GROUND UNCONSCIOUS. MS. STALLWORTH STATED THE SUBJECT CONTINUED ARGUING WITH MS. COLEMAN BRIEFLY, THEN WENT AND PICKED THE VICTIM UP AND DROPPED HIM CAUSING HIS HEAD TO STRIKE THE PAVEMENT. R/O SPOKE WITH CASANDRA PETERSON WHO WAS AT THE HOSPITAL WITH THE VICTIM AND SHE STATED AT THE PRESENT TIME, THE VICTIM WAS IN A COMA. R/O ALSO MADE CONTACT WITH SACA COLEMAN AND ANGELA BROOKS WHO WITNESSED THE INCIDENT, AND ARRANGEMENTS WERE MADE FOR THEM TO MEET R/O AT THE SHERIFF'S OFFICE TO GIVE A VOLUNTARY STATEMENT. R/O CLEARED.

NARRATIVE

ADMINISTRATIVE

SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☐ YES ☒ NO		☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ 21-CLEAR UNDER 18 ☐ 21-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINED COOPERATION 5. ☐ JUVENILE - NO CUSTODY				REPORTING OFFICER(S)		
C13 - MD RUSS PADGETT		DATE	UNIT NUMBER	APPROVING OFFICER		DATE
C18 - PFC RICHARD COCKRELL		01/27/2011	C13	FOLLOW-UP INVESTIGATION OFFICER ☐ YES ☒ NO		

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF SALUDA	)	
	)	Case No.: 2011-GS-41-288
	)	
THE STATE OF SOUTH CAROLINA,	)	REQUESTED SELF DEFENSE CHARGE
	)	
	)	
vs.	)	
	)	
STEVEN OTTS,	)	
	)	
Defendant.	)	

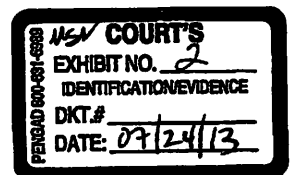
The Defendant requests that the Court instruct the jury on the following law concerning self-defense:

I. SELF-DEFENSE

I WILL NOW INSTRUCT YOU ON THE LAW OF SELF-DEFENSE.

SELF-DEFENSE IS A COMPLETE DEFENSE. THE RIGHT OF SELF-DEFENSE IS A RIGHT TO REPEL FORCE WITH FORCE AND TO USE AS MUCH FORCE AS IS REASONABLY NECESSARY TO PREVENT THE IMPENDING OR THREATENING BODILY INJURY.¹ THE STATE HAS THE BURDEN OF DISPROVING SELF-DEFENSE BEYOND A REASONABLE DOUBT. THE FOLLOWING ARE THE ELEMENTS OF SELF-DEFENSE.

A. WITHOUT FAULT



¹ *State v. Jones*, 133 S.C. 167, 177, 130 S.E. 747, 750 (1927). Overruled on other grounds by *State v. Pilgram*, 326 S.C. 24, 482 S.E.2d 562 (1997).

FIRST, THE DEFENDANT MUST BE WITHOUT FAULT IN BRINGING ON THE DIFFICULTY. THIS IS NOT TO SAY THAT THE DEFENDANT MUST HAVE ACTED LAWFULLY AT ALL TIMES LEADING UP THE INCIDENT.² BUT RATHER THE DEFENDANT MUST NOT HAVE ACTED IN A MANNER REASONABLY CALCULATED TO PROVOKE AN ASSAULT BY HIS ATTACKER.³

B. IMMINENT DANGER OF BODILY INJURY

THE SECOND ELEMENT OF SELF DEFENSE IS IMMINENT DANGER OF BODILY INJURY OR THE FEAR OF IMMINENT DANGER OF BODILY INJURY. THE DEFENDANT MUST HAVE BEEN IN ACTUAL IMMINENT DANGER OF SUSTAINING BODILY INJURY, OR HE MUST HAVE ACTUALLY BELIEVED HE WAS IN IMMINENT DANGER OF BEING INJURED.⁴ IF THE DEFENDANT WAS ACTUALLY IN IMMINENT DANGER, IT MUST BE SHOWN THAT THE CIRCUMSTANCES WOULD HAVE WARRANTED A PERSON OF ORDINARY FIRMNESS AND COURAGE TO ACT AS HE DID TO PREVENT THE BODILY INJURY.

IN DECIDING WHETHER THE DEFENDANT ACTUALLY WAS, OR BELIEVED HE WAS, IN IMMINENT DANGER OF BODILY INJURY, YOU SHOULD CONSIDER ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE CRIME, INCLUDING THE PHYSICAL CONDITION AND CHARACTERISTICS OF THE DEFENDANT AND THE VICTIM.

² See *State v. Williams*, 367 S.C. 192, 198, 642 S.E.2d 443, 446 (Ct. App. 2009) (A person has the right to use force to defend themselves against excessive force used to effectuate a lawful arrest, even when the defendant's own unlawful conduct caused lead to the arrest). See also, *State v. Rivers*, 186 S.C. 221; 196 S.E. 6 (1938) (finding that a defendant would be entitled to a self-defense charge if the an officer used excessive force in effectuating even a lawful arrest).

³ See *State v. Rye*, , 132, 651 S.E.2d 321, 338 (2007) (Quoted from the the charge given by the lower court).

⁴ See *State v. Jones*, 133 S.C. 167, 177, 130 S.E. 747, 750 (1927) (*Overruled on other grounds by State v. Pilgram*, 326 S.C. 24, 482 S.E.2d 562 (1997)) (The right of self-defense is a right to repel force with force and to use as much force as is reasonably necessary to prevent the impending or threatening injury).

a) RIGHT TO ACT ON APPEARANCES

THE DEFENDANT DOES NOT HAVE TO SHOW THAT HE WAS ACTUALLY IN DANGER OF BODILY INJURY. IT IS ENOUGH IF THE DEFENDANT BELIEVED HE WAS IN IMMINENT DANGER AND A REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF. THE DEFENDANT HAS THE RIGHT TO ACT ON APPEARANCES EVEN THOUGH THE DEFENDANT'S BELIEFS MAY HAVE BEEN MISTAKEN.⁵ IT IS FOR YOU TO DECIDE WHETHER THE DEFENDANT'S FEAR OF IMMEDIATE DANGER OF BODILY INJURY WAS REASONABLE AND WOULD HAVE BEEN FELT BY AN ORDINARY PERSON IN THE SAME SITUATION.

b) SIZE AND AGE

THE RELATIVE SIZES, AGES, AND WEIGHTS OF THE DEFENDANT AND THE VICTIM MAY BE CONSIDERED IN DECIDING THE APPARENT OR ACTUAL NEED FOR FORCE IN SELF-DEFENSE.

c) INTOXICATION

THE INTOXICATION OF THE VICTIM MAY BE CONSIDERED IN DECIDING WHETHER THE DEFENDANT'S FEAR OF BODILY INJURY WAS REASONABLE.

C. RETREAT

THE FINAL ELEMENT OF SELF-DEFENSE IS RETREAT. IN SOME CASES, A DEFENDANT MAY HAVE A DUTY TO RETREAT BEFORE HE MAY ACT IN SELF DEFENSE.

⁵ *State v. Jackson*, 227 S.C. 271, 87 S.E.2d 681 (1995)

HOWEVER, IF THE DEFENDANT WAS ON HIS OWN PREMISES, THE DEFENDANT HAD NO DUTY TO RETREAT BEFORE ACTING IN SELF-DEFENSE.

ADDITIONALLY, THE DEFENDANT HAS NO DUTY TO RETREAT IF RETREATING WOULD INCREASE HIS DANGER OF SUFFERING BODILY INJURY.

THOSE WERE THE THREE ELEMENTS OF SELF DEFENSE. THERE IS NO BURDEN UPON THE DEFENDANT TO PROVE THE ELEMENTS OF SELF DEFENSE. THE DEFENDANT IS NOT REQUIRED TO PROVE THAT HE ACTED IN SELF-DEFENSE. THE BURDEN IS ON THE STATE TO DISPROVE SELF-DEFENSE BEYOND A REASONABLE DOUBT. IF YOU HAVE A REASONABLE DOUBT AS TO WHETHER THE DEFENDANT ACTED IN SELF-DEFENSE THEN YOU MUST FIND THE DEFENDANT NOT GUILTY.

II. USE OF FORCE IN SELF DEFENSE

I WILL NOW INSTRUCT YOU ON THE LAW CONCERNING HOW MUCH FORCE MAY BE USED WHILE ACTING IN SELF-DEFENSE, A PERSON CANNOT BE REQUIRED TO MAKE AN EXACT CALCULATION AS TO THE DEGREE OR AMOUNT OF FORCE WHICH MAY BE NEEDED TO AVOID BODILY INJURY. THEREFORE, IN SELF-DEFENSE, THE DEFENDANT HAS THE RIGHT TO USE THE FORCE NEEDED TO PREVENT BODILY INJURY. THE FORCE USED IN SELF-DEFENSE DOES NOT HAVE TO BE LIMITED TO THE DEGREE OR AMOUNT OF FORCE USED BY THE VICTIM. THE DEFENDANT HAS THE RIGHT TO USE SO MUCH FORCE AS APPEARED TO BE NECESSARY FOR COMPLETE SELF-PROTECTION, AND WHICH A PERSON OF ORDINARY REASON AND FIRMNESS WOULD HAVE BELIEVED TO BE NEEDED TO PREVENT BODILY INJURY.

Respectfully submitted,



Tristan Michael Shaffer

140 Gibson Road

Lexington, South Carolina 29072

Shafferlawfirm@gmail.com

Telephone: (803) 575-0384

Facsimile: (803) 603-9965

ATTORNEY FOR DEFENDANT



July 22, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF SALUDA	)	
	)	Case No.: 2011-GS-41-288
	)	
THE STATE OF SOUTH CAROLINA,	)	DEFENDANT'S MOTION FOR
	)	A NEW TRIAL
	)	
	)	
vs.	)	
	)	
STEVEN OTTS,	)	
	)	
Defendant.	)	
	)	

Pursuant to Rule 29(a), SCRCrimP, Defendant respectfully requests this Court grant him a new trial. Defendant avers that he is entitled to a new trial based on the objections raised during trial¹ and the more specifically the following grounds.

I. Instructing the jury on the law of defense of others.

Relevant Facts

During the charge conference the State requested a jury instruction on defense of others to explain the victim's conduct. Defendant objected on grounds that it was confusing and improper to instruct the jury on a defense to explain the victims conduct. Neither party was aware of any South Carolina case that directly addressed whether it is appropriate for the State to raise a defense to explain victim conduct. The Court stated that it believed the defense of others charge would be appropriate especially if it was to charge self-defense. The Court offered to allow Defendant to submit more modern language. While maintaining his objection to any defense of

¹ Counsel submits this not to continue to argue with the Court's prior rulings but to better support the arguments made at trial.

others instruction, Counsel submitted the following language via email prior to arriving at court on July 25, 2013:

The State has raised the law of Defense of Others. In order for you to consider Defense of Others, the State must prove every element beyond a reasonable doubt. The Defendant has no burden to disprove the elements of defense of others. One may act in defense of others when:

(1) The person defending and the person being defended were without fault in bringing on the difficulty;

(2) The person defending must have actually believed the person being defended was in imminent danger of losing his life or sustaining serious bodily injury, or the person being defended must have actually been in imminent danger of losing his life or sustaining serious bodily injury;

(3) If the defense was based on is based upon the actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to defend in order to save the person being defended from serious bodily harm or losing their life; and

(4) The person being defended had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

After arriving at Court on July 25, 2013, the parties spoke with the Court in chambers. The Court advised the parties that he intended on charging the State's proposed language. Counsel agreed not to add any further argument on the issue and merely note his previous two objections for the record.

Argument

Defendant has been unable to locate any South Carolina case where a jury instruction was given to justify a victim's conduct. However, this issue has been addressed by the courts in Tennessee who held the following:

A [defense of others instruction], to justify the victim's conduct, does tend, in our view, to impermissibly shift the burden of proof the defendant. Moreover, ... the instruction would likely confuse the jury even if it did not have the effect of shifting the burden of proof. In short, it should not have been used in this case.

State v. Belser, 945 S.W.2d 776 (Tn. Ct. Crim. App., 1996).

Defendant objected, because the defense of others instruction was inappropriate and likely to confuse the jury. *See State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987) ("It is error to give instructions which are calculated to confuse or mislead the jury."). The instruction that was given by the court is confusing in the fact that it does not clearly outline the burden of proof. Since the State was the proponent of the instruction, the jury might have believed that Defendant had a duty to disprove defense of others in order to be eligible to act in self-defense. The instruction given did not outline that the State must prove that the person being defended must meet all the factors for self-defense.

Defendant also objected because it is inappropriate to charge defense of others to justify the victim's conduct. *Cf. Leonard, supra* (Holding it was inappropriate to instruct the jury on an uncharged statute.). The victim's conduct toward Defendant is only relevant to show whether the State had disproven self-defense beyond a reasonable doubt. *Cf. State v. Day*, 341, S.C. 410, 418, 535 S.E.2d 431, 436 (2000) ("[A] trial judge should specifically tailor the self-defense instruction to adequately reflect the facts and theories presented by the defendant."). The State might argue that the defense of others charge is necessary to rebut Defendant's claim that Defendant was not at fault in bringing on the difficulty." However, whether or not the victim's conduct is justifiable is not an element of self-defense. The proper question is whether the State has proven that Defendant's actions were "reasonably calculated" to bring on the difficulty. *See State v. Bryant*, 336 S.C. 340; 345, 520 S.E.2d 319, 322 (1999) ("Any act of the accused in violation of law and

reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to self defense...”). Therefore it was inappropriate for the Court to instruct the jury on the law of defense of others.

II. Not instructing the jury on the law of involuntary manslaughter from as stated in *Chatman*.

During the charge conference, Defendant requested that the Court instruct the jury on the following law concerning involuntary manslaughter:

An unintentional killing from an unlawful assault and battery, not of a character of itself to cause death, is involuntary manslaughter.

This was a direct quote from *State v. Chatman*, 336 S.C. 149, 154, 519 S.E.2d 100, 101 (1999) (*quoting* 40 C.J.S. Homicide 40 (1991)). The Court refused to charge this language.

During its opening on the law, the State argued that a “classic case” of involuntary manslaughter is vehicular homicide. Although vehicular homicide can be involuntary manslaughter, the State’s argument was calculated to imply that the jury should limit the Court’s instruction on involuntary manslaughter to cases of vehicular homicide. This limitation was not corrected by the instruction given by the Court. *See State v. Liberte*, 336 S.C. 648, 521 S.E.2d 744, 749 (Ct. App. 2000) (“[G]iven that the prosecutor’s argument effectively invited the jury to disregard the trial court’s instructions on reasonable doubt, we fail to see how another instruction mentioning reasonable doubt could have cured the error.”).

After the Court charged the jury on the law, Defendant renewed his previous objections to the charge. Had the Court charged the language requested from *Chatman*, it would have cured any misconceptions that the jury might have had concerning the law of involuntary manslaughter.

III. The Victim's Statement

Prior to going to the hospital the victim made a statement to police that he did not want to press charges against Defendant. During the trial Defendant sought to introduce this as a statement against interest, excited utterance, and/or present sense impression. Defendant also argued that the statement out violated his right to due process under *Chambers v. Mississippi*, 410 U.S. 284, 93 S.Ct. 1038 (1973). Without ruling on the hearsay exceptions,² the Court found it that the Statement was not relevant under Rule 401, SCRE.

Rule 401, SCRE defines relevant evidence as, "evidence having *any* tendency to make the existence of any fact of that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." (emphasis added). Establishing relevance is a very low threshold. See *McKoy v. North Carolina*, 494 U.S. 433, 440, 110 S.Ct. 1227, 1240 ("It is universally recognized that evidence, to be relevant to an inquiry need not conclusively prove the ultimate fact in issue ...") (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 345 (1985)). In *McKoy*, the United States Supreme Court favorably cited the following description of relevant evidence:

Relevant mitigating evidence is evidence which tends logically to prove or disprove some fact or circumstance which a fact-finder could reasonably deem to have mitigating value. Whether the fact-finder accepts or rejects the evidence has no bearing on the evidence's relevancy. The relevance exists even if the fact-finder fails to be persuaded by that evidence. It is not necessary that the item of evidence alone convinces the trier of fact or be sufficient to convince the trier of fact of the truth of the proposition for which it is offered.

Id. (quoting *State v. McKoy*, 323 N.C. 1, 55, 372 S.E.2d 12, 45 (1988) (Exum, C.J. dissenting)).

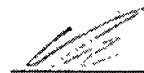
² The Court did find that the statement by the victim was not exculpatory, and therefore the Court held *Chambers* did not apply.

The intention of the victim in this case to forego prosecution was relevant to whether or not Defendant acted with malice.³ Surely, the victim not wanting to press charges has some tendency to show that Defendant did not act with "hatred, ill will, or hostility" toward the victim when the punch was thrown. Defendant and victim had the best vantage point to observe the circumstances surrounding the punch. A juror might "reasonably deem" the victim's request not to prosecute as having some tendency to show whether or not the victim believed Defendant was acting with malice. *See McKoy, supra*. Although this might not conclusively prove that Defendant did not act with malice, it is at least meets the low threshold for admissibility established by Rule 401, SCRE.

CONCLUSION

Based on the Foregoing arguments and the arguments issues raised during trial, Defendant respectfully requests this Court grant him a new trial

Respectfully submitted,



Tristan Michael Shaffer
140 Gibson Road
Lexington, South Carolina 29072
Shafferlawfirm@gmail.com
Telephone: (803) 575-0384
Facsimile: (803) 603-9965

ATTORNEY FOR DEFENDANT

August 3, 2013

³ As stated during trial Defendant also contend this is relevant to show whether Defendant was acting in self-defense.

STATE OF SOUTH CAROLINA

) IN THE COURT OF GENERAL SESSIONS
) THE ELEVENTH JUDICIAL CIRCUIT

COUNTY OF SALUDA

)

) Case No.: 2011-GS-41-288

THE STATE OF SOUTH CAROLINA,

)

CERTIFICATE OF SERVICE

)

)

)

vs.

)

)

STEVEN OTTS,

)

)

Defendant.

)

I certify that on August 3, 2013, I sent a copy of the Defendant's Motion for a New Trial to Assistant Solicitor Ervin Maye and the Honorable Thomas Russo via e-mail.


Tristan Michael Shaffer

140 Gibson Road

Lexington, South Carolina 29072

Shafferlawfirm@gmail.com

Telephone: (803) 575-0384

Facsimile: (803) 603-9965

ATTORNEY FOR DEFENDANT

August 3, 2013

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

State of South Carolina,

State,

vs

Steven Otts,

Defendant.

IN THE COURT OF GENERAL SESSIONS

TICKET NO.: 2011-GS-41-00288

ORDER DENYING MOTION FOR
NEW TRIALFILED
JAN 30 PM 2 5
SALUDA CO. S.C.

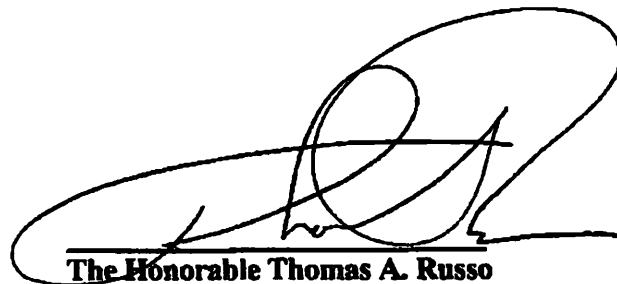
THIS MATTER comes before me on motion of Defendant's counsel for a new trial.

Upon consideration, the motion is hereby denied.

Subsequent to trial in this case, the Court heard post-trial motions, including Defendant's motion for a new trial. The Court denied the motion at that time, and the reasons for doing so were stated on the record. Nothing was argued in Defendant's current motion for a new trial that makes the Court think that the post-trial ruling was improper.

Thus, for the reasons given at the close of trial, the Defendant's motion for a new trial is hereby denied.

IT IS SO ORDERED.



The Honorable Thomas A. Russo

January 21, 2014
Lexington, SC

429

WITNESSES

PADGETT

SCSO

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

MAY 04 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-41- 288

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

MAY TERM 2011

THE STATE

vs.

STEVEN DEWAYNE OTTS

CDR#0116

Indictment for

MURDER

DONALD V. MYERS, SOLICITOR

ATTEST: TRUE COPY

Doris B. Johnson

Clerk of Court
Saluda, S. C.

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on May 4, 2011 the Grand Jurors of Saluda County present upon their oath:

That STEVEN DEWAYNE OTTS, did in Saluda County on or about January 27, 2011, feloniously, willfully and with malice aforethought, kill one Burno Octavias Hydrick in that the Defendant forcibly struck the victim in, on and/or about the head causing the victim to fall to the ground all of which resulted in skull fractures and/or brain trauma and the victim, Burno Octavias Hydrick, died in Saluda County as a proximate result thereof, in violation of the Common Law and as defined in §16-3-10 of the South Carolina Code of Laws, 1976, as amended, with punishment provided for in §16-3-20 of the 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.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Saluda

VS.

Steven Dewayne Otts

AKA:

Race: B Sex: M Age: 34DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: BATESBURG, SC 29006DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: MURDERin violation of § 16-03-10 of the S.C. Code of Laws, bearing CDR Code # 116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

[Signature]
Solicitor5734
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. Credit for 463 days Time Served☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

431

INDICTMENT/CASE#: 2011GS4100288A/W#: 2011GS4100288Date of Offense: 5/4/2011S.C. Code § : 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 2141Sentence Date: 7-25-2013

ATTEST: TRUE COPY

[Signature]
Clerk of Court
Saluda, S.C.

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."

June 8th, 2015

A handwritten signature in cursive script, reading "Susan B. Hackett", written over a horizontal line.

Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT