

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Maite Murphy, Circuit Court Judge

RECEIVED
OCT 15 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHRISTIAN ANTHONY HIMES,

APPELLANT

APPELLATE CASE NO 2017-000870

RECORD ON APPEAL

JOANNA K. DELANY
Appellate Defender

LAURA R. BAER
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

MELODY J. BROWN
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29201

ALPHONSO SIMON, JR.
Senior Assistant Attorney General

DONALD ZELENKA
Deputy Attorney General

DAVID M. PASCOE, JR.
Solicitor, Fifth Judicial Circuit
140 N. Main Street, Suite 102
Summerville, South Carolina 29483

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRANSCRIPT OF TRIAL HELD APRIL 3 – 6, 2017 1

APRIL 3, 2017

IMMUNITY HEARING

TESTIMONY

MICHAEL WEAVER

 Direct Examination by Mr. Wehman.....9

 Cross Examination by Assistant Solicitor Sorenson.....29

 Redirect Examination by Mr. Wehman38

HEATHER MELISSA HAM

 Direct Examination by Mr. Wehman.....40

 Cross Examination by Assistant Solicitor Sorenson.....65

 Redirect Examination by Mr. Wehman89

MATTHEW ADAMS BROOKS

 Direct Examination by Mr. Wehman.....91

 Cross Examination by Assistant Solicitor Templeton93

WADE FRANKLIN ROLLINGS

 Direct Examination by Mr. Wehman95

 Cross Examination by Assistant Solicitor Templeton101

 Redirect Examination by Mr. Wehman104

TIM WAYNE GRAMBON

 Direct Examination by Mr. Wehman.....105

 Cross Examination by Assistant Solicitor Sorenson.....111

CHRISTIAN ANTHONY HIMES

 Direct Examination by Ms. Williams114

 Cross Examination by Assistant Solicitor Sorenson.....136

ARGUMENT ON IMMUNITY163

IMMUNITY RULING TAKEN UNDER ADVISEMENT184

APRIL 4, 2017

COURT’S RULING DENYING IMMUNITY184

COURT’S PRELIMINARY REMARKS TO THE JURY189

OPENING STATEMENT BY ASSISTANT SOLICITOR TEMPLETON195

OPENING STATEMENT BY MS. WILLIAMS198

TESTIMONY

 MATTHEW ADAMS BROOKS

 Direct Examination by Assistant Solicitor Templeton203

 Cross Examination by Ms. Williams211

 KAREN WELBORN

 Direct Examination by Assistant Solicitor Sorenson217

 HEATHER MELISSA HAM

 Direct Examination by Assistant Solicitor Sorenson225

 Cross Examination by Ms. Williams259

 Redirect Examination by Assistant Solicitor Sorenson307

APRIL 5, 2017

TESTIMONY (continued)

 DR. ELLEN RIEMER

 Direct Examination by Assistant Solicitor Sorenson314

 Cross Examination by Ms. Williams327

 SERGEANT JASON FORSYTH

 Direct Examination by Assistant Solicitor Templeton330

 Cross Examination by Ms. Williams339

 WADE FRANKLIN ROLLINGS

 Direct Examination by Assistant Solicitor Templeton343

 Cross Examination by Ms. Williams353

 Redirect Examination by Assistant Solicitor Templeton361

APRIL 6, 2017

TESTIMONY (continued)

MICHAEL PARKER WEAVER	
Direct Examination by Assistant Solicitor Sorenson.....	370
Cross Examination by Ms. Williams	400
Redirect Examination by Assistant Solicitor Sorenson	415
STATE RESTS	416
RENEWAL OF IMMUNITY MOTION	416
COURT'S RULING	417
MOTION FOR A DIRECTED VERDICT	417
COURT'S RULING	420
COLLOQUY RE: DEFENDANT'S RIGHT TO TESTIFY	423
TESTIMONY	
JOHN TISDALE	
Direct Examination by Mr. Wehman	434
Cross Examination by Assistant Solicitor Templeton	438
CHRISTIAN ANTHONY HIMES	
Direct Examination by Ms. Williams	440
Cross Examination by Assistant Solicitor Sorenson.....	463
RENEWAL OF ALL PRETRIAL MOTIONS AND DIRECTED VERDICT	507
COURT'S RULING	507
CLOSING ARGUMENT BY ASSISTANT SOLICITOR SORENSON	509
CLOSING ARGUMENT BY MS. WILLIAMS	528
REBUTTAL ARGUMENT BY ASSISTANT SOLICITOR SORENSON.....	540
JURY CHARGE	540
VERDICT	560

SENTENCING564

 IMPOSITION OF SENTENCE.....569

DEFENDANT’S EXHIBIT 5 (SLED TOXICOLOGY REPORT).....572

DEFENDANT’S EXHIBIT 6
(LETTER FROM HEATHER HAM TO CHRISTIAN HIMES).....577

DEFENDANT’S EXHIBITS 8 AND 9 (CRIME SCENE DRAWINGS).....584

STATE’S EXHIBIT 2 (HIMES’ STATEMENT)586

STATE’S EXHIBIT 6 (TEXT MESSAGE).....589

INDICTMENTS AND SENTENCING SHEETS590

CERTIFICATE OF COUNSEL596

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

- DEFENDANT’S EXHIBIT NO. 1 (CRIME SCENE DOCUMENTS)**
- DEFENDANT’S EXHIBIT NOS. 2-4, 7, AND 10 (PHOTOGRAPHS)**
- DEFENDANT’S EXHIBIT NO. 11 (VIDEO)**

1 me.

2 Q. Well, no. You stopped and pulled a gun and pointed it
3 at him. Is that correct?

4 A. This was all in motion. All at the same time.

5 Q. Okay. If you hadn't pulled the gun out, what would've
6 stopped you from just backing up? I mean, he charges at you
7 because you're pointing a gun at him; correct?

8 A. He charged at me after I pointed a gun at him, yeah.

9 Q. But you weren't at fault then bringing all this on.
10 That's your testimony?

11 A. That's my testimony.

12 Q. He never grabs you, never restrains you, never blocks
13 you from basically leaving. Is that correct?

14 A. Not from -- no, he didn't block me off from leaving.

15 Q. The only thing he said was that you weren't going into
16 the apartment. Is that correct?

17 A. That's correct.

18 Q. Not that you couldn't leave. In fact, he asked you, he
19 told you to leave. Is that correct?

20 A. In fact, I was leaving. That is correct.

21 Q. Now in your statement -- and I kind of asked you this.
22 You went over this . . .

23 AST. SOL. SORENSON: May I approach the witness?

24 THE COURT: You may.

25 Q. State's Exhibit Number 2 I believe it is. You've

1 reviewed that. Is that correct?

2 A. Yes, sir.

3 Q. You were given a copy of that on the night of November
4 1st. Is that correct?

5 A. Yes, sir.

6 Q. Okay. And, obviously, you knew how to contact
7 Detective Weaver. Is that correct? Because you did contact
8 him to get him to come down and see you; right?

9 A. Yes, sir.

10 Q. Okay. And you never at any point in time tell him that
11 there's anything else you need to add to this. Is that
12 correct?

13 A. I didn't tell him that I needed to add something to my
14 statement. No, sir.

15 Q. Nothing that needed to be changed in your statement
16 that was wrong. Is that correct?

17 A. We never talked about my statement at all the first
18 time -- the second time that he came to see me.

19 Q. Well, obviously, if when you got back to the jail and
20 reviewed this and was like, oh, my gosh, I didn't say that.
21 I mean, you knew how to go about contacting him to let him
22 know that that was wrong. Is that correct?

23 A. I went about contacting him about getting the
24 surveillance from the gas station. That was the whole
25 reason of me contacting him the second time. It had nothing

1 to do with my statement.

2 Q. But if there was something wrong in there, I mean, you
3 knew how to go about telling him about that. Is that right?
4 You had the means to contact him. That's all I'm asking.
5 Is that correct?

6 A. Yeah. That's correct.

7 Q. When he asks you about -- asked you the question was
8 David abusing Heather and their children. Is that correct?
9 Do you remember him asking you that question that night and
10 you answering it?

11 A. I remember him asking me the question. Yes, sir.

12 Q. Okay. And your answer was not recently but in the
13 past. David was never there for the kids. He's torturing
14 her mentally and neglecting their kids. That was your
15 answer. Is that correct?

16 A. That's what is on the statement. Yes, sir.

17 Q. Well, that's what you told him. Is that correct?

18 A. I told him.

19 Q. And he asks you, right after that, why did you shoot
20 David. And your answer is I was scared. And then you talk
21 about your father basically doing stuff to you the past. Is
22 that correct? Well, I mean, that really had nothing to do
23 with David Ham; right?

24 A. That didn't have nothing to do with him.

25 Q. You don't at any point in this tell Sergeant Weaver

1 that you thought David Ham had a gun on him that night, did
2 you?

3 A. I told him that I didn't know what he had. He was
4 reaching in his pocket. But I did say in the statement that
5 I don't think he had a gun reflecting back on what happened,
6 actually happened, in this very moment. I told him I don't
7 think he had a gun.

8 Q. Mr. Himes, how long do you think from the time that
9 you're saying you first encountered him in the breezeway
10 until you pulled the trigger, how long do you think that
11 encounter took place?

12 A. Quick. No more than a minute, a minute and a half at
13 most.

14 Q. You think it was at least minute; could've been a
15 minute and a half. Is that right?

16 A. It could have been, yeah.

17 Q. And, obviously, when things are going on like that, I
18 mean, a minute is a pretty long time, isn't it? When you're
19 talking about something like this.

20 A. I mean, everything happened so fast. I don't know if a
21 minute is a long time. In that minute, so much happened so
22 quick.

23 Q. Okay. Well, I'm going to start -- I set my timer for a
24 minute and 15 seconds, okay. You see that? See that from
25 there? Let's kind of see how long a minute and 15 seconds

1 is, okay. (Brief pause.) So A minute and 15 seconds. So
2 that's about how long you think that altercation took place
3 between the two of you?

4 A. I mean, I felt shorter than that. But it could have
5 been no longer than that.

6 Q. Could have been a little longer than that?

7 A. It couldn't have been no longer than that.

8 Q. And the fact of the matter is during that entire time
9 that at no point in time did David Ham ever pull out a
10 weapon. Is that correct?

11 A. He never actually pulled out a weapon. Yes, sir.

12 Q. Even after you pulled out and pointed a gun at him?

13 A. I've pulled my gun out because he was reaching in his
14 pocket.

15 Q. You pulled the trigger because he was -- why did you
16 pull the trigger?

17 A. Because he charged and lunged at me.

18 Q. But you weren't then at fault for why that occurred?

19 A. No, sir.

20 AST. SOL. SORENSON: Beg the Court's indulgence.

21 (Brief pause.) That's all I have, Your Honor.

22 THE COURT: Any redirect?

23 MS. WILLIAMS: None, Your Honor.

24 THE COURT: Ladies and gentlemen of the jury, it's a
25 little bit after 12. It's a good time for us to take our

1 lunch break. If you would please be back in your jury room
2 at about 1:15 then we'll resume with the trial of the case.
3 Have a nice lunch. Please remember not to discuss this
4 case.

5 (The jury exits the courtroom at 12:08 p.m.)

6 THE COURT: You may step down, Mr. Himes.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Ms. Williams, it's my understanding that
9 that was your last witness.

10 MS. WILLIAMS: Yes, ma'am.

11 THE COURT: Okay. Have you all had a chance to review
12 jury -- we'll go ahead and give you the proposed jury
13 instructions. If y'all will come back to my office a couple
14 of minutes beforehand, we can go through and make sure
15 everybody is on the same page.

16 MS. WILLIAMS: When are we coming back, Judge?

17 THE COURT: I told the jury be back 1:15. So if y'all
18 would maybe about 1:10 or 1:05 or somewhere around there --
19 if y'all can grab some lunch and then come back and we'll
20 review this real quickly.

21 AST. SOL. SORENSON: What are we proposing charging, I
22 guess, right now as far as lesser included's or . . .

23 THE COURT: I suppose it depends on the request of both
24 of y'all. Have y'all had a chance to discuss it?

25 AST. SOL. SORENSON: We have not. And that's why I

1 wasn't sure what we had in there already. I didn't know if
2

3 THE COURT: Why don't y'all talk about and then come on
4 back and then we can go from there. That way if y'all think
5 about it ahead of time, we might be able to knock some of it
6 out.

7 (Court recessed for lunch at 12:10 p.m. The
8 proceedings resumed at 1:31 p.m.)

9 THE COURT: Ms. Williams, I understand that was your
10 last witness. And, of course, I'll allow you to rest in
11 front of the jury. However, as we discussed, in the
12 interest of time, if you want to go ahead and place your
13 motions on the record.

14 MS. WILLIAMS: Yes, ma'am. The defense intends to rest
15 as soon as the jury comes back in. So for all intense
16 purposes, right now the defense is resting. And at this
17 time, we would renew all of our pretrial motions and renew
18 our motion for a directed verdict.

19 THE COURT: And considering, again, the evidence that
20 has been presented and the arguments of counsel, the rulings
21 remain the same. We also had a charge conference. I
22 understand the State has requested that the Court charge
23 voluntary manslaughter. The defense did object to this.
24 And the Court finds as well as the -- the Court believes
25 that voluntary manslaughter requires criminal intent to harm

1 another. And the defendant testified basically that he had
2 no criminal intent whatsoever. The testimony was that he
3 acted in self-defense and was scared. And that does not
4 rise to a sudden heat of passion in the Court's opinion.
5 Basically, he was defending his life based upon what his
6 testimony was. And voluntary manslaughter by definition
7 requires criminal intent to do harm to another. But
8 according to the defendant's testimony, that was not his
9 intent. So, therefore, the Court does decline to charge
10 voluntary manslaughter. Anything further regarding the jury
11 instructions? I understand that there are no other
12 objections to the proposed jury instructions from either
13 party. Is that correct?

14 AST. SOL. SORENSON: That would be correct, Your Honor.

15 MS. WILLIAMS: Yes, ma'am.

16 THE COURT: All right. Anything else before we bring
17 the jury out.

18 AST. SOL. SORENSON: I don't believe so.

19 MS. WILLIAMS: Court's indulgence. (Brief pause.)

20 Nothing further, Your Honor.

21 THE COURT: Let's have our jury, please.

22 (The jury enters the courtroom at 1:34 p.m.)

23 THE COURT: Welcome back, ladies and gentlemen of the
24 jury. I hope that you had a nice lunch. Ms. Williams?

25 MS. WILLIAMS: Your Honor, at this time, the defense

1 rests.

2 THE COURT: Thank you, ma'am. Ladies and gentlemen of
3 the jury, it is now time for the parties to present their
4 closing arguments. Please pay close attention. You may
5 proceed, Solicitor.

6 AST. SOL. SORENSON: Thank you. May it please the
7 Court, Your Honor?

8 THE COURT: Yes, sir.

9 CLOSING ARGUMENTS

10 AST. SOL. SORENSON: Good afternoon, Mr. Foreman,
11 ladies and gentlemen of the jury. I submit to you this case
12 boils down to two very simple questions; two very simple
13 questions. The first one on the evening of November 1,
14 2015, was that man right there justified in taking this gun,
15 shooting and killing unarmed 36-year-old David Ham? And I
16 submit to you when you look at that, when you look at that
17 first question, I submit to you you're going to find -- and
18 I'm going to talk in a few minutes about self-defense --
19 you're going to find that we have proven beyond a reasonable
20 doubt that he fails every possible portion of that
21 self-defense. After that first question, I submit to you
22 when you find that he was not justified in pulling out this
23 gun, pointing it at Mr. Ham and shooting and killing him,
24 the second question is very simply: Is he guilty of this
25 murder?

1 Ladies and gentlemen, murder is the most serious charge
2 we have on our books. It's an important matter. It's an
3 important matter for the family of David Ham, the citizens
4 of Dorchester County, I submit to you, for the defendant in
5 this case, Christian Himes. This isn't a particularly
6 complicated -- not a particularly complicated matter. The
7 first thing I want to talk to you about is self-defense.
8 Her Honor is going to charge you that self-defense, once the
9 defense raises the issue self-defense, the State then has
10 the burden of disproving the existence of self-defense.
11 Self-defense boils down -- there's three elements to it;
12 three elements. The first one is the defendant has to be
13 without fault in bringing on the difficulty. He has to be
14 without fault in bringing on the difficulty. Element number
15 two is the defendant had to either have been in imminent
16 danger of losing his life or suffering serious bodily injury
17 or have reasonably believed he was in imminent danger of
18 losing his life or suffering serious bodily injury. And
19 then the third element is that he had to have had no other
20 probable means to avoid basically doing what he did. He had
21 no other probable means; no other means of retreating,
22 getting away other than pulling the trigger that night.
23 Those are the three elements of self-defense. Her Honor is
24 going to charge you that we have to basically disprove. If
25 we disprove one of those elements beyond a reasonable doubt,

1 if we prove to you beyond a reasonable doubt that he had
2 some other means of getting away that night other than
3 striking that fatal blow, self-defense doesn't apply. If we
4 prove to you beyond a reasonable doubt that he was at fault
5 in bringing on what happened that night, then self-defense
6 would not apply. If we prove to you beyond a reasonable
7 doubt that he either wasn't in imminent danger or that a
8 reasonable person would not have believed he was in imminent
9 danger -- not of being assaulted, not of being in a
10 confrontation, but of losing his life or suffering serious
11 bodily injury, then self-defense doesn't apply. We don't
12 have to disprove all three of those, just any one of those.

13 I submit to you, ladies and gentlemen, in this case,
14 though, and we talked about that beyond a reasonable doubt,
15 beyond a reasonable doubt, and that's ultimately what not
16 only in this case, but in any case that is tried throughout
17 our country, that's what the burden is. It's on the State
18 to prove the defendant guilty beyond a reasonable doubt.
19 But I submit to you, ladies and gentlemen, when you look at
20 the facts and circumstances around what happened the evening
21 of November 1st of 2015, there is no doubt. We're not
22 talking about beyond a reasonable doubt. We are talking no
23 doubt that that man was not justified in pulling that
24 trigger. And that's why I want to take the next 10, 15
25 minutes or so and talk to you about.

1 The first issue, the first one I want to talk about,
2 the defendant has to be without fault in bringing on the
3 difficulty. Ask yourselves this question: What did David
4 Ham do that night to cause what happened? I submit to you
5 nothing. He did not know the defendant was there. He
6 wasn't armed with a weapon. He didn't physically assault
7 Christian Himes in any manner. The only reason he was even
8 there that night is because of him; because of him. This
9 person that's got it in his mind that he's going to
10 basically take over and run this family; takes Heather Ham's
11 car that day knowing full well that she's got to go pick her
12 children up from her husband and is gone for hours. And you
13 heard her testimony that it was 3:30 or so in the afternoon
14 when he took off. Needed him back in time for her to go get
15 her kids on a school night to put them to bed, and he is
16 gone. Doesn't even and try to contact her. We know he's
17 around somebody, according to his testimony, whose got a
18 cell phone who supposedly contacted her earlier. Who's at
19 fault? Who is the only person that was armed out there that
20 night? Christian Himes. Who is the person that's messing
21 around with a married women? Christian Himes. Who is the
22 person that knew the other party was there that night?
23 Christian Himes. I submit to you beyond all doubt when you
24 look at it and try to determine who was at fault that night
25 and what led to this shooting outside that apartment, it's

1 that man right there. It's Mister Self-defense, the person
2 that supposedly did nothing wrong.

3 What is his first impulse upon pulling that trigger and
4 leaving David Ham to bleed to death outside of that
5 apartment? It isn't to go check on Heather. You know, he's
6 supposedly so concerned about her that he's toting this gun
7 around, he gets in the car, and he's peeling out of the
8 parking lot. I submit to you the only reason he was caught
9 -- and you saw the video -- the only reason he finally
10 stopped is because he, basically, he doesn't know where he
11 is. That's Mister Self-defense? Mister I did nothing
12 wrong. Mister I was scared. Mister I was worried about
13 what might've been happening with Heather because David was
14 in there too long that night. When you look at whether he's
15 at fault, I mean, look at his statement and his testimony.
16 I mean, he never says at any point in time that David Ham
17 threatened him that night; never said he threatened to kill
18 him, threaten to physically harm him. Never says that David
19 Ham laid a hand on him that night, not even so much as just
20 pushing him or restraining him. Never saw him with any kind
21 of weapon, and I submit to you never made any even
22 aggressive move towards him until after he's got a loaded
23 gun pointed at him. But supposedly that makes David Ham at
24 fault because he chose to rush a person pointing a loaded
25 gun at him. How is all that being without fault in bringing

1 on the difficulty? I submit to you, beyond any and all
2 doubt, it's not.

3 Got to move onto this next element of self-defense.
4 Defendant had to have been in imminent danger of suffering
5 death or serious bodily injury, or have reasonably believed
6 he was. Basically, you look at -- you got to look at the
7 facts and the circumstances surrounding this. And the
8 ultimate question then comes down -- because I submit to
9 you, he wasn't in imminent danger. David Ham wasn't armed
10 that night. So the only question then becomes whether he
11 reasonably believed that night he was an imminent danger.
12 That means immediate danger of either being killed or
13 seriously wounded. From the standard you have to look at,
14 Her Honor is going to charge you at is whether -- the
15 ultimate question is whether a reasonably prudent person of
16 ordinary firmness and courage would've held that same
17 belief? And I submit to you just like that first element,
18 this fails in every possible regard. I submit there was no
19 imminent danger. And even if there was, that danger was not
20 of him being killed or seriously wounded. Two people,
21 basically, on almost an equal footing. I mean, this is not
22 -- we're not talking about a defendant who is frail and
23 elderly and the victim who is a large man. These are two
24 young men. If anything, he's the younger and probably in
25 better shape out of the two of them on equal footing. Let's

1 talk about -- so what he's saying creates that reasonable
2 belief. I was threatened. I was threatened. And you know
3 they reference several times, or there were other text
4 messages, but the fact of the matter when he's asked the
5 question, this was the only one that was in any way, shape,
6 or form threatening. I submit to you if there are others,
7 they would've been provided. Because back at the time,
8 Heather Ham was still conversing with him and providing this
9 stuff at his request to not only his lawyer but also law
10 enforcement. So I submit to you if there was some other
11 threatening text, we would know about it. So this is
12 ultimately the basis of what he's saying allows him to pull
13 out that gun and kill David Ham. The fact that David sent a
14 text at 7:26 on Friday evening, "Tell your boyfriend don't
15 let me catch him slipping." I submit to you, is that
16 reasonable that would create in the mind of a reasonable
17 person of ordinary courage and firmness that I suddenly need
18 to arm myself and that somebody is going to try to kill me
19 or seriously injure me? Or is that more the fact that the
20 father of two young children who now knows that some person
21 he doesn't know is hanging around his kids, is telling her
22 to let him know don't let me catch you messing up around my
23 kids? Is that a more reasonable explanation for this text
24 message? And this text message that is so angry and out of,
25 you know, just threatening, you know, seven minutes later

1 he's sending a text, "By the way I need you to pick up the
2 kids Sunday. Meant to tell you that when I was there."
3 This person that's so crazy and angry. Does that make
4 sense? Or is it more just let your boyfriend know don't let
5 me catch him messing up around my kids? So he's got that in
6 his mind and then he's got, you know, two other -- two
7 incidents of time -- and I'm not condoning what David did. I
8 mean, assuming it happened, I'm not condoning them in any
9 way, shape, or form. But the fact that he assaulted his
10 wife six years prior, and then drug her out of a room 18
11 months prior. Yet again, neither one of those are
12 situations where she suffered -- obviously didn't -- I mean,
13 thank God didn't kill her or receive serious bodily injury.
14 That the knowledge of those two prior incidents that
15 happened back when they were married and living together
16 over 18 months prior, coupled with that, suddenly makes him
17 think that, you know, I got to, you know, this guy is either
18 going to kill me or seriously injure me when he sees me next
19 time. I submit to you, makes no sense. This isn't a
20 situation where there are prior confrontations between the
21 two them. They never met each other before. That night, I
22 mean literally, a minute and 15 seconds, a minute to a
23 minute and half -- so we'll go in the middle, a minute and
24 15 seconds -- after he met David Ham, David Ham was lying
25 and bleeding to death from a gunshot wound inflicted by that

1 man.

2 Her Honor is, you know, in dealing with and looking at
3 this part of self-defense about that imminent death,
4/ imminent danger, and whether a person reasonably believes
5 that they are in that imminent danger of death or serious
6 bodily injury. We're going to talk about the fact that, you
7 know, mere words are not enough. Mere words, the fact that
8 somebody, you know, they can call you whatever offensive
9 names that they could possibly think of. There is no words
10 that a person can say to you that will justify you pulling
11 out a gun and shooting and killing them. Words, no matter
12 how offensive, are not enough to justify pulling out a
13 deadly weapon and shooting and killing somebody. Now words
14 with hostile acts, if accompanied by some hostile acts, can
15 rise to that level. Can rise. And that's why I asked him
16 about that on the witness stand earlier. What were the
17 hostile acts? And what can he point out? He pointed out
18 only two things. The two things that David Ham did that
19 were -- because otherwise all we have are words. We have
20 words that were conveyed that I submit are not even a threat
21 and then words -- and I'm going to talk about what those
22 were in a few minutes. The only hostile acts, the fact that
23 he was waving his arms around initially when they were first
24 arguing outside the apartment, and the fact that he rushed
25 him or charged him or lunged at him after this was pointed

1 at him. I submit to you, you don't get -- you don't get the
2 right to pull out a gun and you're not justified or
3 warranted in doing it. To point a gun at a person, a loaded
4 gun at a person, and then when they react in an aggressive
5 manner to pull the trigger and then claim you were defending
6 yourself. The person that had the right of self-defense
7 that night unfortunately is dead. If David Ham had gotten
8 to him, if he had shot, fired, and missed, and David Ham got
9 to him, choked him to death, struggled with him and the gun
10 went off and he got shot, David Ham would have the right of
11 self-defense.

12 So look at this. You know, reasonable person, what a
13 reasonable person -- look at what he described today from
14 this witness stand, a minute and a half. And I sat and
15 played the, you know, played my timer. A minute and a half
16 is a long period of time. A minute and 15 seconds, he says
17 between a minute and a minute and a half. So I went in the
18 middle, a minute and 15 seconds. At no point in time during
19 that did David Ham ever present any kind of weapon, never
20 laid his hands on Christian Himes, never pushed him, never
21 grabbed him, never punched him, never kicked him. I submit
22 to you, he never threatened him. Not only to kill him or
23 cause serious bodily injury to, he didn't threaten him at
24 all. Didn't threaten to just hit him. Never took a swing
25 at him. The statement he gave on the night this happened

1 doesn't allege any of that. I submit to you, his testimony
2 today doesn't allege any of that. I mean, it's absolutely
3 ludicrous to believe that a person -- I mean, the only
4 person that's armed in this situation, who's holding a
5 loaded gun, pointing it at an unarmed individual that he, I
6 submit to you, at that point in time knew that David Ham
7 didn't have a weapon on him. That he would somehow be
8 justified when that person reacts to that loaded gun in
9 pulling the trigger.

10 The same gun, ladies and gentlemen, and I submit to
11 you, he's not even carrying because of David Ham. You know,
12 I asked him that question. You know, he didn't have this on
13 him because of some fear of being assaulted by David Ham. I
14 was a little surprised he said that. But, I mean, that
15 wasn't the reason he's carrying. He's carrying this because
16 of some assault that happened on -- not involving David a
17 week earlier -- on Heather. And I'm sure Ms. Williams when
18 she gets up here is going to make a big deal about well, you
19 know, the hostile act he made was, you know, was not letting
20 -- wasn't going to let Christian Himes into that apartment.
21 Keep in mind kind of what's in David Ham's mind at this
22 point in time. You know, he is -- you know, he'd been
23 drinking a little bit. No question about that. You know,
24 he has now had to bring his kids back over for a reason that
25 he may or may not have figured out. I don't know if he

1 figured out that, obviously, her car is missing. Gets over
2 there. Heather says no, nothing happened; nothing happened
3 inside. I mean, we had a pleasant conversation. He's got
4 two small children, an eight-year-old and a four-year-old.
5 He comes out the door and encounters, you know, his wife's,
6 who he's still married to, new boyfriend. It's after
7 ten o'clock. It's ten o'clock on that evening. The 911
8 call comes in, I believe, at 10:06. So we're talking a
9 couple minutes after ten o'clock at night. He's just gotten
10 his kids to bed. He's had to bring them home and then the
11 boyfriend is coming walking up to go walking in the
12 apartment. What is a reasonable action of a father, whether
13 he's separated or not from his wife at that point time,
14 about whether that man right there is gonna go just mosey on
15 in to that apartment? I submit to you, that's a reasonable
16 reaction that he had. I mean, you're not going in there.
17 And then the argument, you know, about you're not raising my
18 kids, I mean, I'm their father.

19 But I submit to you, ladies and gentlemen, if you
20 looked at it and he said, you know, he blocked his way, he
21 doesn't -- I don't think he puts that in his statement he
22 made to Sergeant Weaver. Well, let's just say for
23 argument's sake he blocked his way. He stood in the door.
24 Let's say he knocked him, he pushed him back when Christian
25 Himes tried to come in. Told him, you're not going in that

1 apartment. You need to leave. Tries to go in again and he
2 pushes him again. I mean, that's not even what happened,
3 but let's assume it even went that far. I submit to you,
4 there's nothing, nothing, at that point in time that
5 would've justified that man pulling out a gun and shooting
6 it. Not letting him go into an apartment that is not his
7 apartment. He may be staying there off and on at that point
8 in time, but not letting him go into that apartment is not
9 imminent danger of him losing his life, not imminent danger
10 of him suffering serious bodily injury. I submit to you,
11 that's a reason why he's mad. It's a reason why he's upset.

12 Let's look at number three. The last one is -- the
13 last element of self-defense that I submit to you, just like
14 the first two, have been disproven beyond any and all doubt.
15 That the defendant has -- basically, it's a duty to retreat.
16 You have to use whatever means. That there had to have been
17 no other means to avoid the danger. There would've
18 basically been no other way other than to fire that fatal
19 blow in this situation. You know, look at his testimony.
20 Look at, you know, the diagrams, the pictures that have been
21 put in. I mean, his own testimony. I mean, yet again, the
22 victim. What does the victim say to him? What does he say
23 he said to him? You need to leave. You need to leave.
24 Doesn't grab him. Doesn't tackle him. Doesn't jack him up
25 against the wall. Basically following him out as they are

1 leaving the breezeway out into the grassy area.
2 Unfortunately, they're both apparently parked in the same
3 direction so they both got the same direction to go. You
4 have to leave. And he's gonna try to assert that as a
5 result of that, he had no other probable means to avoid
6 pulling out that gun and firing that fatal round. Walk
7 away. Keep backing up. Keep walking away. How hard is
8 that? It's kind of corroborated by Officer Brooks whose
9 apartment is overlooking. Yet again, you're not going into
10 that apartment. Never tells him, you know, you're not
11 getting out of here. As he said this morning, the victim
12 told him, just leave. You need to leave. Nothing blocking
13 behind him. We know that because after he fires that round,
14 he's in the car and peeling out of the parking lot almost
15 before Heather can even get outside her door out of the
16 breezeway. This person that is so concerned about her
17 welfare that he's toting this thing around. He puts in his
18 statement, he comes back, comes back from the gas station.
19 I sat in my car a few minutes. I got out and wanted to make
20 sure Heather was okay. This person that he's so concerned
21 about. And I guess the implication is that because David
22 may have been doing something to her. He didn't bother to
23 go check on her. He's getting out of dodge.

24 I submit to you, ladies and gentlemen, when you look at
25 it, as I said, from the start, I mean, we have to disprove

1 any one of those three elements beyond a reasonable doubt
2 for self-defense not to apply. And I submit to you, in this
3 case, he utterly fails on every possible one of those. He's
4 not justified in pulling out a gun and shooting an unarmed
5 man who I submit to you who has not threatened him. I mean,
6 this situation probably plays out thousands of times every
7 day in our country. Where a new boyfriend comes into
8 contact with either most of time is probably an ex-husband
9 or father of children and they don't all end the way this
10 one ended.

11 That brings us then, ladies and gentlemen, as I said,
12 there are basically those two questions. The first one
13 whether he was justified in pulling that trigger on November
14 1st. And I submit to you when you get beyond that one then
15 the only other question is whether he's guilty of David
16 Ham's murder. This isn't a who done it. This isn't a, you
17 know, piecing a whole bunch of pieces together to figure out
18 who did it. I mean, there's not question about it from the
19 get-go. I mean, he's -- I mean, he's the person. He's
20 charged with murder. And murder, ladies and gentlemen, is
21 the unlawful killing of another person with malice
22 aforethought either expressed or implied. Expressed or
23 implied. And malice, ladies and gentlemen, is an intention
24 doing of a wrongful act towards another without just cause
25 or legal excuse. It's ill will or hostility towards

1 another. It's a heart devoid of social duty and fatally
2 bent on mischief. That malice can be expressed; I mean you
3 can have that rare occasion where you have, you know, a
4 witness that overheard somebody say I'm going to kill him,
5 I'm going to kill you. Or it can be implied; it can be
6 implied or inferred from basically the facts and
7 circumstances surrounding it. It can be inferred by the
8 fact that he's toting around a loaded gun. It can be
9 inferred from the fact that he pulled out that gun and
10 pointed it at an individual that I submit to you was unarmed
11 and he knew was unarmed. It can be inferred from the fact
12 that, I submit to you, that he basically was laying in wait
13 waiting for him that night. I know he doesn't admit to
14 that, but look at the facts. I mean, this is the most
15 unbelievable coincidence.

16 You know, if you look at his version of how long a
17 period of time this took, that he just so happens to walk up
18 to the door when David Ham is coming out. Or what would
19 make more sense is the fact that, you know, he shows up,
20 finds out from Heather that David is still in there. She
21 tells him to leave. He leaves and starts stewing about it.
22 Comes back over ultimately into that parking lot, sitting
23 and waiting. And what do we know about David? We know that
24 he left the apartment initially. Comes out and there's
25 enough time in there for Heather to have gone into the

1 bathroom before she hears banging on the door. I submit to
2 you, enough time for David Ham to get out into that grassy
3 area going to his car and realized guess what I don't have?
4 I don't have my car keys. And he goes back, gets his keys,
5 and then lo and behold, he's walking up meeting him at the
6 door. I submit to you, he saw him coming out and was going
7 to confront him out there that night. And the only reason
8 that it ends up all the way at the door is because the
9 victim turned and went back inside. It's too big of a
10 coincidence otherwise. I mean, he says he's gone to this
11 gas station, you know, rolling weed up in a joint, I guess.
12 You know, he says he didn't smoke it because he couldn't
13 smoke it in Heather's car. Coincidence that after all that
14 he just so happens to meet him just as he's coming out the
15 door. I submit to you, he was jealous; jealous of David
16 Ham. Thought he could do a better job of raising his kids
17 and being a husband to Heather. I submit to, he was upset
18 about being called out Friday night by David. He's was
19 upset about the night before, Halloween night, when he
20 didn't get a chance to go trick-or-treating with the kids.
21 This is a guy, I mean, he's been in her life now -- I mean,
22 granted, they knew each other when he was a teenager. He's
23 been back in the picture for five weeks. And he thinks he's
24 better suited to take David Ham's kids trick-or-treating.
25 And the final straw, I submit to you, is when, yet again,

1 his own fault, it's his own fault, but he shows up that
2 night, that Sunday night, after being gone for however many
3 hours he's gone driving somebody to West Ashley. Use your
4 common sense, ladies and gentlemen. Does that makes any
5 sense? I mean, this person, obviously, according to him,
6 had the means to contact him; had the means to contact him
7 to ask for a ride. Which, yet again, doesn't make any sense
8 that, you know, you're going to contact, you know, the
9 friend who has only been around for a couple weeks as it is
10 who doesn't have a car, doesn't have a driver's license,
11 basically doesn't have a job or he's working down in
12 Summerville now, to come drive you all the way to West
13 Ashley. But that final straw as he comes up and Heather
14 tells him, you know, David is still here. You need to
15 leave. You need to leave. And I submit to you, he's starts
16 stewing at that point in time. And he's gonna confront --
17 he's gonna bring this to a head that night. When he came
18 walking up there that night with that gun in his pocket, he
19 may not have figured I'm gonna end up shooting David Ham,
20 but I'm going to put him in his place that night. He's
21 gonna know not to mess with me. I submit to you, he was the
22 very definition of a person devoid of social duty and
23 fatally bent on mischief that night. No other reason for
24 him to be toting that gun around. Because she was sexually
25 assaulted a week earlier by an acquaintance of his? Does

1 that make any sense?

2 Now, ladies and gentlemen, you're, ultimately, in a
3 short while here gonna have this case back in the jury room
4 and have the opportunity to start deliberating. Basically,
5 you're going to have two possible verdicts. Find the
6 defendant not guilty: I submit to you, if you find that we
7 have not disproved self-defense beyond a reasonable doubt,
8 then find him not guilty. Give him the gun he paid 180
9 bucks back and find him not guilty. I submit to you, you've
10 got to disregard almost all of the evidence to get to that
11 point. The other option after that is, I submit to you,
12 when you find that we've disproven self-defense, that he's
13 guilty of murder. He's guilty of intentionally,
14 maliciously, pointing a gun at an unarmed man and pulling
15 the trigger. I'm gonna sit down in a few minutes, or a few
16 seconds here, and Ms. Williams is going to have an
17 opportunity to come before you and present what she feels
18 the evidence in this case has shown. And I'm going to have
19 at that point in time after that just a real brief
20 opportunity if there's anything that I feel like I need
21 rebut what she said and come back before you. I don't know
22 if that's going to happen or not. But other than that,
23 ladies and gentlemen, you're going to have, as I said, in a
24 few moments an opportunity to come back and start
25 deliberating in this case. And I submit to you, when you

1 get back there and you look at all the evidence, the only
2 truthful verdict, the only verdict that I submit is
3 supported by the evidence in this case, is one that holds
4 Christian Himes accountable; holds him responsible and tells
5 him that he was not justified in taking David Ham's life.
6 That's a verdict of guilty. Thank you.

7 THE COURT: Counsel?

8 MS. WILLIAMS: Thank you, Judge. May it please the
9 Court?

10 THE COURT: Yes, ma'am.

11 MS. WILLIAMS: So common sense is what the State left
12 you with. They wanted you to rely on your common sense.
13 Does a person who has a heart -- and I want to use the word
14 they used -- with malice, a heart willfully bent on
15 mischief, say to another person, "Backup. Backup.
16 Backup."? Does that sound like somebody who is lying in
17 wait waiting to ambush somebody and kill them because
18 they're mad at them? That's what they want you to believe?
19 That's what they want you to hang your hat on? That's why
20 they want you to convict this 23-year-old over here based on
21 that? The State said it better than I could've said it. I
22 was kind of shocked they did. The Solicitor told you that
23 if Christian Ham -- if Christian Himes wouldn't have shot
24 David Ham that night, that the rules would be reversed and
25 David Ham would be sitting here alleging self-defense.

1 Wasn't that the truth? The judge is going to tell you that
2 Christian has the right to use as much force as he needed to
3 protect himself. And if the State themselves are going to
4 tell you that David Ham would have alleged self-defense too,
5 well then that's the end of this case.

6 Murder is the intentional killing of the another with
7 malice aforethought. They said malice aforethought. They
8 defined it for you. I defined it a couple of times. It's
9 with a wicked heart, with a heart fatally bent on mischief.
10 And the other part of the law in this case is self-defense.
11 So we've got murder. They have to prove intentional killing
12 with malice aforethought. And then they've got self-defense
13 that they have to disprove. So they've got both things
14 going on. The State has both things going on. And
15 self-defense is Christian was without fault in bringing on
16 the conflict. Christian had a reasonable belief that he was
17 in imminent danger of serious bodily injury; that a
18 reasonable man or women would've felt the same way, and that
19 Christian had no other means of avoiding the danger. And at
20 the beginning of this trial we talked about law and order
21 and I told you about, you know, Matlock and all the things
22 we hear in court and all the words that we use, the legalese
23 we use, you know, prove beyond a reasonable doubt and
24 presumption of innocence, the right to remain silent, the
25 right to a lawyer. And those are just words. I mean, I say

1 them and say them and say them. It doesn't mean anything.
2 So what I try to do is I try to give you an image of what
3 needs to happen here. And I want you to try to remember
4 that image when you're back in the jury room. And what that
5 image is, is that there's a presumption of innocence just
6 like we would all hope to be presumed innocent if we're ever
7 accused of a crime. And Christian Himes is presumed
8 innocent.

9 Can you stand up for me, Christian. He's presumed to
10 be an innocent man. That is where you start. He is
11 presumed innocent of everything. And that the State has the
12 burden of proof. And what that means is the State has to
13 bring evidence. This and this and this and the testimony,
14 and they have to build a wall. They have to build a wall
15 that has no holes in it. They have to build a wall so high
16 that you can't see an innocent man sitting on the other
17 side of it. And if we brought stuff in front of you that
18 maybe tore down parts of it or kicked holes in that wall,
19 they have to patch it back up again. That's what proof
20 beyond a reasonable doubt is. If you have a doubt, if you
21 hesitate as a reasonable person in deliberating this case,
22 that's what reasonable doubt is. And you have to find
23 Christian Himes not guilty. And that's the baseline.
24 That's where we start our story. And so keeping that wall
25 in mind, I want to talk about what we've heard over the past

1 couple of days.

2 The State, like I said, has the burden to prove beyond
3 a reasonable doubt that Christian had a malicious heart.
4 They also have the burden to disprove beyond a reasonable
5 doubt every element of self-defense to you. Those are the
6 two things they have going on that they have to do in order
7 for you to find Christian Himes guilty. The evidence that
8 we heard over the past couple of days is that in 2008
9 Heather Ham and Christian Himes met at a group home. She
10 was his counselor. She was significantly older than him.
11 He was 14. And as the State, not so kindly, pointed out
12 during the testimony, Christian has nobody sitting behind
13 him in the courtroom. Nobody. And I think that's probably
14 indicative of his entire life. He told you he bounced
15 around, never really had anybody raise him. But when he was
16 14 at a group home, he met Heather Ham. She was pretty and
17 educated and kind. And he grew a crush on her. I mean, who
18 wouldn't? She was privy to everything about him: his past,
19 his difficulties, who he was as a person. And she gave him
20 her cell phone number. And he continued on this bumpy path.
21 He pled guilty to burglary and petty larceny. He stole
22 something out of a house; went to prison for it. And he
23 continued to keep in touch with her. And when he got out,
24 he went to Columbia because that's where he was on
25 probation. He went to Columbia because that was his prior

1 residence. He was reporting to a probation officer. He got
2 a part-time job. And he reached out to the only person in
3 his life that had ever meant anything, and that was Heather
4 Ham. And he told you and she told you, at first, it was not
5 romantic. She was helping him get back on his feet. I
6 think she tried to tell you that she wasn't excited to see
7 him or that she blew him off. But then when confronted with
8 the letter that she wrote in December of 2013, she
9 acknowledged, yeah, she was excited to see him. And they
10 started what both of them called a loving relationship.

11 He met her kids. He did homework with them. She said
12 he was a good role model, that they adored him. And for the
13 first time in his life, he had a home. He had a place that
14 he considers safe. A person that he could turn to. At
15 times he had keys to the apartment. He borrowed the car.
16 He took him to get his hair cut. She sat on his lap on the
17 porch. They did things as a family. They went to the
18 playground. And that was where he was in September, October
19 of 2015. And he knew about David Ham. He knew what Heather
20 had told him and that's all he knew. He didn't know other
21 -- how would he have any other knowledge of this man other
22 than what Heather told him? She told him about the time
23 that David hit her so hard he left a permanent scar on her
24 lip. She told him about the time that he drug her -- that
25 David drug her out of the house kicking and screaming. And

1 Christian knew to be afraid of this guy. How did he know?
2 Because he had to hide, cowering, in the bedroom every time
3 David Ham came to pick up or drop off his kids. He knew
4 because Heather would say to him, shh, go in there. She
5 never went to David. I mean, we know that she wasn't afraid
6 of the way Christian would react towards David Ham because
7 Christian knew everything. Christian was the one in the
8 closet or in the bedroom or being dropped off at the bank.
9 We know that she was afraid of David Ham's reaction a couple
10 of different ways. We know, one, because she never told
11 David about Christian. She never went to David and said I've
12 got this boyfriend and, you know, just don't go near him.
13 He might hurt you. So we know that she was protecting
14 Christian from David Ham. We also know that she wrote a
15 letter in December of '15. We confronted her with it and
16 she acknowledged, yeah, I wrote that letter. And in that
17 letter she wrote that she didn't introduce the two of them
18 because she was afraid of David's reaction. She read it to
19 you from the witness stand. She read to you that she was
20 afraid David would become enraged and angry. She read to
21 you from that letter that she was afraid of David Ham and
22 that other people were afraid of him because of his violent
23 tendencies. And so those are the things that Christian
24 Himes knew about David.

25 He knew he was a tall guy. They testified, he's

1 six-foot. At least 72 inches is what the doctor testified
2 to; six-foot tall, 72 inches. We know that Christian knew
3 he had to hide from him. And we also know on October 30th
4 of 2015 angry text messages came through. Is it our fault
5 that we don't have all the text messages? You know, the
6 State wants to blame it on us that we didn't present all the
7 text messages. We know that there were several. We know
8 that Heather Ham said there were several text messages. We
9 know that Christian said I don't know, if they were phone
10 calls, but I know that there were several angry text
11 messages. We have the one, "Don't let me catch your
12 boyfriend slipping." Christian said I took that as a
13 threat. And how do we know he took it as a threat? Because
14 of what Heather told you, his immediate response when he saw
15 that wasn't, "How dare he? How dare he threaten me? How
16 dare he? How dare he do that?" His immediate response
17 wasn't anger. It wasn't I'm going to go beat him up. It
18 wasn't any of that. It was can he fight. Heather told you
19 that. And she told him, yeah, he can fight. And then he
20 asked do I need to get a gun; not I'm going to go blow that
21 guy up or I'm going to go beat him up or I'm going to go
22 kill him. None of those. What was his first response to
23 those text messages? Pure unadulterated fear. And you
24 don't have to listen to Christian tell you that. You don't
25 got to believe him if you don't want to understand that his

1 reaction was fear. You can believe Heather. You can
2 believe the witnesses from the apartment building who told
3 you he said backup, backup. We know that his first response
4 was not malice. It wasn't a depraved heart. We know his
5 first response was fear.

6 And so after the text messages on November 1, 2015,
7 Christian asked Heather Ham to borrow her car and that was
8 pretty typical. He had done that before. He didn't have a
9 car. And he was gonna go take a friend to West Ashley. He
10 was not from here. He was supposed to be back by eight. He
11 ended up coming back at 9:30. I don't know why. And he
12 really doesn't have an answer either. I didn't know my way
13 around. It took a lot longer. West Ashley is really far
14 away. He said he took a back road. I can only imagine it
15 was 61 or something from West Ashley all the way back to
16 Summerville. And the State wanted to argue, you know, it
17 had to have been a shorter route. But the reality is from
18 West Ashley, come up 61, it's actually longer to get back to
19 that corner of Dorchester Road. But he came back an hour
20 and a half later. And he was anxious because he knew
21 Heather was going to be mad because he had done this before.
22 And he's bee bopping into the only place he knows as home.
23 I mean, it's the place where he's staying. He keeps his
24 toothbrush and his clothes there. That's it. I mean, they
25 want you to believe he's somehow at fault for walking up to

1 a place where he lives, where he's staying. How dare he
2 come back with the car that he borrowed and had to bring
3 back. At one point, they want to say he's so bad he
4 returned an hour and a half late. And then on the other
5 hand they want to say he's so bad for coming back to this
6 place where he was living. Which way do they want it? Do
7 they want him to not return the car or do they want him to
8 return the car and not live there? So they want to accuse
9 him of something. They want him to be wrong. But all he's
10 doing is trying to get back and he knows he's in the wrong
11 for being an hour and a half late.

12 He's met by Heather. And she told you what happened.
13 She comes out and she says David is in there. And I asked
14 her, well, how did he react? How did Christian react? Did
15 he bow up? Oh, how dare he? Are you guys talking? What
16 are doing? No. She said, "No. All I did was say okay,
17 okay. I'll be back." And he took off. He went and got back
18 in the car just like she let him with her house keys. He's
19 got her house keys, her car keys. He gets back in the car
20 and he goes to the gas station. And he buys some cigars and
21 he rolls some marijuana. You know, he's so brutally honest
22 about that. I mean, he don't want y'all thinking bad about
23 him. But he told you the truth. That's what I did. That's
24 how I knew I was there for 30 or 45 minutes. That's why he
25 wanted the police to get that video footage. There wasn't

1 anybody else asking for that. There's nobody else out there
2 saying please officer, please go get this to prove what I
3 did, to show everybody I didn't do anything other than go to
4 this gas station and wait for this man to leave my house.
5 And then he comes back 45 minutes later fully expecting
6 David Ham to have been gone. I mean, and the State wants to
7 say, you know -- I think he said I submit to you, he waited
8 in his car. He saw David come out. He saw him go back in.
9 He saw him come out and then he confronts him with a gun.
10 Well, that doesn't make any since. Why would he pull the
11 car in frontways, number one? Why would he back the car in
12 if he's going to make a quick get-a-way? Or why would he
13 even pull the car in there at all? Why would he just -- the
14 gas station is across the street -- leave the car there,
15 walk over, kill the guy, and then run back? I mean, if he
16 really was there with a malicious heart to hurt somebody,
17 why in the heck would he pull the car in frontways, park it
18 right by David Ham's car, grab all his stuff up and go back
19 up into the breezeway, the fully lit breezeway? Why would
20 he do that? He did it because he had no idea that David Ham
21 was still there. And he's still nervous because he think
22 Heather's gonna give him the what for. And so he walks in
23 and here comes David Ham. And what do we know? We know
24 that the witnesses told you we know what David Ham said,
25 "You're not going into that apartment." We know what David

1 Ham said, "You're not going to be the father to my
2 children." What does that mean? If you're not going to be
3 the father of my children, if you're going into that
4 apartment, something has got to be done with him. Come on.
5 That's clear. It's in the statement. Read it. He said it
6 to him, "Come on. I'm not afraid of your gun. Come on,"
7 while Christian backed up. You saw the video. He backed up
8 from the lit area, down the stairs. He's keeping his face
9 right towards this man who is grossly intoxicated, two and a
10 half times the legal limit. You heard the testimony. That
11 makes a person way more aggressive especially when he's
12 already prone to violence.

13 And so we have this grossly intoxicated man who has
14 just transported his two children, by the way. Why didn't
15 he keep them at his house? Probably would've been the safer
16 option. Didn't wait until the car was available. No,
17 instead he gets his .197 grossly intoxicated self into a
18 vehicle and transports his two children back to this place.
19 But somehow Christian Himes is at fault. But he brings
20 these two children back and he's coming out of this
21 breezeway, this lit breezeway. Christian is backing away
22 from the light because he's got two options. He can either
23 go home, which is behind this six-foot tall man who is
24 grossly intoxicated, or he can go to his car, which is
25 behind them. And so what does this 22-year-old do? He

1 backs into the darkness, step-by-step, while this man is
2 yelling at him. And we know he was yelling. We know that
3 David Ham was yelling because the witnesses in the apartment
4 complex tell you they heard it. They turned their TVs down.
5 What is that noise? Heather Ham said I heard him the
6 breezeway screaming, yelling. And all we know that is David
7 Ham was saying, "You're not going to be a father to my
8 children. You're not going into this apartment. Come on.
9 Come on." And he's moving towards Christian. Who here has
10 the malicious heart? Who here is the predator? And who
11 here is the prey? Who here is advancing and who here is
12 backing up, and saying backup, backup?

13 He doesn't have to wait for this man to pull a gun out
14 of his pocket and shoot him. That's the law. He doesn't
15 have to wait for that. He has the right to
16 self-preservation just like everyone else does. He has the
17 right to pull the gun in warning and say backup. I am
18 scared. Back up. You're fighting me. Back up. And then
19 he lunged. And if Christian Himes was malicious, if he
20 wanted to destroy this man -- you know, the State talks
21 about he was jealous, he was mad, he was upset. Nowhere
22 does anybody say that. Nowhere does anybody say that
23 Christian Himes ever said he was upset or mad or jealous of
24 this man. The only jealous person in this situation is
25 David Ham who was in this apartment with his ex-wife, or

1 soon-to-be ex-wife or separated for a year and half wife,
2 talking about reconciling. And then he comes out to find
3 the boyfriend. Who's jealous? Who's the predator? Who's
4 the prey? Who's advancing? Who's retreating? And as
5 Christian is retreating he has one, one shot. We know that
6 that revolver was completely loaded. If he was shooting in
7 anger, he would've emptied that gun. He was shooting to get
8 away. He was shooting because he was trying to get to his
9 car because that was the only avenue he had left. He
10 couldn't get past the man, and so he was retreating into
11 this extraordinarily dark parking lot. And when he lunged,
12 he had a quick choice to make: It's either me or him. I
13 don't know what he's got in his hands. I don't know what he
14 has on his person. If that's not self-defense, what is?

15 That wall that I asked you to imagine that the State
16 has to build, do you see the holes in it? Do you believe
17 that Christian Himes acted with a malicious heart bent on
18 depravity? Bent on malicious fatal intent? Because if you
19 see the holes in the wall, you have to find Christian Himes
20 not guilty. Thank you.

21 THE COURT: Any reply?

22 AST. SOL. SORENSON: Just, real, real briefly, Your
23 Honor. Ladies and gentlemen, just a couple things I want to
24 touch on. And I may have misheard Ms. Williams initially,
25 but I wanted to make sure that it's clear in everybody's

1 mind. We don't have to disprove every element of
2 self-defense beyond a reasonable doubt. Just one. I submit
3 to you, in this case, we did. Every one of them, there's no
4 doubt, don't exit. She talks about malice. Your Honor, is
5 going to charge you about malice. It's malice aforethought.
6 That's the definition, malice aforethought. What that means
7 is at the time that that trigger, that that fatal blow was
8 struck, that malice had to have existed. It had to have
9 existed for ten minutes prior; an hour prior. It didn't had
10 to exist a minute and 15 minutes -- seconds -- one minute
11 and 15 seconds prior. It had to have existed at the time
12 the fatal blow was fired.

13 She started off by commenting about me saying that if
14 David had actually, let's say, shot and missed him. And he
15 had followed through and gotten ahold of Christian Himes,
16 and as a result of that Mr. Himes had been killed. I'm not
17 sure how she twisted that around to basically show that that
18 proved that he was justified in self-defense. Ladies and
19 gentlemen, I submit to you, if the facts were that David Ham
20 pulled a gun on him, then we wouldn't be here. If David Ham
21 had pulled a gun on him and as a result got himself killed,
22 he'd be justified in self-defense. Because then he would've
23 been in imminent danger of losing his life or suffering
24 serious body injury. So I'm not sure how she twisted that
25 around to basically say that I was basically saying that he

1 was justified in doing what he did.

2 And she talked about -- she talked about the defendant
3 cowering in a bedroom. Ladies and gentlemen, I mean,
4 Heather Ham obviously did not want the two of them to meet.
5 And I can imagine that there are a lot of reasons for that.
6 But, yet again, this is a new boyfriend who is 23 years old,
7 and he's significantly younger than her and her husband. I
8 mean, basically, she's hiding him so they would not meet
9 each other. And, obviously, at some point in time, if that
10 relationship continued, they would've had to of. But I
11 submit to you, it wasn't him cowering. It's more the fact
12 that she didn't want -- wasn't at a time. I mean,
13 literally, he's been in her life for five weeks. He was
14 living in her apartment. It's reasonable that her husband
15 may have had some concern that that if he had found out at
16 that point in time that she had a 23-year-old who had just
17 gotten out of prison, basically doesn't have a job, got a
18 prior conviction for burglary and larceny, according to him,
19 likes to smoke weed, toting a gun around, around his eight-
20 and four-year-old children. I can see how that's something
21 that she probably wasn't quite ready to spring on her
22 husband quite yet. And just turn this pure unadulterated
23 fear at this text message. Ladies and gentlemen, just use
24 your common sense. I mean, he told you, I mean, I got no
25 problem fighting. Been in fights before. Wrote a letter to

1 her about her eight-year-old son saying who's going to be
2 there to teach him how to fight if I'm not.

3 And the last thing I just want to briefly touch on is
4 she -- Ms. Williams talked about, you know, that Christian
5 Himes had two options that night. Two options that night to
6 either go into that apartment or go back to his car. I
7 submit to you, if he did either one of them, yet again, we
8 wouldn't be here. He chose the third option. The third
9 option. He chose to be the one that was going to introduce
10 a deadly weapon to this equation. He chose to be the one to
11 point a loaded firearm at another man. And he chose to be
12 the one to pull that trigger. I submit to you as a result
13 of that, he's guilty; guilty of the murder of David Ham.

14 Thank you.

15 JURY CHARGE

16 THE COURT: Ladies and gentlemen of the jury, it's now
17 time for me to charge you on the law in this case. The
18 indictment charges the defendant with murder and with
19 possession of a firearm during the commission of a violent
20 crime. I remind you that the fact that the defendant was
21 arrested, charged, and indicted in this case is not evidence
22 in this case. It cannot be considered by you as evidence of
23 guilt in this case, nor does it create any presumption or
24 inference of guilt. The document is simply the formal
25 written instrument which contains a charge made against the

1 defendant. It is a formal document by which this case is
2 brought into this Court.

3 The indictments in this case allege two different
4 offenses against the defendant. Again, the charges are
5 murder and possession of a weapon during the commission of a
6 violent crime. Each indictment charges a separate and a
7 distinct offense. You must decide each indictment
8 separately on the evidence and the law applicable to it
9 uninfluenced by your decision as to any other indictment.
10 The defendant may be convicted or acquitted on any or each
11 of the offenses charged. You will be asked to write a
12 separate verdict of guilty or not guilty for each
13 indictment. The defendant has pled not guilty to these
14 indictments and that plea puts the burden on the State to
15 prove the defendant guilty. The person charged with
16 committing a criminal offense in South Carolina is never
17 required to prove himself innocent. I charge you that it is
18 an important rule of the law that the defendant in a
19 criminal trial, no matter what the seriousness of the charge
20 may be, will always be presumed innocent of the crime for
21 which the indictment was issued unless guilt has been proven
22 by evidence satisfying you of that guilt beyond a reasonable
23 doubt.

24 This presumption of innocence does not end when you
25 begin your deliberations. But it accompanies the defendant

1 throughout the trial until you reach a verdict of guilt
2 based on evidence satisfying you of that guilt beyond a
3 reasonable doubt. The presumption of innocence is like a
4 robe of righteousness placed about the shoulders of the
5 defendant which remains with the defendant until it has been
6 stripped from defendant by evidence satisfying you of the
7 defendant's guilt beyond a reasonable doubt. The
8 presumption of innocence is not a mere legal theory. It is
9 not just a legal phrase. It is a substantial right to which
10 every defendant is entitled to unless you the jury are
11 satisfied from the evidence of the defendant's guilt beyond
12 a reasonable doubt.

13 What is a reasonable doubt in the law? A reasonable
14 doubt is the kind of doubt that would cause a reasonable
15 person to hesitate to act. The State has the burden of
16 proving the defendant guilty beyond a reasonable doubt.
17 Some of you may have served as jurors in civil cases where
18 you were told it is only necessary to prove that a fact is
19 more likely true than not true such as by the greater weight
20 or the preponderance of the evidence. In criminal cases,
21 the State's proof must be more powerful than that. It must
22 be beyond a reasonable doubt. Proof beyond a reasonable
23 doubt is proof that leaves you firmly convinced of the
24 defendant's guilt. There are very few things in this world
25 that we know with absolute certainty, and in criminal cases

1 the law does not require proof that overcomes every possible
2 doubt. If based on your consideration of the evidence, you
3 are firmly convinced that the defendant is guilty of the
4 crime charged, you must find the defendant guilty. If, on
5 the other hand, you think there's a real possibility the
6 defendant is not guilty, you must give the defendant the
7 benefit of the doubt and find him not guilty.

8 I remind you that during this trial you and I have
9 certain duties to perform. As a trial judge, it's my
10 responsibility to preside over the trial of the case, and I
11 also have the duty to rule on the admissibility of the
12 evidence offered during this trial. You are to consider
13 only the competent evidence before you. If there was any
14 testimony ordered stricken from the record in this case
15 during this trial, you must disregard that testimony. You
16 are to consider only the testimony which has been presented
17 from the witness stand, any exhibits which have been made
18 part of the record in this case, and any stipulations of
19 counsel. I have the additional duty to charge you the law
20 applicable to this case. As the presiding judge, I'm the
21 sole judge of the law in this case. And it is your duty as
22 jurors to accept it and apply the law as I now state it to
23 you. If you already have any ideas as to what the law is or
24 what the law ought to be and it does not agree with what I
25 now tell you the law is, you must abandon this idea because

1 you are sworn to accept the law and apply the law exactly as
2 I state it to you.

3 In every case tried in this court before a jury, the
4 jury becomes the sole and exclusive judge of the facts in a
5 case. A trial judge cannot intimate, state, comment on, or
6 make any statement to a trial jury about the facts in a
7 case. Since you, the jury, are the sole judges of the facts
8 in this, you're not to infer from what I have said during
9 the process of this trial in ruling upon the admissibility
10 of evidence, or otherwise, or anything that I say now during
11 the course of this instruction to you, that I have any
12 opinion about the facts in this case. The law does not
13 allow me to have an opinion about the facts in this case.
14 This is a matter solely for you, the jury, to determine.

15 As jurors, it's your duty to determine the effect,
16 value, weight, and the truth of the evidence presented to
17 you during this trial. There are two types of evidence
18 which are generally presented during a trial: direct
19 evidence and circumstantial evidence. Direct evidence is
20 the testimony of a person who claims to have actual
21 knowledge of a fact such as an eyewitness. Circumstantial
22 evidence is proof of the chain of facts and circumstances
23 indicating the existence of a fact. The law makes
24 absolutely no distinction between the weight or value to be
25 given to either direct or circumstantial evidence, nor is a

1 greater degree of certainty required of circumstantial
2 evidence than of direct evidence. You should weigh all of
3 the evidence in this case. After weighing all of the
4 evidence, if you're not convinced of the guilt of the
5 defendant beyond a reasonable doubt, you must find the
6 defendant not guilty.

7 Necessarily, you must determine the credibility of
8 witnesses who have testified in this case. Credibility
9 simply means believability. It becomes your duty as jurors
10 to analyze and to evaluate the evidence and determine which
11 evidence convinces you of its truth. In determining the
12 believability of witnesses who have testified in this case,
13 you may believe one witness over several witnesses or
14 several witnesses over one witness. You may believe a part
15 of the testimony of the witness and reject the remaining
16 part of the testimony of that same witness. You may believe
17 the testimony of a witness in its entirety or reject the
18 testimony of a witness in its entirety. You may consider
19 whether the witness has exhibited to you any interest, bias,
20 prejudice, or other motive in this case. You may also
21 consider the appearance and the manner of a witness while on
22 the witness stand.

23 The rules of evidence ordinarily do not permit
24 witnesses to testify as to opinions or conclusions. An
25 exception to this rule exists for witnesses we call expert

1 witnesses. A witness who by education and experience has
2 become an expert in some art, science, profession, or
3 calling may state an opinion as to relevant and material
4 matter in which the witness claims to be an expert, and they
5 also state the reasons for that opinion. You should
6 consider any expert opinion received in evidence in this
7 case, and like any other evidence, give it the weight that
8 you think it deserves. If you decide that the opinion of an
9 expert witness is not based on sufficient education and
10 experience, or if you conclude that the reasons given in
11 support of the opinion are not sound or that the opinion is
12 outweighed by other evidence, you may disregard that opinion
13 entirely. An expert witness's testimony is to be given no
14 greater weight than that of other witnesses simply because
15 the witness is an expert. Further, you are not required to
16 accept an expert's opinion even though it's not
17 contradicted.

18 There has been evidence presented that witnesses have
19 made prior statements which are not consistent with the
20 witnesses present testimony. You may use this evidence to
21 decide whether to believe the witness. You may also use
22 evidence of the earlier contradictory statements to
23 determine the truth of those statements. It is up to you to
24 decide whether to believe the earlier statements or the
25 testimony given at trial. If a witness has shown to have

1 knowingly testified untruthfully concerning any material
2 matter, you may consider this in determining whether to
3 trust the witnesses testimony as to other matters. You may
4 reject all testimony of that witness or give all or part of
5 the testimony the weight that you think it deserves.

6 The statement alleged to have been made by the
7 defendant has been admitted into evidence in this case.
8 While the Court has determined that the statement is
9 admissible, I instruct you that you make the ultimate
10 decision as to whether or not the defendant made the
11 statement. If the defendant did make a statement, you must
12 determine whether the statement was made by the defendant
13 voluntarily and of his own free will. This means that the
14 statement was not caused by pressure, force, fear, threats,
15 coercion, or intimidation, or by hope or a promise of
16 leniency or a reward of any kind. In determining whether
17 the statement was voluntary, you should consider both the
18 characteristics of the defendant and the details of the
19 questioning. Some of the factors that you must consider are
20 the age of the defendant, the defendant's education or lack
21 of education, the defendant's mental abilities or capacity,
22 the defendant's IQ or intelligence, the defendant's
23 background and environment, the place and length of the
24 detention, the nature of the questioning, and the advice or
25 lack thereof to the defendant of his constitutional rights

1 including but not limited to the right to remain silent,
2 that any statement could be used against him in a court of
3 law, the right to have a lawyer present, that if he could
4 not afford a lawyer, a lawyer would be appointed to
5 represent him without any cost, and that he could stop
6 making a statement any time. You must carefully consider
7 all of the surrounding circumstances before you give any
8 weight to an alleged statement. The State has the burden of
9 proving beyond a reasonable doubt that the alleged statement
10 was voluntary. If you determine it was, you may give the
11 statement any further consideration that you deem proper.
12 You must decide what weight, if any, should be given to the
13 alleged statement. If you determine the alleged statement
14 was not a free and voluntary statement of the defendant, you
15 should not consider the statement at all.

16 You have heard evidence that the defendant was
17 convicted of a crime other than the one for which the
18 defendant is now on trial. This evidence may be considered
19 by you if you concluded it's true only in deciding whether
20 the defendant's testimony is believable and for no other
21 purpose. You must not consider the defendant's prior record
22 as any evidence in the defendant's guilt for the crime we're
23 trying here today.

24 In order to establish criminal liability, criminal
25 intent is required. For example, the mental state required

1 to be proven by the State for a particular crime might be
2 purpose, intent, knowledge, recklessness, or criminal
3 negligence. Criminal intent must be proven by the State
4 beyond a reasonable doubt. Criminal intent is always a
5 matter that must be determined by the jury from the
6 circumstances surrounding the situation. There is no way to
7 prove intent to a mathematical certainty. There is no way
8 medical science can dissect a person's brain and determine
9 what the person had in mind. So the law states that
10 criminal intent may be inferred from the circumstances shown
11 to have existed. This is how you make a determination as to
12 whether or not the element requiring intent was present. It
13 is not necessary to establish intent by direct and positive
14 evidence. But intent may be established by inference in the
15 same way as any other fact by taking into consideration the
16 acts of the parties and all of the facts and circumstances
17 of the case. Criminal intent is a mental state, a
18 conscience wrongdoing. It is up to you to determine what
19 the defendant intended to do based on the circumstances
20 shown to have existed. Criminal intent can arise from
21 action or failure to act. It may arise from negligence,
22 recklessness, or an indifference to a duty or consequences
23 that is considered by the law to be the equivalent of the
24 criminal intent.

25 The defendant is charged with murder. The State must

1 prove beyond a reasonable doubt that the defendant killed
2 another person with malice aforethought. Malice is hatred,
3 ill will, or hostility towards another person. It is the
4 intentional doing of a wrongful act without just cause or
5 excuse and with an intent to inflict an injury under
6 circumstances as that the law will infer an evil intent.
7 Malice aforethought does not require that malice exists for
8 any particular time before the act is committed. But malice
9 must exist in the mind of the defendant just before and at
10 the time that the act is committed. Therefore, there must
11 be a combination of the previous evil intent and the act.
12 Malice aforethought may be expressed or inferred. These
13 terms, express and infer, do not mean different kinds of
14 malice, but merely the manner in which the malice may be
15 shown to exist that is either by direct evidence or by
16 inference from the facts and circumstances which are proved.
17 Expressed malice is shown when a person speaks words which
18 express hatred or ill will for another or when a person
19 prepared beforehand to do the act which was later
20 accomplished. For example, lying in wait for a person or
21 any other acts of preparation going to show that the deed
22 was within the defendant's mind would be expressed malice.
23 Malice may be inferred from the conduct showing a total
24 disregard for human life. If facts are proved beyond a
25 reasonable doubt sufficient to raise an inference of malice

1 to your satisfaction, this inference would be simply an
2 evidentiary fact to be considered by you along with the
3 other evidence in the case. And you may give it the weight
4 you decide it should receive.

5 The defendant has raised the defense of self-defense.
6 Self-defense is a complete defense; and if it is
7 established, you must find the defendant not guilty. The
8 State has the burden of disproving self-defense by proof
9 beyond a reasonable doubt. If you have a reasonable doubt
10 of the defendant's guilt after considering all of the
11 evidence, including the evidence of self-defense, then you
12 must find the defendant not guilty. On the other hand, if
13 you have no reasonable doubt of the defendant's guilt after
14 considering all of the evidence including the evidence of
15 self-defense, you must find the defendant guilty.

16 The following are elements required to establish
17 self-defense. First, the defendant must be without fault in
18 bringing on the difficulty. Any act of the accused in
19 violation of law and reasonably calculated to produce the
20 occasion amounts to bringing on the difficulty and bars his
21 right to serve self-defense as a justification or excuse for
22 a homicide. If the defendant's conduct was the type which
23 was reasonably calculated to and did provoke a deadly
24 assault, the defendant would be at fault in bringing on the
25 difficulty and would not be entitled to an acquittal based

1 on self-defense. However, he may restore his right to
2 self-defense if he withdraws from the conflict and
3 communicates that decision to his adversary. Self-defense
4 is not available to a person who uses language which is so
5 contentious that a reasonable person would expect it to
6 bring on a physical encounter in which did actually
7 contribute to the physical encounter.

8 The second element of self-defense is that the
9 defendant was actually in imminent danger of death or
10 serious bodily injury or that the defendant actually
11 believed he was in imminent danger of death or serious
12 bodily injury. If the defendant was actually in imminent
13 danger, it must be shown that the circumstances would have
14 warranted a person of ordinary firmness and courage to
15 strike the fatal blow to prevent death or serious bodily
16 injury. If the defendant believed he was in imminent danger
17 of death or serious bodily injury, it must be shown that a
18 reasonably prudent person of ordinary firmness and courage
19 would have had the same belief. In deciding whether the
20 defendant actually was or believed he was in imminent danger
21 of death or serious bodily injury, you should consider all
22 of the facts and circumstances surrounding the crime
23 including the physical condition and characteristics of the
24 defendant and the victim. Where death is caused by a deadly
25 weapon, words alone however offensive are not sufficient to

1 constitute legal provocation. Depending on the
2 circumstances, words accompanied by hostile acts may
3 establish self-defense. The defendant does not have to show
4 that he was actually in danger. It is enough if the
5 defendant believed he was in imminent danger and a
6 reasonably prudent person of ordinary fairness and courage
7 would have had the same belief. The defendant has a right
8 to act on appearances even though the defendant's beliefs
9 may have been mistaken. It is for you to decide of whether
10 the defendant's fear of immediate danger of death or serious
11 bodily injury was reasonable and would have been felt by an
12 ordinary person in the same situation. Evidence of prior
13 difficulties between the defendant and the victim may be
14 considered in deciding whether a threat existed, whether the
15 defendant had a reason to believe a threat existed and how
16 serious that threat was. The relative sizes, ages, and
17 weights of the defendant and the victim may be considered in
18 deciding an apparent or actual need for force in
19 self-defense and the amount of force needed. Prior
20 instances of violence by the victim may be considered in
21 deciding whether the defendant actually believed he was in
22 imminent danger of death or serious bodily injury or was
23 actually in imminent danger. Evidence of specific instances
24 of violence on the part of the deceased if directed against
25 others are to be considered by you if they were so closely

1 connected at the point of the time or occasion with the
2 homicide as reasonably to indicate the state of mind of the
3 deceased at the time of the homicide or to produce
4 reasonable apprehension of great bodily harm. Threats made
5 by the victim may be considered in determining whether the
6 defendant actually was or believed he was in imminent
7 danger. The intoxication of the victim may be considered in
8 deciding whether the defendant's fear of death or bodily
9 harm was reasonable. A person acting in self-defense is
10 entitled to arm himself even if he typically would not be
11 able to lawfully carry a firearm.

12 The final element of self-defense is if the defendant
13 had no other probable way to avoid the danger of death or
14 serious bodily injury then to act as the defendant did in
15 this particular instance. A person cannot be required to
16 make an exact calculation as to the degree or the amount of
17 force which may be needed to avoid death or serious bodily
18 harm. Therefore, in self-defense, a defendant has a right
19 to use the force needed to avoid death or serious bodily
20 harm. The force in self-defense does not have to be limited
21 to the degree or amount of force used by the victim. The
22 defendant has the right to use so much force as appear to be
23 necessary for complete self protection in which a person of
24 ordinary reason and firmness would have believed to be
25 needed to prevent death or serious bodily harm.

1 The defendant is charged with possession of weapon
2 during the commission or attempt to commit a violent crime.
3 The State must prove beyond a reasonable doubt that the
4 defendant was in possession of a firearm or physically
5 displayed what appeared to be a firearm during the
6 commission of a violent crime. A firearm means any machine
7 gun, automatic rifle, revolver, pistol, or any weapon which
8 will as designed to or may be readily converted to expel a
9 projectile. In order to find the defendant guilty of
10 possession of a weapon during the commission of a violent
11 crime, you must first find the defendant guilty of either
12 committing a violent crime or attempting to attempt a
13 violent crime. Murder is a violent crime. The State must
14 prove beyond a reasonable doubt that the weapon further
15 advanced or helped in the commission of the crime.

16 Ladies and gentlemen of the jury, there are several
17 possible verdicts in this case. Mr. Foreman and members of
18 the jury, you will have the indictments back in the jury
19 room with you along with the verdict form. The verdict form
20 is pretty self-explanatory. It goes through each charge and
21 it says, "As to the charge of murder, we the jury
22 unanimously find the defendant," and then you circle the
23 appropriate verdict that you come to. The next charge is --
24 and it says, "As to the charge of possession of a firearm
25 during the commission of a violent crime, again, we the jury

1 unanimously find the defendant," and you circle the
2 appropriate verdict. You then sign the verdict form. It is
3 dated today's date. You then on the front of the
4 indictment, each indictment, it has a portion right here
5 that says verdict. If you would write what the verdict of
6 the jury is and sign as the foreperson and date it. The two
7 indictments, your verdict must be a unanimous verdict.
8 That, of course, means that all 12 of you must agree on the
9 verdict. I'm going to send you to the jury room for the
10 last time. But before you begin your deliberations, please
11 wait and do so until you have all the evidence and the
12 verdict forms back in the jury room. Once you do come to a
13 verdict, if you would please knock on the door and we will
14 receive your verdict at that time. Again, please retreat to
15 your jury room. Thank you.

16 (The jury exits the courtroom at 2:52 p.m.)

17 THE COURT: Any exceptions or objections to the charge
18 on the law from either the State or the defense?

19 AST. SOL. SORENSON: No, Your Honor.

20 MS. WILLIAMS: No, ma'am.

21 THE COURT: If y'all will make sure you have all the
22 exhibits together. Here is the verdict forms and the
23 indictments. I'm going to go release the alternates.

24 (The proceedings are at ease at 2:53 p.m. The jury
25 begins deliberations at 2:56 p.m.)

1 (The proceedings resumed at 3:52 p.m.)

2 THE COURT: It's my understanding that we have a
3 verdict. Anything before I bring the jury out?

4 AST. SOL. SORENSON: No, Your honor.

5 MS. WILLIAMS: No, ma'am.

6 THE COURT: Let's have our jury, please.

7 (The jury enters the courtroom at 3:53 p.m.)

8 THE COURT: Mr. Foreman, has the jury reached a
9 verdict?

10 FOREPERSON: We have.

11 THE COURT: Would you please hand it to the bailiff.

12 (Bailiff complies.)

13 THE COURT: Madam Clerk, if you would please publish
14 the verdict.

15 CLERK: Yes, ma'am. In the matter of the State of
16 South Carolina versus Christian Himes, indictment number
17 2015-GS-18-1882, 1883, as to the charge of murder, we the
18 jury unanimously find the defendant guilty. As to the
19 charge of possession of a firearm during the commission of a
20 violent crime, we the jury unanimously find the defendant
21 guilty. Dated April 6, 2017, signed by foreperson Shay
22 Byrd.

23 THE COURT: Madam Clerk, if you would please poll the
24 jury.

25 CLERK: Yes, ma'am. If you'll please stand when I call

1 your juror number. Number 35, Marsha Sweet. Was this your
2 verdict in the jury room?

3 JUROR: Yes, ma'am.

4 CLERK: Is this still your verdict?

5 JUROR: Yes, ma'am.

6 CLERK: Thank you. Number 22, Shay Byrd. Was this
7 your verdict in the jury room?

8 JUROR: Yes, ma'am.

9 CLERK: Is this still your verdict?

10 JUROR: Yes, ma'am.

11 THE CLERK: Thank you. Number 124, Ernest Stewart. Was
12 this your verdict in the jury room?

13 JUROR: Yes.

14 CLERK: Is this still your verdict?

15 JUROR: Yes.

16 CLERK: Thank you. Number 89, George Morgan. Was this
17 your verdict in the jury room?

18 JUROR: Yes, ma'am.

19 CLERK: Is this still your verdict?

20 JUROR: Yes, ma'am.

21 CLERK: Thank you. Number 23, Paul Carlton. Was this
22 your verdict in the jury room?

23 JUROR: Yes, ma'am.

24 CLERK: Is this still your verdict?

25 JUROR: Yes, ma'am.

1 CLERK: Thank you. Number 54, Johnna Green. Was this
2 your verdict in the jury room?

3 JUROR: Yes, ma'am.

4 CLERK: Is this still your verdict?

5 JUROR: Yes, ma'am.

6 CLERK: Thank you. Number 112, Peter Schwartz. Was
7 this your verdict in the jury room?

8 JUROR: Yes, ma'am.

9 CLERK: Is this still your verdict?

10 JUROR: Yes, ma'am.

11 CLERK: Thank you. Number 37, Genobia Doctor. Was
12 this your verdict in the jury room?

13 JUROR: Yes, ma'am.

14 CLERK: Is this still your verdict?

15 JUROR: Yes, ma'am.

16 CLERK: Thank you. Number 107, Dawn Richmond. Was this
17 your verdict in the jury room?

18 JUROR: Yes, ma'am.

19 CLERK: Is this still your verdict?

20 JUROR: Yes, ma'am.

21 CLERK: Thank you. Number 27, Hugh Chambrovich. Was
22 this your verdict in the jury room?

23 JUROR: Yes.

24 CLERK: Is this still your verdict?

25 JUROR: Yes.

1 CLERK: Thank you. Number 14, Benjamin Bush. Was this
2 your verdict in the jury room?

3 JUROR: Yes, ma'am.

4 CLERK: Is this still your verdict?

5 JUROR: Yes, ma'am.

6 CLERK: Thank you. And number 121, Della Smith. Was
7 this your verdict in the jury room?

8 JUROR: Yes, ma'am.

9 CLERK: Is this still your verdict?

10 JUROR: Yes, ma'am.

11 CLERK: Thank you.

12 THE COURT: Thank you. Ladies and gentlemen of the
13 jury, if you would please return to your jury room. I'll be
14 in there momentarily to release you.

15 (The jury exits the courtroom at 3:56 p.m.)

16 THE COURT: Anything further before I release the jury?

17 AST. SOL. SORENSON: Nothing from the State, Your
18 Honor.

19 MS. WILLIAMS: No, ma'am.

20 THE COURT: Solicitor, if you would please prepare the
21 sentencing sheets. And just let me know when y'all are
22 ready.

23 AST. SOL. SORENSON: Yes, ma'am.

24 (A brief recess was taken at 3:57 p.m. The proceedings
25 resumed at 4:06 p.m.)

1 THE COURT: Is the State ready to proceed with
2 sentencing?

3 AST. SOL. SORENSON: We're ready to get started. I'm
4 still waiting on one thing to get printed. But I can --
5 I've got the sentencing sheets, so we can get started. Yes,
6 Your Honor. May I approach?

7 THE COURT: Yes, sir. (Brief pause.) All right. Ms.
8 Williams?

9 MS. WILLIAMS: Thank you, Judge. May it please the
10 Court?

11 THE COURT: Yes, ma'am.

12 MS. WILLIAMS: You've heard so much about Christian
13 over the past couple of days through our pretrial motions
14 and also through the course of the trial. He's 23 years
15 old. He's from Columbia; born and raised in Columbia. He
16 has a twin brother. Both of them grew up mostly in group
17 homes. He's got not much of a prior record. You heard
18 his -- his adult record is a burglary and a petty larceny.
19 And that's it for his adult record. He has never really had
20 a stable place. And, as you know, in the courtroom, no one
21 has been here to support him. But murder is punishable by
22 anywhere from 30 years to life in prison. And there's a
23 reason for that sentencing discretion. There's a reason
24 because they want judges to consider a person's background,
25 their age, and the different mitigating factors in the

1 circumstances behind the charge. I think all of that has
2 been laid out for Your Honor, and I'm not gonna elaborate on
3 the mitigation in this case. But what I would ask is for
4 you to consider a sentence closer to the 30 years in the
5 case of Christian's charge.

6 THE COURT: Anything further from the defense?

7 MS. WILLIAMS: No, ma'am.

8 THE COURT: Solicitor?

9 AST. SOL. SORENSON: May it please the Court, Your
10 Honor? As Your Honor heard, Mr. Himes has some juvenile
11 adjudications for an aggravated assault and battery. And
12 then he does have the 2014 convictions for burglary in the
13 second degree, a petty larceny, and a malicious injury that
14 all, I think, stemmed out of same incident that he received
15 a, I believe it was, a youthful offender sentence, an active
16 sentence. So he was incarcerated for a period of time on
17 that. I do believe that David's mother, Mr. Deborah Forney
18 would like to address the Court.

19 The only other thing I would like to point out is he
20 has been -- give Ms. Williams a copy of that. Disciplinary
21 stuff from the jail. He's been incarcerated since November;
22 the evening of November 1st of 2015. And, you know, I speak
23 quite frequently with Major Van Dorn over in the jail about
24 various inmates that they some have issues with, some that
25 they don't. And I'll tell the Court that this defendant has

1 been probably the intimate that I've gotten most contact
2 from the jail about. The fact that he is just constantly
3 over the last, what are we talking, 15, 16 months now? I
4 mean, he has just been a constant problem for them:
5 assaulting other inmates; assaulting correctional officers;
6 he, unprovoked, broke a female correctional officers orbital
7 bone where he sucker punched her; damaging property at the
8 jail. That he, literally, he has -- I mean, they send me,
9 periodically, a list of like the top ten inmates, please get
10 them out of our jail as fast as you can. He's been at the
11 top of that list for the last year. And, I mean, I think
12 that goes and, you know, I'm not sure that would have
13 necessarily been admissible, and I didn't try to get into
14 any of that during his trial just to keep it more clean.
15 But I think it gives a little better glimpse of exactly who
16 Christian Himes is. I mean, he is a violent, volatile
17 individual. And, unfortunately, David Ham learned that;
18 paid the ultimate price for that back on November 1st. But
19 if Your Honor would hear from Ms. Forney, I would appreciate
20 it.

21 THE COURT: Certainly.

22 MS. WILLIAMS: And can I also, Judge, just for the
23 record, and I believe that his competency evaluation has
24 been marked as a Court's exhibit. And I believe you
25 probably reviewed it when you marked it. And just also to

1 use that for mitigation purposes for sentencing; the PTSD
2 diagnosis and the different treatment and diagnoses that he
3 has carried over the years.

4 THE COURT: Yes, ma'am.

5 AST. SOL. SORENSON: And I believe Ms. Ham also would
6 like to address the Court. She's been kind of going back
7 and forth on that, so . . .

8 THE COURT: Good afternoon, ladies.

9 MS. FORNEY: Good afternoon, Judge. My name is Teresa
10 Forney. That's F-O-R-N-E-Y. I just want everybody to know
11 that this last year and a half has been so hard and
12 difficult for David's entire family. Not only did Heather
13 lose her husband, who she was working on getting back
14 together with, Kingston and Lincoln lost their father. So
15 now they are going to have to grow up without their father
16 in their lives. I lost my firstborn child who I miss and
17 love with all my heart. And this is, like I said -- and my
18 dad lost his grandson. My mom lost a grandson. My family
19 lost an uncle. My youngest son lost his brother. And it
20 has been just so difficult for us. And now Kingtson,
21 Lincoln, David is not going to be there for school
22 activities, teaching the child right from wrong, watching
23 them grow up, proms, high school graduations, and whatever
24 life has in plan for them two little boys. My family and I
25 ask for you, Your Honor, to give him the maximum sentence

1 allowed by the Court. Thank you.

2 THE COURT: Yes, ma'am.

3 MS. HAM: My name is Heather Ham, of course. And I
4 just want to say that, yes, this has been the most
5 life-changing thing that has ever happened to me. I never
6 expected my life to be absent of David. And both of my kids
7 are special needs. And it was a challenge for the both of
8 us, but now I have to do that by myself. I don't have him
9 anymore. And my kids ask me still -- my youngest doesn't
10 understand where his daddy is. And I don't know how to tell
11 them. I had to tell my oldest child that Daddy fell on a
12 stick. And it has changed their lives forever. And I don't
13 know how I'm going to get through this, but I know I have to
14 do it for them. But they will never see him again for the
15 rest of their lives. And I never wanted my children to grow
16 up without their father. And that's all I have to say.

17 THE COURT: Thank you, Ms. Ham.

18 AST. SOL. SORENSON: That would be all for the State,
19 Your Honor.

20 THE COURT: Anything further from anyone?

21 AST. SOL. SORENSON: No, Your Honor.

22 (Brief pause.)

23 MS. WILLIAMS: Judge, my client would like to address
24 the Court.

25 THE COURT: Mr. Himes?

1 THE DEFENDANT: Yes, ma'am. I just want to say that
2 every day goes by that I don't feel some type of remorse for
3 what happened. But I never thought I would be standing here
4 being found guilty of murder for defending myself. I'm not
5 here asking for forgiveness. And I'm not apologizing for my
6 actions because that's not going to bring him back. I don't
7 regret my split-second decision of saving my own life. The
8 only thing I regret is falling in love with a ho. And I
9 just want to thank her for this time that I'm about to do.
10 Because not one, but two lives has been lost. That's all I
11 want to say.

12 THE COURT: Well, Mr. Himes, certainly, it's always a
13 difficult situation to have to sentence a young person who
14 has committed such a horrible act. The fact of the matter
15 is you had, I understand, a difficult upbringing. And I
16 certainly understand that. However, your choices are your
17 choices. And you're the one that chose your actions that
18 night, and you're simply responsible for the consequences of
19 your actions. Your actions speak louder than your words.
20 Since your incarceration, I understand that you have been
21 nothing but a problem. You've shown no remorse. You still
22 show no remorse for your actions and the consequences of
23 that. And that's certainly a factor for me consider as to
24 whether or not you're a person that can be successfully
25 rehabilitated and enter back into the community; in a safe

1 way, reenter the community. Your prior record -- even
2 though your adult record was for burglary, your juvenile
3 record also exhibits signs of violence and a history of
4 disregard and a complete disregard for the law as you have
5 exhibited here today.

6 On indictment 2015-GS-18-1882 for the crime of murder,
7 you're hereby committed to the State Department of
8 Corrections for the remainder of your life. On indictment
9 2015-GS-18-1883, you're hereby committed to the State
10 Department of Corrections for a period of five years.
11 That's concurrent to your life sentence. He's dismissed.

12 AST. SOL. SORENSON: Thank you, Your Honor.

13 (The proceedings in the trial of this matter concluded
14 at 4:17 p.m.)

15

16

(End of Record)

17

18

19

20

21

22

23

24

25

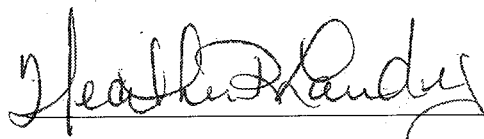
1 STATE OF SOUTH CAROLINA)
) CERTIFICATE OF REPORTER
 2 COUNTY OF CHARLESTON)

3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

I, HEATHER R. LANDRY, Official Court Reporter for the
 Judicial Department of the State of South Carolina, do
 hereby certify that the foregoing is a true, accurate and
 complete Transcript of Record of the proceedings had in the
 trial of the captioned case, in the Court of General
 Sessions for Dorchester County, South Carolina, on the
 3rd-6th day(s) of April 2017.

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

September 11, 2017



Heather R. Landry, CVR
 Official Court Reporter

This is a certified original of the Transcript of Record
 requested by and provided to the following party: South
 Carolina Commission on Indigent Defense .

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Linda Walsh
Dorchester County Coroner's Office
212 Deming Way, Suite 2
Summerville, SC 29483

TOXICOLOGY DEPARTMENT
December 15, 2015
SLED No: L15-14759
Your Case No: FA15733
Incident Date: 11/01/2015

[V-Deceased] David S Ham

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

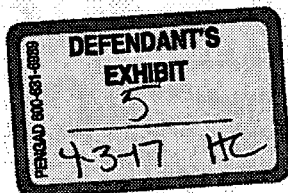
Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE

Item: 1 **Sample Type: Blood (Toxicology) - Perihperal Blood labeled "HAM, DAVID
S. FA15-733"**

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Ethanol	0.194	% (g/dL)	0.010
Methanol	Negative	% (g/dL)	0.010
Acetone	Negative	% (g/dL)	0.010
Isopropanol	Negative	% (g/dL)	0.010



CALEA



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014
P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SLED No :L15-14759

Page 2 of 3

12/15/15

Screen by Enzyme Linked Immunosorbant Assay (ELISA)

Analyte	Result	Units	Threshold
Amphetamine	Negative	mg/L	0.100
Benzodiazepines	Negative	mg/L	0.050
Buprenorphine	Negative	µg/L	1.000
Carisoprodol	Negative	mg/L	0.500
Cocaine Metabolite	Negative	mg/L	0.200
Methadone	Negative	mg/L	0.050
Methamphetamine	Negative	mg/L	0.100
Oxycodone	Negative	mg/L	0.075
Tramadol	Negative	mg/L	0.050
Zolpidem	Negative	mg/L	0.020
Cannabinoids	Negative	mg/L	0.030

Analysis by Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Opiates	Negative		

Analytes of interest include: Codeine, Hydrocodone, Dihydrocodeine, Hydromorphone, Oxycodone, Oxymorphone, 6-Monoacetylmorphine, and Morphine.

Item: 2 **Sample Type: Urine - labeled "HAM, DAVID S. FA15-733"**

No Analysis Performed

Item: 3 **Sample Type: Ocular fluid - labeled "HAM, DAVID S. FA15-733"**

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Ethanol	0.198	% (g/dL)	0.010
Methanol	Negative	% (g/dL)	0.010
Acetone	Negative	% (g/dL)	0.010
Isopropanol	Negative	% (g/dL)	0.010

CALEA



ALI-359-T

AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 898-7300 Fax (803) 898-7351

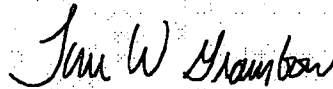
574

SLED No :L15-14759

Page 3 of 3

12/15/15

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.



Tim W. Grambow
Forensic Toxicologist

CC: Ellen Riemer - MUSC Medical Center

For any additional interpretation of results please contact the Toxicologist above at the SLED Toxicology Department , (803) 896-7385

CALEA



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014
P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 898-7351



SLED LABORATORY FORENSIC SERVICES REQUEST

SLED LAB No. L15-14759
Submission: 1 11/9/2015 11:10:07AM

Name of Investigating officer: <u>Linda Walsh</u>	ORI No: <u>SC018013M</u>
Agency: <u>Dorchester County Coroner's Office</u> Phone No: <u>(843) 832-0381</u>	Agency Case No: <u>FA15733</u>
Fax No: _____ Email: _____	Offense: <u>HOMICIDE</u>
Mailing Address: <u>212 Deming Way, Suite 2</u>	County: <u>Dorchester</u>
City / State / Zip: <u>Summerville, SC 29483</u>	Offense Date: <u>11/01/2015</u>
CC: _____	Officer involved Shooting <input type="checkbox"/> Yes
	Rush: <input type="checkbox"/> Yes

Is this evidence related to another lab number?

Yes No

If yes, Lab Number: _____

SLED ITEM No LAB ONLY	Agency Item No.	Description of Evidence	Analysis Requested
1	001	Blood (Toxicology) - HAM, DAVID ONE CONTAINER OF URINE	TOXICOLOGY
2	002	Urine - Ham, David_two grey tubes of peripheral blood	TOXICOLOGY
3	003	Ocular fluid - Ham, David_one eppendorff container of vitreous	TOXICOLOGY
4	004	Blood standard - Ham, David_one blood spot card	DNA ANALYSIS

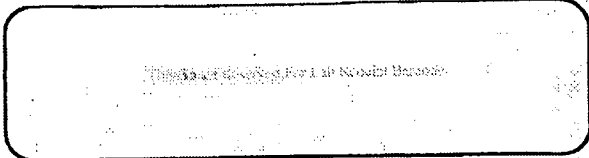
Victim(s) Deceased	Sex	Race	DOB	SSN
David S Ham	M	W	11/14/1978	

Comments

Case Comments: CC: Dr. Ellen Riemer at Medical University of South Carolina

Submission Comments: Delivered through "SC State Courier" System

All sealed evidence packages accepted by the laboratory are assumed to contain what they are "said to contain" by the submitter. The laboratory does not conduct a detailed inventory of evidence package contents during the evidence intake process.



**SLED LABORATORY
FORENSIC SERVICES REQUEST**

SLED LAB No. L15-14759
Submission: 11/9/2015 11:10:07AM

Submitted By :

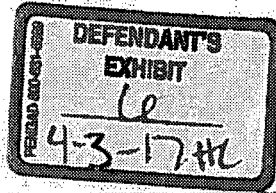
Received By :

via Hand Delivered by Courier to Mail R

Jennifer Aycock
Forensic Technician

December, 7th 2013

577



Christian,

You have touched my heart and soul in such a way, that it is so difficult to express in words. Each and everytime I think about the good times we have shared together, even though it was brief, it felt like a dream of what I yearned for and imagined since I was a young child that had finally come true. All I have ever wished for is for someone to love me as much as I love them. I have always had so much love to give but never encountered the right person to share it with until now. The moments we had together mean sooo much to me and I crave the day that I will be able to touch you, kiss you, and hold you and you touch me, kiss me, and hold me again. It will happen again and I need for you to honestly believe that, because I do... We have been through so much together. After finally seeing you again after 7 years was so unreal. I never thought that we would be in a relationship. But now... It feels so right even though at first it seemed so wrong. When you contacted

me in August this year, I was so excited but when you visited Charleston that time, I was scared... Scared of what might happen when we met, Scared of falling for someone that didn't love me the way I love them. Scared of the age gap and if you were ready so soon at your age to settle down and create a family. But, when you got stuck here during the flood. All of doubt seemed to rapidly drift away. You say that you hate how much you love me... well at first I was hurt by those words of expression, but now I think I get it, Only because of what we just had to experience. An experience that is so haunting and tormenting that it you think to yourself "this can't really be happening... this CAN'T be real!" I know that this is a test. It has to be. But like it said, if we can get through this together, nothing will stand in our way ever again that we can't handle. I read your letters over and over again. When I do, just a when the first time I read them, it penetrates my soul. Your words and descriptions are

3

paradox. It pierces me in a way that makes me shiver as if you were a ghost making physical contact with me. As if you were here with me. It's not fair what has happened. It's not fair of the situation you were placed in. You were not expecting this to happen. I know that. . . . But I feel responsible in some ways for what has happened. Only because I knew the way he would become enraged and how he reacts when he is angry. He has hurt many people, physically, even other family members of his. I should have told him to leave sooner. But many people are afraid of him and I am one of those people. So I try to keep peace to prevent verbal, emotional, and physical abuse by him. Yet still, I'm not sure if it would have made any difference after he saw me drop you off at the bank before I got to the house where he was waiting for me so he could get the kids. I worry about you all of the time. I worry about you being stuck in that place. I worry about you having negative thoughts, and feelings of

hopelessness. Part of me is still in disbelief that any of this is actually happening. How quickly and unexpectedly you were ripped away from me. I miss you so much baby... I will never give up on you. But you need to believe that there is no monster inside of you. Being emotionally scarred by your past, particularly as a child, is NOT your fault, nor should it be. I know and see how you love and how you care, not only for me, but for others... even those who have hurt you the most throughout life. I see the angel inside of MY Christian! You should take time to look at it because it is quite beautiful! 😊 But know that we will make it through this, whether things work in our favor or not. All of our chips have already been down. It's time for us to rise up. To trust and give strength to one another. It's me and you that the world has turned their backs on. But together, we can show them the truth. And not question us, but question themselves. I am pleading with you, please don't give up. Don't give up on you, don't give up on me.

5

don't give up on us and our family. I can't lose you too. I am fighting for you. I fought for David for 13 years and I failed miserably. But I can't do it all by myself. I need for someone to fight along side me, to fight with together. Kingston and Lincoln's experiences with you were amazing. They adore you. You were always so kind and gentle with them yet still encouraging good behavior. When you were here it felt so right, like you just filled the empty void in our lives.

Showed us the love, attention, compassion and affection that we desperately craved.

I think maybe David loved us too in his own way but still struggled in some way with his own family past that impacted him and the way he loved us. Yet I still wonder if he ever really loved me at all...

It pains me to think like that but that is the question that I've been searching for the answer for, for many many years.

But you stole my heart baby and it is yours to keep as long as you wish to. My doubt that once was, is gone now. I believe

in my heart that we were and are meant to be. It's so unusual that I find myself so in love with you amidst all that is happening. But I've never been so sure of something before when it comes to love. Even though we may be apart for now, I know that one day we will be together again and pick right up where we left off. I will be waiting there when you get released just like when you got off that bus for the first time. You will have your chance at success. We will have a complete family. We will have that precious little baby girl we named Phoenix. We will put up our Christmas tree as a family. We will get those matching tattoos. We will plan out our special New Year's. We will go trick or treating with the kids. We will laugh and cry together. I will never let you go. Not ever again... I believe that together we will overcome this. Nothing will stand in our way. I want you, I need you Kirby. And I expect you to do everything in your power so that we can be reunited once and for all. You are my strength as

7

I am yours. For better or for worse...
Think of us, dream of us, Look forward
to our beautiful future, and not our
terrible past. I love you. ♡

To Infinity and Beyond...

Your Cry Baby,

Heather

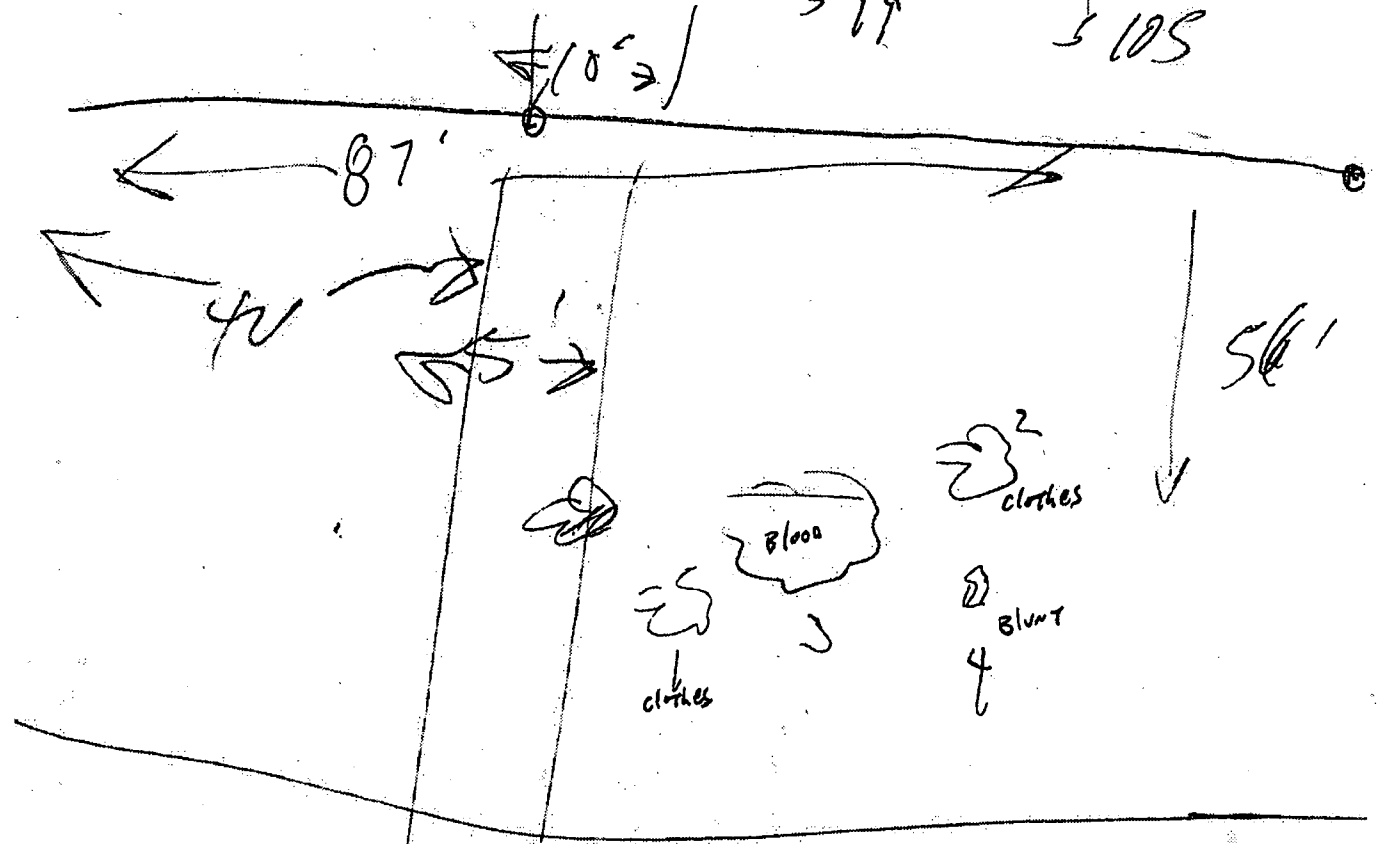
Building
12
WALLS
EDGE

(1)
LEFT
corner
of
balcony

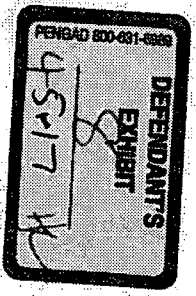
(2)
RIGHT
corner
of
building

- (4)
- 1 33'
- 2 39'
- 3 36'
- 4 37'
- 5 89'

- (2)
- 1 - 39
- 2 35
- 3 39
- 4 42
- 5 105



5
sim
CARD

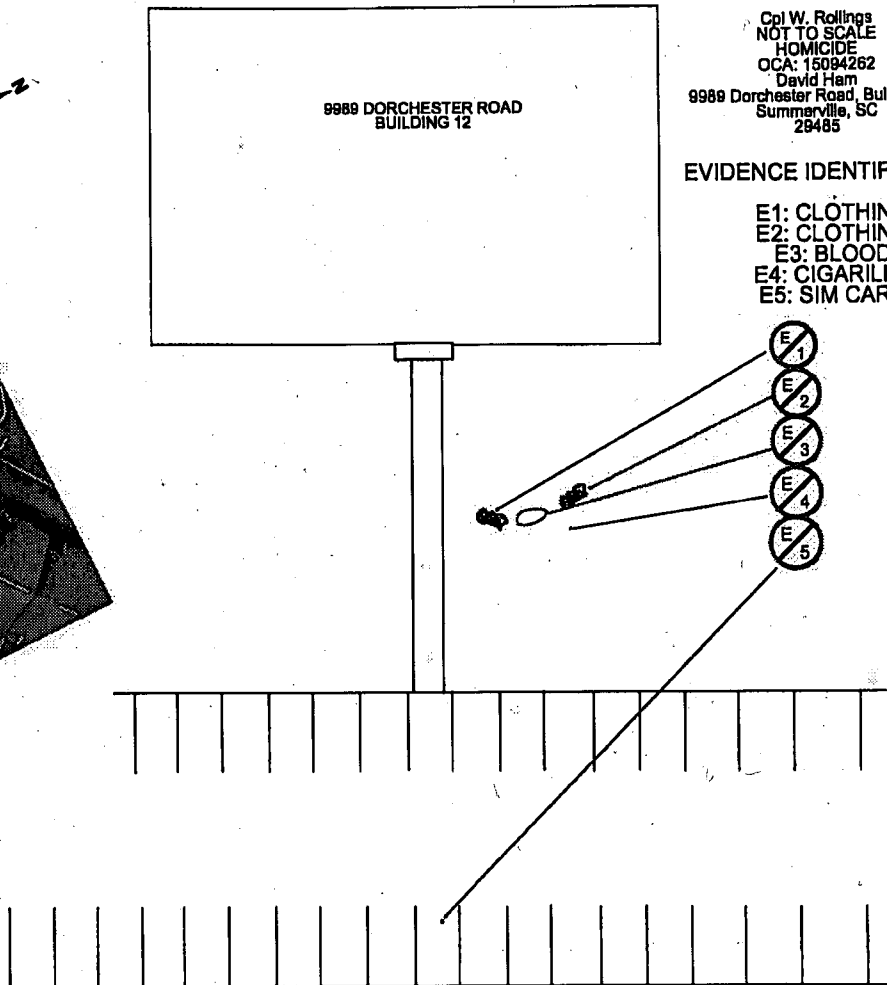
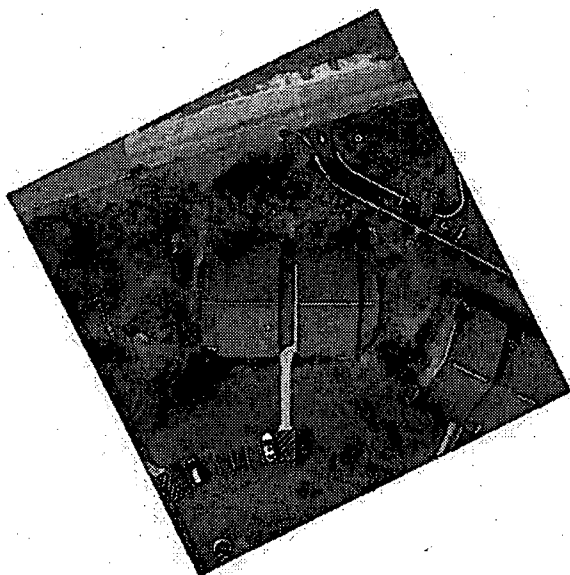


9989 DORCHESTER ROAD
BUILDING 12

Col W. Rollings
NOT TO SCALE
HOMICIDE
OCA: 15094262
David Ham
9989 Dorchester Road, Building 12
Summerville, SC
29485

EVIDENCE IDENTIFICATION

- E1: CLOTHING
- E2: CLOTHING
- E3: BLOOD
- E4: CIGARILLO
- E5: SIM CARD



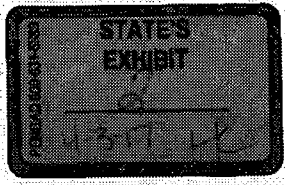
DEFENDANT'S
EXHIBIT
9
4-5-17 HLC

SUMMERVILLE POLICE DEPARTMENT

{ } Victim
{ } Witness
{ } Accused
2354

Page 1 of 3

VOLUNTARY STATEMENT FORM



DATE 11-1-15 TIME 1154

OCA # 15094262
NAME Himes- Christian Anthony SOCIAL SECURITY # 247-93-4203
ADDRESS _____ PHONE _____
EMPLOYMENT N/A PHONE _____
RACE W SEX M DATE OF BIRTH 07-30-1993 EDUCATION GED

This statement was prepared by Detective Weaver for Christian Himes.

On November 1, 2015 ^{at} Heather was supposed to pick up kids. I was late and when I get home, Heather came outside and told me he was there. I sat in car and then left. I went around neighborhood and came back. He never stays that long, so I left and went to gas station. After I left gas station I went back to the apartment. I sat in car for a few minutes, I get out and wanted to make sure Heather was ok. As I was walking up steps to the breezeway I saw him (David Ham) as he was coming out door. I tried to walk past him and he said "You Chris!" And then things escalated. He was walking towards me and I was backing up. He was reaching in his pocket and I kept backing up. And then I reached in my pocket. I don't think he had a gun. He would have pulled it if he had it. I told him to stop because this was going to destroy the kids. Your not going to destroy their lives. I was just thinking how much he hurt Heather. And I went back to thinking of how my dad treated my family. David said, "I'm not scared of your gun." He started to charge at me and he yelled. That's when I shot. I ran. I got in car and I left then I got stopped by police.

Q-What gas station did you go to?
A- Oakbrook Express between 9:30 PM to 10:15 PM

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH I HAVE MADE FREELY AND VOLUNTARILY, THE FACTS CONTAINED THEREIN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESS:
M. Weaver L-40
SIGNATURE
Chris Himes L-45
SIGNATURE

Chris Himes
SIGNATURE
I HAVE RECEIVED A COPY OF THIS STATEMENT
Chris Himes
SIGNATURE

SUMMERVILLE POLICE DEPARTMENT

{ } Victim 587
{ } Witness
X Accused

Page 2 of 3

VOLUNTARY STATEMENT FORM

DATE 11-2-2015 TIME 12:10 AM

OCA# 15-094262

NAME _____ SOCIAL SECURITY # _____

ADDRESS _____ PHONE _____

EMPLOYMENT Cont. PHONE _____

RACE _____ SEX _____ DATE OF BIRTH _____ EDUCATION _____

Q- What kind of car were you in?

A- dark blue Chrysler 300.

Q- Were you and David ever physically fighting?

A- No

Q- Have you ever seen David before this incident?

A- No

Q- What hand did you hold the revolver in when you shot David?

A- right hand

Q- What kind of revolver did you have when you shot David?

A- wood handle, dark silver, snub nose 38.

Q- Did David have a weapon?

A- I did not see him with a weapon.

Q- Was David abusing Heather and their children?

A- Not recently, but in the past. David was never there for the kids. And he is there torturing her mentally. He neglects these kids.

Q- Why did you shoot David?

A- I was scared, my father hurt me so much in the past mentally physically and emotionally. And I was going thru it all over again.

Q- Did you see where you shot David?

A- In the chest area or upper body.

Q- Did you try to help David after you shot him?

A- No

Q- How far away were you from David when you shot him?

A- Two or three feet

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH I HAVE MADE FREELY AND VOLUNTARILY, THE FACTS CONTAINED THEREIN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESS:

M. Weaver L-40
SIGNATURE

M. Weaver L-40
SIGNATURE

Chris Himes
SIGNATURE

I HAVE RECEIVED A COPY OF THIS STATEMENT

Chris Himes
SIGNATURE

SUMMERVILLE POLICE DEPARTMENT

Victim
 Witness
 Accused

VOLUNTARY STATEMENT FORM

DATE 11-2-2015 TIME 12:30 AM

OCA # 15-094262

NAME _____ SOCIAL SECURITY # _____

ADDRESS _____ PHONE _____

EMPLOYMENT Cont PHONE _____

RACE _____ SEX _____ DATE OF BIRTH _____ EDUCATION _____

Q- Is there anything else you need to add to your statement.

A- I love Heather, this was never my intention but I cannot take her being upset. I'm scared and I was scared then. Everything happened so fast, the cycle continued. I feel like I have been here before. Same shit different outcome.

MW

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH I HAVE MADE FREELY AND VOLUNTARILY, THE FACTS CONTAINED THEREIN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESS:

M Weaver L-40
SIGNATURE

Chris Hiroch L-45
SIGNATURE

Chris Hiroch
SIGNATURE

I HAVE RECEIVED A COPY OF THIS STATEMENT
Chris Hiroch
SIGNATURE

conversation
between David &
cather

sent via email
11-10-15

don't act u care now...no more
convo. Im out

589

Oct 30 7:23 PM

sweet. i care u dont. what i
needed to hear. tell your bf dont
let me catch him slippin

Oct 30 7:26 PM

btw, i need u to pick up the kids
sunday. meant to tell u when i
was there.

Oct 30 7:33 PM

Did u find costumes for the boys?

Oct 31 10:41 AM

out looking now.

Oct 31 10:46 AM



Enter message

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

INDICTMENT
2015GS18-1882

As a Court of General Sessions, convened on September 1, 2016 the Grand Jurors of DORCHESTER County present upon their oath:

MURDER

That in Dorchester County on or about November 1, 2015, with malice aforethought, the defendant, Christian Anthony Himes did kill one David Ham by means of shooting the victim. The victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

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



Donald N. Sorenson, Solicitor

WITNESSES

Michael Weaver

Summerville Police Department
15-094262

ARREST WARRANT NUMBER
2015A1820500640

Arrested: November 2, 2015

ACTION OF GRAND JURY

TRUE BILL

FK

Foreperson of Grand Jury
Date: September 1, 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS18-1882

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

September 5, 2016 TERM

THE STATE
vs.

Christian Anthony Himes

Indictment for

Murder

SC Code: 16-3-10

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

Defendant

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

Defendant

Witness:

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

2016 SEP -1 PM 2:52
RECORDED
CHERYL B. BARNETT
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

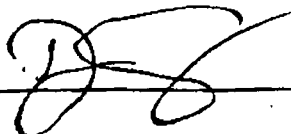
INDICTMENT
2015GS18-1883

As a Court of General Sessions, convened on September 1, 2016 the Grand Jurors of DORCHESTER County present upon their oath:

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

That in Dorchester on or about November 1, 2015, the defendant, Christian Anthony Himes, did visibly display or have in his possession a handgun during the commission of a violent crime as defined by Section 16-1-60, Code of Laws of South Carolina, 1976, as amended, to wit: Murder, thereby violating Section 16-23-490, Code of Laws of South Carolina, 1976, as amended.

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



Donald N. Sorenson, Solicitor

WITNESSES

Michael Weaver

Summerville Police Department
15-094262

ARREST WARRANT NUMBER
2015A1820500641

Arrested: November 2, 2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: September 1, 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS18-1883

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

September 5, 2016 TERM

THE STATE
vs.

Christian Anthony Himes

Indictment for

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

SC Code: 16-23-490

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

Defendant

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

Defendant

Witness:

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

FILED - RECORDS
2016 SEP - 1 PM 2:51
SHERYL B. BROWN
CLERK OF COURT
DORCHESTER COUNTY

COUNTY OF Dorchester)
STATE VS.)
Christian Anthony Himes)
AKA:)
Race: WHITE Sex: M Age: 23)
DOB: SS#:)
Address:)
City, State, Zip:)
DL#: SID#:)

INDICTMENT/CASE#: 2015GS18-1882
A/W#: 2015A1820500640
Date of Offense: 11/1/2015
S.C. Code § : 16-3-10
CDR Code #: 0116

RECEIVED

APR 10 2017

SENTENCE SHEET **SC Court of Appeals**

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Murder

CONVICTED OF or PLEADS

in violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)

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

ATTEST: 9512
Sorenson, Donald N. 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 remainder of life 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: 4/6/17
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
 Set by SCDPPPS

PTUP days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ <u>3.75</u>
TOTAL		\$ <u>128.75</u>

Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/ Deputy Clerk: Cheryl Graham
Court Reporter: Hester Landry
SCCA/217 (07/2016)
Presiding Judge: State Murphy
Judge Code: 2146
Sentence Date: 4/6/17

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS 505

RECEIVED

COUNTY OF Dorchester)

STATE VS.)

Christian Anthony Himes)

AKA:)

Race: WHITE Sex: M Age: 23)

DOB: SS#)

Address:)

City, State, Zip:)

DL#: SID#)

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Possession of a Firearm or Knife During the Commission of a Violent Crime

INDICTMENT/CASE#: 2015GS18-1883

A/W#: 2015A1820500641

APR 10 2017

Date of Offense: 11/1/2015

S.C. Code § : 16-23-490

SC Court of Appeals

CDR Code #: 0549

SENTENCE SHEET

in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

9512

Sorenson, Donald

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 5 days/months/years or under the Youthful Offender Act not to exceed _____ years

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

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

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

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ <u>3.75</u>

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Cheryl Branch
Heather Landry

Presiding Judge

Judge Code: 2164

Sentence Date: 4/6/17

Marti Huff
4/6/17

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Laura R. Baer
Appellate Defender

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

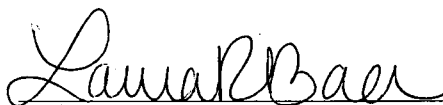
ATTORNEY FOR APPELLANT

This 15th day of October, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Laura R. Baer
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 15th day of October, 2018.

RECEIVED
OCT 15 2018
SC Court of Appeals