

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

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Apr 20 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ROBERT XAVIER GETER,

APPELLANT

APPELLATE CASE NO 2018-001647

RECORD ON APPEAL

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1 A At my girlfriend house.

2 Q Do you mind telling me what the argument was about?

3 A I forgot what the argument was about, but we got
4 into it, and I was about to hit her, then she cut
5 me with a box cutter.

6 Q So you deserved the cut?

7 A Yeah, I deserved the cut, yeah.

8 MR. CATHCART: Please answer any questions
9 Defense counsel has.

10 CROSS-EXAMINATION

11 BY MS. ZMROCZEK:

12 Q You said you spoke to the police?

13 A Yes, ma'am.

14 Q You did? That night?

15 A On that same night.

16 Q On that same night. Was that before or after you
17 just walked out of the hospital?

18 A That's -- when I was in the hospital, I talked to
19 the police.

20 Q You did? But you refused care from the hospital?

21 A When I went to the hospital, my car was -- I had
22 locked the keys in my car. My friend had took -- I
23 had -- I was bleeding real bad where she cut me
24 with the box cutter, so I had -- I parked in front
25 of the hospital and I got -- went to the emergency

1 room. And then I was waiting for them to stitch me
2 up, and then they said they about to tow my car and
3 I didn't want to get my car towed. So they said if
4 you leave, you got to wait back in line. So I
5 got -- so I had to bust my window out in order to
6 keep my car from getting towed.

7 Q And so you --

8 A That's when I talked to the police when I was out
9 there.

10 Q When you bust your window out?

11 A Yeah, the back window so I can get in my car.

12 Q And your arm's already bleeding?

13 A Well, my friend bust my back window out so we can
14 get in the car.

15 Q Oh, okay. And do you recall telling the ER that,
16 We was playing cards for money and he just lost it,
17 and law enforcement being at your bedside? Do you
18 remember that?

19 A No, I don't remember that.

20 THE COURT: Let him hold it and read through
21 it.

22 THE WITNESS: I don't remember that.

23 BY MS. ZMROCZEK:

24 Q You don't remember that? So it somehow got in the
25 hospital record, you have no idea?

1 A No.

2 Q Okay.

3 MS. ZMROCZEK: Thank you. I have no further
4 questions.

5 THE COURT: All right. Anything else from the
6 State?

7 MR. CATHCART: No, Your Honor. I ask he be
8 excused to go back to work.

9 THE COURT: All right, sir, you may step down.
10 Any objection to this witness being excused?

11 MS. ZMROCZEK: None whatsoever, Your Honor.

12 THE COURT: You are free to leave.

13 (Witness steps down and is excused.)

14 THE COURT: Call your next witness.

15 MR. CATHCART: That's the only rebuttal
16 witness, Your Honor.

17 THE COURT: All right. All right, ladies and
18 gentlemen of the jury, the State has rested. And
19 at this time, we are ready for -- well, not now,
20 but we are ready for closing arguments and charge
21 on the law, but it is 5:25 and that will take quite
22 some time. So we will start tomorrow morning.
23 We'll start earlier, but I'll have you all come in
24 at 10:00.

25 We'll order lunch, Madam Clerk, order lunch in

1 the morning, so she'll have order forms for you
2 when you get here. And then we should be ready to
3 start with closing arguments and then the charge on
4 the law. And then at some point tomorrow you all
5 will be able to begin deliberating.

6 With that being said, please do not discuss
7 this case until -- you have received all the
8 evidence -- until you've heard the arguments of the
9 parties and the charge on the law.

10 Please do not do any independent research, no
11 driving by the scene. Just go home and think about
12 something else. Have a wonderful evening.

13 Oh, one thing, Juror Number 6, Ms. Amaker, I'm
14 going to ask that you serve as our forelady. The
15 bailiff will show you where you are to sit. And
16 I'll give you instructions tomorrow.

17 THE FORELADY: Okay.

18 (WHEREUPON, the jury was excused at 5:25
19 p.m.)

20 THE COURT: What we are going to do is, I will
21 have my law clerk e-mail you all what she has as a
22 proposed charge. Ms. Zmroczek, I received your
23 e-mail; however, for whatever reason, some of them
24 are not opening. So once you have a chance to
25 review the jury charge that we have proposed, if

1 there is anything that is additionally needed -- I
2 understand you have Anderson's, it looks like, some
3 of the ones we were able to open. I use the desk
4 book.

5 MS. ZMROCZEK: Uh-huh.

6 THE COURT: But if there's something that is
7 missing from the jury charge, let us know. She did
8 put in there the lesser inclusions. We can argue
9 about that in the morning. I think they must have
10 turned the air conditioner off.

11 Just take a look at them, but I think we
12 probably have most of these. But if you have them,
13 it might be best to print those and give them a
14 copy just because I wasn't able to open them.

15 MS. ZMROCZEK: Okay. And some of them, Your
16 Honor, I had to just take pictures here, but I can
17 do that as soon as I get back to the office. But
18 if she e-mails it to me, I can just --

19 THE COURT: Take a look at what she sent and
20 then just come prepared in the morning to -- or,
21 actually, if there's something that she needs to
22 add, you can send it to her, make sure you copy the
23 other side, of course, and we can discuss it at
24 that time or if there's any objections. I want to
25 roll through it fairly quickly. We'll start at

1 9:30. They'll be here at 10:00. By the time she
2 finishes getting their orders, probably be about
3 10:15.

4 MS. ZMROCZEK: Thank you, Your Honor.

5 THE COURT: All right. I think that's
6 everything.

7 (WHEREUPON, court adjourned for the
8 evening at 5:27 p.m.)

9 **APRIL 12, 2018**

10 THE COURT: Y'all don't want that?

11 MR. CATHCART: No, ma'am, I did all those long
12 before we started and I just included all
13 possibilities. I didn't go back before I handed it
14 out, I apologize.

15 THE COURT: I think the only thing we added
16 was the -- what we had transferred intent and I
17 added it pursuant to the transfer intent doctrine,
18 if one person intends to harm the second person,
19 but instead unintentionally harms the third person,
20 the first person's criminal intent towards the
21 second person applies to the third as well.

22 We did add this -- because it was a little
23 confusing. In the future, y'all should number your
24 requests to charge so we'll know what we're
25 referring to.

1 MR. CATHCART: I apologize.

2 THE COURT: But it says: Pursuant to the
3 transferred intent doctrine, if one person intends
4 to harm the second person, but instead
5 unintentionally harms the third, the first person's
6 criminal intent towards the second person applies
7 to the third as well.

8 She just thought it was a little confusing
9 because it made it seem like it was three people,
10 but I understand the way it's written. The one
11 person would be the Defendant, the second person
12 would be the person that he allegedly intended to
13 harm, and the third person is -- so we'll add that
14 in there.

15 There was already an intoxication charge in
16 there.

17 And the believability, credibility all that is
18 part of the general charge.

19 Anything else that needs to be added?
20 Anything else that you all see that needs to be
21 changed from the Court's jury charge?

22 MS. ZMROCZEK: Yes, Your Honor.

23 THE COURT: Hold on. State first.

24 MR. CATHCART: Nothing else from the State.

25 THE COURT: Yes, ma'am, from the Defense?

1 MS. ZMROCZEK: Your Honor, I certainly
2 apologize for the late submissions, but I was
3 working off of what y'all sent as well as trying to
4 research the law.

5 So on the direct and circumstantial evidence
6 charge, we request the Logan charge, which I sent
7 that pretty early on yesterday.

8 THE COURT: I'm charging what's in the desk
9 book. The direct and circumstantial evidence comes
10 straight from the desk book.

11 MS. ZMROCZEK: I understand that comes
12 straight from the desk book, but I believe case law
13 states that if we request it that --

14 THE COURT: No, I don't know what case law
15 states that we have to charge it, but I'll be glad
16 to take a look at the case law that you're
17 referring to.

18 MS. ZMROCZEK: Well, I e-mailed the case to
19 y'all last night.

20 THE COURT: What does Logan say? Logan says
21 what?

22 MS. ZMROCZEK: It says there are two types of
23 evidence generally presented in a trial, direct and
24 circumstantial evidence. Direct evidence directly
25 proves the existence of a fact and does not require

1 deduction. Circumstantial evidence is proof of a
2 chain of facts and circumstances indicating the
3 existence of a fact. Crimes may be proven by
4 circumstantial evidence. The law makes no
5 distinction between the weight or value given to
6 either direct or circumstantial evidence. However,
7 to the extent the State relies on circumstantial
8 evidence, all circumstances must be consistent with
9 each other and when taken together point
10 conclusively to the guilt of the accused beyond a
11 reasonable doubt. If the circumstances merely
12 portray the Defendant's behavior as suspicious, the
13 proof has failed.

14 THE COURT: That's from Logan?

15 MS. ZMROCZEK: That's Logan.

16 THE COURT: I mean, that sounds -- so how is
17 that any different than what's already in the desk
18 book?

19 MS. ZMROCZEK: Your Honor, the portion where
20 it says: To the extent that the State relies on
21 circumstantial evidence, all circumstantial
22 evidence must be consistent with each other and
23 when taken together point conclusively to the guilt
24 of the Defendant. If these circumstances merely
25 portray the Defendant's behavior as suspicious, the

1 proof has failed.

2 THE COURT: All right. So you just want to
3 add the portion that says the State has the burden
4 of proving the Defendant guilty beyond a reasonable
5 doubt. The burden rests with the State regardless
6 of whether the State relies on direct evidence,
7 circumstantial evidence, or some combination of the
8 two?

9 MS. ZMROCZEK: No, I wanted to add the section
10 before that that says: To the extent the State
11 relies on circumstantial evidence, all
12 circumstances must be consistent with each other
13 and when taken together point conclusively to the
14 guilt of the accused beyond a reasonable doubt. If
15 these circumstances merely portray Mr. Geter's
16 behavior as suspicious, the proof has failed.

17 THE COURT: I definitely wouldn't say his
18 name.

19 MS. ZMROCZEK: Or the Defendant.

20 THE COURT: I think the charge that's in the
21 desk book is sufficient, but I'll add that
22 paragraph.

23 All right, anything else?

24 MS. ZMROCZEK: We added a charge on jailhouse
25 snitch.

1 THE COURT: I don't have --

2 MR. CATHCART: I don't have that.

3 MS. ZMROCZEK: I sent all these. I can make
4 another copy.

5 MR. CATHCART: I printed all your e-mails just
6 before I came back down here.

7 THE COURT: I'm not going to charge that.

8 MS. ZMROCZEK: We added a charge on multiple
9 charges. And I believe that we'll probably have an
10 issue, Your Honor, especially if they're arguing
11 the transferred intent doctrine.

12 THE COURT: What page?

13 MS. ZMROCZEK: Page 10.

14 THE COURT: I'm trying to process because I
15 think that would be in the jury charge when we
16 explain to the jury the verdict form.

17 MS. ZMROCZEK: Okay.

18 THE COURT: I will go through the verdict form
19 with them as to each indictment. I know we briefly
20 discussed yesterday the transferred intent and
21 maybe doing some language that says that -- well, I
22 mean, let me say this. I don't know because
23 yesterday, I listened to the State, but yesterday
24 based on your client's testimony, it is
25 questionable as to whether -- I mean, the jury

1 can -- if there's an issue of fact as to whether it
2 was transferred intent or whether -- I mean, I
3 think the way he testified is that he was fighting
4 them both.

5 MR. CATHCART: Right.

6 THE COURT: And so it is questionable. I
7 guess the argument could be made, because he
8 specifically -- I'd have to go back. He
9 specifically, your client -- because I was sitting
10 there listening to it and then when he said it, I
11 said, well, that kind of contradicts the argument
12 that you all made earlier, his testimony, because
13 he specifically talked about fighting Mr. -- is it,
14 Stone?

15 MR. CATHCART: That's correct.

16 THE COURT: Mr. Stone also.

17 MR. CATHCART: He said the first person he
18 laid hands on was Mr. Stone, and was fighting them
19 both.

20 THE COURT: So, I mean, I guess the jury could
21 find him -- yeah, he actually -- I think he
22 actually testified that he and Mr. Stone had a
23 dispute first.

24 MR. CATHCART: Right.

25 THE COURT: And then the other -- the Decedent

1 came from behind the jukebox afterwards.

2 MR. CATHCART: That's correct.

3 THE COURT: So are y'all still asking for
4 transferred intent?

5 MR. CATHCART: Yes, Your Honor, transferred
6 intent as to he was -- his self-defense is saying
7 against both. Transferred intent is still that as
8 he was trying to kill Mr. Lewis, he also stabbed
9 Mr. Stone. That's what the evidence shows from the
10 State. Mr. Stone didn't know he was in the fight.

11 THE COURT: From the State. But from his
12 testimony, it's a question of fact as to whether or
13 not it was intent or malice towards Mr. Stone.

14 Remember, initially we were saying that maybe
15 I would direct the jury that, If you find him not
16 guilty of murder, then you couldn't find him guilty
17 under the transferred intent doctrine in terms of
18 the attempted murder. But after his testimony, I
19 think that changes it a little bit.

20 All right. Let me read your multiple charges
21 again. I'll leave the multiple --

22 Do you have a position on that charge?

23 MR. CATHCART: We don't know what the charges
24 are because we don't have a copy of it.

25 THE COURT: She e-mailed them last night. It

1 was midnight.

2 MR. CATHCART: I printed what she sent me and

3 --

4 MR. SHELLENBERG: I got the case law.

5 MR. CATHCART: I got the case law, but did not
6 get the charges.

7 MR. SHELLENBERG: The last thing --

8 MR. CATHCART: I got her discussion regarding
9 permissive inferences and Gilbert Gonzales. That's
10 all I received.

11 THE COURT: She said she did not send you
12 that, but Jasmine will forward it to you.

13 MR. CATHCART: I'm not very good with
14 computers, but that I usually know.

15 THE COURT: I guess I'll have to read it out.
16 The multiple charges reads: The indictment in this
17 case alleged two different offenses against
18 Mr. Geter. The charges are: Indictment Number
19 One, 2015-GS-40-2757, murder; Indictment Number
20 Two, 2015-GS-40-2758, attempted murder. Each
21 indictment charges a separate and distinct offense.
22 You must decide each indictment separately on the
23 evidence and the law applicable to it, uninfluenced
24 by your decision as to any other indictment.
25 Mr. Geter may be convicted or acquitted on any or

1 all of the offenses charged. You will be asked to
2 write a separate verdict of guilty or not guilty
3 for each indictment.

4 MR. CATHCART: I'm fine with that.

5 THE COURT: Sir?

6 MR. CATHCART: As to that, that's fine.

7 THE COURT: Okay. So we'll add that in.
8 She's going to have her print a copy.

9 Any other changes?

10 MS. ZMROCZEK: Your Honor, on Page 15, it
11 seems to be like two and a half pages, or at least
12 a page and a half, of the definition of malice, and
13 they seem to be redundant.

14 MR. SHELLENBERG: What page?

15 THE COURT: It might not be 15 on mine. It
16 is --

17 MR. CATHCART: We're talking about jury
18 charges or her charges?

19 THE COURT: Well, you don't have hers yet.

20 MR. CATHCART: Yeah, I don't have Page 15.

21 THE COURT: But I know what you're talking
22 about, because the way the desk book is, it defines
23 malice for attempted murder and it defines it for
24 murder. So I can read the definition under the
25 murder and leave it at that. And then when we get

1 to attempted murder, we can take the malice --
2 because it gets into malice again, but it's the
3 same definition.

4 MS. ZMROCZEK: I guess, where it says the
5 Defendant is charged with murder, the State must
6 prove beyond a reasonable doubt the Defendant
7 killed another person with malice aforethought.
8 And it talks about malice is hatred or ill will
9 towards another person, it's an intentional
10 wrong -- this is on the original charges -- it's an
11 intentional wrongdoing of a wrongful act without
12 just cause or excuse with an intent to inflict
13 injury under circumstances that could infer evil
14 intent. And then the next paragraph says malice is
15 a legal term implying wickedness and excluding a
16 just cause. So it seems to repeat itself.

17 THE COURT: But it's not the exact same
18 language. That comes directly from the request to
19 charge desk book. I'm going to leave that in, but
20 I will not repeat it again, because then it gets
21 into express and inferred malice. I'm going to
22 leave that in. I will take it out -- when we get
23 to attempted murder, it just says the Defendant is
24 charged with attempted murder. In order to prove
25 this crime, the State must prove that the Defendant

1 had the specific intent to kill another person with
2 malice aforethought, either expressed or implied.
3 We don't need the second paragraph. I'll leave the
4 third paragraph. We don't need the fourth
5 paragraph. And then we -- but then we do need to
6 define what specific intent includes on Page 16.

7 MS. ZMROCZEK: And then I believe in the
8 attempted murder charge, Your Honor, there was
9 evidence of the character of the act and the
10 character of the instrument used.

11 THE COURT: I thought she took that out. She
12 took out the part about inferred malice by use of a
13 deadly weapon. That's what the case law says.

14 MS. ZMROCZEK: Right. And right above the
15 attempt definition, there's a paragraph at the end
16 of the attempted murder that says, Evidence of the
17 character of the act and character of the
18 instrument used, the manner in which it was used,
19 the purpose be accomplished when resulting wounds
20 or injuries may be considered in determining the
21 intent.

22 MR. CATHCART: Your Honor, that's different.
23 That's not --

24 THE COURT: I'm a little -- where are you now?
25 Yes, that's not -- but I don't think that's what

1 the case law is referring to. That's the character
2 of the act, the character of the instrument used,
3 the manner in which it was used, purpose to be
4 accomplished. The other language says use of --
5 specifically says use of a deadly -- you may use
6 this to infer malice. I think this is a little bit
7 different.

8 MR. CATHCART: Speaking of the action, not the
9 object.

10 MS. ZMROCZEK: But it says -- it specifically
11 says object. Your Honor, what I'll do is I'll just
12 make sure that --

13 THE COURT: Instrument could be -- I mean,
14 object could be hands. I mean -- I'm going to
15 leave that in there.

16 MS. ZMROCZEK: And I'll just make sure that my
17 jury charges are part of the -- I'm going to make
18 them a Court Exhibit.

19 THE COURT: That's fine.

20 MS. ZMROCZEK: Okay. My requests.

21 THE COURT: Any other changes?

22 MS. ZMROCZEK: And if Your Honor was going to
23 charge ABHAN, we would ask that you go all the way
24 down to assault and battery second.

25 THE COURT: I don't --

1 MS. ZMROCZEK: Otherwise, we're not asking for
2 a lesser included.

3 THE COURT: She took ABHAN --

4 MS. ZMROCZEK: Okay.

5 THE COURT: She took all the lesser
6 includeds -- if no one is requesting it, we won't
7 charge it.

8 MR. CATHCART: We're not.

9 THE COURT: All right. There are no lesser
10 includeds.

11 MS. ZMROCZEK: Okay. Your Honor, I had a
12 request for a charge of integrity in the
13 investigation.

14 MR. CATHCART: What page is that?

15 THE COURT: That's in hers.

16 MR. CATHCART: We've got a copy now.

17 THE COURT: Oh, you did get a copy?

18 MR. CATHCART: That's a comment on the facts,
19 your Honor.

20 THE COURT: That's exactly what I was about to
21 say. I'm not going to charge that. But you can --
22 like I said, it's in there, you can mark it for the
23 record. But I give a general charge on the
24 credibility of the witnesses and the evidence, and
25 I think that covers everything, but this will be a

1 comment on the facts. You can argue all day about
2 the integrity of the investigation if you want to,
3 but I don't think it's appropriate for the Court to
4 charge that.

5 MS. ZMROCZEK: Okay. And, Your Honor, there
6 was a section in there on mutual combat.

7 THE COURT: Yes.

8 MS. ZMROCZEK: Jackson v. State, 355 S.C. 568,
9 586 S.E.2d 562, a 2003 case. It says that mutual
10 combat arises only when the parties are armed with
11 deadly weapons, and it says both parties. I don't
12 know that that applies to the facts in this case.

13 THE COURT: So you're asking to take out the
14 portion that says, In addition, it must be shown
15 that both parties are armed, or you just don't want
16 the mutual combat?

17 MS. ZMROCZEK: I ask that mutual combat be
18 taken out.

19 THE COURT: Does the State have a position
20 regarding mutual combat?

21 MR. CATHCART: One moment.

22 THE COURT: I haven't had a chance to look at
23 the case.

24 What's the cite again for Jackson vs. State?

25 MS. ZMROCZEK: 355 S.C. 568, 586 S.E.2d 562,

1 2003.

2 THE COURT: Does the State have any position
3 regarding taking mutual combat out?

4 MR. CATHCART: No, Your Honor, I don't have a
5 problem taking it out.

6 THE COURT: You said you don't?

7 MR. CATHCART: No, Your Honor.

8 THE COURT: All right, we'll take that out.
9 Anything else?

10 MS. ZMROCZEK: Your Honor, I think -- is the
11 duty to retreat in there? Because I think that's
12 common law, and I don't think that applies to --
13 since the passing of the new law, I don't know that
14 that applies.

15 THE COURT: Duty to retreat?

16 MR. CATHCART: Yes, it applies.

17 THE COURT: Under what new law? I'm confused
18 as to what --

19 MS. ZMROCZEK: Under the Persons and Property
20 Act since it was codified.

21 MR. CATHCART: That's not self-defense.

22 THE COURT: That's not under self-defense.
23 Remember, those are two separate. I know what
24 you're talking about. You're talking about --
25 Mr. Fyall was in it. The duty to retreat, we had

1 this long discussion in a trial I tried two weeks
2 ago, because under the Persons and Property Act,
3 you don't have a duty to retreat if you're in your
4 home.

5 MS. ZMROCZEK: Right. Or in a business that
6 you have the right to be.

7 MR. CATHCART: Have a right to be. And the
8 evidence in this case is he was told to leave.

9 MR. SHELLENBERG: He testified he wasn't even
10 supposed to be there that night.

11 MS. ZMROCZEK: No, he testified he wasn't
12 supposed to be there that night because of his
13 girlfriend, Your Honor.

14 MR. CATHCART: It's a right to be home, not a
15 place where you're allowed to be. You have to have
16 a right. He has no right to be there. He was
17 allowed to be there as a patron until he was told
18 to leave before he committed this act.

19 THE COURT: Yes, but duty to retreat still is
20 an element of self-defense unless there's some
21 evidence that -- I think it specifically says --
22 because we looked at some case law, and I can't
23 remember the name of the cases, but we specifically
24 said -- specifically said you don't have a duty to
25 retreat if you're in your home.

1 MR. SHELLENBERG: Your Honor, in addition,
2 isn't it you get a Stand Your Ground hearing at the
3 beginning of the trial completely separate from
4 self-defense. If you lose your Stand Your Ground,
5 you still get a self-defense charge. They are two
6 totally separate things.

7 THE COURT: That's correct, but -- which is
8 correct, but if you're in your home --

9 MR. SHELLENBERG: Okay.

10 THE COURT: If he was at home, there's some
11 case or something out there, and I'll have to look
12 it up and find it, but it specifically says that
13 you don't charge -- that you don't have a duty to
14 retreat.

15 MR. SCHWARTZ: Duncan? Sorry.

16 THE COURT: I don't know if it is Duncan or
17 not. I think it came out after Duncan. But it may
18 be Duncan, I'll have to look at it.

19 MR. SHELLENBERG: That applies to the Stand
20 Your Grand aspect.

21 THE COURT: Exactly. This is a little bit
22 different. I'm going to leave that in there. And
23 there is an issue of fact as to, I believe
24 Ms. Culler testified and the witness testified that
25 he was told to leave.

1 MR. CATHCART: That's correct.

2 THE COURT: So at that point, it's
3 questionable as to whether or not he had a right to
4 be there or not. And it is not his business.

5 MR. CATHCART: Exactly.

6 MS. ZMROCZEK: And is voluntary intoxication
7 in there twice? I have a little confusion about
8 voluntary intoxication. Not once did anybody ask
9 the Defendant when he was on the stand -- there was
10 no testimony from the Defendant or anybody else,
11 except for a passing girlfriend who said she didn't
12 know about his intoxication level, so I don't know
13 that that necessarily applies either.

14 MR. SHELLENBERG: He testified that he was
15 drinking beers that night. I think it's reasonable
16 to at least have the charge.

17 THE COURT: The fact that he was drinking. I
18 don't know if he was. That's an issue of fact.

19 MR. SHELLENBERG: And some people, it takes a
20 little less than others.

21 THE COURT: I don't know.

22 MS. ZMROCZEK: And then I guess, Your Honor,
23 the two other issues that we have remaining --
24 obviously, I'll restate my objections again -- I
25 think that we have three other issues.

1 Actually, I have to renew my motion for
2 directed verdict, renew all motions again.

3 I think we need to discuss the missing witness
4 rule.

5 And also the Solicitor advised the Court -- or
6 the court reporter that they intended on both doing
7 a closing, and so I just -- I just need to make
8 sure that they understand that whoever opens first
9 has to open in full. If they come back and do
10 anything other than rebut what --

11 THE COURT: They should understand that.

12 MR. CATHCART: Absolutely.

13 THE COURT: They can both do -- I mean, if
14 there's nothing to rebut, then one person may not
15 have a chance to close, but the rebuttal is limited
16 to what you cover.

17 MS. ZMROCZEK: New.

18 THE COURT: What you cover in your closing.
19 They can't come back and bring up anything new.
20 The whole -- I think the idea behind Beatty is that
21 the State cannot open on the law and then come back
22 at the end and do their full closing.

23 MS. ZMROCZEK: Right. So my concern is that
24 they're going to open fully and then open again --
25 or, I mean, close -- you know, open their closing

1 fully and then get another full close. So that's
2 my concern.

3 THE COURT: Well, they can only respond to
4 what you say.

5 MR. CATHCART: To the arguments that she
6 makes. Exactly.

7 THE COURT: They can respond to the arguments
8 that you make. They can't come in and start a
9 whole new argument.

10 MS. ZMROCZEK: Or reiterate the same arguments
11 that they have already made.

12 MR. CATHCART: It's to rebut what was said.

13 THE COURT: It's to respond to what you say.
14 They can respond to what you say. They have an
15 opportunity to do that. All right.

16 MR. SHELLENBERG: And, Judge, we don't intend
17 in our closing to go into any lack of witnesses the
18 Defense produced.

19 MS. ZMROCZEK: Well, that's what they said
20 they were going to do yesterday.

21 THE COURT: What, missing witnesses?

22 MS. ZMROCZEK: Uh-huh.

23 MR. CATHCART: No --

24 MS. ZMROCZEK: Mr. Cathcart said he
25 intended --

1 MR. CATHCART: No, I said that we have the
2 right to comment as to the weakness of Defense
3 case. I'm not saying -- I certainly would not be
4 arguing that we can say, Well, why didn't he go
5 find this person and why didn't he go find that
6 person? I'm not doing that.

7 THE COURT: Well, I think even in commenting
8 on any weakness in their case, you've got to be
9 careful that you're burden shifting.

10 MR. CATHCART: Absolutely, Your Honor.

11 THE COURT: So -- I understand the
12 investigator, you all -- I mean, because you're
13 attacking the integrity of their investigation and
14 your investigator coming in and saying they should
15 have done this, they should have done that.

16 MS. ZMROCZEK: Well --

17 THE COURT: I think they are able to discuss
18 that.

19 MS. ZMROCZEK: Right. Well --

20 THE COURT: As to why they did not do it. And
21 I think they're also able to discuss if there's
22 something lacking in the way your investigator took
23 pictures or did it. But you can't burden shift.

24 MR. CATHCART: No, ma'am.

25 MS. ZMROCZEK: I guess -- you know, I hate to

1 have to do this all over again, but that's, you
2 know --

3 MR. SHELLENBERG: We only talk about, I guess,
4 what he did or didn't do, not as to how what he did
5 or didn't do proves or disproves Mr. Geter's case.
6 It would be specifically talking about exactly --

7 MS. ZMROCZEK: He has no duty to do or do
8 anything.

9 THE COURT: I understand that, but this is the
10 issue. He can't sit here and say, There's no way
11 that she could see this from here.

12 MS. ZMROCZEK: And he didn't.

13 THE COURT: I'm just using this as an example.

14 MS. ZMROCZEK: Right.

15 THE COURT: That she couldn't see this from
16 here based on my pictures. I think they have a
17 right to say, But you don't know exactly where she
18 was standing? I mean, I think they can -- I think
19 they can respond to his investigation. Now, they
20 can't say, Well, why didn't you go over here and
21 get this person and why didn't you --

22 MR. CATHCART: Absolutely not.

23 THE COURT: -- and why didn't you go to
24 parking lot? I mean, because that's not necessary.
25 But if he's there to investigate, I think they can

1 ask him about the credibility of what it is that
2 he's there doing and how he's doing it. He can't
3 just say -- for example, if he said, I stood here
4 and I couldn't see anything on the dance floor --
5 and I know he didn't say that.

6 MS. ZMROCZEK: Right.

7 THE COURT: And -- I mean, can I sit here --
8 they have a right to come back and say, But you
9 might have been standing in the wrong place. You
10 don't know. That's what I'm saying.

11 MS. ZMROCZEK: Had that been raised, but that
12 wasn't even an issue because -- the only reason I
13 put him up was to put those pictures in, and then
14 Mr. Cathcart decides to try to go into, You didn't
15 know where she was standing, but that wasn't the
16 point of the pictures. The pictures -- the point
17 was, again, that we didn't have any pictures from
18 inside the kitchen. That was the whole point.

19 THE COURT: All right. But he also testified
20 that the investigator should have done this and the
21 investigator should have done that, and she should
22 have done this and she should have done that. I
23 mean, they're going to have to be careful not to
24 burden shift.

25 But I think you need to focus on the

1 investigation that your investigators did. And
2 then if you're going to respond to what she said,
3 you can focus -- be very, very careful not to shift
4 the burden to them.

5 I mean, frankly, the fact that you're
6 putting -- I think they have a right to respond
7 to -- you can't just say, Oh, I sent an
8 investigator out here and he did this, and, Oh, but
9 it's not our -- you know, he didn't have to do it,
10 which he didn't, but nobody can respond to what he
11 said because that's burden shifting.

12 MS. ZMROCZEK: But he didn't -- the only thing
13 that he did is go and take pictures of an area that
14 had no pictures taken. That --

15 MR. CATHCART: And he said what our
16 investigator should have done if she did her job
17 properly is talk to witnesses --

18 THE COURT: Yeah, he testified to a little
19 more --

20 MR. CATHCART: -- and figure out the scene,
21 which is not what he did. He went in there and
22 took a picture of the kitchen and he guesstimated
23 on the size of the kitchen.

24 MS. ZMROCZEK: Because that's not his
25 responsibility.

1 MR. CATHCART: It's what he said it was.

2 THE COURT: I think once you put him up there
3 to testify, they have an opportunity -- why he was
4 able to cross-examine him yesterday -- he gets the
5 opportunity to question him about what he did and
6 how he did it.

7 If you put an investigator on the stand, you
8 can't say, Oh, it's burden shifting after you put
9 the investigator up there and he has the right to
10 ask him about what he has done.

11 Now, they start going into, Well, you should
12 have done this and you should have done that and
13 you should have done that, then that is probably a
14 fine line. But they have an opportunity to respond
15 and cross-examine him based on what he did.

16 All right. But that's fine. Your objection
17 is noted for the record.

18 Missing witness rule. So no one is getting
19 into any testimony, is my understanding, about
20 missing --

21 MR. SHELLENBERG: We're not going to talk
22 about any witnesses that they should have called or
23 that didn't come up or that --

24 THE COURT: I think that would be burden
25 shifting.

1 MR. SHELLENBERG: We're not going to say that.

2 THE COURT: All right. Anything else?

3 MS. ZMROCZEK: No, Your Honor. I'll just --
4 at a break, I'll make this a Court's Exhibit.

5 THE COURT: And I guess I need to rule on your
6 motion for directed verdict as to -- it was as to
7 the attempted?

8 MS. ZMROCZEK: It was as to the attempted
9 murder, but now that he's testified, Your Honor, we
10 would move for a directed verdict on both based on
11 the testimony of the client and all of the evidence
12 that supports the position of self-defense.

13 And, again, with our attempted murder
14 argument, we would reiterate what Mr. Stone said
15 about being caught in the eye.

16 THE COURT: Anything in response from the
17 State?

18 MR. CATHCART: Your Honor, from the State, I
19 believe there's evidence as to each element of each
20 offense, and I would ask you to deny their motion.

21 THE COURT: All right. Motion for directed
22 verdict is respectfully denied. I do find that
23 there is an issue of fact as to both charges. And
24 based on the -- as I stated earlier, based on the
25 testimony of the Defendant on yesterday, the

1 issue -- there's an issue of fact as to -- I think
2 the motion yesterday was attempted murder, not
3 being able to be found guilty on the attempted
4 murder, I think, because you said there was no
5 malice. But based on his testimony yesterday,
6 there's an issue of fact regarding his interaction
7 with Mr. Stone. I think he testified yesterday
8 that he and Mr. Stone actually had a dispute before
9 the Decedent came around the jukebox.

10 So, for those reasons and the reasons I stated
11 earlier, I am going to deny the motion for directed
12 verdict.

13 You said you had a missing witness rule, and
14 that's a moot issue at this point.

15 And any other issues? And you want to mark
16 your jury charges?

17 MS. ZMROCZEK: I do.

18 THE COURT: And that will be Court Exhibit 1.

19 (WHEREUPON, Court Exhibit No. 1 was
20 marked for identification only.)

21 MS. ZMROCZEK: Your Honor, I may need a break.
22 I have everything organized, but if they go through
23 them, I may need a break.

24 THE COURT: So she's going to print that out.
25 If you all are ready to get started, we can.

1 Are all the jurors here?

2 Oh, the verdict form, I didn't discuss that.
3 She just did two separate verdict forms, one on the
4 attempted murder and one on the murder.

5 All right. We can bring them in.

6 (WHEREUPON, the jury came into open
7 court at 10:38 a.m.)

8 THE COURT: Good morning, ladies and gentlemen
9 of the jury, at this time we are ready for the
10 closing arguments.

11 First, you will hear from the State, and then
12 you will hear from the Defense. And then the State
13 will have an opportunity to respond. Please pay
14 close attention to the attorneys. And then after
15 that, I will give you the charge on the law.

16 All right. Thank you.

17 MR. SHELLENBERG: Thank you, Your Honor. May
18 it please the Court?

19 THE COURT: Yes, sir.

20 CLOSING ARGUMENT

21 MR. SHELLENBERG: As Prosecutors, it is our
22 job to prove every case and every crime beyond a
23 reasonable doubt. It is the highest burden in any
24 case, as it should be, but it is a burden we accept
25 and it is a burden we proved here.

1 Now, what is proof beyond a reasonable doubt?
2 In the State of South Carolina, proof beyond a
3 reasonable doubt is proof that leaves you firmly
4 convinced of the Defendant's guilt. That leaves
5 you firmly convinced of the Defendant's guilt.

6 There are very few things in this world that
7 we know with absolute certainty. With absolute
8 certainty, death and taxes. And in a criminal
9 case, the law does not require proof that overcomes
10 every possible doubt. If, based on your
11 consideration of the evidence, you are firmly
12 convinced the Defendant is guilty of the crime
13 charged, you must find him guilty. If, on the
14 other hand, you think there is a real possibility
15 that he is not guilty, you must give him the
16 benefit of the doubt and find him not guilty.
17 Proof that leaves you firmly convinced of the
18 Defendant's guilt.

19 MS. ZMROCZEK: Your Honor, may we briefly
20 approach?

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

24 MR. SHELLENBERG: And what is the Defendant
25 charged with in this case? He is charged with

1 murder and attempted murder. I talked to y'all in
2 the beginning of the trial, and I told you murder
3 is the unlawful killing of any person with malice
4 aforethought, either express or implied.

5 Now, in this case the Defendant picked a fight
6 with James Lewis in the bar and he lost. No one
7 has got up here and told you that James Lewis
8 didn't beat up Robert Geter in the bar that night.
9 But after he lost, and after a cooling off period,
10 a couple of minutes when he sat in the bar, and
11 Deborah Culler told him he had to leave, instead of
12 leaving, he made the choice to go out back and
13 attack James Lewis and Clarence Stone.

14 And when he went out the back, pretended to go
15 up to him as a friend. We good, we good, we good?
16 And as soon as he got close enough, attacked him
17 with a knife, killing him. That is the unlawful
18 killing of James Lewis with malice aforethought.

19 Now, what is malice aforethought? It's a
20 state of mind, ladies and gentlemen. A state of
21 mind that may be inferred from conduct showing
22 total disregard for human life.

23 Now, how can we prove a state of mind?
24 Typically the best way we can do it is if somebody
25 says, I'm going to kill you, right before they kill

1 you.

2 And in this case, when the Defendant cooled
3 off, then decided he was going to go out back and
4 hatched the plan that he needed to get a knife
5 because he couldn't beat up James Lewis with his
6 hands, and he heads out back, Michael Harkness
7 hears him say, I'm going to kill somebody tonight.
8 And then he goes out back and he kills somebody
9 tonight. That is malice.

10 And not only does he kill him, but once he
11 gets outside, he hatched a plan that he knows the
12 only way he can get close enough to James Lewis to
13 attack him is if he goes up pretending to be a
14 friend.

15 He goes up, Are we good? Are we good? Are we
16 good? And as soon as he gets close enough, he
17 starts stabbing him.

18 And then finally says, I do this shit, pulls
19 his knife out and flicks it before he runs off.
20 That's malice.

21 Now, he is also charged with attempted murder.
22 In the State of South Carolina, it is with the
23 specific intent to kill. Now, what is specific
24 intent to kill? It means that the Defendant
25 consciously intended the completion of the act he

1 attempted. Consciously intended. He meant to do
2 what he did. Again, he says, I am going to kill
3 someone tonight, and then he goes and kills someone
4 tonight. He consciously intended his actions.

5 Now, in this case he consciously intended to
6 go out there, lure in James Lewis, attack him and
7 kill him. And Clarence Stone broke it up, and he
8 got a knife to the eye for his efforts.

9 Well, in South Carolina, it is the law of
10 transferred intent, which means pursuant to the
11 Transferred Intent Doctrine, if one person -- the
12 Defendant, Robert Geter -- intends to harm a second
13 person -- James Lewis -- but instead
14 unintentionally harms a third -- meaning when he
15 stabbed Clarence Stone, he was intending to stab
16 James Lewis. Robert Geter's criminal intent
17 towards James Lewis applies to Clarence Stone.
18 When he went outside with the intent to kill James
19 Lewis, that intent is the same intent that
20 transferred to his attempted murder of Clarence
21 Stone. He is guilty of attempted murder.

22 Now, again, they were in a bar, had some
23 drinks. Voluntary intoxication. There's a law
24 that says you can't go get drunk, kill a man,
25 trying to kill another man, go home, go to bed, get

1 up the next day, realize what you did, and be
2 absolved of it because, Oh, I was drunk. Voluntary
3 intoxication is never an excuse or a defense to a
4 crime. A person who voluntary renders himself
5 intoxicated is no less responsible for his actions
6 while in such condition. If a person voluntary
7 drinks intoxicating liquors and becomes intoxicated
8 and if while in that condition commits an act that
9 would be a crime if it had been committed by a
10 sober person, the fact of drunkenness or
11 intoxication would not relieve the intoxicated
12 person from responsibility. If you get drunk and
13 commit a crime, you are still guilty of that crime.

14 Now, let's talk about the evidence in this
15 case. There are two types of evidence, direct
16 evidence and circumstantial evidence.

17 Direct evidence is the testimony of a person
18 who asserts or claims to have actual knowledge of
19 the facts. In this case, you heard from Deborah
20 Culler, Reeshemah Culler, Michael Harkness,
21 Clarence Stone, who were there, who saw what
22 happened and could come in and tell you exactly
23 what they saw. Direct evidence.

24 And circumstantial evidence is proof of a
25 chain of facts and circumstances indicating the

1 existence of a fact. Circumstantial evidence in
2 this case is the testimony we got from Dr. Bradley
3 Marcus, who corroborated what Reeshemah Culler
4 said. From Dr. Alejandro Luis, who talked about
5 how quickly the victim would have bled out when his
6 right ventricle was cut and he was bleeding into
7 his chest cavity, consistent with what all of the
8 witnesses said happened when he came out the back
9 of the bar when James Lewis was trying to get to
10 the front and he was bleeding and he was saying, I
11 can't breathe, because his chest is full. That's
12 circumstantial evidence. You saw the pictures.
13 You saw all the blood consistent with the stabbing
14 happening out on the back porch, tracked through
15 the bar, all the way out to the front stoop where
16 James Lewis collapsed and said, I can't breathe,
17 before he died. All that is circumstantial
18 evidence.

19 Now, the law makes no distinction between the
20 weight or value given to either direct or
21 circumstantial evidence, nor is a greater degree of
22 certainty required of circumstantial evidence than
23 direct evidence. You should weigh all the evidence
24 in the case. After weighing all the evidence, if
25 you are not convinced of the Defendant's guilt

1 beyond a reasonable doubt, you must find him not
2 guilty. If, on the other hand, you are convinced
3 of the Defendant's guilt beyond a reasonable doubt,
4 you have got to find him guilty.

5 Now, let's talk about witnesses that testified
6 in this case and their credibility. You can
7 believe everything a witness said, part of what a
8 witness said, none of what a witness said, but when
9 looking at the credibility of witnesses, you look
10 at the demeanor of their stay on the stand. Were
11 they forthright? Were they hesitant? Was the
12 testimony of the witness consistent and was the
13 testimony of the witness corroborated?

14 Now, the first witness that you heard from was
15 Deborah Culler. She told you what she saw. She
16 said the same thing -- she was consistent -- she
17 said the same thing to the officers that night as
18 she came up here and she told you. She said she
19 was sober. She was working at Culler's Pool Hall.
20 She came out when she heard a commotion. Saw the
21 Defendant coming after James Lewis and he tried to
22 say, Go on, Man, go on, Man. Kept attacking him,
23 kept attacking him, until finally James Lewis got
24 the better of him. Clarence took him out back.
25 And that's what she saw. She came in and testified

1 to exactly what she saw.

2 And why -- did she have a reason to lie? She
3 was trying to get Robert Geter to go to church with
4 her. They opened up Culler's Restaurant to
5 Ms. Zmroczek's investigator to come look through it
6 everywhere they wanted to go. If you or I went in
7 there, we can't go in the kitchen. Consistent
8 testimony. And she said there was no blood on the
9 dance floor.

10 Then Reeshemah Culler took the stand. She
11 corroborated what Deborah said. She was sitting on
12 the corner by the dance floor. She looked out, saw
13 the Defendant come back after James Lewis, again
14 and again. Saw James Lewis get the best of him.
15 And then finally saw James leave the dance floor,
16 pull something from his pocket, and head out back.
17 And then finally she made it to the back door just
18 in time to see the Defendant standing over James
19 Lewis's limp body when he said, I do this shit,
20 stabbed him one more time, and flicked the knife
21 before he ran off. And that testimony is
22 consistent the whole time, and it was corroborated.
23 It was corroborated by the pictures Yvonne Woods
24 took of blood all over the back porch. Blood that
25 went through the pool hall to the front stoop. And

1 it was corroborated by the picture where you see
2 the blood on the side of the door where she said he
3 fell and hit his head when she walked outside.

4 Corroborated by the pictures.

5 Then it was corroborated by Dr. Marcus, who
6 took the stand. And he got up here and he was
7 telling you all about the defensive wounds, how it
8 could have happened just like this, as Reeshemah
9 Culler said it happened. Then he told you about
10 the final stab wound to the chest. And he stood
11 here and he demonstrated right on me, and he said
12 it was backwards, upwards, and medial. The stab
13 went in and up. Just like Reeshemah Culler said it
14 happened.

15 Dr. Luis, as I told you a minute ago,
16 corroborates it too. He got on the stand and said,
17 if your right ventricle is severed, your chest
18 cavity is filling with blood. Every time his heart
19 beat, his chest filled with blood. He would have
20 quickly weakened. That's what he said, he would
21 have quickly weakened.

22 And Reeshemah said when he came back in, he
23 had to be helped to the front. And he said, I
24 can't breathe, and collapsed.

25 The Defendant said he was stabbed on the dance

1 floor in the chest and somehow he managed to get
2 out back and keep fighting as his chest cavity was
3 filling up with blood? Does that even make sense?

4 And Reeshemah actually dates Robert Geter's
5 cousin. Why would she come in and lie? She dates
6 Robert Geter's cousin. That might make for, you
7 know, an awkward family gathering.

8 Then you heard from Michael Harkness. Came in
9 here, he corroborated what Deborah said, he
10 corroborated what Reeshemah said. He said he was
11 shooting pool at the first pool table. He looked
12 over and he saw the Defendant picking the fight.
13 He actually went as far as to say that he saw him
14 stepping on James Lewis's foot, James Lewis's foot
15 that he had just had surgery on. Robert Geter was
16 stepping on a foot of a man who had just had
17 surgery and a man that he knew had never caused any
18 trouble in the bar or anywhere else, goes and picks
19 a fight with him. And he said he saw the fight.
20 Saw it get broken up. And then a little while
21 later, a couple of minutes later, after Robert
22 Geter had time to hatch his plan and work through
23 how he was actually going to get outside, now that
24 he's lost the fist-fight, the only way that he's
25 going to be able to take down James Lewis is with a

1 knife. And the only way he's going to be able to
2 get close enough to James Lewis is if he pretends
3 that he's going out there to make peace.

4 Michael Harkness hears the Defendant say, as
5 soon as he's headed out the back door, I'm going to
6 kill me somebody tonight. And then, lo and behold,
7 he kills somebody that night.

8 And, finally, you got to hear from Clarence
9 Stone. Clarence was shooting pool. He was in
10 there just sort of helping out, keeping the peace.
11 He said he heard the fight and he came over and he
12 pulled James off and he took him outside. And he
13 said James was more worried about the chain around
14 his neck that broke. All he wanted to do was get
15 back his chain. He wasn't fighting. He wasn't
16 trying to go back in there. He was trying to look
17 for his broken chain.

18 And what happens? The door busts open, the
19 Defendant comes out, and he says, We good, we good,
20 we good? And as soon as he gets close enough, he
21 starts stabbing James Lewis again and again. And
22 when Clarence Stone went to break it up, he gets
23 knifed in the eye. And he testifies everything
24 went blurry. If he's making it up, why didn't he
25 just say, Yeah, I definitely saw James Lewis also

1 get stabbed in the chest and say, I do this shit.
2 No, he said exactly what happened. He said he got
3 stabbed in the eye and that was it. It's
4 consistent and it's corroborated.

5 And then Yvonne Woods took the stand. And
6 Reeshemah also says no blood on the dance floor.
7 Harkness says nobody was bleeding when he saw him
8 come around the corner. Clarence said nobody was
9 bleeding when he saw him come from around the
10 corner. Two people said no blood on the dance
11 floor. And then Yvonne Woods comes in after Jared
12 Marum tapes off the scene, no one in, no one out.
13 And she comes in as the CSI who took the pictures.
14 She tells you exactly what she did. She comes in
15 and she does a lap and she looks at the blood and
16 she looks for evidence around the entire wall.
17 Then she said she does another lap where she drops
18 down the numbers where she's going to go and take
19 pictures. And you will have these back there. And
20 then she takes a third lap where goes through and
21 actually takes all these pictures. And then she
22 even said when she finishes taking the pictures,
23 she does one last lap around the bar to look for
24 evidence and blood. And she told you on the stand
25 there was no blood on the dance floor. She took

1 pictures where the evidence was. It corroborated
2 exactly what Reeshemah Culler said and exactly what
3 Deborah Culler said.

4 You heard from Dr. Marcus. He came in. He
5 put up all the wounds that he had on his hand. He
6 told you about all of them. He told you about the
7 defensive wounds on his hands, the big cuts that he
8 had. He told you about the cuts to his face that
9 he said if he would have gotten cut on his face
10 like this and he had the alcohol in his system that
11 he had, it would have bled like crazy. And if it's
12 bleeding like crazy, it would have been everywhere
13 and they would have found blood on the dance floor,
14 but it actually happened over there. Reeshemah saw
15 it happen outside where she saw the Defendant
16 punching and stabbing him in the face as blood
17 splattered everywhere outside. Corroborated.

18 And then, finally, the fatal stab wound. He
19 came in and told you that corroborates what
20 Reeshemah Culler came in and said she saw.
21 Backward, upward, and medial. Between the rib
22 cage. All the evidence was corroborated.
23 Everyone's statement has been corroborated.

24 You heard from Joe Clarke. He went to the
25 scene and talked to Yvonne Woods. He developed

1 Robert Geter as a suspect. Called Geter. Geter
2 came in and saw him, turned himself in, wearing the
3 clothes covered in blood with the knife and gave it
4 to him and said his first story, It was like five
5 guys. Didn't say what they did. Didn't say
6 anything else. Just said it was like five guys
7 jumped him.

8 And we know that story changed. You heard
9 from Howard Jordan. He claimed he went to the
10 Sheriff's Department, knew about the murder,
11 Monticello Road, Robert Geter killing a middle-aged
12 man.

13 You heard from Elijah Salley, who we had to
14 drag in here off the street because -- and his
15 newest story, the Defendant decided that now Elijah
16 Salley was at the bar and he committed the crime,
17 so had to bring him in here. And that guy got on
18 the stand and told you he cut his arm because his
19 wife cut him with a box cutter when he was trying
20 to punch her in the face. And then he lied to the
21 police to protect her. That's a pretty incredible
22 story. He was going to punch his girlfriend in the
23 face.

24 And Mr. Cathcart asked him, Well, did you
25 deserve it? And he said, yeah, he deserved it. He

1 didn't know James Lewis. He didn't know Clarence
2 Stone. He didn't know Robert Geter. He just got
3 added to the story.

4 There was even Rosalyn Graves that took the
5 stand for the Defense. And she puts Reeshemah
6 Culler there. She puts Robert Geter there. Then
7 she doesn't remember her own cousin getting there.
8 And she was outside in her car during the fight, so
9 she didn't see anything. She didn't see what
10 happened.

11 All the witnesses's stories and all the
12 evidence corroborate the stabbing happening on the
13 back deck. You'll have it. You'll see the blood.
14 You can go in the back and look at every single one
15 of these pictures. It all adds up because that's
16 what happened. The truth did not change. Everyone
17 testified to the same thing again and again, and
18 the pictures corroborate it, and the doctors
19 corroborate it.

20 Then Robert Geter took the stand. We went
21 through Robert's stories. He gave us a new story
22 this time where it was James and Clarence and Zack
23 and Elijah that attacked him, then some other guy.
24 And he was juggling and fighting and he made it to
25 the back porch. And nothing happened on the back

1 porch. He doesn't remember being hit. He doesn't
2 remember anything.

3 Mr. Cathcart asked him, said, You never got
4 hit hard when you were on the back porch, just to
5 confirm exactly what he was saying. He said, no.
6 He said he got out of there and made it to his
7 brother's car.

8 Well, he testified in a prior hearing that he
9 got hit in the back with a chair on the back porch,
10 which is something I think you would probably
11 remember happening. But also in that prior
12 testimony, he said it was actually only Clarence
13 Stone, Zack Blue, and James Lewis that attacked
14 him. Elijah Salley wasn't there that time. He
15 needed more people because he originally said it
16 was five people that did the attack, so he had to
17 add in somebody, and Elijah Salley, throw him in
18 there. But he also told his girlfriend it was only
19 Clarence and James. But that doesn't track.

20 Then he said everything happened by the
21 jukebox and they moved that thing. He said, It
22 happened by the jukebox. They move him out to the
23 back porch. They walk him around to make sure it
24 gets good and bloody. Then they take him back in
25 and they walk him through the dance floor, and then

1 they flop him down on the front steps. That
2 doesn't make sense either.

3 Not even Robert Geter can corroborate Robert
4 Geter. Not even Robert Geter is consistent with
5 Robert Geter. He is not a credible witness. His
6 story kept changing. It kept shifting to say
7 whatever he had to say to maneuver it in to jam it
8 in some sort of self-defense argument. Whatever he
9 needed to do, however it needed to change. The
10 Defendant said the truth changes.

11 And by his own admission in his story, two
12 people he knew, Clarence Stone and James Lewis, who
13 he said he had never seen cause any fights, cause
14 any trouble in the bar or out of the bar, according
15 to him, while he's trying to apologize to them,
16 just start fighting. These two guys that he knows
17 to be peaceful just start fighting him while he's
18 apologizing. That doesn't make sense.

19 Then he made his phone call where he said, I
20 fucked up, I fucked up. I'm a bad boy and I done
21 wrong. He doesn't say anything right after he's
22 been arrested and he's talking to people he loves
23 about, Oh, my God, I had to fight for my life. I
24 was almost killed. I can't believe I had to defend
25 myself. This was a traumatic incident. I did

1 everything that I could to get out of there. No,
2 he says, I'm a bad boy and I fucked up. That's it.

3 And then Geter has these pictures where he's
4 got these horrific injuries that he claims. Only
5 he never sought any medical attention for them.
6 They seem to clear up real quick on their own. And
7 then he said he got hit in the back of the head
8 with a bottle. Well, they were documenting all
9 these injuries, making sure they got all these
10 pictures of injuries, making sure that -- you know,
11 the brother texted Joe Clarke to make sure the
12 pictures got to him, make sure all the pictures of
13 the injuries got to him, but we have no picture of
14 the back of his head where he supposedly got hit
15 with a beer bottle.

16 The story kept changing. Four or five
17 different stories. The truth doesn't change. They
18 say a lie has no memory. He just had to keep
19 retelling it. It was new every single time that he
20 did it.

21 And then the blood. You saw the blood got
22 tested. Dr. Amick came in here and explained to
23 you how DNA works. And all the blood, all the
24 blood in the bar came back to James Lewis. The
25 only DNA in all that blood, the only DNA to Robert

1 Geter came back on the knife that he used to stab
2 everybody and the shirt that he was wearing that
3 you would expect to find DNA on.

4 So whose blood was on Robert Geter that night?
5 If all the blood in the pool hall is all James
6 Lewis's, then whose blood is that? If all the
7 blood that they found everywhere in the pool hall
8 is all James Lewis's? It's James Lewis's blood
9 from stabbing him and attacking him. The story
10 just kept changing. That's why all of the evidence
11 points to the attack happening on the back porch.
12 The only thing, the time of the fight to the dance
13 floor is Robert Geter's stories.

14 Deborah Culler says the fight happened in the
15 bar that she saw. Everybody says that Robert Geter
16 lost. If they're trying to make this whole thing
17 up, why would they just all come in and say, Yes,
18 James beat him up? Why wouldn't they just say,
19 Robert Geter just stabbed him? They told you what
20 happened. They told -- the reason everybody's
21 story is because they told you what happened.
22 Deborah saw what she saw and Reeshemah saw what
23 she saw. Deborah saw them fight on the dance
24 floor. Reeshemah saw the fight on the dance floor
25 and saw them go around the corner. If they're

1 making it up, why didn't she get with Harkness and
2 say, Oh, then I heard him say, I'm going to kill me
3 somebody tonight? Because they told you the truth.
4 They told you what they saw. And it was
5 corroborated by the evidence. And the Defendant is
6 guilty of murder and attempted murder.

7 Now, we also need to take a minute -- and
8 Ms. Zmroczek will get up next -- and talk for just
9 a few minutes about this self-defense argument.
10 They have to prove all four prongs of self-defense
11 in order to get it.

12 MS. ZMROCZEK: Your Honor, may we approach?

13 (WHEREUPON, a bench conference was held
14 in the presence of the jury but out of
15 the hearing of the jury.)

16 MS. ZMROCZEK: Your Honor, I'm objecting to
17 the last statement and ask that it be stricken.

18 THE COURT: The objection is sustained. The
19 last statement is stricken.

20 Please rephrase.

21 MR. SHELLENBERG: And we have to disprove at
22 least one prong of self-defense. It's the State's
23 burden. The State has the burden.

24 The Defendant must be without fault in
25 bringing on the difficulty. The Defendant must be

1 without fault in bringing on the difficulty. He
2 started a fight in the bar and he lost. It got
3 broken up. James Lewis went out back. It was
4 over. He was -- Robert Geter was inside, he was
5 talking to Deborah Culler, who was telling him, You
6 got to go. You got to leave. And he went out back
7 and he attacked James Lewis. You must be without
8 fault in bringing about the difficulty. The
9 Defendant went out back, pretended to go in as a
10 friend, Are we good, Are we good, Are we good? And
11 attacked him. He fails on the first prong.

12 The second one. The second element is the
13 Defendant was actually in imminent danger of death
14 or serious bodily injury or believed he was.

15 Again, there was a fight. It was on the dance
16 floor. The Defendant lost. But it was over. He
17 got up. Everyone testified he wasn't bleeding.
18 James Lewis has gone out back. Clarence Stone was
19 gone out back. There was no imminent threat of
20 death or serious bodily injury. And then the
21 Defendant goes out back and he says, I'm going to
22 kill me somebody. He bust through the door and,
23 Are we good, Are we good, because he knows he can't
24 take him one-on-one with his hands, that's already
25 failed a couple of times, so he needs to pull the

1 knife and he needs to get close enough where he can
2 stab him. He fails the prong.

3 The third element of self-defense is that if
4 the Defendant was actually in imminent danger, it
5 shows that the circumstances would have warranted a
6 person of ordinary fitness and courage to strike
7 the fatal blow to prevent death and serious bodily
8 injury. Well, we already know that he wasn't
9 actually in imminent danger. He fails on that
10 prong.

11 And, finally, the Defendant had no other
12 probable way to avoid danger, death, or serious
13 bodily injury than to act the way he did. He had
14 no way to get out of the situation. After the
15 fight was over, he had no way other than going out
16 back, except for when Deborah Culler told him to
17 leave and he had been going to Culler's for 18
18 years, knew the layout of the place, and he could
19 just have easily walked out the front door and been
20 gone. But he didn't want to. He wanted to go out
21 back because he had been disrespected. And that's
22 exactly what he did.

23 Now, they also put up Investigator Stace Day,
24 who got up there and he was talking to you all
25 about the puzzle that the case was and what was put

1 together well and what wasn't put together well.
2 And I guess going through it, the biggest problem
3 we didn't do was we didn't take some guesstimation
4 maps of what the area looked like. You know, we
5 didn't just guess this was 12 feet, this was
6 4 feet, real scientific stuff. I guess we should
7 have done that.

8 Then he said we should have took more pictures
9 of the kitchen. We need more pictures of the
10 kitchen. Deborah said she walked out of the
11 kitchen. And Robert Geter said she walked out of
12 the kitchen. Everybody says, even if you listen to
13 Robert Geter's story, she walked out of the
14 kitchen. Nothing happened in the kitchen. We just
15 need random pictures of the kitchen, though, from
16 random angles. That's what was missing.

17 And he said we didn't know what happened on
18 the dance floor because the statements of
19 Ms. Culler and Ms. -- or Deborah and Reeshemah, I
20 guess they're both Cullers -- didn't tell them what
21 happened. Even though they both said there was no
22 blood on the dance floor, that wasn't good enough.
23 But they let Stace come out to the bar, Reeshemah
24 let him in, let him go everywhere and take
25 pictures. And Stace didn't ask her about her

1 statement. Didn't ask Deborah about the statement.
2 Actually told Mr. Cathcart, I believe, that the
3 statements were fine. So the statements aren't
4 good enough, but, yeah, actually, you know, the
5 statements are good enough. So what they said was
6 good enough for him except for when he got on the
7 stand and decided maybe it wasn't and we needed to
8 do something else because we had to jam Robert
9 Geter's story in to try and make the self-defense
10 work.

11 And they will victim-blame. They'll get up
12 there and they'll say James brought it on himself
13 since he's not here to defend himself. That's what
14 they did in opening. And somehow I guess they
15 figured Clarence Stone should come down here and he
16 should have got on the stand and he really should
17 have been pissed off at James Lewis, is what they
18 said. It's all James's fault. He's not here, so
19 let's just blame him. Well, that's not true
20 because that's not what happened. That's not what
21 the evidence shows, that's not what the testimony
22 shows. That's what Robert Geter said in five
23 different stories. And we should just take it as
24 gospel.

25 Then finally they said we can't prove malice

1 aforethought. I'm going to kill me somebody
2 tonight. Listen to the charge on malice that the
3 judge gives you. I'm going to kill me somebody
4 tonight. And then, lo and behold, he kills
5 somebody. And he says it before he goes out there
6 and before he attacks James Lewis by going in with
7 the mindset that he has to get close to him. As I
8 said, he could not take him without his knife. So
9 he went out back after he's inside for a few
10 minutes, pulled his knife, and said, We good, we
11 good, we good? As soon as got close enough, he
12 started stabbing James Lewis. When Clarence Stone
13 tried to break it up, he got a knife to the eye.
14 And Robert Geter kept attacking James Lewis until
15 that fatal blow, I do this shit, flicked his knife,
16 and runs off.

17 He committed murder that night against James
18 Lewis and attempted murder against Clarence Stone.
19 The blood, the pictures, the testimony, the doctors
20 all corroborate that that's what happened. And the
21 Defendant is guilty of murder and attempted murder.

22 Thank you.

23 THE COURT: Yes, ma'am?

24 MS. ZMROCZEK: Thank you, Your Honor. May it
25 please the Court? May I have just a moment,

1 please?

2 THE COURT: Yes, ma'am.

3 (Pause.)

4 CLOSING ARGUMENT

5 MS. ZMROCZEK: Good morning. In the beginning
6 of this week, Mr. Schwartz got up here and told you
7 that not every time someone is killed is it a
8 murder and not every time that somebody is stabbed
9 is it a crime.

10 You have taken on an incredible responsibility
11 that few people have the opportunity or the
12 obligation to do. Our system works because of you.
13 You are here knowing as little as you can about the
14 facts, because you base all of your determination
15 on what's presented to you. And you're here to
16 answer a very serious question of fact. And if the
17 State has not given you the answers, the law will
18 be your guide. And it's done that way for a
19 reason. Mr. Shellenberg talks about how it's the
20 highest burden of proof in our juris prudence.
21 We're talking about someone's liberty.

22 So how I've broken down -- and I don't
23 anticipate going on and on because you've heard all
24 the testimony. I just want to sum up, point out a
25 few things that we would like for you to focus on.

1 I want to talk about some fears. I want to maybe
2 respond a little bit to the State's presentation,
3 both this whole week and just now. And then I want
4 to talk to you about self-defense briefly. The
5 Judge is obviously going to give you a charge on
6 that and she's going to give you the law.

7 So my fears. It's human nature -- there's
8 been a loss of life. And it's unfortunate that Mr.
9 Lewis died. But Mr. Lewis died because of his
10 behavior. They talked about voluntary
11 intoxication. One thing that you've never heard,
12 in fact, from any of the witnesses, who all saw
13 Mr. Geter that night, and even the investigator who
14 saw him a couple of hours later, less than 12 hours
15 later, you never heard that he was drunk. You
16 never heard that he was raving. Interestingly,
17 there was someone, two people, that we know smelled
18 of alcohol. There was someone that we know had a
19 .09 vitreous fluid, which means that's a two-hour
20 lag, so Dr. Marcus testified that it was higher,
21 and we know that he was high on marijuana. And not
22 only active marijuana, but metabolite. Does that
23 make him a bad person? No. Does that make him
24 deserve to die? No. Does that change his
25 behavior? It's possible.

1 The judge is going to tell you that you're not
2 here to reward anybody, that we can't base our
3 verdicts on sympathy. And it's human nature to
4 have sympathy. But you all took an oath, and we
5 have no doubt that you're not going to follow it,
6 and you will apply the facts to the law as you see
7 them and you will come up with a just verdict.

8 Interestingly, I was waiting to hear
9 Mr. Shellenberg explain Howard Jordan. Because
10 Howard Jordan is an example of how this case was
11 put together and presented to you. They put a
12 witness on the stand, a witness who testified under
13 oath that he was in the same pod as Mr. Geter and
14 he -- it was self-defense and I'm just going to try
15 to get out of it, without checking, without
16 checking to see if they had ever been in the same
17 pod. Not only have they not been in the same pod
18 at that time, those two never crossed paths. But
19 that's good enough for the State. As Investigator
20 Clarke told you right here, he gets called, he was
21 on duty that night, and he goes out there and he
22 talks to Deborah and he talks to Reeshemah, and he
23 gets probable cause. So he swears out warrants
24 without even getting the other side of the story.
25 Interestingly, before he got those warrants, he had

1 received these pictures. So he's got to know, he's
2 got to know that there's another side to the story.

3 Almost incredibly I asked him about his
4 training, 18 years in law enforcement, and he said,
5 Eh. Ladies and gentlemen, Eh isn't what we demand
6 in a court of law. He stopped at probable cause
7 and never went any further.

8 They're playing a shell game with you. They
9 spent 45 minutes yesterday cross-examining
10 Investigator Stace Day. And they spent another, I
11 don't know, 20 or so minutes talking about it. If
12 it doesn't matter, if he's not important, then why
13 are we talking about him? And why are they so
14 worried about his testimony?

15 There are questions, ladies and gentlemen,
16 that the State needs to answer for you. There have
17 been several objections about whose burden it is.
18 Mr. Shellenberg stood up and he said, The burden is
19 on the State. We welcome it. We accept it. Then
20 they try to shift it, and they can't do that.
21 Because even though we put up a case, and even
22 though we put up witnesses and we put in pictures
23 and we cross-examined their witnesses, the burden
24 never shifts, it never shifts to the Defendant. No
25 matter how hard they want to say it, it doesn't.

1 I was reading a book a few weeks back about --
2 it was a Sherlock Holmes book, and Sherlock Holmes
3 was talking to Watson, and he was talking about
4 circumstantial evidence. And he was talking about
5 a stick. And he says, Well, the stick, when you
6 look at it, the stick points in a direction. And
7 Holmes says to Watson, Wait, wait, wait, what you
8 need to do is come around and look at the other
9 side of the stick because, guess what, it points in
10 the exact opposite direction.

11 Richland County never looked at the other side
12 of the stick. What they're trying to do is make
13 all of this fit into their theory because it is
14 impossible that any other theory apply except for
15 theirs. It is impossible that Robert Geter was on
16 the ground being beaten and bloodied until his eyes
17 were swollen shut. And it is impossible that he
18 takes out the knife and gets James off of him.

19 Because remember how Dr. Marcus Bradley
20 corroborates all of their testimony? What did that
21 same doctor say? Absolutely, it could have
22 happened that way. In fact, if you're underneath
23 someone and you're trying to get them off, he says,
24 Absolutely, it could have happened that way.

25 And then they want to talk about the internal

1 bleeding, which only supports our side of the
2 story. If he's bleeding internally, then there's
3 not blood everywhere. And that's why he gets off.
4 Then you think the fight just stops? No. It's
5 because James was beating Robert and Robert pushed
6 him off. And that's what he testified to. He
7 can't see outside. He can't see. He's being led
8 outside. And James is mad now. He's mad. And he
9 comes out that door and he says words that I won't
10 repeat. And you heard Robert's testimony. But
11 they want you to not believe Robert's testimony
12 because he didn't stop to count and identify the
13 people who were beating him and kicking him.

14 Oh, he never mentioned self-defense. First
15 thing he says when he hands over the knife to the
16 police is, I got jumped by five guys. They already
17 had warrants out on him. They weren't interested
18 in hearing the full story or his side of the story.

19 He told you out back, he's trying to get away,
20 he's slashing, slashing. Dr. Marcus told you about
21 the injuries to the face, slashing. He talked
22 about defensive wounds to the hands. And look at
23 the pictures of Robert Geter's hands. Look at the
24 scrape, as it likes to be categorized, look at the
25 scrape that he received. All because he

1 accidentally stepped on someone's foot.

2 When you look at the evidence through the
3 guidance of Sherlock Holmes, on the other side of
4 the stick, there's some things that you'll see.
5 I'm not going to show it all to you because you'll
6 take it back there, but let's talk about Deborah.
7 She marked where she saw the fight. And she didn't
8 see it start. Not one, not one witness, except for
9 Mr. Geter could tell you what happened when it
10 started. But we can't believe him because he's a
11 Defendant. He's still a citizen. He's still
12 human. And he is presumed innocent. But don't
13 bother us with the facts. We don't want anything
14 that corroborates what he says. Because remember
15 how Dr. Marcus said that if you get cut in the
16 face, it's going to bleed? Well, isn't that
17 consistent with what you see on the deck?

18 Now, what's not consistent -- and I know I
19 remember this demonstration -- is what Reeshemah
20 Culler said. And he slung his knife in and he rips
21 it up and then he pulls it out and throws it down.
22 You don't have to have a pathology degree or a
23 medical degree to know that that's not corroborated
24 by the pictures. What is, is that someone gets
25 pushed, their chest is filling up, they're angry,

1 and they go outside to finish this up.

2 They say that Deborah Culler is perfectly
3 credible. And they're so worried about this
4 kitchen. Well, because Deborah Culler even says it
5 started on the dance floor or that she saw it
6 happen on the dance floor. And Clarence testifies
7 to his chain on the dance floor. And a lot of
8 people, including Mr. Geter, testified to a bottle
9 on the dance floor. So is it so wrong to ask why
10 we didn't have any pictures? Is that wrong? Is
11 that -- so we sent Investigator Day out there to
12 try to see to some pictures. That's all. Because
13 we weren't there that night.

14 They talked about how Rosalyn Graves
15 corroborated Reeshemah Culler's testimony. Well,
16 if you recall, what she actually testified to is
17 that she didn't see Reeshemah until after this
18 incident happened, which is interesting because
19 when you take the evidence and the 9-1-1 call, why
20 does she -- why doesn't she say, Boo Geter just
21 gutted my friend? Listen to the 9-1-1 call and see
22 if that makes sense with her testimony. Reeshemah
23 and Deborah never say that they see Clarence
24 inside. That's Deborah's godson. They never
25 identified him inside.

1 When you look at it from just one angle
2 without anything but your blinders, you're going to
3 see what you want to see. And that's why we have
4 the 15 of you to help solve this all.

5 The one thing that almost everyone is
6 consistent with in their testimony is that this
7 happened in about 10 to 15 minutes. Yet, a portion
8 of that time apparently was spent crafting a plan
9 to murder James Lewis. And Mr. Harkness's
10 statement was so important. That's their malice.
11 That's their malice. You know when they found that
12 malice? Two years later. The investigator said he
13 never, to this day, has spoken to Michael Harkness.
14 Yet, he is the star witness because of the malice?
15 We're not demanding perfection, just a little bit
16 of effort.

17 And when you go back and you discuss the
18 evidence and you -- and you recall both
19 investigators said, These people don't like to
20 talk. But look at the familial connection amongst
21 the people that do like to talk. Because they're
22 all in the same family and they all control who
23 goes in and out of that bar and who gets to come
24 back. And it is a tragedy that he died, but it is
25 not a crime, not a crime. That's why we have these

1 laws.

2 What is incredible to me is that all of the
3 witnesses who claim to have been throwing Robert
4 out, they say they never see any wounds, they never
5 see any blood. So I guess what they're trying to
6 say is that he did this later or he did it to
7 himself? I'm not sure. But, ladies and gentlemen,
8 you all have got common sense. Does it make sense
9 to be -- as testified -- beaten to almost a coma
10 and get up and go back for more? Oh, but I have a
11 knife in my pocket. Or could it also make sense
12 that as you're being beat to a pulp that you take
13 out your work knife and you push him off? And the
14 work records are in here because he had a job in
15 construction. Oh, he didn't use the right tool.
16 No. He used what he needed.

17 Corroboration is a funny thing. Remember the
18 other incredible demonstration by Reeshemah Culler
19 was that Robert is five-foot-eight, 145 pounds.
20 Geter is dragging James Lewis around the deck. So
21 be sure you look for all the marks that show that
22 there's a drag, because I'm sure you'll find them,
23 because she was telling the truth.

24 They want to talk about consistency and truth
25 and the truth is always changing, but Ms. Deborah

1 Culler said there was two men that brought James
2 up. Reeshemah Culler says it was two women. She
3 gives their names. We never heard from them. The
4 investigator talked to two people, and Clarence
5 Stone. That was his investigation in this case,
6 except for when Robert Geter turned himself in.

7 The judge is going to talk to you about the
8 burden of proof. And she's going to tell you it
9 makes a reasonable person hesitate to act. Let's
10 take Michael Harkness, for example. Let's say he
11 knocks on your door, says his car broke down, and
12 you've never met him before. He wants to come in
13 and watch your children. Use your phone, watch the
14 children. Would you hesitate to act?

15 Ladies and gentlemen, if you fall anywhere on
16 this chart with the evidence that they have
17 presented, then the judge is going to instruct you
18 that the just verdict is not guilty.

19 They charged Mr. Geter with attempted murder
20 on Clarence Stone. You remember his testimony. He
21 got caught in the eye. Now, let's say he was
22 breaking up a fight where Robert was getting beat
23 to death. If he got caught in the eye, there's no
24 specific intent to murder him. Because that's what
25 is required for attempted murder: A specific

1 intent to murder. There was not one doctor that
2 testified that Mr. Stone would have died from his
3 injuries. Are they unfortunate? Yes. Were they
4 intentional? No. Were they specifically
5 intentional to kill? No.

6 But, ladies and gentlemen, on the verdict form
7 that you're going to get, you're going to have two
8 choices, guilty or not guilty. In this case, I
9 would submit that there would be a third line, and
10 that third line would say innocent, and you would
11 check that. And let me tell you why. And it
12 starts with the behavior of Mr. Geter as soon as he
13 finds out that James Lewis is dead. I mean, three
14 years of phone calls and they played one phone
15 call. And listen to that phone call because they
16 want to say, Oh, I f'd up. And one of things that
17 I meant to mention in my fears is that, you know,
18 Mr. Geter is not like you and I. He's not well
19 educated. He is a hard-working man. But that
20 doesn't mean he deserves anything less. And so to
21 play the F word over and over, that's what they
22 chose to do. But if you listen to the other
23 portions of the call where he talks about how he
24 cried. And, sure, we could have been here all week
25 playing jail phone calls about him crying. But you

1 get to make reasonable inferences from the
2 evidence. And probably could have trained him and
3 got his testimony so it was exactly perfect,
4 cleaned him up and put a pretty little bow on him,
5 but, ladies and gentlemen, that's not what the
6 truth is. The truth is what you saw and how he
7 told you what he fears.

8 They say that he's never raised the defense of
9 self-defense. Okay, well, we know that
10 Investigator Clarke received these photos within 12
11 hours, actually probably within five hours, after
12 he had already sworn out the warrants. But not
13 only that, when he goes to turn himself in and he
14 gives him the knife and he's wearing the same
15 clothes. And if he is gutting and just dragging
16 James Lewis all over the place, what about that
17 camo jacket? Remember, I asked Dr. Amick, You
18 never received that, right? Did you test it? No.
19 Because, ladies and gentlemen, he stopped at
20 probable cause because every time that he starts to
21 investigate, the case gets a little worse.

22 I'm not going to sit here and say that Yvonne
23 Woods is a terrible investigator. That's not --
24 that wasn't the whole purpose of this. The whole
25 purpose was just take all the pictures. That's

1 what they're trained to do. There's no reason not
2 to. Clarence talked about a chain in there, so we
3 know there's got to be some evidence there. A
4 bottle, maybe we can see whose fingerprints are on
5 it, maybe we can whose blood is on it. And as much
6 as they want to say that there was no blood in the
7 dance room, reluctantly, but truthfully, Officer
8 Marum said, Yep, that's what my report says.
9 Because, you know what, he wrote it right then and
10 that's what it said. And it doesn't matter because
11 we're not here to try to blame and point fingers,
12 we're just here to try to get the truth, that's
13 all. That's all we want.

14 He talked to you about the elements of
15 self-defense, ladies and gentlemen. And you'll get
16 to evaluate whether or not he actually believed he
17 was in imminent danger. And in order to do that,
18 you have to go back to the point where he initiated
19 it, where he was on the ground, as was
20 demonstrated, with a knee in him and then a knee
21 around him. And when you look at the autopsy
22 pictures, what does Mr. Lewis have on his knee?
23 Two abrasions. Could that be corroborating
24 evidence? Not if you're the State. Don't dispute
25 the facts.

1 So after he's getting beaten and his eyes are
2 swelling shut, did he believe that he was in
3 imminent danger? They put not one witness up here
4 to say it wasn't self-defense. They just want to
5 call him a liar because he can't say how many
6 people jumped him and kicked him. They just wanted
7 him to continue to get jumped and kicked and beaten
8 until he just went away.

9 So when you evaluate the third element of
10 self-defense, any reasonable, prudent person
11 getting kicked and punched, would they feel like
12 not only is it death, but the law says great bodily
13 injury. That's a fact for you to decide. He had
14 no other probable means of avoiding the danger.
15 He's in a tiny dance floor area we don't know
16 because the only sketches not to scale or to scale
17 that were provided by us. Not our duty, not our
18 responsibility, but we did it because, yes, we are
19 trying to paint a complete picture. And if that
20 somehow makes us the enemy, I'll accept that
21 because the constitution requires that of me for
22 Mr. Geter.

23 So you look at the pictures and you look at
24 his face and you decide whether or not he had an
25 opportunity to go away. And, in fact, he explained

1 to you what happened when we went out on the deck.
2 Had to have somebody walk him out there. And see
3 if what he testified to was consistent with the
4 injuries received.

5 And then you come back to the reasonable
6 doubt. And this changes a little bit, ladies and
7 gentlemen, with self-defense. So self-defense has
8 been proven beyond a reasonable doubt. Not guilty.
9 It's possible he was acting in self-defense. Not
10 guilty. It's probable that he was acting in
11 self-defense. Not guilty. That's what the law and
12 justice requires. Even if -- even if there's a
13 strong belief he wasn't acting in self-defense, the
14 Judge is going to instruct you that's not enough.
15 A reasonable person hesitates to act.

16 Every creature understands self-preservation.
17 In your consideration of whether or not the State
18 has disproven self-defense, which is really a
19 double negative, a convoluted way of saying --
20 saying what? You go back there and this is what
21 you do at my suggestion, certainly, you can do what
22 you want. I think you should look at the evidence
23 and I think you should evaluate it. And when you
24 evaluate it, you remember all of the things that
25 the judge is going to tell you. She has told you

1 about the presumption of innocence. And I want to
2 talk about that just for a little bit because it
3 goes to how someone looks at the evidence.

4 So there are two ways to kind of look at the
5 evidence, analyze the evidence. There's a sinister
6 way where the only thing that could happen is the
7 way that the State says. Or there's the way that
8 the constitution and the law requires us, and
9 that's the open-minded way. So when you get back
10 in that room and one of your fellow jurors turns to
11 you and says, Why didn't the Defense play all the
12 jail calls, why didn't they do this, why didn't
13 they do that? You be the juror to say, No, no, no,
14 you have it backwards. That's not the burden. Why
15 didn't the State prove it beyond a reasonable
16 doubt? Why did the State put somebody up here and
17 let them lie? Did they know he was going to lie?
18 I don't know. Did they bother to even check? I
19 know they didn't because they wouldn't have put him
20 up. Did they listen to the 9-1-1 call with
21 Reeshemah on it and ask her -- why do we have to
22 put the 9-1-1 call in? And it was available to us,
23 we did it, and it's fine. Because we want you to
24 have as much of the picture as you can.

25 Finally, I want to make one suggestion to you.

1 Set aside these crimes of attempted murder and
2 murder for a moment when you're in the back and
3 decide on self-defense. And if you can
4 definitively say that they have disproven all of
5 the elements beyond a reasonable doubt, then you go
6 onto the crime. But if you have some question, a
7 reason to doubt, then you stop right there and you
8 find him not guilty. And when you're looking at
9 this whole corroboration, so one of the things that
10 I found interesting in the photos they did take
11 that evening were the pool tables. And y'all will
12 get them back there, you will have them. You have
13 two people playing pool and then this thing happens
14 and they run out. Look for the balls, look for the
15 cue. See where they are. And see if that
16 corroborates their story. I submit you won't find
17 them.

18 Oh, she's just trying to confuse you. No.
19 Just trying to give you the whole picture and just
20 trying to ask you to do your duty and follow the
21 law and hold the State to their burden. Because,
22 ladies and gentlemen, when you go back there and
23 you analyze the elements of self-defense to see if
24 they have been disproven beyond a reasonable doubt
25 by the State, then your job is done because you

1 will find that this loss of life was done in
2 justification because Robert Geter acted in
3 self-defense and he is not guilty of murder and he
4 is not guilty of attempted murder.

5 Thank you.

6 MR. CATHCART: May it please the Court?

7 THE COURT: Yes, sir.

8 CLOSING ARGUMENT

9 MR. CATHCART: Ladies and gentlemen, I'm not
10 going to take long. Mr. Shellenberg already told
11 you the State's case. I just want to point out to
12 you that Ms. Zmroczek says that we did not put up
13 one witness who said anything about self-defense.
14 That there was not self-defense. Every witness
15 said that. Every witness testified to what they
16 saw about the fact that Mr. Geter started the
17 fight, the fact that Mr. Geter kept going back at
18 him, and kept losing. Every witness saw him run
19 out, armed himself with a knife, pull the knife and
20 start stabbing Mr. Lewis, and in doing so, also
21 stabbed Mr. Stone. All the evidence corroborates
22 that. And I, again, agree with Ms. Zmroczek on
23 that.

24 Look at the evidence. Look as to the door,
25 the back door where Reeshemah Culler says that the

1 Defendant had pushed the victim up against that
2 door, his face already been stabbed, his head up
3 against the door as he gutted him. And you will
4 see where his head was because of the blood.

5 All the evidence that has been presented here
6 today proves the Defendant's guilt. The Defendant,
7 Defense counsel, does not want you to focus on
8 that. She wants to say, Well, is it possible? No,
9 it's not. We have witnesses here.

10 Her own investigator said, I didn't see a
11 reason to talk to Ms. Culler, her statement was
12 right. I didn't see a reason to talk to the
13 daughter, it was right. But I did go and take
14 pictures of the kitchen without knowing where
15 anybody was standing. Because they don't want you
16 to look at the evidence.

17 Let's talk about the kitchen. Let's not look
18 at the evidence that shows his guilt. Let's talk
19 about something else. Anything else. Something
20 else. Let's not talk about Robert Geter's five
21 stories. Let's just talk about the one this time.
22 Let's just believe this one. Every time he has
23 said what happened, it has changed. And as we all
24 know, the truth doesn't change. And I submit to
25 you, ladies and gentlemen, when he said he was

1 going to cry when he found out he murdered that
2 man, he wasn't crying for Mr. Lewis. He screwed
3 up, fucked up, and now he's got to pay the
4 consequences. I'm a bad boy. I did wrong. I was
5 going to kill myself, but what the heck, I'll see
6 how this works out.

7 He says he couldn't call his girlfriend that
8 night because his phone was so covered in blood it
9 wouldn't work. You saw the picture that they're
10 saying are his massive injuries he has. A scrape
11 on one hand -- scrape on one hand, his face is
12 bruised, he has a scratch over that eye, but his
13 phone was covered in blood. His other hand with no
14 injury on it, looks like he dipped his hand in
15 blood.

16 Ladies and gentlemen, the evidence has been
17 presented before you. Mr. Geter himself has said
18 he's a bad boy, he did wrong. I ask that you go
19 back there and look at the evidence and make him
20 take responsibility for that. Find him guilty of
21 murder of James Lewis and the attempted murder of
22 Mr. Stone. The specific intent of Mr. Stone is the
23 fact that he was trying to kill Mr. Lewis and he
24 stabbed Mr. Stone in the face. The judge will
25 charge you on transferred intent. Specific intent.

1 I'm going to kill me somebody tonight. That's
2 exactly what he did. He's a bad boy. He did
3 wrong.

4 Thank you.

5 THE COURT: All right. Let me have you all
6 move the easel for me.

7 Ladies and gentlemen, we are now ready for the
8 charge on the law. It may take another 30 minutes
9 or so. Does anyone need to use the restroom or
10 take a break?

11 (WHEREUPON, there was no response.)

12 THE COURT: All right. Well, if not, we will
13 continue on. We will move on.

14 JURY CHARGE

15 THE COURT: Ladies and gentlemen of the jury,
16 as I have told you, we are ready for the charge on
17 the law. You have heard all of the evidence, the
18 arguments of the parties, it is now my
19 responsibility to charge you the law in this case.

20 I remind you that during this trial you and I
21 have certain duties to perform. As the trial
22 judge, it is my responsibility to preside over the
23 trial of this case, and I also have the
24 responsibility of ruling on the admissibility of
25 evidence offered during this trial.

1 You are to consider only the competent
2 evidence before you. If there was any testimony
3 ordered stricken from the record in this case
4 during this trial, you must disregard that
5 testimony. You are to consider only the testimony
6 which has been presented from this witness stand,
7 any exhibits which have been made a part of the
8 record, and any stipulations of counsel.

9 I have the additional duty to charge you the
10 law applicable to this case. As the presiding
11 judge, I am the sole judge of the law in this case.
12 And it is your duty as jurors to accept and apply
13 the law as I now state it to you. If you already
14 have any idea as to what the law is or what the law
15 ought to be and it does not agree with what I now
16 tell you the law is, you must abandon this idea
17 because you are sworn to accept the law and apply
18 the law exactly as I state it to you.

19 In every case tried in this court before a
20 jury, the jury becomes the sole and exclusive judge
21 of the facts in the case. A trial judge cannot
22 comment on or state or make any statements to a
23 trial jury about the facts in a case.

24 Since you, the jury, are the sole judges of
25 the facts in this case, you are not to infer from

1 what I have said during the progress of this trial
2 in ruling upon the admissibility of evidence or
3 otherwise or anything that I say now during the
4 course of this instruction to you that I have any
5 opinion about the facts in this case. The law does
6 not allow me to have an opinion about the facts in
7 this case. This is a matter solely for you to
8 determine as jurors. As jurors, it is your duty to
9 determine the effect, the value, and the weight of
10 the evidence presented during this trial.

11 Ladies and gentlemen of the jury, there are
12 two types of evidence which are generally presented
13 during a trial, direct evidence and circumstantial
14 evidence.

15 Direct evidence is the testimony of a person
16 who claims to have actual knowledge of a fact, such
17 as an eyewitness. It is evidence which immediately
18 establishes the main fact to be proved.

19 Circumstantial evidence is a proof of a chain
20 of facts and circumstances indicating the existence
21 of a fact. It is evidence which immediately
22 establishes collateral facts from which the main
23 fact may be inferred. Circumstantial evidence is
24 based on inference and not on personal knowledge or
25 observation.

1 The law makes absolutely no distinction
2 between the weight or value to be given to either
3 direct or circumstantial evidence, nor is a greater
4 degree of certainty required of circumstantial
5 evidence than of direct evidence. However, to the
6 extent the State relies on circumstantial evidence,
7 all of the circumstances must be consistent with
8 each other and, when taken together, point
9 conclusively to the guilt of the accused beyond a
10 reasonable doubt. If these circumstances merely
11 portray the Defendant's behavior as suspicious, the
12 proof has failed. The State has the burden of
13 proving the Defendant guilty beyond a reasonable
14 doubt. This burden rests with the State regardless
15 of whether the State relies on direct evidence,
16 circumstantial evidence, or some combination of the
17 two. You should weigh all the evidence in this
18 case.

19 After weighing all the evidence, if you are
20 not convinced of the guilt of the Defendant beyond
21 a reasonable doubt, you must find the Defendant not
22 guilty.

23 Necessarily, you must determine the
24 credibility of witnesses who have testified in this
25 case. Credibility simply means believability. It

1 becomes your duty as jurors to analyze and to
2 evaluate the evidence and determine which evidence
3 convinces you of its truth.

4 In determining the believability of witnesses
5 who have testified in this case, you may believe
6 one witness over several witnesses, or several
7 witnesses over one witness. You may believe a part
8 of the testimony of a witness, and reject the
9 remaining part of the testimony of that same
10 witness. You may believe the testimony of a
11 witness in its entirety, or reject the testimony of
12 a witness in its entirety. You may consider
13 whether any witness has exhibited to you any
14 interest, bias, prejudice, or other motive in this
15 case. You may also consider the appearance and
16 manner of a witness while on the witness stand.

17 A person who has a past criminal record is
18 competent to testify during a trial. A past record
19 does not affect the ability of that witness to
20 testify. The past record may only be considered by
21 you, if at all, in determining the witness's
22 believability.

23 The Rules of Evidence -- we've had, I think,
24 two or three expert witnesses -- and as I told you
25 earlier in the week, the Rules of Evidence

1 ordinarily do not permit witnesses to testify to
2 opinions or conclusions. An exception to this rule
3 exists for witnesses we call expert witnesses.

4 A witness who, by education and experience,
5 has become an expert in some art, science,
6 profession, or calling may state an opinion as to
7 relevant and material matters in which the witness
8 claims to be an expert and may also state the
9 reasons for the opinion.

10 You should consider any expert opinion
11 received in evidence in this case and, like any
12 other evidence, give it the weight you think it
13 deserves.

14 If you decide that the opinion of an expert
15 witness is not based on sufficient education and
16 experience or if you conclude that the reasons
17 given in support of the opinion are not sound or
18 that the opinion is outweighed by other evidence,
19 you may disregard the opinion entirely.

20 An expert witness's testimony is to be given
21 no greater weight than that of other witnesses
22 simply because the witness is an expert. Further,
23 you are not required to accept an expert's opinion
24 even though it is not contradicted.

25 Ladies and gentlemen of the jury, as I told

1 you on the first day, the Defendant in this case is
2 charged with murder and attempted murder -- is
3 charged in indictments with murder and attempted
4 murder. I remind you the fact that the Defendant
5 was arrested, charged, and indicted in this case is
6 not evidence in this case and cannot be considered
7 by you as evidence of guilt in this case, nor does
8 it create any presumption or inference of guilt.
9 This document is simply the formal written
10 instrument which contains the charges made against
11 the Defendant. It is the formal document by which
12 this case is brought into court.

13 The indictments in this case allege two
14 different offenses against the Defendant: The
15 charge of murder, and that is
16 Indictment 2015-GS-40-2757; and attempted murder,
17 Indictment 2015-GS-40-2758.

18 Each indictment charges a separate and
19 distinct offense. You must decide each indictment
20 separately on the evidence and the law applicable
21 to it uninfluenced by your decision as to any other
22 indictment. The Defendant may be convicted or
23 acquitted on any or all of the offenses charged.
24 You will be asked to write a separate verdict of
25 guilty or not guilty for each indictment.

1 Ladies and gentlemen of the jury, the
2 Defendant in this case has pled not guilty to the
3 indictments, and that plea puts the burden of proof
4 on the State. A person charged with committing a
5 criminal offense in South Carolina is never
6 required to prove himself innocent.

7 I charge you that it is an important rule of
8 the law that the Defendant in a criminal trial, no
9 matter what the seriousness of the charge may be,
10 will always be presumed to be innocent of the crime
11 for which the indictment was issued unless guilt
12 has been proven by evidence satisfying you of that
13 guilt beyond a reasonable doubt. This presumption
14 of innocence does not end when you begin your
15 deliberation, but it accompanies the Defendant
16 throughout the trial until you have reached a
17 verdict of guilt based on evidence satisfying you
18 of that guilt beyond a reasonable doubt.

19 The presumption of innocence is like a robe of
20 righteousness placed about the shoulders of the
21 Defendant, which remains with the Defendant until
22 it has been stripped from the Defendant by evidence
23 satisfying you of the Defendant's guilt beyond a
24 reasonable doubt.

25 The presumption of innocence is not a mere

1 legal theory. It is not just a legal phrase. It
2 is a substantial right to which every Defendant is
3 entitled unless you, the jury, are satisfied from
4 the evidence of the Defendant's guilt beyond a
5 reasonable doubt.

6 What is reasonable doubt in the law? A
7 reasonable doubt is the kind of doubt that would
8 cause a reasonable person to hesitate to act. The
9 State has the burden of proving the Defendant
10 guilty beyond a reasonable doubt. Some of you may
11 have served as jurors in civil cases where you were
12 told that it is only necessary to prove that a fact
13 is more likely true than not true, such as the
14 greater weight or preponderance of the evidence.

15 In criminal cases, the State proof must be
16 more powerful than that. It must be beyond a
17 reasonable doubt. Proof beyond a reasonable doubt
18 is proof that leaves you firmly convinced of the
19 Defendant's guilt.

20 There are very few things in this world that
21 we know with absolute certainty. And in criminal
22 cases, the law does not require proof that
23 overcomes every possible doubt.

24 If, based on your consideration of the
25 evidence, you are firmly convinced that the

1 Defendant is guilty of the crime charged, you must
2 find the Defendant guilty.

3 If, on the other hand, you think there is a
4 real possibility that the Defendant is not guilty,
5 you must give the Defendant the benefit of the
6 doubt and find him not guilty.

7 In order to establish criminal liability,
8 criminal intent is required. For example, the
9 mental state required to be proven by the State for
10 a particular crime might be purpose, intent,
11 knowledge, recklessness, or criminal negligence.
12 Criminal intent must be proved by the State beyond
13 a reasonable doubt.

14 Criminal intent is always a matter that must
15 be determined by the jury from the circumstances
16 surrounding the situation. There is no way to
17 prove intent to a mathematical certainty. There is
18 no way that medical science can dissect a person's
19 brain and determine what the person had in mind.
20 So the law says that criminal intent may be
21 inferred from the circumstances shown to have
22 existed. This is how you make a determination of
23 whether or not the element requiring intent was
24 present. It is not necessary to establish intent
25 by direct and positive evidence, but intent may be

1 established by inference in the same way as any
2 other fact, by taking into consideration the acts
3 of the parties and all the facts and circumstances
4 of the case.

5 Criminal intent is a mental state, a conscious
6 wrongdoing. It is up to you to determine what the
7 Defendant intended to do based on the circumstances
8 shown to have existed. Criminal intent can arise
9 from actions or failure to act. It may arise from
10 negligence, recklessness, or an indifference to the
11 duty or the consequences that is considered by the
12 law to be the equivalent of criminal intent.

13 Ladies and gentlemen of the jury, the
14 Defendant in this case is charged with murder. The
15 State must prove beyond a reasonable doubt that the
16 Defendant killed another person with malice
17 aforethought.

18 Malice is a legal term implying wickedness and
19 excluding a just cause or excuse. The term malice
20 indicates a formed purpose and design to do a
21 wrongful act under the circumstances that exclude
22 any legal right to do it. It is something which
23 springs from wickedness, from depravity, from a
24 heart devoid of social duty and fatally bent on
25 mischief. Malice must be expressed or implied.

1 Malice is hatred, ill-will, or hostility towards
2 another person. It is the intentional doing of a
3 wrongful act without just cause or excuse and with
4 an intent to inflict an injury or under
5 circumstances that the law will infer it evil
6 intent. Malice aforethought does not require that
7 malice exist for any particular time before the act
8 is committed, but malice must exist in the mind of
9 the Defendant just before and at the time the act
10 is committed. Malice may be conceived at the very
11 moment the fatal blow is given. Therefore, there
12 must be a combination of the previous evil intent
13 and the act.

14 Malice aforethought may be express or
15 inferred. These terms express or inferred do not
16 mean different kinds of malice, but merely the
17 manner in which malice may be shown to exist. That
18 is either by direct evidence or by inference from
19 the facts and circumstances which are proved.

20 Express malice is shown when a person speaks
21 words which express hatred or ill-will for another
22 or when the person prepared beforehand to do the
23 act which was later accomplished. For example,
24 lying in wait for a person or any other acts of
25 preparation going to show that the deed was within

1 the Defendant's mind would be express malice.

2 Malice may be inferred from conduct showing a
3 total disregard for human life. Malice may be
4 inferred from the facts and circumstances
5 surrounding the case. Malice does not necessarily
6 impart ill-will towards the individual injured, but
7 signifies rather a general and malignant
8 recklessness of the lives and safety of others or a
9 condition of mind which shows a heart regardless of
10 social duty and fatally bent on mischief.

11 Ladies and gentlemen, we'll next talk about
12 the doctrine of transferred intent. If the
13 Defendant with malice aforethought attempts to kill
14 another person, but by mistake injures or kills a
15 different person, the law considers that the
16 Defendant still had the intent to kill. Intent to
17 kill is a mental state. It exists in the mind. So
18 if the State proves that a Defendant acting with
19 malice had the intent to kill one person, but
20 mistakenly injured another, the intent to kill is
21 merely transferred from the original person the
22 Defendant attempted to kill to the actual person
23 injured.

24 Pursuant to the transfer intent doctrine, if
25 one person intends to harm a second person, but

1 instead unintentionally harms a third, the first
2 person's criminal intent towards the second applies
3 to the third as well.

4 An attempt. An attempt is an effort to
5 accomplish a crime which does not succeed. An
6 attempt includes an intent to do a particular
7 criminal act along with any act falling short of
8 the act intended. The State must show more than
9 mere preparation and intent. There must be some
10 overt act committed in the effort to commit the
11 crime. Intent means intending the result which
12 actually occurred, not accidentally or
13 involuntarily. Intent may be shown by acts and
14 conduct of the Defendant and other circumstances
15 from which you may naturally and reasonably infer
16 intent.

17 Ladies and gentlemen of the jury, the
18 Defendant in this case is also charged in an
19 indictment with attempted murder. In order to
20 prove this crime, the State must prove the
21 Defendant had the specific intent to kill another
22 person with malice aforethought, either express or
23 implied. A specific intent -- attempt includes an
24 intent to do a particular criminal act along with
25 an act falling short of the act intended. The

1 State must show more than mere preparation and
2 intent. There must be some overt act committed in
3 the effort to commit the crime.

4 Intent means intending the result which
5 actually occurred, not accidentally or
6 involuntarily. Intent may be shown by acts and
7 conduct of the Defendant and other circumstances
8 from which you may naturally and reasonably infer
9 intent. Evidence of the character of the act, the
10 character to which it was used, the manner in which
11 it was used, the purpose to be accomplished, and
12 the resulting wounds or injuries may be considered
13 in determining the intent with which the act was
14 committed. Intent may also be inferred when it is
15 demonstrated that the Defendant voluntarily and
16 willfully commits an act, the natural tendency of
17 which is to destroy another's life.

18 Ladies and gentlemen of the jury, the
19 Defendant has raised the defense of self-defense.
20 Self-defense is a complete defense, and if it is
21 established, you must find the Defendant not
22 guilty. The State has the burden of disproving
23 self-defense by proof beyond a reasonable doubt.

24 If you have a reasonable doubt of the
25 Defendant's guilt after considering all of the

1 evidence, including the evidence of self-defense,
2 then you must find the Defendant not guilty.

3 On the other hand, if you have no reasonable
4 doubt of the Defendant's guilt after considering
5 all the evidence, including the evidence of
6 self-defense, then you must find the Defendant
7 guilty.

8 The following elements are required to
9 establish self-defense.

10 First, the Defendant must be without fault in
11 bringing on the difficulty. If the Defendant's
12 conduct was the type which was reasonably
13 calculated to and did provoke a deadly assault, the
14 Defendant would be at fault in bringing on the
15 difficulty and would not be entitled to an
16 acquittal based on self-defense.

17 The second element of self-defense is that the
18 Defendant was actually in imminent danger of death
19 or serious bodily injury, or that the Defendant
20 actually believed he was in imminent danger of
21 death or serious bodily injury.

22 If the Defendant was actually in imminent
23 danger, it must be shown that the circumstances
24 would have warranted a person of ordinary firmness
25 and courage to strike the fatal blow to prevent

1 death or serious bodily injury. If the Defendant
2 believed he was in imminent danger of death or
3 serious bodily injury, it must be shown that a
4 reasonably prudent person of ordinary firmness and
5 courage would have had the same belief.

6 In deciding whether the Defendant actually was
7 or believed he was in imminent danger of death or
8 serious bodily injury, you should consider all the
9 facts and circumstances surrounding the crime,
10 including the physical condition and
11 characteristics of the Defendant and the victim.

12 The Defendant does not have to show that he
13 was actually in danger. It is enough if the
14 Defendant believed he was in imminent danger and a
15 reasonably prudent person of ordinary firmness and
16 courage would have the same belief. The Defendant
17 has the right to act on appearances even though the
18 Defendant's belief may have been mistaken. It is
19 for you to decide whether the Defendant's fear of
20 immediate danger or death or serious boldly injury
21 was reasonable and would have been felt by an
22 ordinary person in the same situation.

23 Words accompanied by hostile acts may,
24 depending on the circumstances, establish
25 self-defense. Evidence of prior difficulties

1 between the Defendant and the victim may be
2 considered in deciding whether a threat existed,
3 whether the Defendant had a reason to believe a
4 threat existed, and how serious that threat was.

5 Ladies and gentlemen, you can also consider
6 the size and age. The relative sizes, ages, and
7 weight of the Defendant and the victim may be
8 considered in deciding the apparent or actual need
9 for force and self-defense and the amount of force
10 needed.

11 The intoxication of the victim may be
12 considered in deciding whether the Defendant's fear
13 of death or bodily harm was reasonable.

14 The third element of self-defense is that a
15 reasonably prudent person of ordinary firmness and
16 courage would have entertained the same belief.

17 The final element of self-defense is that the
18 Defendant had no other probable way to avoid the
19 danger of death or serious bodily injury than to
20 act as the Defendant did in the particular
21 instance.

22 The Defendant had no duty to retreat if, by
23 doing so, the danger of being killed or suffering
24 serious bodily injury would increase.

25 A person cannot be required to make an exact

1 calculation as to the degree or amount of force
2 which may be needed to avoid death or serious
3 bodily injury. Therefore, in self-defense, the
4 Defendant has the right to use the force needed to
5 avoid death or serious bodily harm. The force used
6 in self-defense does not have to be limited to the
7 degree or amount of force used by the victim. The
8 Defendant has the right to use so much force as
9 appeared to be necessary for complete
10 self-protection and which a person of ordinary
11 reason and firmness would have believed to be
12 needed to prevent death or serious bodily harm.

13 If the Defendant is justified in defending
14 himself or others and in firing the first shot,
15 then the Defendant is also justified in continuing
16 to defend himself until it is apparent that the
17 danger of death or serious bodily injury has
18 completely ended.

19 Voluntary intoxication is not an excuse for a
20 defense to a crime. A person who voluntary ingests
21 alcohol or drugs and thereby becomes intoxicated is
22 no less responsible for his acts while in such
23 condition. If one voluntarily drinks intoxicating
24 liquors, wine, or beer or ingests drugs or becomes
25 intoxicated to whatever degree, and if while in

1 that condition commits an act which would be a
2 crime if it had been committed by a sober person,
3 the fact of intoxication would not relieve the
4 intoxicated person from responsibility.

5 Ladies and gentlemen of the jury, the law
6 requires that a jury verdict be unanimous, which
7 means that all jurors must agree. The only two
8 forms of the verdict are guilty or not guilty.

9 Madam Forelady, once the jury reaches a
10 verdict of not guilty or guilty, circle the verdict
11 on the verdict form and sign under the verdict to
12 signify that what you have circled is the verdict
13 of all the jurors. Then you will notify us by
14 knocking on the door that you have reached a
15 verdict.

16 Ladies and gentlemen of the jury, the State
17 and the Defendant are entitled to the individual
18 opinion of each juror on the issues of fact in this
19 case. It is the duty of each of you to consider
20 and weigh all of the evidence in this case and from
21 such evidence determine, if you can, the question
22 of guilt or innocence of the Defendant.

23 There is nothing peculiarly different in the
24 way a jury should consider the evidence in a
25 criminal case from that in which all reasonable

1 persons treat any question depending upon evidence
2 presented to them. You are expected to use your
3 good sense, consider the evidence in the case for
4 only those purposes for which it has been admitted,
5 and give it a reasonable and fair construction in
6 the light of your common knowledge of the natural
7 tendencies and inclinations of human beings. If
8 the accused be proved guilty beyond a reasonable
9 doubt, say so. If not so proved guilty, say so.

10 Your verdict in this case will be one of two
11 forms. If, from the evidence and the law, you find
12 that the Defendant is not guilty, you will circle
13 not guilty on the verdict form that I will give
14 you, and the forelady will sign her name.

15 If, on the other hand, you find that the
16 Defendant is guilty based upon the evidence and the
17 law which you have heard, you will circle guilty on
18 the verdict form, and the forelady will sign her
19 name.

20 Your verdict must be unanimous. It must be
21 guilty or not guilty.

22 Madam Forelady, I have in my hand two verdict
23 forms that you will receive in the jury room. The
24 verdict form reads: The State of South Carolina,
25 County of Richland, In the Court of General

1 Sessions of the Fifth Judicial Circuit,
2 Indictment 2015-GS-40-2757, State of South Carolina
3 v. Robert Xavier Geter, Defendant. Please circle
4 the appropriate verdict below and follow the
5 accompanied instructions carefully.

6 Number One: As to the indictment alleging the
7 murder of James Lewis, We, the jury, unanimously
8 find the Defendant -- and right next to each other,
9 you have guilty or not guilty. You will circle
10 whichever is the verdict of the jury. You will
11 sign it, Madam Forelady, and date it.

12 On the next indictment of 2015-GS-40-2758, the
13 State of South Carolina v. Robert Xavier Geter,
14 Defendant. Please circle the appropriate verdict
15 below and follow the accompanying instructions
16 carefully.

17 This one says, One: As to the indictment
18 alleging attempted murder of Clarence Stone, We,
19 the jury, unanimously find the Defendant guilty or
20 not guilty.

21 Please stop and end your deliberations. Madam
22 Forelady, you will sign the verdict form and date
23 it.

24 Once you have done that, you will knock on the
25 door and inform the bailiff that you have reached a

1 verdict.

2 I am going to send you all back into the jury
3 room at this time, but do not begin your
4 deliberations until you have received -- you've got
5 to wait on the exhibits -- until you've received
6 the exhibits, the verdict form, and the
7 instructions from the bailiff that you may begin
8 your deliberations.

9 Your lunch may be back there, I'm not sure.
10 If it is, you are more than welcome to eat while
11 you deliberate. It is up to you as to how you wish
12 to, you know, eat your lunch. Some people eat and
13 then deliberate. It is up to you. But once you
14 begin your deliberations, we will wait on your
15 verdict, and you just knock on the door and let the
16 bailiff know that you have reached a verdict.

17 There will probably be a notepad back there I
18 think in the jury room. If you have any questions
19 that you would like to ask, Madam Forelady, you
20 just write on the notepad, sign your name and put
21 your juror number.

22 You will receive all the exhibits in the back.
23 So there is nothing additional that I can give you.
24 You will have all of the evidence. If you need to
25 hear testimony, I will go ahead and tell you, the

1 court reporter is over there typing away, but there
2 is no transcript that she can just print off
3 because they type -- I don't know if it's called
4 shorthand, or what, but you would not understand.
5 I cannot understand it. So she is the recording
6 the testimony and everything that we're saying. So
7 she can play back testimony if you need testimony
8 played back. Just write us a note, let us know
9 which testimony you would like to hear played back,
10 and we will have to bring you back out here for you
11 to hear it.

12 We are going to also send the audio. There's
13 audio?

14 MR. CATHCART: Yes, Your Honor.

15 THE COURT: That will be sent on the laptop?

16 MR. CATHCART: I believe so.

17 THE COURT: A clean laptop?

18 MR. CATHCART: Yes, ma'am.

19 THE COURT: You won't be able to access
20 anything else on it. The only thing you'll be able
21 to do is play the audio.

22 Anything else?

23 MS. ZMROCZEK: There's another audio as well.
24 I mean, there's two disks of audio.

25 THE COURT: You'll have those -- if they are

1 in evidence, you will have all of that in the back.

2 All right. So don't begin your deliberations.
3 And we're going to send you all back, and then you
4 should hear something from us shortly.

5 And, Mr. Bowen, tell them to keep the
6 alternates in the hallway.

7 (WHEREUPON, the jury retires to the jury
8 room at 12:30 p.m.)

9 THE COURT: Any objections or exceptions from
10 the State?

11 MR. CATHCART: No, Your Honor.

12 THE COURT: Anything from the Defense other
13 than --

14 MS. ZMROCZEK: Yes, Your Honor. I renew my
15 objections to the charges that I requested,
16 additions or changes, and specifically to the
17 renewed objection to transferred intent.

18 THE COURT: All right.

19 MR. CATHCART: And, Your Honor, State's
20 Exhibit Number, I believe it's 75, which is the
21 audio, there's an unredacted copy. I'll get what
22 we played for the jury, redacted copy, brought
23 down.

24 THE COURT: All right. And what about the
25 knife? I know normally on a gun we put the little

1 wrap thing, but I guess we'll send it back.

2 All right, let me bring the alternates. I'm
3 going to release the alternates then.

4 Then here are the verdict forms. Y'all take a
5 look at those. And I think that's it.

6 The last jury requested a copy of the jury
7 charge. I don't know how y'all feel about that.
8 If you want to send it back, I can send it back.

9 MS. ZMROCZEK: I guess, let's wait and see.

10 MR. SHELLENBERG: Yes, I guess we can tackle
11 that when we --

12 THE COURT: Okay. You can bring the
13 alternates in.

14 (WHEREUPON, the alternates enter the
15 courtroom at 12:13 p.m.)

16 THE COURT: All right. Ladies and gentlemen,
17 you three were selected as our alternates. And as
18 you can see, all of the other 12 jurors have
19 remained. No one has gotten sick, which is good.
20 And so therefore we no longer need your services.
21 You are more than welcome to hang around. You can
22 now talk to anyone. You can read anything. I am
23 releasing you. I don't think you have to go back
24 downstairs, you can be released for the week. The
25 clerk may have -- she has your lunches and she may

1 have some documents for you if you need a work
2 excuse or anything.

3 But I do want to thank you all for your
4 service. Being an alternate, in the words of my
5 former boss, it is like being invited to the dance,
6 but not being asked to dance. And I do want to
7 thank you for being attentive here this week and,
8 hopefully, this has been a good experience for you
9 all. And, once again, thank you. And you're free
10 to leave. You can hang around. And if you choose
11 to hang around, we'll let you sit in -- they will
12 bring you back around and let you sit in here and
13 see what your fellow jurors are going to come up
14 with.

15 All right. Thank you.

16 (WHEREUPON, the alternates were
17 excused.)

18 (WHEREUPON, the jury was instructed to
19 begin deliberations at 12:47 p.m.)

20 (WHEREUPON, court was in recess awaiting
21 a verdict.)

22 (WHEREUPON, the following occurred at
23 2:09 p.m.)

24 THE COURT: I can tell you what the question
25 is. They want the self-defense charge, I guess.

1 Please provide the meaning of self-defense,
2 which means I have to read the self-defense charge
3 to them.

4 MS. ZMROCZEK: I mean, unless you want to send
5 it back. We're find sending it back, Judge.
6 That's fine.

7 MR. CATHCART: Send all the charges back or
8 just the self-defense?

9 THE COURT: Just send them all back.

10 MR. CATHCART: Fine by me.

11 THE COURT: Okay. But I still have to give
12 them the charge about the charge, so. That's why I
13 asked earlier. Judge Newman sends it back all the
14 time. I do if both sides agree. But I think it
15 helps. That is the law. I mean, I don't have
16 anything written on here.

17 (WHEREUPON, Court Exhibit No. 2 was
18 marked for identification only.)

19 (WHEREUPON, Court's Exhibit No. 3 was
20 marked for identification only.)

21 THE COURT: Are we ready? You can bring them
22 on in.

23 MR. SHELLENBERG: Your Honor, may we approach
24 real quick?
25

1 (WHEREUPON, the jury came into open
2 court at 2:13 p.m.)

3 THE BAILIFF: The jury is seated, Your Honor.

4 THE COURT: All right, ladies and gentlemen of
5 the jury, I have received your question, and I have
6 marked that as Court's Exhibit Number 2. It says:
7 Please provide the meaning of self-defense.

8 What we have decided to do is to give you the
9 entire jury charge so you'll have it. But there is
10 a charge that goes with sending the jury charge
11 back, so I will read that to you real quick.

12 I will give you a copy of these instructions
13 in written form. During your deliberations, you
14 may refer to these instructions to guide your
15 decision-making. You must consider the
16 instructions as a whole and not follow some and
17 ignore others.

18 Please return the instructions to the Court at
19 the time your verdict is rendered.

20 Thank you.

21 And this is marked Court's Exhibit Number 3.
22 So just hand those back with the other exhibits.

23 All right. You may resume your deliberations.

24 THE FORELADY: Thank you.

25 (WHEREUPON, the jury retires to the jury

1 room to continue deliberations at 2:14
2 p.m.)

3 THE COURT: All right. Well, we'll see.
4 We'll be at ease until that happens.

5 (WHEREUPON, court was in recess awaiting
6 a verdict.)

7 (WHEREUPON, the following occurred at
8 3:30 p.m.)

9 THE COURT: They want to hear testimony. So
10 the testimony they would like to hear -- let's mark
11 this as Court Exhibit Number 4: Please provide the
12 following testimony: Reeshemah Culler, the owner's
13 daughter, Number One. Two, Dr. Marcus Bradley.
14 Three, emergency room surgeon. And it has got a
15 thing, any testimony pertaining to the heart
16 wounds.

17 I don't remember. I mean, I'm assuming
18 Dr. Bradley testified to wounds?

19 MR. CATHCART: They both did.

20 MS. ZMROCZEK: I think they both did, Your
21 Honor.

22 MR. CATHCART: And, again, we spoke about it.
23 I believe -- and neither one their testimony is
24 very long and it is kind of scattered between it.
25 So I think we probably just need to play them all.

1 MR. SHELLENBERG: Your Honor, I don't know if
2 we can pick and choose.

3 THE COURT: I will let them know that. All
4 right. We will bring them on in.

5 (WHEREUPON, the jury came into open
6 court at 3:32 p.m.)

7 THE BAILIFF: The jury is seated, Your Honor.

8 THE COURT: All right. Madam Forelady, it is
9 my understanding that you all would like to have
10 some testimony played back, is that correct?

11 THE FORELADY: That is true.

12 THE COURT: All right. So she has Reeshemah
13 Culler, her testimony, ready for you, but I just --
14 so she can be looking, you want to hear Dr. Marcus
15 Bradley's testimony?

16 THE FORELADY: Uh-huh.

17 THE COURT: And then the emergency room
18 surgeon, Dr. Alejandro Luis, is that correct?

19 So we will have to play it all in its
20 entirety. So we will go ahead and have her turn
21 that on.

22 (WHEREUPON, testimony was played for the
23 jury.)

24 THE COURT: All right. Ladies and gentlemen
25 of the jury, I will send you back into the jury

1 room to continue your deliberations.

2 Thank you.

3 (WHEREUPON, the jury retires to the jury
4 room to continue deliberations at 5:19
5 p.m.)

6 (WHEREUPON, court was in recess awaiting
7 a verdict.)

8 (WHEREUPON, the following occurred at
9 3:41 p.m.)

10 THE COURT: You may be seated.

11 All right. My understanding is that they have
12 reached a verdict, so we will bring the jurors back
13 in, but I will let everyone know in the audience
14 that if you feel that you cannot control your
15 response or your emotions -- I understand it is
16 emotional, but if you feel you cannot control your
17 emotions, then now is the time for you to leave out
18 of the courtroom. But there will be no outbursts
19 as a result of the verdict, so I am telling you,
20 once again, if you cannot control yourself, I am
21 giving you an opportunity to leave out of the
22 courtroom at this time.

23 If there are any outbursts, there is a chance
24 of contempt of court, and I'll have one of the
25 deputies take you downstairs to the holding cell,

1 and then we'll figure out the contempt stuff on
2 tomorrow.

3 All right. You can bring the jurors in.

4 (WHEREUPON, the jury came into open
5 court at 5:42 p.m.)

6 THE BAILIFF: The jury is seated, Your Honor.

7 THE COURT: All right. Thank you.

8 All right. Madam Forelady, it is my
9 understanding that you all have reached a verdict,
10 is that correct?

11 THE FORELADY: Yes, Your Honor.

12 THE COURT: And is that verdict unanimous?

13 THE FORELADY: Yes, Your Honor.

14 THE COURT: All right. I am going to ask that
15 you pass that to the bailiff and give it to the
16 clerk.

17 (Pause.)

18 THE COURT: All right. I am going to ask the
19 clerk to publish the verdict.

20 THE CLERK: Yes, Your Honor.

21 Indictment Number 2015-GS-40-2757, The State
22 of South Carolina v. Robert Xavier Geter. As to
23 the indictment alleging murder of James Lewis: We,
24 the jury, unanimously find the Defendant guilty.
25 Signed, Number 6, Foreperson, April 12, 2018.

1 Indictment Number 2015-GS-40-2758, The State
2 of South Carolina v. Robert Xavier Geter. As to
3 the indictment alleging attempted murder of
4 Clarence Stone: We, the jury, unanimously find the
5 Defendant guilty. Signed, Number 6, Foreperson,
6 April 12, 2018.

7 Madam Forelady, were these your verdicts and
8 the verdicts of the entire jury?

9 THE FORELADY: Yes.

10 THE CLERK: Thank you.

11 THE COURT: All right.

12 MS. ZMROCZEK: Your Honor, we would ask that
13 the jury be polled.

14 THE COURT: Yes, ma'am.

15 Madam Clerk, if you would poll the jurors by
16 number.

17 THE CLERK: Yes, Your Honor.

18 Ladies and gentlemen of the jury, I am going
19 to ask you two questions relating to your verdict.
20 Please answer yes or no to both.

21 Number 6. Were these your verdicts?

22 THE JUROR: Yes.

23 THE CLERK: Are they still your verdicts?

24 THE JUROR: Yes.

25 THE CLERK: Number 48. Were these your

1 you in the back.

2 (WHEREUPON, the jury is excused at 5:48
3 p.m.)

4 THE COURT: All right. Yes, sir? Yes, ma'am?
5 Any motions?

6 MS. ZMROCZEK: Yes, Your Honor. At this time
7 we would move to set aside the jury verdict,
8 basically based on our request regarding the
9 specific jury charges that we requested and our
10 objections to the jury charges that were given, in
11 addition to renewing the motions that we had argued
12 during trial.

13 THE COURT: Thank you. Any response?

14 MR. CATHCART: Your Honor, we think the jury
15 charges were correct, perfect. I just ask that you
16 proceed on with sentencing.

17 THE COURT: All right. The motion to set
18 aside the verdict is denied. The jury charges --
19 actually, I think the Court did in the jury
20 charge -- there are several requests from Defense
21 that were incorporated into the jury charge. I
22 believe you had an objection to the transferred
23 intent jury charge?

24 MS. ZMROCZEK: Yes.

25 THE COURT: As to the attempted murder?

1 MS. ZMROCZEK: Yes, Your Honor.

2 THE COURT: Being that I think he was found
3 guilty on the murder, that was our concern with
4 transferred intent on the intent on the attempted.
5 This Court will deny the motion to set aside the
6 verdict.

7 Furthermore, I believe the only other changes
8 to the jury charge were, I think you had an
9 objection to --

10 MS. ZMROCZEK: The malice.

11 THE COURT: The malice, which is pulled
12 directly from the criminal trial bench book and is
13 an accurate recitation of the law in defining what
14 exactly malice is.

15 And also there was an objection to not putting
16 in duty to retreat, that he had -- I think your
17 objection was that he -- because it was a place of
18 business, although it was not his place of
19 business, under the Protection of Persons and
20 Property Act, that he had a right to be there. And
21 the Court denied that also.

22 For those reasons, I will respectfully deny
23 the motion to set aside the verdict as to the jury
24 charge.

25 As to your renewed motions, those are

1 respectfully denied for the reasons that were given
2 earlier in the trial.

3 MS. ZMROCZEK: Thank you, Your Honor.

4 THE COURT: All right. Thank you.

5 Are we ready to proceed with sentencing?

6 MR. CATHCART: Yes, Your Honor.

7 (Pause.)

8 THE COURT: Yes, sir, Mr. Cathcart?

9 MR. CATHCART: May it please the Court, Your
10 Honor? The Defendant's prior record dated back to
11 1998, starting with just larceny of a bicycle.
12 Then in 1998 he apparently went on a bit of a
13 spree. He was arrested for two counts of burglary
14 in the second degree, petit larceny. That was
15 September of '98. October of '98, he had another
16 arrest for burglary second degree, a grand larceny
17 and a petit larceny. And October 31st of '98, he
18 got another burglary second. In 1998, another
19 arrest charge for -- and conviction of trespass.
20 And, finally, in December of '98, he had a
21 possession of a sawed-off shotgun.

22 All of those were pled, or at least sentenced
23 together, on July 15th, excuse me, July 13th of
24 1999. He received a sentence of 15 years.

25 When he got out he was again convicted in 2012

1 for a 2011 -- excuse me, June 20th, 2011, arrest
2 for the charge of assault and battery first degree,
3 convicted of assault and battery second degree. He
4 received a sentence at that time of three years
5 suspended upon the service of 423 days and two
6 years probation.

7 THE COURT: Back to the other -- I'm sorry, I
8 was speaking with Jasmine about the jurors. You
9 said he was at the Department of Corrections when
10 on which charge?

11 MR. CATHCART: He had -- let's see. He was in
12 the Department of Corrections for three counts of
13 burglary second degree non-violent, unlawful
14 possession of a sawed-off shotgun, grand larceny,
15 and petit larceny, for which he received a sentence
16 of 15 years, each concurrent to each other. And
17 2012 --

18 THE COURT: What year was that?

19 MR. CATHCART: The multiple burglaries?

20 THE COURT: Yes?

21 MR. CATHCART: The arrest charges date all
22 through 1998, beginning in September through
23 December of 1998, were all the arrest charges. The
24 sentencing was July 13th of 1999, for which he
25 received, as I stated, a sentence of 15 years. And

1 in 2012 he was sentenced to the assault and battery
2 second degree. He received a sentence of three
3 years suspended upon the service of 423 days and
4 two years probation. In 2014 he was convicted of
5 assault and battery third.

6 That is the extent of his record, Your Honor.

7 Mr. Stone has indicated he did not have
8 anything to say. He has been here and testified
9 and relived what he had -- what happened to him, as
10 did the Cullers, of what they observed.

11 Mr. Geter has had a long criminal history of
12 breaking in people's homes and now taking people's
13 lives. The prior assault and battery second,
14 again, of violence. Possession of sawed-off
15 shotgun.

16 I think that the sentence, because he is
17 looking at a minimum of just of the one charge, 30.
18 This is not a case in which there should be a
19 minimum. He had a chance to cool off. He had a
20 chance to leave. He was actually told to leave.
21 And yet he took it upon himself to attack, kill a
22 man, and maim a person who didn't even have an idea
23 of what this was all about.

24 THE COURT: All right. Thank you. The victim
25 did not wish to speak?

1 MR. CATHCART: Anything else? He is fine,
2 Your Honor.

3 THE VICTIM: No.

4 THE COURT: Yes, ma'am?

5 MS. ZMROCZEK: Thank you, Your Honor.

6 Mr. Geter has been in jail since March 7th of 2015.
7 He has not requested a bond. He has not -- or at
8 least when I was his attorney. He has not -- in
9 fact, all he has done is take classes and continue
10 to better himself. Your Honor, you heard the
11 testimony. You heard him testify. I'm advising
12 him not to speak due to the potential appellate
13 issues. And his mother is here. She is blind.
14 And his friend is also here.

15 However, Your Honor, obviously this was a
16 difficult case for the jury. I don't believe that
17 a life sentence is warranted in this case. I mean,
18 30 years day for day, he is not going to get out
19 until he is 65 years old. So we would ask that the
20 Court to consider giving consecutive sentences and
21 a mandatory minimum on the murder.

22 THE COURT: You mean concurrent?

23 MS. ZMROCZEK: Oh, I'm sorry, concurrent, not
24 consecutive.

25 THE COURT: I wanted to make sure.

1 MS. ZMROCZEK: The heat is getting to my
2 brain, Your Honor.

3 THE COURT: How old was the victim?

4 MR. CATHCART: I cannot remember off the top
5 of my head, Your Honor. I believe mid 30's.

6 MR. SHELLENBERG: Thirty-five.

7 MR. CATHCART: Thirty-five.

8 MS. ZMROCZEK: Your Honor, I know that you
9 heard a little bit about his potential record. He
10 did have pending charges, you know, and that
11 doesn't change what happened, but it kind of -- it
12 helps explain. I think that had we been able to
13 vet out that a little more, because Mr. Cathcart
14 and Mr. Shellenberg kept saying, even though they
15 knew he had a record, that he was never known to be
16 violent, which was incredibly frustrating under the
17 Rules of Evidence, because we knew he had a record.
18 And so to say that he had never been violent was
19 very frustrating for us. The charge he had
20 pending, Your Honor, he had assaulted his
21 girlfriend. She was fleeing in the vehicle, and
22 that is how his ankle was broken. In addition to
23 other domestic violence charges and gun charges,
24 excuse me, and drug charges. Your Honor, so that
25 part was incredibly frustrating for us during the

1 trial just because my client wasn't there to
2 witness what happened, so we couldn't get into it.
3 And so -- and not that we are trying to disparage
4 anybody, but I think what it does is shed a little
5 bit of light on a little bit more of what was going
6 on at the bar, that it wasn't just a very peaceful
7 individual. It likely was a fight, and that was
8 certainly a trial strategy with the charges that we
9 chose. But, again, I mean, you heard all the
10 testimony.

11 MR. CATHCART: And, Your Honor, in that
12 testimony it was the Defendant who said he never
13 knew the victim to be violent. Not at the bar, not
14 outside the bar. It was his testimony, I didn't
15 know this guy was a violent man, the man he killed.
16 The same thing with Mr. Stone. He said, I never
17 knew Mr. Stone to be trouble to anybody. And yet
18 he blinded him.

19 MS. ZMROCZEK: Certainly, Your Honor. We
20 understand what their witnesses were, but it was
21 the State that knew of his violent past. And so
22 that is what was -- we thought it was frustrating.

23 THE COURT: All right. And just because I
24 think that was -- in denying your motion -- you had
25 a motion regarding that also -- just also to put on

1 the record, I think -- because I can't remember if
2 we did that at the bar, but I think my concern was
3 that your client testified to that, he did not
4 know. Also that is something that, in considering
5 the self-defense claim, of course, is what he knew
6 of the -- did he know or have reason to know
7 that -- did he know or have reason to know to fear
8 the victim in the case. And so that was the other
9 reason that the Court I think overruled the
10 objection of the --

11 MS. ZMROCZEK: I think what he was going to
12 testify is that he heard about it, and I think you
13 said unless he was there and witnessed it that that
14 couldn't come in.

15 THE COURT: Yes. All right. Anything else?

16 MS. ZMROCZEK: That's all, Your Honor.

17 MR. CATHCART: No, ma'am.

18 SENTENCING

19 THE COURT: All right. On Indictment
20 2015-GS-40-2757, sir, you will be sentenced to the
21 State Department of Corrections for 40 years.

22 On Indictment 2015-GS-40-2758, you will be
23 sentenced to the State Department of Corrections
24 for 20 years. The sentences will run concurrent.
25 You will be given credit for the 1,133 days that

1 have been served.

2 All right. Thank you.

3 MS. ZMROCZEK: Thank you, Your Honor.

4 MR. CATHCART: Thank you, Your Honor.

5 THE COURT: Good luck to you.

6 (WHEREUPON, court adjourned at 6:01

7 p.m.)

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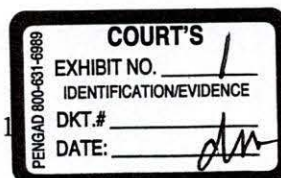
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(END OF TRANSCRIPT)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	)	OF THE FIFTH JUDICIAL CIRCUIT
	)	
	)	INDICTMENT NOS:
STATE OF SOUTH CAROLINA	)	
Plaintiff,	)	2015-GS-40-02758
	)	2015-GS-40-02757
VS.	)	
	)	
	)	JURY CHARGES
	)	
ROBERT XAVIER GEETER,	)	
Defendant.	)	
_____	)	

MADAME FORPERSON AND MEMBERS OF THE JURY, YOU HAVE HEARD THE TESTIMONY, RECEIVED THE EVIDENCE, AND HEARD THE ARGUMENTS OF THE STATE AND MR. GETER. I WILL NOW EXPLAIN TO YOU THE LAW THAT APPLIES TO THIS CASE. UNDER THE CONSTITUTION AND LAWS OF SOUTH CAROLINA, YOU ARE THE FINDERS OF THE FACTS IN THIS CASE. I DO NOT HAVE THE RIGHT TO PASS UPON THE FACTS OR TO EVEN EXPRESS ANY OPINION THAT I MIGHT HAVE AS TO THEM BECAUSE THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, THEN, IT IS YOUR DUTY TO DETERMINE THE EFFECT, THE VALUE, THE WEIGHT, AND THE TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL



DUTIES OF JURY AND TRIAL JUDGE

I REMIND YOU THAT, DURING THIS TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD IN THIS CASE DURING THIS TRIAL, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE, AND ANY STIPULATIONS OF COUNSEL.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THIS CASE, AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU ALREADY HAVE ANY IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I NOW TELL YOU THE LAW IS, YOU MUST ABANDON THIS IDEA BECAUSE

YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS IN A CASE. A TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A CASE. SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE FACTS IN THIS CASE, YOU ARE NOT TO INFER FROM WHAT I HAVE SAID DURING THE PROGRESS OF THIS TRIAL IN RULING UPON THE ADMISSIBILITY OF EVIDENCE, OR OTHERWISE, OR ANYTHING THAT I SAY NOW DURING THE COURSE OF THIS INSTRUCTION TO YOU, THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS IN THIS CASE. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, IT IS YOUR DUTY TO DETERMINE THE EFFECT, VALUE, AND WEIGHT OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

~~THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL — DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.~~

~~DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.~~

~~CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.~~

~~THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THE CASE. AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT~~

~~CONVINCED OF THE GUILT OF MR. GETER BEYOND A REASONABLE DOUBT, YOU MUST FIND MR. GETER NOT GUILTY.~~

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL—DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE DIRECTLY PROVES THE EXISTENCE OF A FACT AND DOES NOT REQUIRE DEDUCTION. CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT.

CRIMES MAY BE PROVEN BY CIRCUMSTANTIAL EVIDENCE. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, HOWEVER, TO THE EXTENT THE STATE RELIES ON CIRCUMSTANTIAL EVIDENCE, ALL OF THE CIRCUMSTANCES MUST BE CONSISTENT WITH EACH OTHER, AND WHEN TAKEN TOGETHER, POINT CONCLUSIVELY TO THE GUILT OF THE ACCUSED BEYOND A REASONABLE DOUBT. IF THESE CIRCUMSTANCES MERELY PORTRAY MR. GETER'S BEHAVIOR AS SUSPICIOUS, THE PROOF HAS FAILED.

THE STATE HAS THE BURDEN OF PROVING MR. GETER GUILTY BEYOND A REASONABLE DOUBT. THIS BURDEN RESTS WITH THE STATE REGARDLESS OF WHETHER THE STATE RELIES ON DIRECT EVIDENCE, CIRCUMSTANTIAL EVIDENCE, OR SOME COMBINATION OF

THE TWO.¹ THE DEFENDANT IS ENTITLED TO EVERY INFERENCE IN HIS FAVOR WHICH CAN REASONABLY BE DRAWN FROM THE EVIDENCE. WHEN TWO INFERENCES MAY BE DRAWN FROM THE SAME SET OF FACTS, ONE CONSISTENT WITH A VERDICT OF GUILTY AND ONE INFERENCE CONSISTENT WITH A VERDICT OF NOT GUILTY, THE DEFENDANT IS ENTITLED TO THE INFERENCE WHICH IS CONSISTENT WITH A VERDICT OF NOT GUILTY. YOU CANNOT FIND THE DEFENDANT GUILTY BASED UPON SUSPICION, CONJECTURE, OR SPECULATION, NO MATTER HOW STRONG. A CONVICTION CAN ONLY BE BASED UPON PROOF OF GUILT BEYOND A REASONABLE DOUBT. IF THE PROOF DOES NOT MEET THAT STANDARD, YOU MUST FIND THE DEFENDANT NOT GUILTY.²

CREDIBILITY OF WITNESSES

NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH.

IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE

¹ State v Logan, previously emailed to chambers

² United States v. Freeman, 286 F.2d 262 (4th Cir. 1961) (proclaiming that evidence creating mere probability of guilt or giving rise to mere suspicion or conjecture of guilt is not sufficient to justify conviction).

TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO YOU ANY INTEREST, BIAS, PREJUDICE, OR OTHER MOTIVE IN THIS CASE. YOU MAY ALSO CONSIDER THE APPEARANCE AND MANNER OF A WITNESS WHILE ON THE WITNESS STAND. YOU HAVE HEARD THE TESTIMONY OF A NUMBER OF WITNESSES WHO ARE EMPLOYED AS POLICE OFFICERS. ALTHOUGH THESE WITNESSES, THROUGH TRAINING, EDUCATION, AND EXPERIENCE, WORK IN THE FIELD OF LAW ENFORCEMENT, THEIR TESTIMONY MUST BE CONSIDERED JUST LIKE THAT OF ANY OTHER WITNESS. YOU MAY ACCEPT OR REJECT THEIR TESTIMONY, OR GIVE IT AS MUCH WEIGHT AS YOU THINK IT DESERVES, BUT YOU MAY NOT ATTACH ANY SIGNIFICANCE TO THE FACT THAT THEY ARE POLICE OFFICERS.

PRIOR RECORD OF WITNESS

A PERSON WHO HAS A PAST CRIMINAL RECORD IS COMPETENT TO TESTIFY DURING A TRIAL. A PAST RECORD DOES NOT AFFECT THE ABILITY OF THAT WITNESS TO TESTIFY. THE PAST RECORD MAY ONLY BE CONSIDERED BY YOU, IF AT ALL, IN DETERMINING THE WITNESS' BELIEVABILITY.

JAIL HOUSE SNITCH ✕

THE TESTIMONY OF A WITNESS WHO PROVIDES EVIDENCE AGAINST THE DEFENDANT FOR PERSONAL ADVANTAGE OR FOR THE HOPE OF LENIENT TREATMENT FROM THE PROSECUTION MUST BE EXAMINED AND WEIGHED BY THE JURY WITH GREATER CARE THAN THE TESTIMONY OF AN ORDINARY WITNESS. THE JURY MUST DETERMINE WHETHER THE WITNESS'S TESTIMONY HAS BEEN AFFECTED BY INTEREST OR BY PREJUDICE AGAINST THE DEFENDANT.

EXPERT WITNESSES

THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WE CALL "EXPERT WITNESSES". A WITNESS WHO, BY EDUCATION AND EXPERIENCE, HAS BECOME

EXPERT IN SOME ART, SCIENCE, PROFESSION, OR CALLING MAY STATE AN OPINION AS TO RELEVANT AND MATERIAL MATTERS, IN WHICH THE WITNESS CLAIMS TO BE AN EXPERT, AND MAY ALSO STATE THE REASONS FOR THE OPINION.

YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN EVIDENCE IN THIS CASE AND, LIKE ANY OTHER EVIDENCE, GIVE IT THE WEIGHT YOU THINK IT DESERVES. IF YOU DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS NOT BASED ON SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND, OR THAT THE OPINION IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY.

AN EXPERT WITNESS' TESTIMONY IS TO BE GIVEN NO GREATER WEIGHT THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE THE WITNESS IS AN EXPERT. FURTHER, YOU ARE NOT REQUIRED TO ACCEPT AN EXPERT'S OPINION, EVEN THOUGH IT IS NOT CONTRADICTED.

CHARGE, ARREST, INDICTMENT NOT EVIDENCE

THE INDICTMENTS CHARGE MR. GETER WITH MURDER AND ATTEMPTED MURDER. I REMIND YOU THAT THE FACT MR. GETER

WAS ARRESTED, CHARGED AND INDICTED IN THIS CASE, IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THIS DOCUMENT IS SIMPLY THE FORMAL WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGES MADE AGAINST MR. GETER. IT IS THE FORMAL DOCUMENT BY WHICH THIS CASE IS BROUGHT INTO THIS COURT.

MULTIPLE CHARGES

THE INDICTMENTS IN THIS CASE ALLEGE TWO DIFFERENT OFFENSES AGAINST MR. GETER. THE CHARGES ARE:

INDICTMENT NO. 1: 2015-GS-40-2757 (Murder)

INDICTMENT NO. 2: 2015-GS-40-2758 (Attempted Murder)

EACH INDICTMENT CHARGES A SEPARATE AND DISTINCT OFFENSE. YOU MUST DECIDE EACH INDICTMENT SEPARATELY ON THE EVIDENCE AND THE LAW APPLICABLE TO IT UNINFLUENCED BY YOUR DECISION AS TO ANY OTHER INDICTMENT. MR. GETER MAY BE CONVICTED OR ACQUITTED ON ANY OR ALL OF THE OFFENSES CHARGED. YOU WILL BE ASKED TO WRITE A SEPARATE VERDICT OF GUILTY OR NOT GUILTY FOR EACH INDICTMENT.

PRESUMPTION OF INNOCENCE

MR. GETER HAS PLED NOT GUILTY TO THE INDICTMENTS, AND THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE MR. GETER GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF THE LAW THAT MR. GETER IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT. THIS BURDEN NEVER SHIRFTS TO MR. GETER EVEN WHEN THE PRESENT EVIDENCE AND PUT UP A CASE. THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES MR. GETER THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF MR. GETER WHICH REMAINS WITH MR. GETER UNTIL IT HAS BEEN STRIPPED FROM MR. GETER BY EVIDENCE SATISFYING YOU OF MR. GETER'S GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF MR. GETER'S GUILT BEYOND A REASONABLE DOUBT.

REASONABLE DOUBT

WHAT IS A REASONABLE DOUBT IN THE LAW? A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

THE STATE HAS THE BURDEN OF PROVING MR. GETER GUILTY BEYOND A REASONABLE DOUBT. ADDITIONALLY, MR. GETER HAS RAISED THE DEFENSE OF SELF DEFENSE AND THE STATE HAS THE DUTY OF DIS-PROVING SELF DEFENSE BEYOND A REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES, WHERE YOU WERE TOLD THAT IT IS ONLY NECESSARY TO

PROVE THAT A FACT IS MORE LIKELY TRUE THAN NOT TRUE, SUCH AS BY THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL CASES, THE STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE DOUBT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF MR. GETER'S GUILT. THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT MR. GETER IS GUILTY OF THE CRIME CHARGED; YOU MUST FIND MR. GETER GUILTY. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT MR. GETER IS NOT GUILTY, YOU MUST GIVE MR. GETER THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

INTENT

IN ORDER TO ESTABLISH CRIMINAL LIABILITY, CRIMINAL INTENT IS REQUIRED. FOR EXAMPLE, THE MENTAL STATE REQUIRED TO BE PROVEN BY THE STATE FOR A PARTICULAR CRIME MIGHT BE

PURPOSE, INTENT, KNOWLEDGE, RECKLESSNESS, OR CRIMINAL NEGLIGENCE. CRIMINAL INTENT MUST BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING THE SITUATION. THERE IS NO WAY TO PROVE INTENT TO A MATHEMATICAL CERTAINTY. THERE IS NO WAY MEDICAL SCIENCE CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT THE PERSON HAD IN MIND, SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW YOU MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT REQUIRING INTENT WAS PRESENT. IT IS NOT NECESSARY TO ESTABLISH INTENT BY DIRECT AND POSITIVE EVIDENCE, BUT INTENT MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY AS ANY OTHER FACT BY TAKING INTO CONSIDERATION THE ACTS OF THE PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF THE CASE.

CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS WRONGDOING. IT IS UP TO YOU TO DETERMINE WHAT MR. GETER INTENDED TO DO.

THE OFFENSES OF MURDER AND ATTEMPTED MURDER ARE

SPECIFIC INTENT CRIMES.

MURDER

MR. GETER IS CHARGED WITH MURDER. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT MR. GETER KILLED ANOTHER PERSON WITH MALICE AFORETHOUGHT. ~~MALICE IS HATRED OR ILLWILL, TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO INFLICT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT..~~

~~MALICE IS A LEGAL TERM IMPLYING WICKEDNESS AND EXCLUDING A JUST CAUSE OR EXCUSE. THE TERM MALICE INDICATES A FORMED PURPOSE AND DESIGN TO DO A WRONGFUL ACT UNDER THE CIRCUMSTANCES THAT EXCLUDE ANY LEGAL RIGHT TO DO IT. IT IS SOMETHING WHICH SPRINGS FROM WICKEDNESS, FROM DEPRAVITY, FROM A HEART DEVOID OF SOCIAL DUTY AND FATALLY BENT ON MISCHIEF. MALICE MAY BE EXPRESS OR IMPLIED.~~

THE PRESENCE OF MALICE IS A REQUIRED ELEMENT OF MURDER. MALICE IS HATRED OR ILLWILL TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST

CAUSE OR EXCUSE AND WITH AN INTENT TO INFLICT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT.

MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXISTS FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF MR. GETER JUST BEFORE AND AT THE TIME OF THE ACT IS COMMITTED. MALICE MAY BE CONCEIVED AT THE VERY MOMENT THE FATAL BLOW IS GIVEN. THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.

MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE TERMS, "EXPRESS" AND "INFERRED" DO NOT MEAN DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER OR WHEN THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED; FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY OTHER ACTS OF PREPARATION GOING TO SHOW

THAT THE DEED WAS WITHIN MR. GETER'S MIND WOULD BE EXPRESS MALICE.

MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD FOR HUMAN LIFE. MALICE MAY BE INFERRED FROM THE FACTS AND CIRCUMSTANCES SURROUNDING THE CASE.

~~MALICE DOES NOT NECESSARILY IMPART ILL WILL TOWARD THE INDIVIDUAL INJURED BUT SIGNIFIES RATHER A GENERAL MALIGNANT RECKLESSNESS OF THE LIVES AND SAFETY OF OTHERS, OR A CONDITION OF MIND WHICH SHOWS A HEART REGARDLESS OF SOCIAL DUTY AND FATALLY BENT ON MISCHIEF.~~

VOLUNTARY MANSLAUGHTER

~~IF YOU FIND THAT THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT MR. GETER COMMITTED MURDER, YOU MAY CONSIDER WHETHER THE STATE HAS PROVED BEYOND A REASONABLE DOUBT THAT MR. GETER COMMITTED VOLUNTARY MANSLAUGHTER. INCLUDED WITHIN THE OFFENSE OF MURDER IS THE LESSER OFFENSE OF VOLUNTARY MANSLAUGHTER.~~

~~TO PROVE VOLUNTARY MANSLAUGHTER, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT MR. GETER TOOK THE LIFE OF ANOTHER IN THE SUDDEN HEAT OF PASSION BASED ON SUFFICIENT~~

~~LEGAL PROVOCATION. BOTH HEAT OF PASSION AND SUFFICIENT
LEGAL PROVOCATION MUST BE PRESENT AT THE TIME OF THE
KILLING TO CONSTITUTE VOLUNTARY MANSLAUGHTER.~~

~~SUDDEN HEAT OF PASSION MAY, FOR A TIME, AFFECT A PERSON'S
SELF CONTROL AND TEMPORARILY DISTURB A PERSON'S REASON.
THE SUDDEN HEAT OF PASSION MUST BE THE TYPE THAT WOULD
MAKE AN ORDINARY PERSON UNABLE TO COOLY REFLECT ON HIS
ACTIONS AND WOULD PRODUCE AN UNCONTROLLABLE IMPULSE TO
DO VIOLENCE.~~

~~SUFFICIENT LEGAL PROVOCATION MUST BE THE TYPE THAT WOULD
MAKE A PERSON OF ORDINARY REASON AND CAUTION BECOME
ENRAGED AND TO LOSE CONTROL TEMPORARILY. THE
PROVOCATION NEEDED FOR VOLUNTARY MANSLAUGHTER MUST
COME FROM SOME ACT OF, OR RELATED TO, THE VICTIM.~~

~~WORDS ALONE, HOWEVER VULGAR OR INSULTING, ARE NOT
ENOUGH TO BE LEGAL PROVOCATION. WHERE DEATH IS CAUSED BY
THE USE OF A DEADLY WEAPON, THE WORDS MUST BE
ACCOMPANIED BY SOME OVERT, THREATENING ACT WHICH COULD
HAVE PRODUCED THE HEAT OF PASSION. THE EXERCISE OF A LEGAL
RIGHT, NO MATTER HOW OFFENSIVE IT IS TO ANOTHER, IS NEVER~~

~~SUFFICIENT LEGAL PROVOCATION FOR VOLUNTARY MANSLAUGHTER.~~

~~IF THE HEAT OF PASSION HAD COOLED, OR IF THERE WAS ENOUGH TIME BETWEEN THE PROVOCATION, IF ANY, AND THE KILLING FOR THE PASSION OF A REASONABLE PERSON TO COOL, THE KILLING WOULD NOT BE VOLUNTARY MANSLAUGHTER. IN DECIDING WHETHER A REASONABLE PERSON WOULD HAVE HAD ENOUGH TIME TO COOL OFF, YOU SHOULD CONSIDER ALL THE CIRCUMSTANCES SURROUNDING THE KILLING. YOU MAY CONSIDER THE NATURE OF THE PROVOCATION, IF ANY; MR. GETER'S MENTAL AND PHYSICAL STATE; AND THE CIRCUMSTANCES AND RELATIONSHIPS BETWEEN THE PARTIES.~~

TRANSFERRED INTENT

~~IF MR. GETER, WITH MALICE AFORETHOUGHT, ATTEMPTS TO KILL ANOTHER PERSON, BUT BY MISTAKE, INJURES OR KILLS A DIFFERENT PERSON, THE LAW CONSIDERS THAT MR. GETER STILL HAD THE INTENT TO KILL. INTENT TO KILL IS A MENTAL STATE. IT EXISTS IN THE MIND. SO, IF THE STATE PROVES THAT A DEFENDANT, ACTING WITH MALICE, HAD THE INTENT TO KILL ONE PERSON BUT MISTAKENLY INJURED ANOTHER, THE INTENT TO KILL IS MERELY~~

~~TRANSFERRED FROM THE ORIGINAL PERSON MR. GETER ATTEMPTED TO KILL TO THE ACTUAL PERSON INJURED.~~

ATTEMPTED MURDER

MR. GETER IS CHARGED WITH ATTEMPTED MURDER. IN ORDER TO PROVE THIS CRIME, THE STATE MUST PROVE MR. GETER HAD THE SPECIFIC INTENT TO KILL ANOTHER PERSON WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR IMPLIED.

MALICE IS HATRED, ILLWILL, OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO INFLECT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT.

MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXISTS FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF MR. GETER JUST BEFORE AND AT THE TIME OF THE ACT IS COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.

MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE TERMS, "EXPRESS" AND "INFERRED" DO NOT MEAN DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER IN WHICH MALICE

MAY BE SHOWN TO EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER OR WHEN THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED; FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY OTHER ACTS OF PREPARATION GOING TO SHOW THAT THE DEED WAS WITHIN MR. GETER'S MIND WOULD BE EXPRESS MALICE.

MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD FOR HUMAN LIFE.

IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR SATISFACTION, THIS INFERENCE WOULD BE SIMPLY AN EVIDENTIARY FACT TO BE CONSIDERED BY YOU, THE JURY, ALONG WITH THE OTHER EVIDENCE IN THE CASE, AND YOU MAY GIVE IT THE WEIGHT YOU DECIDE IT SHOULD RECEIVE.

A SPECIFIC ATTEMPT INCLUDES AN INTENT TO DO A PARTICULAR CRIMINAL ACT ALONG WITH AN ACT FALLING SHORT OF THE ACT INTENDED. TO PROVE ATTEMPTED MURDER, THE STATE MUST

PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT ATTEMPTED TO KILL ANOTHER PERSON WITH MALICE AFORETHOUGHT. ~~THE STATE MUST SHOW MORE THAN MERE PREPARATION AND INTENT. THERE MUST BE SOME OVERT ACT COMMITTED IN THE EFFORT TO COMMIT THE CRIME.~~

INTENT MEANS INTENDING THE RESULT WHICH ACTUALLY OCCURS; NOT ACCIDENTALLY OR INVOLUNTARY. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF MR. GETER AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT. ~~EVIDENCE OF THE CHARACTER OF THE ACT, THE CHARACTER OF THE INSTRUMENT USED, THE MANNER IN WHICH IT WAS USED, THE PURPOSE TO BE ACCOMPLISHED, AND THE RESULTING WOUNDS OR INJURIES MAY BE CONSIDERED IN DETERMINING THE INTENT WITH WHICH THE ACT WAS COMMITTED. INTENT MAY ALSO BE INFERRED WHEN IT IS DEMONSTRATED THAT MR. GETER VOLUNTARILY AND WILLFULLY COMMITS AN ACT, THE NATURAL TENDENCY OF WHICH IS TO DESTROY ANOTHER'S LIFE.~~

ATTEMPT

AN ATTEMPT IS AN EFFORT TO ACCOMPLISH A CRIME WHICH DOES NOT SUCCEED. AN ATTEMPT ~~INCLUDES~~ IN THIS CASE REQUIRES A

SPECIFIC INTENT TO DO A PARTICULAR CRIMINAL ACT ALONG WITH AN ACT FALLING SHORT OF THE ACT INTENDED. THE STATE MUST SHOW MORE THAN MERE PREPARATION AND INTENT. THERE MUST BE SOME OVERT ACT COMMITTED IN THE EFFORT TO COMMIT THE CRIME.

INTENT MEANS INTENDING THE RESULT WHICH ACTUALLY OCCURS; NOT ACCIDENTALLY OR INVOLUNTARY. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF MR. GETER AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT.

~~ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE - § 16-3-600(B)~~

~~IF YOU FIND THAT THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT MR. GETER COMMITTED ATTEMPTED MURDER, YOU MAY CONSIDER WHETHER THE STATE HAS PROVED BEYOND A REASONABLE DOUBT THAT MR. GETER COMMITTED ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. INCLUDED WITHIN THE OFFENSE OF ATTEMPTED MURDER IS THE LESSER OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. TO PROVE ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, THE STATE MUST PROVE BEYOND~~

~~A REASONABLE DOUBT THAT MR. GETER UNLAWFULLY INJURES ANOTHER PERSON, AND:~~

~~(A) GREAT BODILY INJURY TO ANOTHER PERSON RESULTS; OR~~

~~(B) THE ACT WAS ACCOMPLISHED BY MEANS LIKELY TO PRODUCE DEATH OR GREAT BODILY INJURY.~~

~~GREAT BODILY INJURY MEANS BODILY INJURY WHICH CAUSES A SUBSTANTIAL RISK OF DEATH OR WHICH CAUSES SERIOUS, PERMANENT DISFIGUREMENT OR PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OF A BODILY MEMBER OR ORGAN.~~

IF THE COURT DECIDES OVER THE DEFENSES OBJECTIONS TO INCLUDE LESSER INCLUDED, THE DEFENSE WOULD THEN REQUEST THAT ASSAULT AND BATTERY IN THE FIRST DEGREE AND ASSAULT AND BATTERY IN THE SECOND DEGREE BE CHARGED.

ASSAULT AND BATTERY FIRST DEGREE

IF YOU FIND THAT THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT MR. GETER COMMITTED ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, YOU MAY CONSIDER WHETHER THE STATE HAS PROVED BEYOND A REASONABLE DOUBT THAT MR. GETER COMMITTED ASSAULT AND BATTERY IN THE FIRST DEGREE. A PERSON COMMITS THE OFFENSE

OF ASSAULT AND BATTERY IN THE FIRST DEGREE IF THE PERSON UNLAWFULLY OFFERS OR ATTEMPTS TO INJURE ANOTHER PERSON WITH THE PRESENT ABILITY TO DO SO, AND THE ACT: IS ACCOMPLISHED BY MEANS LIKELY TO PRODUCE DEATH OR GREAT BODILY INJURY.

ASSAULT AND BATTERY IN THE SECOND DEGREE

IF YOU FIND THAT THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT MR. GETER COMMITTED ASSAULT AND BATTERY IN THE FIRST DEGREE, YOU MAY CONSIDER WHETHER THE STATE HAS PROVED BEYOND A REASONABLE DOUBT THAT MR. GETER COMMITTED THE OFFENSE OF ASSAULT AND BATTERY IN THE SECOND DEGREE. A PERSON COMMITS THE OFFENSE OF ASSAULT AND BATTERY IN THE SECOND DEGREE IF THE PERSON UNLAWFULLY INJURES ANOTHER PERSON, OR OFFERS OR ATTEMPTS TO INJURE ANOTHER PERSON WITH THE PRESENT ABILITY TO DO SO, AND MODERATE BODILY INJURY TO ANOTHER PERSON RESULTS OR MODERATE BODILY INJURY TO ANOTHER PERSON COULD HAVE RESULTED.

INTEGRITY OF THE INVESTIGATION

LADIES AND GENTLEMEN, THE ISSUE OF INVESTIGATIVE TECHNIQUES AND THE RETENTION OF EVIDENCE HAS BEEN RAISED. WHEN THE VALUE OF EVIDENCE DEPENDS ON THE CIRCUMSTANCES IN WHICH IT WAS OBTAINED AND THOSE CIRCUMSTANCES RAISE A POSSIBILITY OF FRAUD, INDICATIONS OF CONSCIENTIOUS POLICE WORK WILL ENHANCE THE VALUE AND SLOVENLY WORK WILL DIMINISH IT. SIMILARLY, THE DETAILS OF THE INVESTIGATION PROCESS POTENTIALLY AFFECTING THE INVESTIGATING OFFICER'S CREDIBILITY AND MORE IMPORTANTLY, THE WEIGHT TO BE GIVEN TO THE EVIDENCE PRODUCED BY HIS INVESTIGATION. SEE KYLES V. WHITLEY, 514 US 419, 446, N. 15 (1995); US V. SAGER, 227 F.3D 1138, 1145 (9TH CIR. 2000).

SELF-DEFENSE

MR. GETER HAS RAISED THE DEFENSE OF SELF-DEFENSE. SELF-DEFENSE IS A COMPLETE DEFENSE AND, IF IT IS ESTABLISHED, YOU MUST FIND MR. GETER NOT GUILTY. THERE IS NO BURDEN UPON THE DEFENDANT TO PROVE SELF-DEFENSE. THE DEFENDANT IS NOT REQUIRED TO PROVE ANY ELEMENT OF SELF-DEFENSE. THE BURDEN IS ON THE STATE TO DISPROVE SELF-DEFENSE BEYOND A REASONABLE DOUBT ~~THE STATE HAS THE BURDEN OF DISPROVING~~

~~SELF-DEFENSE BY PROOF BEYOND A REASONABLE DOUBT.~~ IF YOU HAVE A REASONABLE DOUBT OF MR. GETER'S GUILT AFTER CONSIDERING ALL THE EVIDENCE, INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST FIND MR. GETER NOT GUILTY. ON THE OTHER HAND, IF YOU HAVE NO REASONABLE DOUBT OF MR. GETER'S GUILT AFTER CONSIDERING ALL THE EVIDENCE, INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST FIND MR. GETER GUILTY. SELF-DEFENSE IS A COMPLETE DEFENSE. IF ESTABLISHED, YOU MUST FIND THE DEFENDANT NOT GUILTY. THERE ARE FOUR ELEMENTS REQUIRED BY LAW TO ESTABLISH SELF-DEFENSE. FIRST, THE DEFENDANT MUST BE WITHOUT FAULT IN BRINGING ON THE DIFFICULTY. SECOND, THE DEFENDANT MUST HAVE BEEN IN ACTUAL IMMINENT DANGER OF LOSING HIS LIFE OR SUSTAINING SERIOUS BODILY INJURY, OR HE MUST HAVE ACTUALLY BELIEVED HE WAS IN IMMINENT DANGER OF LOSING HIS LIFE OR SUSTAINING SERIOUS BODILY INJURY. THIRD, IF HIS DEFENSE IS BASED UPON HIS BELIEF OF IMMINENT DANGER, A REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE ENTERTAINED THE SAME BELIEF. IF THE DEFENDANT ACTUALLY WAS IN IMMINENT DANGER, THEN THE CIRCUMSTANCES WERE DEFENSES 602 SOUTH

CAROLINA BAR CLE SUCH AS WOULD WARRANT A PERSON OF ORDINARY PRUDENCE, FIRMNESS, AND COURAGE TO [STRIKE THE FATAL BLOW] [SHOOT THE FATAL SHOTS] IN ORDER TO SAVE HIMSELF FROM SERIOUS BODILY HARM OR LOSING HIS OWN LIFE. FOURTH, THE DEFENDANT HAD NO OTHER PROBABLE MEANS OF AVOIDING THE DANGER OF LOSING HIS OWN LIFE OR SUSTAINING SERIOUS BODILY INJURY THAN TO ACT AS HE DID IN THIS PARTICULAR INSTANCE. THESE ARE THE ELEMENTS OF SELF-DEFENSE.

(1)WITHOUT FAULT

FIRST, MR. GETER MUST BE WITHOUT FAULT IN BRINGING ON THE DIFFICULTY. IF MR. GETER'S CONDUCT WAS THE TYPE WHICH WAS REASONABLY CALCULATED TO, AND DID, PROVOKE A DEADLY ASSAULT, MR. GETER WOULD BE AT FAULT IN BRINGING ON THE DIFFICULTY AND WOULD NOT BE ENTITLED TO AN ACQUITTAL BASED ON SELF-DEFENSE.

~~MUTUAL COMBAT~~³

~~IF MR. GETER VOLUNTARILY PARTICIPATED IN MUTUAL COMBAT FOR PURPOSES OTHER THAN PROTECTION, THE KILLING OF THE~~

³ mutual combat arises only when the parties are armed with deadly weapons, and mutual combat does not arise from a mere fist fight or scuffle); Jackson v. State, 355 S.C. 568, 586 S.E.2d 562 (2003); State v. Porter, 269 S.C. 618, 239 S.E.2d 641 (1977) **THAT DOES NOT APPLY TO THE FACTS OF THIS CASE**

~~VICTIM WOULD NOT BE SELF-DEFENSE. THIS IS TRUE EVEN IF, DURING THE COMBAT, MR. GETER FEARED DEATH OR SERIOUS BODILY INJURY. HOWEVER, IF, BEFORE THE KILLING IS COMMITTED, MR. GETER WITHDRAWS AND TRIED IN GOOD FAITH TO AVOID FURTHER CONFLICT, AND EITHER BY WORD OR ACT, MAKES THAT FACT KNOWN TO THE VICTIM, HE WOULD BE WITHOUT FAULT IN BRINGING ON THE DIFFICULTY.~~

~~FOR MUTUAL COMBAT THERE MUST BE A MUTUAL INTENT AND WILLINGNESS TO FIGHT. THIS INTENT MAY BE SHOWN BY THE ACTS AND CONDUCT OF THE PARTIES AND THE CIRCUMSTANCES SURROUNDING THE COMBAT.⁸⁴⁵ IN ADDITION, IT MUST BE SHOWN THAT BOTH PARTIES WERE ARMED WITH A DEADLY WEAPON.~~

(2) IMMINENT DANGER

THE SECOND ELEMENT OF SELF-DEFENSE IS THAT MR. GETER WAS ACTUALLY IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY OR THAT MR. GETER ACTUALLY BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY.

IF MR. GETER WAS ACTUALLY IN IMMINENT DANGER, IT MUST BE SHOWN THAT THE CIRCUMSTANCES WOULD HAVE WARRANTED A

PERSON OF ORDINARY FIRMNESS AND COURAGE TO STRIKE THE FATAL BLOW TO PREVENT DEATH OR SERIOUS BODILY INJURY. IF MR. GETER BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY, IT MUST BE SHOWN THAT A REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF.

IN DECIDING WHETHER MR. GETER ACTUALLY WAS, OR BELIEVED HE WAS, IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY, YOU SHOULD CONSIDER ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE CRIME, INCLUDING THE PHYSICAL CONDITION AND CHARACTERISTICS OF MR. GETER AND THE VICTIM.

RIGHT TO ACT ON APPEARANCES

MR. GETER DOES NOT HAVE TO SHOW THAT HE WAS ACTUALLY IN DANGER. IT IS ENOUGH IF MR. GETER BELIEVED HE WAS IN IMMINENT DANGER AND A REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF. MR. GETER HAS THE RIGHT TO ACT ON APPEARANCES EVEN THOUGH MR. GETER'S BELIEFS MAY HAVE BEEN MISTAKEN. IT IS FOR YOU TO DECIDE WHETHER MR. GETER'S FEAR OF IMMEDIATE

DANGER OF DEATH OR SERIOUS BODILY INJURY WAS REASONABLE AND WOULD HAVE BEEN FELT BY AN ORDINARY PERSON IN THE SAME SITUATION.

WORDS ACCOMPANIED BY HOSTILE ACTS

WORDS ACCOMPANIED BY HOSTILE ACTS MAY, DEPENDING ON THE CIRCUMSTANCES, ESTABLISH SELF-DEFENSE.

PRIOR DIFFICULTIES

EVIDENCE OF PRIOR DIFFICULTIES BETWEEN MR. GETER AND THE VICTIM MAY BE CONSIDERED IN DECIDING WHETHER A THREAT EXISTED, WHETHER MR. GETER HAD A REASON TO BELIEVE A THREAT EXISTED, AND HOW SERIOUS THAT THREAT WAS.

SIZE AND AGE

THE RELATIVE SIZES, AGES, AND WEIGHTS OF MR. GETER AND THE VICTIM MAY BE CONSIDERED IN DECIDING THE APPARENT OR ACTUAL NEED FOR FORCE IN SELF-DEFENSE AND THE AMOUNT OF FORCE NEEDED.

INTOXICATION

THE INTOXICATION OF THE VICTIM MAY BE CONSIDERED IN DECIDING WHETHER MR. GETER'S FEAR OF DEATH OR BODILY HARM WAS REASONABLE.

(3) REASONABLE BELIEF

THE THIRD ELEMENT OF SELF-DEFENSE IS THAT A REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE ENTERTAINED THE SAME BELIEF.

(4) NO OTHER WAY TO AVOID DANGER

THE FINAL ELEMENT OF SELF-DEFENSE IS THAT MR. GETER HAD NO OTHER PROBABLE WAY TO AVOID THE DANGER OF DEATH OR SERIOUS BODILY INJURY THAN TO ACT AS MR. GETER DID IN THIS PARTICULAR INSTANCE.

~~DUTY TO RETREAT~~

~~INCREASED RISK OF HARM~~

~~MR. GETER HAD NO DUTY TO RETREAT IF, BY DOING SO, THE DANGER OF BEING KILLED OR SUFFERING SERIOUS BODILY INJURY WOULD INCREASE.~~

DEGREE OF FORCE

A PERSON CANNOT BE REQUIRED TO MAKE AN EXACT CALCULATION AS TO THE DEGREE OR AMOUNT OF FORCE WHICH MAY BE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM. THEREFORE, IN SELF-DEFENSE, MR. GETER HAS THE RIGHT TO USE THE FORCE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM. THE FORCE USED IN SELF-DEFENSE DOES NOT HAVE TO BE LIMITED

TO THE DEGREE OR AMOUNT OF FORCE USED BY THE VICTIM. MR. GETER HAS THE RIGHT TO USE SO MUCH FORCE AS APPEARED TO BE NECESSARY FOR COMPLETE SELF-PROTECTION, AND WHICH A PERSON OF ORDINARY REASON AND FIRMNESS WOULD HAVE BELIEVED TO BE NEEDED TO PREVENT DEATH OR SERIOUS BODILY HARM.

CONTINUING UNTIL THREAT OF HARM IS ENDED

IF MR. GETER IS JUSTIFIED IN DEFENDING HIMSELF OR OTHERS AND IN FIRING THE FIRST SHOT, THEN MR. GETER IS ALSO JUSTIFIED IN CONTINUING TO DEFEND HIMSELF UNTIL IT IS APPARENT THAT THE DANGER OF DEATH OR SERIOUS BODILY INJURY HAS COMPLETELY ENDED.

~~VOLUNTARY INTOXICATION~~

~~VOLUNTARY INTOXICATION IS NOT AN EXCUSE FOR OR A DEFENSE TO A CRIME. A PERSON WHO VOLUNTARILY INGESTS ALCOHOL OR DRUGS AND THEREBY BECOMES INTOXICATED IS NO LESS RESPONSIBLE FOR HIS ACTS WHILE IN SUCH CONDITION. IF ONE VOLUNTARILY DRINKS INTOXICATING LIQUORS, WINE OR BEER OR INGESTS DRUGS AND BECOMES INTOXICATED TO WHATEVER DEGREE, AND IF WHILE IN THAT CONDITION COMMITS AN ACT~~

~~WHICH WOULD BE A CRIME IF IT HAD BEEN COMMITTED BY A SOBER PERSON THE FACT OF INTOXICATION WOULD NOT RELIEVE THE INTOXICATED PERSON FROM RESPONSIBILITY.~~

CONCLUSION

NOW, YOU HAVE BEEN CHOSEN AND SWORN TO GIVE THE PARTIES IN THIS CASE A FAIR AND IMPARTIAL TRIAL. WHEN YOU HAVE DONE SO, YOU WILL HAVE COMPLIED WITH YOUR OATH AND NO ONE WILL HAVE A RIGHT TO CRITICIZE YOUR VERDICT. YOU MUST NOT BE INFLUENCED BY OPINIONS OR EXPRESSIONS OF OPINION YOU MAY HAVE HEARD OUTSIDE OF THE COURTROOM BUT RATHER SHOULD BASE YOUR VERDICT SOLELY ON THE TESTIMONY OF THE SWORN WITNESSES WHO TOOK THE STAND, THE EXHIBITS RECEIVED INTO EVIDENCE, AND THE LAW WHICH I HAVE STATED. YOU SHOULD NOT BE SWAYED BY CAPRICE, PASSION, PREJUDICE, OR IMPROPER SYMPATHY FOR OR AGAINST ANYONE IN THIS CASE. REMEMBER, YOU HAVE NO FRIENDS TO REWARD OR ENEMIES TO PUNISH AND ALL PARTIES ARE ENTITLED TO A FAIR AND IMPARTIAL TRIAL.

UNANIMOUS VERDICT

THE LAW REQUIRES THAT A JURY VERDICT BE UNANIMOUS, WHICH MEANS THAT ALL THE JURORS MUST AGREE. THE ONLY TWO FORMS OF THE VERDICT ARE GUILTY OR NOT GUILTY. MADAME FORELADY,

ONCE THE JURY REACHES A VERDICT OF NOT GUILTY OR GUILTY, CIRCLE THE VERDICT ON THE FACE OF THE VERDICT FORM AND SIGN UNDER THE VERDICT TO SIGNIFY THAT WHAT YOU HAVE CIRCLED IS THE VERDICT OF ALL THE JURORS. THEN NOTIFY US THAT YOU HAVE REACHED A VERDICT BY KNOCKING ON THE DOOR.

INDIVIDUAL OPINION OF EACH JUROR

THE STATE AND MR. GETER ARE ENTITLED TO THE INDIVIDUAL OPINION OF EACH JUROR ON THE ISSUES OF FACT IN THIS CASE. IT IS THE DUTY OF EACH OF YOU TO CONSIDER AND WEIGH ALL THE EVIDENCE IN THE CASE AND, FROM SUCH EVIDENCE TO DETERMINE, IF YOU CAN, THE QUESTION OF THE GUILT OR INNOCENCE OF MR. GETER.

USE COMMON SENSE

THERE IS NOTHING PERCULIARLY DIFFERENT IN THE WAY A JURY SHOULD CONSIDER THE EVIDENCE IN A CRIMINAL CASE, FROM THAT IN WHICH ALL REASONABLE PERSONS TREAT ANY QUESTION DEPENDING UPON EVIDENCE PRESENTED TO THEM. YOU ARE EXPECTED TO USE YOUR GOOD SENSE, CONSIDER THE EVIDENCE IN THE CASE FOR ONLY THOSE PURPOSES FOR WHICH IT HAS BEEN ADMITTED, AND GIVE IT A REASONABLE AND FAIR CONSTRUCTION,

IN THE LIGHT OF YOUR COMMON KNOWLEDGE OF THE NATURAL TENDENCIES AND INCLINATIONS OF HUMAN BEINGS.

IF GUILTY SAY SO-IF NOT SAY SO

IF THE ACCUSED BE PROVED GUILTY BEYOND A REASONABLE DOUBT, SAY SO. IF NOT SO PROVED GUILTY SAY SO.

FORM OF VERDICT

YOUR VERDICT IN THIS CASE WILL BE ONE OF TWO FORMS. IF, FROM THE EVIDENCE AND THE LAW, YOU FIND THAT MR. GETER IS NOT GUILTY, YOU WILL CIRCLE "NOT GUILTY" VERDICT FORM I WILL GIVE YOU AND THE FOREMAN WILL SIGN HIS NAME. IF, ON THE OTHER HAND, YOU FIND THAT MR. GETER IS GUILTY, BASED UPON THE EVIDENCE AND THE LAW WHICH YOU HAVE HEARD, YOU WILL CIRCLE "GUILTY" ON THE VERDICT FORM AND THE FOREMAN WILL SIGN HIS NAME. YOUR VERDICT MUST BE UNANIMOUS. IT MUST BE GUILTY OR NOT GUILTY.

IF THE TRANSFERRED INTENT DOCTRINE IS READ THEN THERE IS AN ISSUE ABOUT SELF-DEFENSE TRANSFERRING TO THE ATTEMPTED MURDER CHARGE AS WELL-THIS IS AN ISSUE THAT MUST BE ADDRESSED.

****RELEASE ALTERNATE JURORS**

99

WITNESSES

(s) Joseph Clarke

- Richland County Sheriff

DOCKET NO. 2015GS4002758

The State of South Carolina

County of

Richland

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

COURT OF GENERAL SESSIONS

JUNE TERM 2015

67

ARREST WARRANT NUMBER

2015A4010200737

Defendant

THE STATE
vs.

Witness:

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

ACTION OF GRAND JURY

Robert Xavier Geter

TRUE BILL

Foreperson of Grand Jury

JUN 17 2015

VERDICT

Indictment for
ATTEMPTED MURDER

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

Foreperson of Petit Jury

Date:

SCANNED

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on JUNE 17, 2015, the
Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Robert Xavier Geter did in Richland County on or about March 7,
2015, did with the intent to kill, attempt to kill CLARENCE STONE with
malice aforethought, either expressed or implied. All in violation of SC
Code of Laws § 16-3-29 (1976, as amended)

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

A handwritten signature in dark ink, appearing to read 'Dan Johnson', written over a horizontal line.

DAN JOHNSON, SOLICITOR

63

WITNESSES

(S) Joseph Clarke

- Richland County Sheriff

DOCKET NO. 2015GS4002757

The State of South Carolina

County of

Richland

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

ARREST WARRANT NUMBER

2015A4010200736

67

JUNE TERM 2015

COURT OF GENERAL SESSIONS

Defendant

Witness:

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

ACTION OF GRAND JURY

TRUE BILL

Joseph Clarke
Foreperson of Grand Jury
Date: JUN 17 2015

VERDICT

Robert Xavier Geter

Indictment for
MURDER / MURDER

SC Code: 16-03-0010
CDR Code: 0116

Foreperson of Petit Jury
Date:

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on JUNE 17, 2015, the
Grand Jurors of Richland County present upon their oath:

MURDER

That Robert Xavier Geter did in Richland County, on or about March 7, 2015, kill the victim, James Lewis, with malice aforethought, either express or implied, by means of stabbing, and the victim did die as a proximate result thereof. All in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended

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



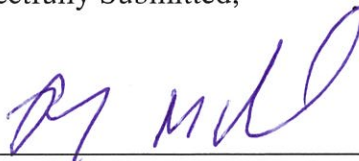
DAN JOHNSON, SOLICITOR

JUNE 17 2015

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,



Robert M. Dudek
Chief Appellate Defender

RECEIVED

Apr 20 2020

SC Court of Appeals

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

ATTORNEY FOR APPELLANT

This 20th day of April, 2020.