

2019-GS-24-01187

State of South Carolina                    )  
                  vs.                                )     Transcript of Record  
                                                      )  
                                                      )  
James Lamar Ficklin                        )  
                              Defendant        )

October 2, 2019  
Greenwood, South Carolina

RECEIVED

Jul 27 2020

## SC Court of Appeals

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

A P P E A R A N C E S:

Carson Penny, Assistant Solicitor  
Josh Thomas, Assistant Solicitor  
Attorneys for the State

Elizabeth Able, Assistant Public Defender  
Tristan Shaffer, Assistant Public Defender  
Attorneys for the Defendant

Joy E. Holston  
Official Court Reporter

**I N D E X   O F   W I T N E S S E S**

(IC) - Denotes In Camera  
(DW) - Denotes Defense Witness  
(SW) - Denotes State's Witness

(SW) Jacob James

|                                     |    |
|-------------------------------------|----|
| Direct examination by Ms. Penny:    | 41 |
| Cross-examination by Mr. Shaffer:   | 48 |
| Redirect examination by Ms. Penny:  | 62 |
| Recross examination by Mr. Shaffer: | 71 |

(SW) Bryan Louis

|                                    |     |
|------------------------------------|-----|
| Direct examination by Ms. Penny:   | 74  |
| Cross-examination by Ms. Able:     | 83  |
| Redirect examination by Ms. Penny: | 100 |
| Recross examination by Ms. Able:   | 101 |

(SW) Caleb Thurston

|                                   |     |
|-----------------------------------|-----|
| Direct examination by Ms. Penny:  | 103 |
| Cross-examination by Mr. Shaffer: | 112 |

(SW) Cayla Quinn

|                                    |     |
|------------------------------------|-----|
| Direct examination by Ms. Penny:   | 118 |
| Cross-examination by Ms. Able:     | 126 |
| Redirect examination by Ms. Penny: | 132 |

|    |                                   |     |
|----|-----------------------------------|-----|
| 1  | Opening Arguments by Ms. Penny:   | 33  |
| 2  | Opening Arguments by Mr. Shaffer: | 35  |
| 3  | Closing Arguments by Ms. Penny:   | 145 |
| 4  | Closing Arguments by Ms. Able:    | 155 |
| 5  | Jury Charge:                      | 161 |
| 6  | Verdict of the Jury:              | 188 |
| 7  | Sentencing by The Court:          | 190 |
| 8  | Certificate of Reporter:          | 192 |
| 9  |                                   |     |
| 10 |                                   |     |
| 11 |                                   |     |
| 12 |                                   |     |
| 13 |                                   |     |
| 14 |                                   |     |
| 15 |                                   |     |
| 16 |                                   |     |
| 17 |                                   |     |
| 18 |                                   |     |
| 19 |                                   |     |
| 20 |                                   |     |
| 21 |                                   |     |
| 22 |                                   |     |
| 23 |                                   |     |
| 24 |                                   |     |
| 25 |                                   |     |

**E X H I B I T S**State's

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EV</u> | <u>PAGE#</u> |
|------------|--------------------|-----------|-----------|--------------|
| 1          | Photo              |           | X         | 79           |
| 2          | Photo              |           | X         | 64           |
| 3          | Photo              |           | X         | 64           |
| 4          | Photo              |           | X         | 64           |
| 5          | Photo              |           | X         | 76           |
| 6          | Knife              |           | X         | 45           |
| 7          | Photo              |           | X         | 110          |

Defendant's

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EV</u> | <u>PAGE#</u> |
|------------|--------------------|-----------|-----------|--------------|
| 1          | Statement          | X         |           | 112          |

Court's

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EV</u> | <u>PAGE#</u> |
|------------|--------------------|-----------|-----------|--------------|
| 1          | Jury Note          | X         |           | 186          |

1           (Whereupon, the jury came into open court at  
2           approximately 9:00 a.m.)

3           THE COURT: We are going to try to select another  
4           jury for a trial for this morning. The State is going to  
5           call and publish the indictments. So, Ms. Penny.

6           MS. PENNY: The State -- indictment number  
7           19-GS-24-1187 is the State versus James Lamar Ficklin for  
8           assault and battery in the first degree.

9           THE COURT: We are going to go through the same  
10          process that we did Monday. The indictment has been  
11          handed up. The State's called the case. Mr. Ficklin's  
12          here in the courtroom with his lawyers. What we're going  
13          to do is I am going to ask you a series of questions to  
14          make certain you don't have any connection to the case or  
15          any preconceived notions that would prevent you from being  
16          fair and impartial. So all my questions are going to be  
17          to that end. So I think we've got the same two lawyers in  
18          this first trial -- the middle trial that we're working  
19          on, it got resolved also. Ms. Penny, introduce yourself  
20          again and to the entire panel.

21          MS. PENNY: Feels like deja vu, doesn't it? My name  
22          is Carson Penny. I'm an Assistant Solicitor here in  
23          Greenwood in the Eighth Circuit. Also with me here today  
24          is Josh Thomas, an Assistant Solicitor here in the Eighth  
25          Circuit in Greenwood County.

1           THE COURT: All right. Ms. Able, now, you're new,  
2 and I think that you're the newest lawyer in the group.  
3 So, Ms. Able, introduce yourself.

4           MS. ABLE: Good morning. I'm Elizabeth Able. I work  
5 as a criminal defense attorney here in town, along with my  
6 co-counsel, Mr. Tristan Shaffer. We are representing Mr.  
7 Ficklin. Thank you.

8           THE COURT: The indictment the State handed up  
9 alleges that an incident occurred on October 10th of 2018  
10 regarding an assault and battery. And the victim's name  
11 is Jacob James. The first question. Does any member of  
12 the jury panel know any of the attorneys or any parties  
13 just introduced, including Mr. Ficklin or Mr. -- the  
14 victim, Jacob James. Does anybody know anything about  
15 these folks, does anybody know them personally, related by  
16 blood or marriage, or close personal friends of any of  
17 those witnesses. Is she here?

18          CLERK OF COURT: She is here.

19          THE COURT: Okay. We'll catch her up. I won't call  
20 you by name because I don't know your name, ma'am. One  
21 lawyer introduced herself who wasn't here Monday, Ms.  
22 Able. And Mr. James Lamar Ficklin has pled not guilty and  
23 is here for a trial. So my first question -- that's the  
24 only part you missed was their introduction. Does anybody  
25 know anything about these accusations against Mr. James

1 Lamar Ficklin. And the incident that occurred October  
2 10th of '18 regarding Jacob James. If so, please stand.

3 (No response.)

4 THE COURT: No one is standing. Is any member of the  
5 jury panel related by blood or marriage, close personal  
6 friends with any of the folks introduced to you just  
7 moments ago. If so, please stand.

8 (No response.)

9 THE COURT: Any member of the jury panel ever been  
10 represented by, in any fashion, any of the attorneys that  
11 have been introduced to you. If so, please stand.

12 (No response.)

13 THE COURT: No one is standing. Now, the same goes  
14 for the first trial. Mr. Ficklin's pled not guilty and by  
15 that plea he has asked for a trial. Now, I emphasize to  
16 you that Mr. Ficklin doesn't have anything to prove or  
17 disprove. And that's with anyone accused of an accusation  
18 or a crime in General Sessions Court. They're presumed  
19 innocent. The State has the responsibility or burden of  
20 proving guilt beyond a reasonable doubt. The person  
21 accused has nothing to prove or disprove. Because of that  
22 the State goes first, the State presents it's case first,  
23 presents its witnesses and evidence first. The Defense  
24 responds to that and the Defense may choose to put nothing  
25 up. It's up to them to decide what they want to put up,

1 if anything, they are not required to. So because of that  
2 the Defense has got to wait and see what is presented in  
3 the case-in-chief by the State. So with that  
4 understanding, I'm going to read you a list of potential  
5 witnesses. And I told you all the trials this week are  
6 relatively short in the big scheme of things. Potential  
7 witnesses, if Mr. Ficklin were to decide to testify; Jimmy  
8 Powers, Caleb Thurston, Jerry Brooks, Jacob James, Bryan  
9 Louis, Cayla Quinn. I don't know that all of those  
10 witnesses will be called. Those are potential witnesses.  
11 Any member of the jury panel related by blood or marriage,  
12 close personal friends of any of those potential  
13 witnesses. If so, please stand.

14 (No response.)

15 THE COURT: No one's standing. I have to ask those  
16 questions for the record. I'm not talking to myself, but  
17 I am. That's how I make a record is to recognize what you  
18 all are doing for Ms. Holston's benefit over there. Is  
19 any member of this jury panel, member of your immediate  
20 family, either employed now or formerly in the capacity of  
21 law enforcement, whether it be a law enforcement officer,  
22 probation officer, correctional officer, anything of that  
23 type. If so, please stand. So whether you work, don't  
24 work, retired from, all of the above. You or a member of  
25 your family. Tell me your name.

1 JUROR: Angela Riddle. And I have a cousin that  
2 works for the City.

3 THE COURT: In Greenwood?

4 JUROR: Yes.

5 THE COURT: Still employed there?

6 JUROR: Yes.

7 THE COURT: Would that affect your ability to be fair  
8 and impartial?

9 JUROR: No, sir.

10 THE COURT: Okay. State your name.

11 JUROR: Brandon Westmoreland.

12 THE COURT: Mr. Westmoreland, do you know your jury  
13 number?

14 JUROR: 167.

15 THE COURT: 167. You were formerly with the  
16 sheriff's office?

17 JUROR: My brother was.

18 THE COURT: Brother was. No longer employed?

19 JUROR: That's correct.

20 THE COURT: How long you -- I think you discussed  
21 this. How long did your brother work there?

22 JUROR: He worked there for maybe a couple of years,  
23 and this was several years back.

24 THE COURT: Okay. So, several years back. And the  
25 fact your brother was employed as a sheriff's deputy would

1 that affect your ability to be fair and impartial?

2 JUROR: No, sir.

3 THE COURT: All right. Ma'am, tell me your name.

4 JUROR: Lorraine Evans, 62.

5 THE COURT: Ms. Evans, juror 62, and who in your  
6 family is in law enforcement?

7 JUROR: My son-in-law. He's a Major and he works for  
8 the City.

9 THE COURT: And what's his name?

10 JUROR: Crisp.

11 THE COURT: Crisp, he works for the City of  
12 Greenwood. Would that affect your ability to be fair and  
13 impartial in this case?

14 JUROR: No, sir.

15 THE COURT: Thank you, very much. Ma'am, tell me  
16 your name.

17 JUROR: Tracy Gonce, 72.

18 THE COURT: Ms. Gonce.

19 JUROR: Uh-huh.

20 THE COURT: All right. And who in your family is in  
21 law enforcement?

22 JUROR: My brother was. It's probably been over 10  
23 years ago. He's no longer employed there --

24 THE COURT: Where was he --

25 JUROR: The Sheriff's Office.

1           THE COURT:   The Sheriff's Office?   It was more than  
2   10 years ago?

3           JUROR:   Yes, sir.

4           THE COURT:   Would that affect your ability to be fair  
5   and impartial?

6           JUROR:   No, sir.

7           THE COURT:   All right.   Sir, last but not least.  
8   Tell me your name.

9           JUROR:   Joseph Bender, juror 15.   Father, a retired  
10   police officer.

11          THE COURT:   From Pennsylvania?

12          JUROR:   Pennsylvania.

13          THE COURT:   Okay.   I remember that.   Would that  
14   affect your ability to be fair and impartial?

15          JUROR:   No.

16          THE COURT:   The fact that I talk funny, would that  
17   affect your ability to be fair and impartial?

18          JUROR:   Not at all.

19          THE COURT:   The lawyers get to suggest questions for  
20   the Court to ask, so some of these questions might be  
21   slightly different.   Any member of the jury panel or a  
22   member of your immediate family pay contributions to the  
23   Eighth Circuit Solicitor's campaign, Solicitor Stumbo who  
24   is the elected Solicitor, or the Sheriff of Greenwood  
25   County.   If so please stand.

1 (No response.)

2 THE COURT: No one is standing. I asked this  
3 question earlier but I am going to ask it again. Any  
4 member of this jury panel, member of your immediate  
5 family, a member of any organization such as MADD mothers,  
6 SADD students, or advocacy groups that advocate victim's  
7 rights such as Citizens Against Violent Crime, Bikers  
8 Against Child Abuse, or advocacy groups for victim's  
9 rights? If so, please stand.

10 (No response.)

11 THE COURT: No one is standing. This is a question  
12 that I get asked -- suggested to ask occasionally. Any  
13 member of the jury panel have a particular dislike for  
14 attorneys? If so, please stand.

15 (No response.)

16 THE COURT: I always get that reaction. No one is  
17 standing. I don't think I asked the question. These  
18 allegations occurred last October regarding Mr. Ficklin  
19 and Mr. James. There may have been some publicity,  
20 whether on social media, local media or in any fashion  
21 whatsoever. Has any member of this jury panel heard  
22 anything, seen anything, read anything, whether it be  
23 Facebook, Twitter, Instagram, Greenwood Today, whatever.  
24 Anything you all read about that would affect your ability  
25 be fair and impartial. Anybody heard any publicity in

1 this case. If so, please stand.

2 (No response.)

3 THE COURT: All right. I asked this question earlier  
4 in the other trial. Any member of the jury panel, member  
5 of your immediate family, a member of the National Rifle  
6 Association or any groups that emphasize the protection of  
7 Second Amendment Rights. If so, please stand. State your  
8 name.

9 JUROR: Bender, Josaeph Bender, 15.

10 THE COURT: Are you a member of the NRA?

11 JUROR: NRA.

12 THE COURT: Can you be fair and impartial?

13 JUROR: Yes.

14 THE COURT: Your name.

15 JURY MEMBER: Number 171, Timothy Wideman.

16 THE COURT: 171. You're a member of the NRA?

17 JUROR: Yes.

18 THE COURT: Can you be fair and impartial?

19 JUROR: Yes.

20 THE COURT: Thank you, sir. Tell me your name,  
21 please.

22 JUROR: Daniel Enszt. Juror number 60.

23 THE COURT: 60. What are you a member of?

24 JUROR: The NRA.

25 THE COURT: The NRA. Does that affect your ability

1 to be fair and impartial?

2 JUROR: No, Your Honor.

3 THE COURT: Okay. I didn't ask this question  
4 earlier. Is any member of the jury panel got a concealed  
5 weapons permit? If so, please stand. Mr. Bender, you  
6 have got a concealed weapons permit?

7 JUROR: Yes, sir.

8 THE COURT: Can you be fair and impartial?

9 JUROR: Yes, sir.

10 THE COURT: Mr. Wideman. The other Mr. Wideman.

11 THE CLERK: Robert Wideman, 170.

12 THE COURT: Mr. Robert Wideman, you were on the first  
13 jury, so I knew your name. You agreed to be foreperson.  
14 Do you have a concealed weapons permit?

15 JUROR: I do.

16 THE COURT: Can you be fair and impartial?

17 JUROR: I can.

18 THE COURT: Very well, thank you. Sir, tell me your  
19 name.

20 JUROR: Robert Adams.

21 THE COURT: Mr. Adams, juror number 2. You've got a  
22 concealed weapons permit?

23 JUROR: I do.

24 THE COURT: Can you be fair and impartial?

25 JUROR: I can.

1 THE COURT: All right. Ma'am, tell me your name.

2 JUROR: Sarah Normandia, number 113.

3 THE COURT: And Ms. Normandia, you have a concealed  
4 weapons permit?

5 JUROR: I do.

6 THE COURT: Can you be fair and impartial?

7 JUROR: Yes, sir.

8 THE COURT: Very well. Sir, tell me your name?

9 JUROR: Richard Armstrong, number 8.

10 THE COURT: Juror 8, Mr. Armstrong. You have a  
11 concealed weapons permit?

12 JUROR: I do.

13 THE COURT: Can you be fair and impartial?

14 JUROR: I can.

15 THE COURT: Thank you. Any member of the jury panel,  
16 any member of your immediate family, ever been accused of  
17 or a victim of an assault and battery type crime or a  
18 domestic violence type crime. I don't need to know which  
19 side you're on, whether you are accused of or a victim of.  
20 You or a member of your family ever been involved in a  
21 domestic or assault and battery accusation or victim such  
22 that that incident would affect your ability to be fair  
23 and impartial in this case. The subject matter in this is  
24 going to involve a dispute. If so, please stand. Ma'am,  
25 tell me your name.

1 JUROR: Dominique Gamble.

2 THE COURT: Ms. Gambell. And I asked it both ways,  
3 have you ever been a victim of -- you have something that  
4 you or your family. Would that incident you stood for  
5 create an issue for you where you couldn't hear testimony  
6 regarding the incident in this case?

7 JUROR: No, sir.

8 THE COURT: Can you hear that and be fair and  
9 impartial to both sides?

10 JUROR: Yes, sir.

11 THE COURT: How long ago was the incident you stood  
12 for?

13 JUROR: Five years ago.

14 THE COURT: Five years? Is it resolved?

15 JUROR: Yes, sir.

16 THE COURT: And you can be fair and impartial?

17 JUROR: Yes, sir.

18 THE COURT: Okay. Thank you, ma'am. Sir, in the  
19 stripped shirt, tell me your name.

20 JURY MEMBER: Brent Best.

21 THE COURT: Mr. Best, you stood for the same reason,  
22 an incident that you're involved in some fashion, you or a  
23 member of your family. In light of that incident, can you  
24 still listen fairly and openly to testimony regarding an  
25 incident in this case?

1 JUROR: Given how recent it was, I don't think that I  
2 could be.

3 THE COURT: Fair enough. Mr. Best, I believe, is  
4 number 17; is that right?

5 THE CLERK: Number 17.

6 THE COURT: How about that. I'm not going to -- you  
7 can't leave, but you won't be selected as a juror. That  
8 is what I am looking for, just candor. Ma'am, tell me  
9 your name.

10 JUROR: Ebonee Freeman.

11 THE COURT: Freeman?

12 JUROR: Yes, sir.

13 THE COURT: Ms. Ebony Freeman. And Ms. Freeman is --

14 JUROR: 67.

15 THE COURT: 67. An incident where you or a member of  
16 your family. Can you be fair and impartial understanding  
17 that the testimony in this case would involve an incident  
18 regarding assault or a domestic violence type situation?

19 JUROR: Yes.

20 THE COURT: Can you be fair and impartial?

21 JUROR: Yes.

22 THE COURT: Okay. Thank you very much. I asked this  
23 question before and I will do it for this case. Any  
24 member of the jury panel not going to be able to accept an  
25 oath, to accept the law as instructed by the Court. As I

1 told you Monday, there's a lot of law out there discussed  
2 with television, movies and the internet, in other states  
3 and other jurisdictions, and just television in general,  
4 or movies in general that's not necessarily the law of  
5 South Carolina. As presiding Judge, I instruct the law at  
6 the end of the case. Is any member of the jury panel not  
7 going to be able to accept the law instructed by the Court  
8 and disregard a misunderstanding you may have. Anybody  
9 not going to be able to do that, please stand.

10 (No response.)

11 THE COURT: No one's standing. Does anyone not  
12 presume and know the instruction from this point forward  
13 to be that the State has the burden of proof and Mr.  
14 Ficklin is presumed innocent and he doesn't have anything  
15 to prove or disprove right now, nothing. Does anybody not  
16 understand that. If you don't understand that, please  
17 stand.

18 (No response.)

19 THE COURT: No one's standing. Does any member of  
20 the jury panel know any reason whatsoever they cannot give  
21 a fair trial to both sides, both the State and the Defense  
22 in this case, please stand.

23 (No response.)

24 THE COURT: No one's standing. I think that voir  
25 dire should be sufficient. Anybody want to be heard on

1 that we will, otherwise we will get the Cricket box going.  
2 Are we good?

3 MS. ABLE: Yes, sir.

4 THE COURT: Are any of the attorneys going to  
5 challenge the Clerk on the statute that she has to have a  
6 young child to draw these names randomly?

7 MS. PENNY: I think Ms. O'Shields is young enough.

8 THE COURT: I think Ms. Copeland is young enough.

9 MR. SHAFFER: No objection.

10 MS. PENNY: No objection.

11 THE COURT: I want y'all to come up right here and  
12 stand here and turn like we did in the first case. Bring  
13 your stuff up here when the Clerk calls you.

14 MADAM CLERK: 148, Asa Stallworth. What say the  
15 State?

16 MS. PENNY: Please present this juror.

17 MADAM CLERK: What say the Defense?

18 MS. ABLE: Please seat the juror.

19 MADAM CLERK: 113, Sarah Normandia. What say the  
20 State?

21 MS. PENNY: Please present this juror.

22 MADAM CLERK: What say the Defense?

23 MS. ABLE: Please seat the juror.

24 MADAM CLERK: 132, Annissa Robinson. What say the  
25 State?

1 MS. PENNY: Please present this juror.

2 MADAM CLERK: What say the Defense?

3 MS. ABLE: Please seat Ms. Robinson.

4 MADAM CLERK: 44, Ann Crawley. What says the State?

5 MS. PENNEY: Please present this juror.

6 MADAM CLERK: What says the Defense?

7 MS. ABLE: Please excuse Ms. Crawley.

8 MADAM CLERK: 37, Crystal Coats. What say the State?

9 MS. PENNY: Please present this juror.

10 MADAM CLERK: What say the Defense?

11 MS. ABLE: Please seat Ms. Coats.

12 THE COURT: 141, Mary Selby. What says the State?

13 MS. PENNY: Please present this juror.

14 MADAM CLERK: What says the Defense?

15 MS. ABLE: Please excuse Ms. Selby.

16 MADAM CLERK: 22, Charlie Brooks. What says the  
17 State?

18 MS. PENNY: Please present this juror.

19 MADAM CLERK: What says the Defense?

20 MS. ABLE: Please seat Mr. Brooks.

21 MADAM CLERK: 162, Adam Waites. What says the State?

22 MS. PENNY: Please present this juror.

23 MADAM CLERK: What says the Defense?

24 MS. ABLE: Please seat Mr. Waites.

25 MADAM CLERK: Number 8, Richard Armstrong. What says

1 the State?

2 MS. PENNY: Please present this juror.

3 MADAM CLERK: What says the Defense?

4 MS. ABLE: Please seat Mr. Armstrong.

5 MADAM CLERK: Number 3, Matthew Alexander. What says  
6 the State?

7 MS. PENNY: Please excuse this juror.

8 MADAM CLERK: Number 5, Orlando Allen. What says the  
9 State?

10 MS. PENNY: Please present this juror.

11 MADAM CLERK: What says the Defense?

12 MS. ABLE: Please seat Mr. Allen.

13 MADAM CLERK: 15, Joseph Bender. What says the  
14 State?

15 MS. PENNEY: Please present this juror.

16 MADAM CLERK: What says the Defense?

17 MS. ABLE: Please seat Mr. Bender.

18 MADAM CLERK: 33, Gloria Chappelle. What says the  
19 State?

20 MS. PENNY: Please present this juror.

21 MADAM CLERK: What says the Defense?

22 MS. ABLE: Please excuse Ms. Chappelle.

23 MADAM CLERK: 70, Dominique Gamble. What says the  
24 State?

25 MS. PENNY: Please excuse this juror.

1           MADAM CLERK: 99, Elizabeth Martin. What says the  
2 State?

3           MS. PENNY: Please seat this -- or please present  
4 this juror.

5           MADAM CLERK: What says the Defense?

6           MS. ABLE: Please seat Ms. Martin.

7           MADAM CLERK: 167, Brandon Westmoreland. What says  
8 the State?

9           MS. PENNY: Please excuse this juror.

10          MADAM CLERK: 90, Karen Larson. What says the State?

11          MS. PENNY: Please present this juror.

12          MADAM CLERK: What says the Defense?

13          MS. ABLE: Please seat Ms. Larson.

14          MADAM CLERK: 28, Omar Buggs. What says the State?

15          MS. PENNY: Please excuse this juror.

16          MADAM CLERK: 62, Lorraine Evans. What says the  
17 State?

18          MS. PENNY: Please present this juror.

19          MADAM CLERK: What says the Defense?

20          MS. ABLE: Please excuse Ms. Evans.

21          MADAM CLERK: 131, Angela Riddle. What says the  
22 State?

23          MS. PENNY: Please present this juror.

24          MADAM CLERK: What says the Defense?

25          MS. ABLE: Please excuse Ms. Riddle.

1           MADAM CLERK: 64, Timothy Fender. What says the  
2 State?

3           MS. PENNY: Please present this juror.

4           MADAM CLERK: What says, any excuse for cause for the  
5 Defense?

6           MS. ABLE: Please seat Mr. Fender.

7           MADAM CLERK: 52, Rhonda Donaldson. What says the  
8 State?

9           MS. PENNY: Please present this juror.

10          MADAM CLERK: What says the Defense?

11          MS. ABLE: Please excuse Ms. Donaldson.

12          MADAM CLERK: 133, Martin Robinson. What says the  
13 State?

14          MS. PENNY: Please present this juror.

15          MADAM CLERK: What says the Defense?

16          MS. ABLE: Please seat Mr. Robinson.

17          THE COURT: Are there any matters of law the Court  
18 needs to take up regarding the selection process employed  
19 by the Court, as well as the composition of the jury?

20          MS. PENNY: Not from the State, Your Honor.

21          MS. ABLE: No, Your Honor.

22          THE COURT: We want the jury to call back tonight or  
23 are they done. Call back?

24          MS. PENNY: Yes, sir.

25          THE COURT: Y'all are done for today. Call back

1     tonight and follow instructions just like you did before.

2     Call back.

3             (Whereupon, the remainder of the jury panel was  
4             excused from the courtroom at approximately 9:58  
5             a.m.)

6             THE COURT: What we're going to do is similar -- how  
7     many from Monday, I know I've got two or three, four,  
8     five. I recognize a couple of you. Anyway, for those who  
9     don't know, that's the jury room. As they're heading out  
10    I'll tell you this. Several things. For those of you who  
11    were here before, I'm going to sound like a broken record  
12    again. What you need to decide this case you'll get here  
13    in the courtroom. Testimony will be presented, evidence  
14    will be presented from the witness stand right here to my  
15    right. We're the court record. The State goes first who  
16    sits closer to you. The Defense may not present anything.  
17    It's up to them. Anyway, you don't need to do any  
18    independent research. You don't need to go on the  
19    internet and see what was published about this case last  
20    fall. Don't need any of that. It's better firsthand from  
21    the witness stand, evidence in hand, in the courtroom,  
22    because everybody's here. And the Court record, and the  
23    Clerk of Court, and the testimony under oath. What you  
24    get on the internet or on the street corner is not sworn  
25    testimony. And I'm telling you, that makes a difference.

1 Everybody will be sworn that comes up here. So my  
2 instruction will come as we go, but the majority of the  
3 instruction will come at the very end of the trial. So  
4 you all understand that. Now, I'm going to put you in the  
5 jury room and bring you back out here shortly. I think  
6 they're ready to get rolling right now. So you all step  
7 in there, use the restroom, get something to drink, and  
8 I'll let you know who -- Mr. Willingham -- he's the  
9 Bailiff that is going to be probably here closer to the  
10 door. But if you need something, ask him. What's back  
11 there or not, he has a good pot of coffee. Help yourself.  
12 If you want a notepad, I allow jurors to take notes. It's  
13 not required. Some people want something in their hands,  
14 some people don't. I don't care. Oh, and I did notice  
15 this. This courtroom has some trick chairs, and sometimes  
16 when you sit down they drop you kind of quick, and it's  
17 very amusing when you're not the one being dropped. That  
18 one does it the most, I think. But back here, he got it.  
19 He got it when he sat down. So he was in it this morning.  
20 But anyway, you all step in the jury room. Have you back  
21 here in a few minutes. We'll get sworn and get underway.  
22 Okay.

23 (Whereupon, the jury was excused from the courtroom.)

24 THE COURT: We'll take a couple minutes break. But  
25 how much pretrial do we have to deal with from the State?

1 Any?

2 MS. PENNY: None from the State, Your Honor.

3 THE COURT: None? Ms. Able, you got any?

4 MR. SHAFFER: Three motions.

5 THE COURT: Three motions? Okay.

6 MR. SHAFFER: Very quick motions that I don't think  
7 there's going to be much dispute about.

8 THE COURT: But you want to make a record of them.  
9 You want to do them right now and then we'll--

10 MR. SHAFFER: I can do them right now in probably  
11 five minutes.

12 THE COURT: Okay. Let's do them right now.

13 MR. SHAFFER: We pared down some stuff. We thought  
14 it was going to be more like 30. Your Honor, there's --  
15 first there is marijuana found, a marijuana pipe, alleged  
16 rolling papers found inside the car. We'd like to  
17 suppress those. I think the State's pretty much in  
18 agreement on that. Right?

19 MS. PENNY: No objection from the State.

20 THE COURT: All right. So we won't go into any  
21 paraphernalia or illicit drugs from the car. Fair enough.  
22 Off limits.

23 MR. SHAFFER: Thank you, Your Honor. There's also a  
24 -- inside the search of the vehicle when they did an  
25 inventory search. So there's an allegation of him using a

1 knife, but there was also a machete found somewhere in the  
2 vehicle, like the trunk. We want to suppress any mention  
3 of the machete, because I think that they -- I think the  
4 newspaper said -- sort of took the machete and sort of ran  
5 with it. And it wasn't a machete that is alleged to have  
6 done anything. It was just in the trunk.

7 THE COURT: Well, will the witnesses testify as to  
8 the weapon or knife, whatever it was, and not mention -- I  
9 mean, the witnesses were seeing what they were seeing.  
10 They'll testify to what they saw.

11 MS. PENNY: Right. We can certainly have a  
12 discussion with law enforcement about what they found. We  
13 already have to make sure that they're keeping out the  
14 fact that they found drugs.

15 THE COURT: Okay. So we'll mention any weapons in  
16 the trunk or other paraphernalia will be off limits and  
17 will caution the witnesses to do that.

18 MR. SHAFFER: Thank you, Your Honor. There's one  
19 witness that describes Mr. Ficklin as wearing a Black  
20 Sabbath T-shirt. I don't want anyone to have some sort of  
21 preconceived notion of people who wear like Ozzy Osborne  
22 or Black Sabbath or -- who's biting heads off bats or  
23 anything like that. So, we ask that that particular part  
24 of the description be suppressed.

25 MS. PENNY: I think that that's just a natural thing

1     that might come out of her mouth because that's what she  
2     observed. I don't -- I don't have any opinion about  
3     somebody in a Black Sabbath T-shirt. I don't -- I don't  
4     know about the jury. We don't know about their attitudes  
5     or opinions.

6             THE COURT: All right. If it comes out that way, can  
7     you follow it up with a question, that's a rock and roll  
8     group, or something along those lines so as not to appear  
9     to be a religious T-shirt of some type?

10            MS. PENNY: Certainly.

11            THE COURT: Does that help you?

12            MR. SHAFFER: That will be fine.

13            MS. PENNY: We can do that.

14            THE COURT: So you follow-up. If it comes out. If  
15     she doesn't and she says rock and roll T-shirt then that's  
16     fine. There's no need to say which one. Just if it does,  
17     that's a rock and roll group.

18            MS. PENNY: Certainly, Your Honor.

19            THE COURT: That will keep things rolling. Anything  
20     else, Mr. Shaffer?

21            MR. SHAFFER: That's it.

22            THE COURT: Okay. Well, good. You were right.  
23     Those were easy. Let's take a couple of minutes and then  
24     we'll get out here and get started.

25            MR. THOMAS: I guess -- I don't know if this needs to

1 be on record or not. But I guess the victim showed up in  
2 shorts. He was laying brick all morning. He showed up in  
3 shorts. Do we need to run get him a pair of pants, or  
4 will you allow him to testify in those? He's going right  
5 back to work. That's what he told our investigator.

6 MR. SHAFFER: We have no objection to him wearing  
7 shorts.

8 MR. THOMAS: We could run to the Dollar Store and get  
9 him some. It might take a couple of minutes.

10 THE COURT: I'd rather have him in a pair of slacks.  
11 We kind of keep those rules for a reason. And so, let's  
12 get him a pair of slacks.

13 MR. SHAFFER: Your Honor, we have a bunch of clothes  
14 over at the Public Defenders Office, so if he can fit in  
15 some of those.

16 THE COURT: Well, go look then real quick. See if --  
17 how big is he?

18 MS. ABLE: He's small. Small guy.

19 MR. SHAFFER: We may not have -- we had that problem  
20 earlier this week.

21 MR. THOMAS: Is there any over here, a pair of pants  
22 over here.

23 THE COURT: Yeah, it give it a --

24 MR. THOMAS: We'll square it away.

25 THE COURT: Okay.

1           (Whereupon, a short break was taken.)

2           THE COURT: Let's bring the jury in.

3           (Whereupon, the jury came into open court at  
4           approximately 10:37 a.m.)

5           THE COURT: It doesn't really matter to me who sits  
6 where. When we start deliberating everybody will be in  
7 there. So sit wherever you like. I just know that you  
8 all -- it's kind of like church. You kind of sit where  
9 you get comfortable and you kind of go back to the same  
10 seat, and if that's what y'all do, that's fine. All  
11 right. We're ready to start. What's going to happen  
12 next, I'm going to have the Clerk place you under oath  
13 momentarily. If you all want to take notes. Now, my  
14 comments on notes is this. If you don't take notes,  
15 that's fine. I have to take notes because some of the  
16 issues I have to rule on. If you want to doodle on your  
17 notepad, that's fine. Once we begin deliberations  
18 understand this. A note taker's notes do not trump a good  
19 listener's recollection. Everybody's going to be on even  
20 Stephen ground. So you can't be, "Well, I wrote this  
21 down, therefore you must have misheard." That's for you  
22 all to decide. There's 12 of you listening, 12 of you  
23 eyeballing, whatever. That's what you do is you listen  
24 and you consider. And nobody's wrong. It's just what the  
25 group of you all hear, and you all are going to resolve

1 and answer questions of fact. I'm going to resolve  
2 questions of law. So what that means is as questions of  
3 law come up, "Judge, we object," that's -- "I want you to  
4 do a 403 analysis on that." Okay, I need to hear a little  
5 more. And so, if that comes up and the lawyers tell me  
6 that, that's a clue to me that I need to hear a little bit  
7 more and I'm going to rule one way or the other. But it's  
8 kind of the opposite of being in a sporting event where  
9 you can go back and review the play you just had and  
10 determine whether it was inbound or out of bounds and look  
11 at it and replay it over and over and then decide what to  
12 call this. I have to do the instant preview. So whether  
13 than asking questions and say, okay, that's out of bounds  
14 or not, I put you all in the jury room and then say,  
15 "Okay, what's the question and what's the objection," and  
16 then kind of consider it that way. And I hear both sides  
17 if that question is legal, it's inbounds, or, "No, sir,  
18 Judge, that's out of bounds because of these reasons." So  
19 I have to get a preview of it on the record before I rule  
20 sometimes. If that happens and y'all are in the jury  
21 room, just understand that. I can't do a review, I've got  
22 to do a preview. And then I'll make the call and the case  
23 moves on. Once y'all start answering questions of fact  
24 y'all are going to be in the jury room. You'll have all  
25 the testimony you've heard and all the law you've heard,

1 and you all will resolve the questions of fact in similar  
2 fashion. When you all are doing y'all's job, I won't be  
3 back there to help you. When I'm in here doing my preview  
4 ruling on the case, y'all won't be in here helping me but  
5 we work together. Okay. So if a legal issue comes up,  
6 put y'all in there. Once the questions of fact come up,  
7 y'all will be in there and y'all will answer those  
8 yourself. Now, the State goes first. They'll do an  
9 opening comment. Kind of a summary of what they think the  
10 roadmap of the case is. Defense will get an opportunity  
11 to do the same thing. They'll make those comments to you.  
12 Tell you what the case is going to present to you or what  
13 it might not present to you. After they do that, the  
14 State will then call it's first witness and start  
15 presenting evidence. Now, while y'all were in the jury  
16 room the lawyers told me. They said, look, we've got  
17 several pieces of evidence and photographs that we think  
18 pretty much we're going to agree on that they're probably  
19 going to come in. So I don't think there's going to be a  
20 legal issue but you never know. So with those limited  
21 instructions, Madam Clerk, will you place the jury under  
22 oath for me.

23 (Whereupon, the jury was sworn at approximately 10:41  
24 a.m.)

25 THE COURT: Ms. Penny.

1 MS. PENNY: Good morning. Again, for some of us this  
2 is very much deja vu. On October 10th of last year, 2018  
3 a man was at a gas station. He was talking to a friend.  
4 He had a car in front of him, a car next to him. And  
5 someone -- our Defendant, Mr. Ficklin, sitting right here,  
6 turns out pulled up behind him, started to blow his horn,  
7 get irate, wanted him to move forward. The man had  
8 nowhere to go. But this man, the Defendant, Mr. Ficklin,  
9 continued to honk his horn, be irate, eventually bumped  
10 the man in front of him, who you'll hear from today. The  
11 man he bumped got out, said, "Why'd you do that?" Mr.  
12 Ficklin went inside the gas station, was in there for some  
13 time, came back out. The man that he bumped went over to  
14 Mr. Ficklin's car and said, "Why'd you do that?" Wanted  
15 to talk about insurance. Wanted to talk about how to  
16 resolve what just happened. And Mr. Ficklin quickly  
17 opened his front door and pushed the man back. And then  
18 pulled this knife out of his car and said, "I'll kill you.  
19 I'll slice you." Something to that effect. You'll hear  
20 -- you'll hear from the victim exactly what he said.  
21 Pulled this knife out. Mr. Ficklin is indicted for  
22 assault and battery in the first degree. Assault and  
23 battery in the first degree. A person commits that if the  
24 person unlawfully offers or attempts to injure another  
25 person with a present ability to do so. And the act, in

1 this case, is accomplished by means likely to produce  
2 death or great bodily injury. That's the law. I want you  
3 to think about the law while you listen to the facts of  
4 this case that will largely come from up here from the  
5 witness stand. We'll hear from Mr. James, the victim.  
6 We'll hear from law enforcement. And we'll hear from two  
7 witnesses that just happened to be on scene that day.  
8 We'll talk about the facts. You'll hear more about the  
9 law from the Judge. You'll hear about the State's burden,  
10 which I think you guys might be familiar with. You've  
11 heard beyond a reasonable doubt. That's how we have to  
12 prove that Mr. Ficklin violated this law beyond a  
13 reasonable doubt. That's not beyond all doubt, not beyond  
14 any doubt. But beyond a reasonable doubt that he  
15 committed this act and violated this law by doing it. We  
16 welcome that burden. We deal with that burden on a daily  
17 basis with our jobs as prosecutors. So you'll hear about  
18 the facts. You'll hear about the law. You'll hear about  
19 our burden more from the Judge at the end, and you'll  
20 consider all that together. But one thing that I don't  
21 want you to leave behind as you hear about all this is  
22 your common sense. Think about all this with a view of  
23 your common sense. Once you've done that, you've heard  
24 about the law, the facts, our burden, you're using your  
25 common sense the whole time, I believe you will find that

1 Mr. Ficklin is guilty of assault and battery in the first  
2 degree. Thank you.

3 MR. SHAFFER: I have a confession to make to you all.  
4 Right now I'm a little bit scared. So I'm not talking  
5 about anxiety, because I do have anxiety whenever I talk  
6 in front of people. I think everyone does. I imagine  
7 some people hide it a little bit better than others. But  
8 I'm scared because of the fact that in this situation I  
9 represent someone who I truly believe is innocent. And  
10 that's a whole lot of burden on my shoulders here, because  
11 while we may be joking around and, you know, dealing with  
12 stuff in the courtroom, you may have seen me earlier  
13 joking around with the Judge and joking around with the  
14 Prosecutor, this is a really serious case. Mr. Ficklin is  
15 charged with assault and battery in the first degree. Not  
16 second degree, not third degree, in the first degree. And  
17 there's a whole lot of pressure on me. So if it seems  
18 like I'm forgetting something or if it seems like I'm  
19 rambling, I want to apologize in the first place. Okay.  
20 What I want to do first is to sort of set the scene of  
21 what -- what happened there that day. This is what I  
22 think the jury -- what you're going to hear from the  
23 witness stand. I think you're going to hear that there  
24 are two gas pumps and that there were two cars. I think  
25 you're going to hear about the Kia. Okay. And in the Kia

1 -- there's a Kia Sorento SUV. And in the Kia there's Mr.  
2 -- Mr. James and Jerry Brooks. Okay. Mr. James is the  
3 person they're calling the victim in this case. Okay.  
4 And behind there there's a Crown Vic, Crown Victoria. I'm  
5 sure most of you all know what it is, but if not you'll  
6 figure it out soon enough. It basically looks like an old  
7 police car. And in that car is James Ficklin. My client.  
8 Now, because we have Jacob James and James Ficklin, I'm  
9 just calling Mr. Ficklin, my client, Mr. Ficklin. Okay.  
10 And I'll call him Jacob, because I don't want to confuse  
11 you all, because sometimes, you know, whenever you're  
12 preparing for a case and you talk to a client, sometimes  
13 you slip up and you call them by their first name or you  
14 deal with them like that. So if I slip up and say James,  
15 I don't mean Mr. James. I mean Jacob James, okay, who's  
16 the alleged victim in this case. So you have James and  
17 Jerry, and they're in the front car and there's someone in  
18 the back car which is Mr. Ficklin. Ms. Penny said -- gave  
19 you one version of what you're going to hear. Probably  
20 the version that Mr. Jacob James said. She's not going to  
21 -- she didn't tell you the whole version, or the whole  
22 thing about the law. She also told you part of the law  
23 that you're going to consider. And I don't want you all  
24 to -- to hear this directly from me and take this in as  
25 directly from me. I am going to tell you what I think is

1 going to come through one of the independent witnesses  
2 that's there. This -- I suspect you're going to hear from  
3 a young man named Caleb Thurston. And Caleb Thurston was  
4 there and I suspect that Mr. Thurston -- or as far as we  
5 know, he isn't really connected to this other than the  
6 fact he witnessed it. I heard the driver of the Kia  
7 screaming that some guy hit his grandma's car. Then some  
8 guy who I thought was the driver of the car that hit it  
9 came out of the store. The driver of the Kia then tried  
10 to close the door on him, the driver of the other car, as  
11 he was trying to get in his car. At the same time, the  
12 other guy in the Kia had approached the car. He came  
13 around to the other side of the car. They all started  
14 screaming, and the guy who was accused of hitting the Kia  
15 said he had a knife. They all started screaming again and  
16 that's about the time the cops pulled up. I suspect  
17 you're going to hear that from the witness stand. And  
18 whenever I said that the State did not tell you all the  
19 law that you're going to consider in this case, what they  
20 didn't tell you is the law of self-defense. I suspect  
21 that you're going to hear that at the scene of the  
22 accident -- or the scene of this, when cops showed up he  
23 said I am fearing for my life. That's the reason I pulled  
24 out a knife. The self-defense law, which you're going to  
25 hear from the Judge later, and if I -- I'm going to go a

1 lot quicker than the Judge is probably going to go. So if  
2 I say anything that disagrees with the Judge it's not  
3 intentional. It's just because I want to go a little bit  
4 quicker. Self-defense is someone without thought in  
5 bringing on the difficulty. Not the kind of thought  
6 that's going to cause somebody to attack you. It is  
7 imminent fear of sustaining serious bodily injury. Two  
8 guys on one. A reasonable person would have also felt  
9 that way. And the person had no other course of action  
10 than to act the way he did. Ladies and gentlemen, you're  
11 going to hear from the witness stand that my client went  
12 inside the store after this minor incident which you're  
13 also going to hear has no property damage at all, went  
14 inside the store, and the other guy stayed outside getting  
15 mad and started yelling whenever he got in -- got in --  
16 got outside the store. They approached him, yelling at  
17 him, and tried to slam the door of his car on top of him.  
18 He's -- he can't go forward. There's people on both sides  
19 of his car. Yeah, he has a knife inside of his car. He  
20 grabs it. He tries to get away, and he says -- he doesn't  
21 stab anybody. He doesn't attempt to stab anybody. What  
22 he does is says, "Hey, leave me alone. I got a knife.  
23 I'll cut you if you come after me." There's two on one.  
24 That is self-defense. And that is what you're going to  
25 hear from the witness stand. Ladies and gentlemen, they

1 talk about their burden of proof a whole lot, and one  
2 reason that I think that they talk about their burden of  
3 proof is to make it sound like, oh, well. To inundate you  
4 with this where you don't really care. This burden  
5 basically says that the constitution guarantees that you  
6 don't have to prove you're innocent. They have to prove  
7 you're guilty, which means they have to prove that he  
8 didn't act in self-defense beyond a reasonable doubt. You  
9 all have to be firmly convinced at the end of this trial  
10 that he did not act in self-defense in order to convict  
11 him. We have no burden. The Judge is going to say that a  
12 whole bunch throughout the trial. It's a very important  
13 thing. They have to prove that this is not self-defense.  
14 So listen throughout the trial. List to the witnesses.  
15 Try to find out whether or not you are firmly convinced  
16 that he did not act in self-defense whenever -- he didn't  
17 even stab someone. He just said, Hey, I have a knife. I  
18 can cut you. Get away from me, guys, that are attacking  
19 me. Listen to that. Listen for something that convinces  
20 you beyond a reasonable doubt that this is not  
21 self-defense. Now, I'm going to talk to you some -- about  
22 something else. You see, everyone in every case sort of  
23 struggles with the decision, every Defense attorney at  
24 least, is whether or not their client is going to testify.  
25 Okay. And right now I don't know if he's going to testify

1 or not, and I'm going to tell you why. Because whenever  
2 you don't testify the Judge will instruct people, instruct  
3 you guys, that you can't hold it against somebody. But  
4 most people think, hey, you're innocent. You should get  
5 up on the stand and testify. But those are the kind of  
6 people who probably have never been in this situation.  
7 Probably never been faced with somebody who's going to  
8 question you who is trained at questioning you and trained  
9 to make you look bad. So I don't know if he's going to  
10 testify or not. But what I do want you all to do is to  
11 understand the fact that the Judge has told you that he  
12 has no burden and he doesn't have to put up anything. I  
13 want you all to keep that in mind throughout this trial,  
14 and if he doesn't testify I want you all to follow the law  
15 and not hold it against him. Like I said at the very  
16 beginning of this, this is a very serious matter. It's  
17 assault and battery of the first degree. You guys are  
18 going to have to make a decision as to whether or not he  
19 acted in self-defense, or whether or not -- and really the  
20 decision you're supposed to make under the law is whether  
21 or not they can prove that he didn't act in self-defense.  
22 And I'm not trying to mince words with you all, because if  
23 you all listen to the independent witness in this case,  
24 Mr. -- or Caleb, if you listen to his testimony, that  
25 sounds like self-defense. But they're going to have to

1 present some evidence that makes you firmly convinced that  
2 he did not act in self-defense. Thank you.

3 THE COURT: Call your witness.

4 MS. PENNY: The State calls Mr Jacob James.

5 JACOB JAMES, being  
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 By Ms. Penny:

9 Q Good morning, Mr. James.

10 A Good morning.

11 Q How are you doing this morning?

12 A All right.

13 Q All right. If you will, please state and spell your  
14 name for the record.

15 A Jacob Wayne James, J-A-C-O-B, W-A-Y-N-E, J-A-M-E-S.

16 Q All right, Mr. James. Where are you from?

17 A I'm from Antreville, South Carolina.

18 Q Where do you live now?

19 A Antreville.

20 Q In Antreville.

21 A I'm from Ware Shoals. I live in Antreville now.

22 Q What do you do for a living, Mr. James?

23 A I'm a brick mason.

24 Q Have you been at work today?

25 A Yes, ma'am.

1 Q How long you been doing that?

2 A Since I was 15.

3 Q How old are you now?

4 A Forty-four.

5 Q Mr. James, do you recall where you were at about five  
6 o'clock on October 10th of 2018?

7 A At the Stop-A-Minit in Ware Shoals.

8 Q What were you doing at the Stop-A-Minit?

9 A I had just pumped gas. Was talking to a friend of  
10 mine.

11 Q What happened -- did anything of note happen after  
12 you finished pumping gas?

13 A Some guy started blowing the horn at me.

14 Q He started blowing the horn at you. Was he saying  
15 anything while he blew the horn?

16 A Yeah, he was hollering and stuff, but I wasn't paying  
17 him no attention.

18 Q Okay. Do you know -- if you saw that man again could  
19 you tell us who he was?

20 A Yeah.

21 Q Is he this man seated right here in the garnet shirt?

22 A Yes, ma'am.

23 Q What happened after he blew his horn and started  
24 yelling at you?

25 A I pulled up trying to give him room to get in. There

1 was a car in front of me. There are four pumps there.  
2 There were cars at all four pumps and I couldn't go  
3 nowhere. I pulled up a little bit. Couldn't go no  
4 further. I guess he needed gas right then, so he decided  
5 to try to knock me out of the way. Rammed my mom's car.

6 Q So you're driving your mom's car?

7 A Yeah. Mine's tore up, so I had to get my mom's car  
8 for a couple of days until mine gets fixed.

9 Q What kind of car is that?

10 A I think it's a Kia Sorento or something like that. A  
11 little SUV.

12 Q Okay. And so, in response to him blowing the horn  
13 you pulled up?

14 A I pulled up. Tried to give him enough room to get  
15 in. I couldn't go no further because there was another  
16 car in front of me. I guess he decided he was going to  
17 ram the rear-end of my mom's car.

18 Q What happened after that?

19 A He got out cussing, telling me to get -- get the hell  
20 out of the way. Excuse my French. But, you know, he was  
21 cussing, raising cain because I couldn't -- wouldn't get  
22 out of the way for him. Sitting there talking to my  
23 friend, you know. Couldn't go nowhere. Regardless of  
24 whether I could go, you know -- talking to my friend or  
25 not I still couldn't go forward. Couldn't go backwards

1 because he's behind me.

2 Q So after -- after he hit your car and jumped out,  
3 then what did he do?

4 A He was cussing me, going into the store. I got out  
5 of my car. Couldn't go around neither way, because I was  
6 up against the car that was in front of me, and he was up  
7 under my mom's car. So I went across the hood of his car  
8 cussing him back wondering what his problem was.

9 Q Did you follow him in the store?

10 A I went over to the other side of the gas pumps and  
11 said I ain't going in that store after him. I'll wait  
12 until he comes back out. I went back over there beside  
13 mom's car, and he come back out and I asked him what his  
14 problem was. Went to approach him, you know, to see if he  
15 had any insurance, what he was going to do about hitting  
16 my mom's car. And when I got where his fender was and he  
17 thought -- I guess he thought I was threatening or  
18 something, but I didn't say nothing out of the way to him.  
19 And he opens his door and pushes me out of the way with  
20 his car door and reaches under the seat, or somewhere in  
21 the car, and pulls out a knife.

22 Q He pulled out a knife?

23 A Yeah, a big knife.

24 MS. PENNY: Your Honor, may I approach the witness?

25 THE COURT: Sure.

1 MS. PENNY: And I am taking the sheath -- if I may  
2 have a moment, Your Honor. I'm showing what's marked --  
3 pre-marked as State's Exhibit number 6 to the witness.

4 Q Mr. James, is this the knife that you saw?

5 A It looked like it.

6 Q This is -- this looks like the knife he pulled on  
7 you?

8 A Uh-huh. (Indicated yes.)

9 MS. PENNY: Your Honor, I'd like to move that this  
10 knife comes into evidence.

11 MR. SHAFFER: No objection, Your Honor. Actually --  
12 no objection. Yeah, no objection to the knife, Your  
13 Honor.

14 THE COURT: All right. The knife will be in without  
15 objection. It'll be marked as one, the sheath and  
16 everything.

17 MS. PENNY: As one exhibit?

18 THE COURT: Uh-huh.

19 COURT REPORTER: That's number 6, Judge.

20 THE COURT: Okay.

21 (Whereupon, State's Exhibit number 6 was admitted  
22 into evidence.)

23 Q So this is the knife that he pulled --

24 A Yes, ma'am.

25 Q From his car. And once he pulled this knife what did

1 he say to you?

2 A He said, "Don't -- don't come near me. I'll cut  
3 you."

4 Q Did he say anything else?

5 A "I'll kill you." He was hollering all kind of crazy  
6 stuff.

7 Q How was he holding the knife?

8 A By the handle like -- like that (demonstrating).

9 Q Was he holding -- was he holding it like this by the  
10 handle (demonstrating) --

11 A Yeah.

12 Q -- like I'm holding it right now?

13 A Uh-huh. He was holding it down like that.

14 Q Down right here, (demonstrating)?

15 A Uh-huh.

16 Q Closer to his hip?

17 A Yeah, like on his side.

18 Q Do you know what hand he was holding it in?

19 A I'm wanting to say it was in his right hand. I'm not  
20 sure. Been so long ago, I don't remember.

21 Q It was a long time ago?

22 A Yeah.

23 Q Almost a year ago. Everything happened so fast?

24 A Yeah.

25 Q So what did you do in response to that?

1 A I backed up at first. Got -- you know, went back  
2 toward my own car and I just -- all of a sudden I just got  
3 mad. You know, I ain't never been intimidated like that.  
4 I started cussing him like he was cussing me.

5 Q In response to him pulling this knife out --

6 A Yeah.

7 Q -- on you and threatening you?

8 A Yeah.

9 Q And --

10 A I told him to put that knife down, you know--

11 Q -- but that was in response to him pulling out the  
12 knife?

13 A Yeah.

14 Q And you didn't -- you didn't threaten him --

15 A For something he done. I mean, why is he pulling a  
16 knife on me? I didn't do nothing to him. He done that to  
17 me.

18 Q You didn't threaten him prior to him --

19 A No.

20 Q -- hitting your car?

21 A No. I ain't ever seen this guy. Don't know this  
22 guy's name or nothing. Never seen him before in my life.

23 Q Have you seen him since?

24 A And I've lived in Ware Shoals for 30 some years.

25 Q So you don't --

1 A And I've never seen him before.

2 Q You don't have any prior beef with him?

3 A No.

4 Q So in response to this -- scratch that. What  
5 happened -- what happened to diffuse this whole situation?

6 A To diffuse it?

7 Q To end it.

8 A Somebody called the police and the police started  
9 showing up and he went back over there to his car.  
10 Threw the knife in the car, I guess, and walked around  
11 behind his car. And one of the police come talk to him  
12 and the other come talked to me.

13 Q And as far as you know that's the end of it?

14 A Yeah. I ain't never heard nothing else about it  
15 until, you know, you called me.

16 Q And so, we have called -- we have called you and  
17 talked to you about this case and wondered your  
18 perspective on it, correct?

19 A Yes, ma'am.

20 MS. PENNY: That's all we have for now. If you'll  
21 answer any questions from Mr. Ficklin's lawyer.

22 CROSS-EXAMINATION

23 By Mr. Shaffer:

24 Q Mr. James, would you mind if I called you Jacob  
25 just --

1 A Either way.

2 Q -- to avoid confusion?

3 A Yeah.

4 Q I guess I'm going to start where they left off. You  
5 said they called you. When did they call you about this?

6 A They called me a month or so ago.

7 Q Okay.

8 A Asked me if I would, you know, come testify --

9 Q Come up here?

10 A -- if I needed to.

11 Q Okay. So it was about a month or so ago. Outside of  
12 that you thought this was over with?

13 A Uh-huh.

14 Q So --

15 A I ain't heard nothing else about it until, like said,  
16 a month ago.

17 Q Okay. So I guess let's go back a little bit. You  
18 said that he pulled up and he was honking his horn at you,  
19 right. How long had he been -- you had pumped gas, right?

20 A Uh-huh.

21 Q And you were talking to somebody. Who were you  
22 talking to?

23 A A guy named Terry, a friend of mine I went to school  
24 with.

25 Q Okay. What's Terry's last name?

1 A Maran.

2 Q And was he riding with you or was he in a different  
3 car?

4 A No, he was -- he was walking through the store  
5 parking lot.

6 Q Okay. About how long were you all talking?

7 A Several minutes.

8 Q You weren't alone, were you?

9 A No.

10 Q You had a guy named Jerry Brooks with you?

11 A Yes, sir.

12 Q Now, when they -- when he pulled up you're saying he  
13 was honking his horn at you, right? And --

14 COURT REPORTER: I need a yes or a no, please.

15 A Yes.

16 Q And I'm sorry. Yes. The Court Reporter needs to  
17 take down verbal responses.

18 A Okay.

19 Q So he's honking the horn at you, and then you said  
20 that he basically rammed you, right?

21 A Yeah.

22 Q Did he say anything before he rammed you?

23 A He cussing. You know, he's blowing the horn behind  
24 me telling me to get out of the way. But I couldn't go  
25 nowhere.

1 Q Were you trying to move whenever he rammed you?

2 A I was trying to go forward but I couldn't. I tried  
3 to pull up to give him enough room to get in there, but I  
4 couldn't. There was a car in front of me. I pulled up as  
5 tight as I could. And when he hit my car there wasn't but  
6 about three inches between my car and the car that was in  
7 front of me.

8 Q So, but -- so you pulled up within about three inches  
9 of the car in front of you, correct?

10 A I pulled up about a foot from the car in front of me.

11 Q Okay.

12 A He knocked me that close to that other car.

13 Q Okay. Did he, like, rev up his motor and then run  
14 into you or --

15 A I wasn't paying no attention. All I know is I pulled  
16 up and next thing I know it was bam, you know.

17 Q Was there any damage to your car?

18 A It bent a little of a bumper, scratched it a little  
19 bit.

20 Q Okay. Did you file any sort of claim?

21 A No, sir. My sister had ran into the little guardrail  
22 around the gas pump and put a big scratch and a dent down  
23 the passenger side of mom's car and she was going to get  
24 it fixed when she got that fixed. She just made one  
25 claim.

1 Q And this isn't in evidence yet, because it's a  
2 State's exhibit, but I'm going to show you what's been  
3 marked State's Exhibit 4 for the purposes of  
4 identification. And in that, does that picture accurately  
5 demonstrate any -- any damage to your vehicle?

6 A You can't see nothing. It's just black.

7 Q So you can't see any damage in that picture, correct?

8 A You can't tell the difference between the car and the  
9 shadow.

10 Q Do you have any pictures of that damage?

11 A No, sir.

12 Q Okay. A month ago when the State contacted you, or  
13 since that month ago, had they ever asked you for any  
14 pictures of that damage?

15 A No.

16 Q Did the officer ever ask you for pictures of the  
17 damage?

18 A No, sir.

19 Q And you never filed an insurance claim, correct?

20 A Mom did on the -- well, my sister did, but not on  
21 what he did.

22 Q Okay. So you said that he then got out and went  
23 inside the store, correct?

24 A Yes, sir.

25 Q You said that you were blocked off from him, so you

1     crossed the hood of the car to get inside -- to follow him  
2     toward the store, correct?

3     A     Yes, sir.

4     Q     So how did you cross the hood of -- you're saying you  
5     crossed the hood of his car?

6     A     I couldn't go around him. I could have went all the  
7     way around him.

8     Q     Okay. So you could have --

9     A     I couldn't go in between my car and his car, or the  
10    car in front of me they were so close together.

11    Q     So you walked across the hood of his car to get to --

12    A     Yeah.

13    Q     -- get closer to him quicker?

14    A     The bumper of his car.

15    Q     Okay. And he went inside the store, correct?

16    A     Yes, sir.

17    Q     What was Jerry doing during this?

18    A     He got out of the car and was looking at my car.

19    Q     Okay. And whenever he went inside -- when he -- when  
20    Mr. Ficklin went inside the store were you standing  
21    outside there waiting for him or what?

22    A     No, I done come back to mom's car by then, was  
23    waiting on that guy.

24    Q     You weren't yelling at him whenever he came out of  
25    the store?

1 A No.

2 Q So you never yelled and cussed at him?

3 A Yeah, I asked him what -- excuse my language, but I  
4 asked him what the hell his problem was.

5 Q Okay. And then he went toward the door of his car,  
6 correct?

7 A Who went to the door of his car?

8 Q Mr. Ficklin went toward the door of the Crown  
9 Victoria, right?

10 A Yeah.

11 Q And you approached that door, correct?

12 A The door wouldn't open. He was trying to pump gas  
13 but he wasn't close enough to pump gas because the hose  
14 wouldn't reach.

15 Q But you -- he actually opened the door of his car,  
16 correct?

17 A Yeah.

18 Q And you approached the door of his car whenever he  
19 opened it, correct?

20 A No. I was already approaching it when he was opening  
21 the car.

22 Q Okay.

23 A He was standing at the back of his car where the gas  
24 tank is, and when I got to the front of his car he come  
25 toward his door and opened it.

1 Q Where was Jerry during this?

2 A Pushed me with the door. When he opened the door he  
3 pushed me back with the door.

4 Q Okay. Where was Jerry during this?

5 A He was on the other side of his car.

6 Q Other side of Mr. Ficklin's car?

7 A He was on the passenger side of mom's car and -- the  
8 back of my mom's car in front of his.

9 Q And was Jerry yelling at him?

10 A No, sir.

11 Q Describe Jerry for us.

12 A Six-two, six-three.

13 Q How old is he?

14 A Twenty-seven, twenty-eight.

15 Q Okay. About how much does he weigh?

16 A About a buck 80, buck 90.

17 Q So Jerry was standing on the passenger side near the  
18 front of his car, correct?

19 A Yes.

20 Q And he initially went toward the gas pump -- the gas  
21 tank of his car, but then went toward the -- opened the  
22 door of his car, correct?

23 A Mr. Ficklin did, yeah.

24 Q Yeah. And then whenever he -- he opened the door of  
25 his car you didn't try to push him or try to push him into

1 his car?

2 A No. I was going to see what he was going to do about  
3 fixing mom's car, you know, talk to him about insurance  
4 and stuff, and he was just steady cussing.

5 Q So you weren't cussing back at him at that point?

6 A Probably.

7 Q Okay.

8 A I done got aggravated because he was cussing me, you  
9 know.

10 Q Whenever -- whenever he went inside the store you  
11 were cussing at him, right?

12 A No, he was cussing me.

13 Q So you didn't say you were -- you started yelling at  
14 him whenever you walked across -- or walked across the  
15 bumper or the hood of his car?

16 A Well, when he got over almost into the store, yeah, I  
17 probably said something to him, but I don't know what it  
18 was.

19 Q At any point whenever the knife came out did he --  
20 was he trying to swing it at you?

21 A No.

22 Q He wasn't trying to jab it at you?

23 A No. I wasn't that close to him. When he pulled the  
24 knife out of the car I stepped back away from the car and  
25 went back toward my mom's car.

1 Q Okay. And I think you testified on direct that he  
2 said, "Don't come near me or I'll cut you --

3 A Yeah.

4 Q Or, "I'll kill you," or something like that. Is that  
5 correct?

6 A He was making threats.

7 Q Okay. And then you got mad, correct?

8 A Yes, sir.

9 Q And you were cussing at him, right?

10 A Yes, sir.

11 Q And you were -- you got mad, so you re-approached  
12 him, correct?

13 A Yes, sir.

14 Q And during this time period was he inside his car or  
15 outside his car?

16 A He never did get back inside of his car.

17 Q Okay.

18 A Once he pulled the knife out he walked away from his  
19 car and got out into the parking lot.

20 Q Okay. So he walked away from you all with the knife.  
21 So let's say -- that's the front of your car and this is  
22 the front of his car. About right?

23 A You mean the front --

24 Q This is from the -- this is the nose, the front --  
25 front bumper of your car. Is that about a fair depiction

1 of how far away it was?

2 A I guess. Whatever length mom's car is, yeah.

3 Q Okay. So he's back at the driver's side door. Let's  
4 say the jury is the gas pump, right? Okay. So he -- he's  
5 back there and he has the knife, and you initially walk  
6 away once you see the knife, correct?

7 A I backed up, yeah.

8 Q Okay. And then he said, "Don't come near me or else  
9 I'll stab you," or "cut you," or "slice you," or  
10 something?

11 A He wasn't going that way, (indicating). He was  
12 coming this way, (indicating).

13 Q Okay. So he was coming this way (indicating). And  
14 said, "Don't come near me or I'll stab you?"

15 A He come between his car and the gas pump and went on  
16 the other side of the gas pump where there wasn't nobody  
17 out there.

18 Q So he would have gone this way, (indicating)?

19 A And, you know, the area in between this pump and this  
20 pump where the trash cans and stuff is.

21 Q Yes, sir.

22 A He went in that area --

23 Q Okay. And so --

24 A -- out. Swinging the knife. You know, hollering  
25 and cussing waving the knife around.

1 Q So given -- given where we're at, where the gas pump  
2 is the jury, is the store that way or is the store that  
3 way, (indicating)?

4 A This way over here, (indicating).

5 Q So the store is this way, (indicating). And you said  
6 he went out toward the parking lot. Which way is the  
7 parking lot?

8 A There's a row here and a row here and the gas pump's  
9 right here, (indicating). And it's where everybody goes  
10 in and out of the store. It's not really a parking area,  
11 but --

12 Q So is the parking lot closer to the store or is it  
13 closer --

14 A The parking lot's right up against the store.

15 Q Okay. So the area he was --

16 A He was going away from the store out -- out the way  
17 from the gas pump basically, four pumps.

18 Q Yes, sir. And just so we're clear, the store is  
19 which direction in this room? If the cars are facing this  
20 way, which direction is --

21 A If the cars is right there, the store's on this side,  
22 (indicating).

23 Q Store's on this side, (indicating). So he walked out  
24 this way, (indicating)?

25 A Yeah.

1 Q About how far out did he go?

2 A Eight or ten feet. Not even that far. He just went  
3 on the other side of the gas pump.

4 Q So the gas pump's right here on that bar that  
5 separates the jury and he goes about eight feet this way,  
6 (indicating)?

7 A He goes -- yeah.

8 Q So he would have been somewhere in this jury box  
9 saying -- holing the knife in his hands?

10 A Yeah.

11 Q Where was he holding it? Down his hip?

12 A Holding it by his side and just every now and again  
13 he'd pick it up and say something, you know, waiving it  
14 around.

15 Q What would he be saying?

16 A Just cussing.

17 Q Were you --

18 A Called me -- called me names and stuff. I mean, you  
19 know, I didn't do nothing to him.

20 Q What kind of names was he calling you?

21 A I didn't even say nothing to the boy or nothing,  
22 until after he done hit my mom's car and come out the  
23 store. I might have said something to him when he went in  
24 the store -- before he went in the store. But I didn't  
25 get mad or nothing until after he pulled the knife and,

1 you know, started threatening me.

2 Q So after he came out of the store you weren't  
3 screaming at him?

4 A Yeah, I was asking him what his problem was, yeah,  
5 and hope he had insurance.

6 Q So did the -- how long do you all think -- how long  
7 do you think you were out there with him holding the knife  
8 and you all yelling back and forth to each other?

9 A Three or four minutes probably.

10 Q Before the cops showed up?

11 A Yeah.

12 Q Where was Jerry during all this?

13 A He was on the other side of mom's car and his car.

14 Q Was he ever saying anything, yelling anything like  
15 that?

16 A No, sir. He never even got involved in it.

17 MR. SHAFFER: Court's indulgence.

18 Q Now, Mr. James, I'm not -- I try not to embarrass  
19 people with this, but one thing that I do want to do is  
20 ask you a question whether or not back in 2010 you had a  
21 little drug charge on your record, right?

22 A Yes, sir.

23 Q There's a -- did you plead guilty to possession of  
24 meth or was it cocaine, or which one was it?

25 A It was meth.

1 Q It was meth, okay.

2 A I had a bad habit.

3 Q Okay.

4 A But I've been clean for 10 years.

5 Q Okay. And that plea was from -- so you've been clean  
6 since that plea? That -- I mean, obviously that was a  
7 plea within 10 years ago, right, but --

8 A I guess.

9 Q Well, it would have been 2010.

10 A Yeah.

11 Q So you've been clean since that?

12 A I've done two and a half, two years or something  
13 probation.

14 Q Okay. So you never -- you were clean -- you were not  
15 using meth or anything on this date, were you?

16 A On this date with this?

17 Q Yeah.

18 A No, sir.

19 Q Okay.

20 MR. SHAFFER: That's all the questions I have at this  
21 time. Thank you.

22 REDIRECT EXAMINATION

23 By Ms. Penny:

24 Q All right, Mr. James.

25 MS. PENNY: If I may approach, Your Honor.

1 THE COURT: You may.

2 Q I'm going to show you some photos. I'm showing Mr.  
3 James what's been premarked as State's Exhibit 2. What is  
4 that a picture of?

5 A That is his car.

6 Q That is the Defendant's car?

7 A Yes, ma'am.

8 Q What kind of car is that?

9 A Crown Vic, I guess. That's what he said it was a  
10 while ago.

11 Q Is it a white car?

12 A Yeah, it's white.

13 Q I'm showing you what's been premarked as State's  
14 Exhibit number 3. What is that a picture of?

15 A That's a picture of his car and my mom's car.

16 Q And is that -- so that -- this -- what color is your  
17 mom's car?

18 A Like charcoal gray.

19 Q Okay. So you're saying that the other car in this  
20 picture is your mom's car?

21 A Yes, ma'am.

22 Q And then I'm showing you what's been premarked as  
23 State's Exhibit number 4. What do you see there?

24 A His car almost touching mine.

25 Q Okay. And would you --

1 A Where he bumped -- I guess where he hit me and  
2 bounced forward.

3 Q Would you say that these are accurate pictures of the  
4 scene as you remember it that day?

5 A Uh-huh.

6 MS. PENNY: And we've, I think, stipulated to the  
7 admissibility of this evidence.

8 MR. SHAFFER: No objection.

9 MS. PENNY: I'd like to move these into evidence.

10 THE COURT: What's the number?

11 MS. PENNY: State's numbers 4, 2 and 3.

12 THE COURT: 2, 3 and 4 entered without objection.

13 (Whereupon, State's Exhibit numbers 2, 3 and 4 were  
14 admitted into evidence.)

15 MS. PENNY: May I publish to the jury, Your Honor?

16 THE COURT: Sure.

17 MS. PENNY: All right. So now, for you all to see  
18 these pictures we've been talking about.

19 Q Mr. James, is this the white car that we were just  
20 speaking about?

21 A Yes, ma'am.

22 Q And what's on the other side of this white car? Is  
23 that the gas pumps?

24 A Yes, ma'am.

25 Q Okay. So you see -- you see the gas pumps are to the

1 -- to the left? The driver's side of that white car?

2 A Yes, ma'am.

3 Q They're to the driver's side of that white car? And  
4 now I'm going to show what's been marked as State's  
5 Exhibit number 3. So here what do we see? What two cars  
6 do we see?

7 A That's my mom's car on the right and his car on the  
8 left.

9 Q Is that on the right, is that that gray car the car  
10 you call your mom's car --

11 A Yes, ma'am.

12 Q -- is it in front of his car?

13 A Yes, ma'am.

14 Q The white car? In front of the white car?

15 A Yes, ma'am.

16 Q And what do you see to the driver's side of those two  
17 cars?

18 A The gas pumps.

19 Q The gas pumps. And what -- would the parking lot  
20 that you're talking about, that you spoke about with Mr.  
21 Shaffer, the attorney -- the other attorney, is that  
22 parking lot kind of to the left to the driver -- further  
23 to the driver's side of these two cars?

24 A It's behind whoever took that picture. It's behind  
25 them. There's another set of gas pumps on this side

1 (indicating) of whoever took that picture. There's  
2 another set of gas pumps just like them --

3 Q I see.

4 A -- behind them. And then the store's on the other  
5 side of the other gas pump.

6 Q So the store is farther to the passenger side of the  
7 cars?

8 A Yes, ma'am.

9 Q And the parking lot is behind the cars?

10 A The parking lot's in between the store and the gas  
11 pump.

12 Q Got you.

13 A It's on both sides. And the parking lot out front of  
14 this.

15 Q I understand what you're saying. And you were at the  
16 Stop-A-Minit?

17 A Yes, ma'am.

18 Q And you can see that Stop-A-Minit sign here in the  
19 picture?

20 A Yes, ma'am.

21 Q And then I'm about to show -- I'm showing what's been  
22 premarked as State's Exhibit number 4. And what is this?

23 A That's my mom's car and my mom's -- the rear-end of  
24 her car and the front of his car.

25 Q And this -- what is this showing us?

1 A Where he bumped into my mom's car. You can see the  
2 scratch on the front of his bumper right there. My mom's  
3 car is black, so you can't see nothing on it.

4 Q And you -- again, you didn't take any separate  
5 pictures?

6 A No, ma'am.

7 Q And you didn't send us any pictures?

8 A No, ma'am.

9 Q And you didn't send -- you personally didn't send  
10 insurance any pictures --

11 A No.

12 Q -- that you would have available?

13 A No, ma'am.

14 Q But -- and I think you said you suppose that your car  
15 bumped forward a little bit --

16 A Yes, ma'am.

17 Q -- or moved forward when he hit you? So, Mr. James,  
18 to clarify -- first of all, as one matter, it sounds to me  
19 like your description of Jerry, is he skinny?

20 A He's--

21 Q Your friend? He's not a big guy? He's a skinny guy?

22 MR. SHAFFER: Your Honor, this is leading at this  
23 point.

24 THE COURT: Yeah, don't lead.

25 Q Mr. James, did Mr. Ficklin hit your car?

1 A Yes, ma'am.

2 Q And after that you were talking to him, right?

3 A You know, he got out cussing me, and I'm like,  
4 "What's your problem, man? I couldn't move," you know.

5 Q And he -- and he walked into the store?

6 A Yeah, he walked in -- you know, relatively quickly  
7 went into the store. I guess he was in a hurry. I don't  
8 know what was wrong with him.

9 Q Were you trying to talk to him about what had just  
10 happened?

11 A When he come back out the store I asked him what --  
12 you know, what's he going to do about hitting my mom's  
13 car. He pretty much wasn't worried about my mom's car.

14 Q When he was walking into the store though, is that  
15 the conversation you were trying to have with him--

16 A Yeah.

17 Q -- is what's going to happen? What are you going to  
18 do about this car?

19 MR. SHAFFER: Your Honor --

20 A I was asking him what you going to do about hitting  
21 my mom's car, you know.

22 MR. SHAFFER: -- That's the same question. Same --

23 A I don't know whether I asked him before he went in  
24 the store or after he come out of the store. But, you  
25 know --

1 MR. SHAFFER: Withdrawn.

2 A -- but it escalated from there.

3 COURT REPORTER: Judge, I haven't heard any --

4 MR. SHAFFER: Withdrawn.

5 THE COURT: He withdrew his objection. I think he  
6 said it's been asked and answered, but withdrawn.

7 Q Did you ever -- did you ever threaten Mr. Ficklin?

8 A No.

9 Q Did you -- before he pulled the knife on you?

10 A No. I told him to put that knife down, you know. We  
11 talking about, we settle it like men.

12 Q Did you ever threaten Mr. Ficklin before he hit you  
13 with his car door?

14 A No.

15 Q Did you ever pull a knife on Mr. Ficklin?

16 A No.

17 Q Did you ever pull a gun on Mr. Ficklin?

18 A No.

19 Q And when is it --

20 A I hadn't said a word to him until after he hit the  
21 car and he got out of the car and running his mouth to me.  
22 I never said a word to him.

23 Q When was it that you -- that you said, "Let's settle  
24 this as men without a knife"?

25 A After he was -- he done went in between the two gas

1 pumps and was out there in front of that little white  
2 truck that was out there. Standing over there acting  
3 crazy.

4 Q I'm showing you State's Exhibit 3. Is that what --  
5 the white truck you're talking about?

6 A The little white truck on the other side. He was  
7 over there in front of that truck.

8 Q And you're talking --

9 A There wasn't nothing out -- no car or nothing right  
10 there, parked out there.

11 Q So you're talking about this white truck that's on  
12 the other side of the gas pumps?

13 A Yes, ma'am. In between the two gas pumps. When he  
14 got out of his -- pulled the knife out of his car he went  
15 that way (indicating), out away from the gas pumps. Out  
16 into the open.

17 MS. PENNY: That's all I have, Mr. James. Thank you  
18 for being here.

19 THE WITNESS: Yes, ma'am.

20 MS. PENNY: It seems as though you may have some  
21 additional questions to answer, but thank you for being  
22 here.

23 MR. SHAFFER: Judge, --

24 THE COURT: -- just a few.

25 RECROSS-EXAMINATION

1 By Mr. Shaffer:

2 Q You said you never threatened him, correct?

3 A Yeah.

4 Q You said that you said, "Let's settle this like men";  
5 correct?

6 A Yes, sir.

7 Q That means you wanted to fight him, right?

8 A Well, if he put the knife down I would, yeah.

9 Q Okay. But did he put the knife down?

10 A No, not until that police pulled up in the parking  
11 lot.

12 Q Okay. You think he wanted to fight you?

13 A I don't know. I thought he wanted to kill me. I  
14 didn't know what he wanted to do. He pulled a knife on  
15 me.

16 Q But he didn't put the knife down and actually settle  
17 it like men, right?

18 A No.

19 Q And there were two of you all, right?

20 A Yeah.

21 Q And there was one of him, right?

22 A Jerry was with me, yeah. But I don't know what --  
23 why he felt threatened to pull a knife on me.

24 Q Okay. So whenever he initially -- you said he bumped  
25 -- he ended up honking his horn a bunch and then ended up

1 bumping into your car, correct?

2 A No, he didn't bump it. He hit it.

3 Q He rammed it?

4 A Yeah.

5 Q That was the term you first used, and then they're  
6 using the term hit. He rammed it, right?

7 A He hit it. I mean, he hit it. He didn't bump it.  
8 He hit it.

9 Q Okay. So -- but there's no property damage even  
10 though he rammed it, right? Okay. So he gets out of his  
11 car, and you're completely calm and just asking about  
12 insurance, is that right?

13 A Well, I asked him, you know, what his problem was and  
14 what's he going to do about fixing my mom's car, and he  
15 started -- he wasn't worried about my mom's car. He went  
16 on in there to get his gas.

17 Q Okay. So both you all -- both of you all got out --

18 A All he was doing is cussing me. He didn't want to  
19 discuss the car, accident, or whatever he -- what he did.  
20 He was just cussing me wanting me to get the hell out of  
21 the way.

22 Q Both of you all got out of the car, right? You and  
23 Jerry.

24 A Yeah.

25 Q And then he starts moving toward the store and you

1 walk across the hood or bumper, or whatever it was, and --

2 A He went around the rear-end of his car and went  
3 towards the store.

4 Q So you're following him --

5 A And he started cussing me. You know, I was wanting  
6 to know what he was going to do about -- why he hit my  
7 mom's car, and then he started cussing me and told me he  
8 wasn't worried about the car and this, that and the other.

9 Q Were you calm at this point?

10 A Yeah.

11 Q Okay. You were calm?

12 A Yeah. I didn't get mad until after he done pulled  
13 the knife on me.

14 Q You were calm but you walked across the hood of his  
15 car?

16 A Yeah.

17 Q How many feet would it have taken for you to talk  
18 around that car?

19 A Probably from me to you, a little further.

20 Q Okay. But you didn't want to wait that long, did  
21 you?

22 A No.

23 MR. SHAFFER: No further questions.

24 THE COURT: All right. You may step down. All  
25 right. Call your next witness.

1 MS. PENNY: State calls Bryan Louis.

2 BRYAN LOUIS, being  
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 By Ms. Penny:

6 Q Morning.

7 A Good morning.

8 Q What should I call you?

9 A I'm Interim Chief at the moment.

10 Q So you're Interim Chief Louis of what?

11 A Ware Shoals Police Department.

12 Q All right. How long have you been a police officer?

13 A Last month is 20 years.

14 Q What all have you done as a police officer?

15 A I've worked investigations, murders, property crimes,  
16 sexual assaults, basically any violent crimes, and drug  
17 crimes.

18 Q Where have you been a police officer?

19 A Due West, Ware Shoals, Greenwood.

20 Q How long have you been with Ware Shoals?

21 A A little over a year.

22 Q How long have you been Interim Chief?

23 A About three weeks.

24 Q Congratulations.

25 A Thank you.

1 Q Were you working for the Ware Shoals Police  
2 Department on October 10th, 2018?

3 A Yes, ma'am.

4 Q What were you doing that day?

5 A We were just about to conduct a shift change. I was  
6 patrolling that day.

7 Q What shift were you working?

8 A First shift.

9 Q What is that? What --

10 A 6:00 in the morning until 6:00 in the evening.

11 Q Okay. And when did this happen?

12 A This happened approximately 5:07 p.m.

13 Q 5:07 p.m. How were you called out there?

14 A Through dispatch.

15 Q Okay. What did -- walk through the scene for me once  
16 you got there?

17 A When I got there I saw the white Crown Vic belonging  
18 to Mr. Ficklin almost pressed up against the -- it looked  
19 like a golden colored Kia. And I believe I was the first  
20 one in contact with Mr. Ficklin who was at his vehicle,  
21 and then I had another officer initially go to talk Mr.  
22 James. I don't know how much you probably want me to go  
23 into it. I noticed --

24 Q What did you notice on the scene?

25 A Outside of the driver's door of the white Crown Vic I

1 observed a black in color sheath laying on the ground.

2 MS. PENNY: Your Honor, may I approach?

3 THE COURT: Sure.

4 MS. PENNY: I'm showing Interim Chief Louis what's  
5 been premarked as State's Exhibit 5.

6 Q What is that?

7 A That's going to be the sheath that I observed on the  
8 ground.

9 Q What's it outside?

10 A Outside the Crown Victoria, white car.

11 Q Do you know who took these pictures?

12 A I did.

13 Q Took these pictures.

14 MS. PENNY: I'd like to move what's been premarked as  
15 State's Exhibit 5 into evidence.

16 MS. ABLE: No objection.

17 THE COURT: State's 5 without objection.

18 (Whereupon State's Exhibit number 5 was admitted into  
19 evidence.)

20 MS. PENNY: Your Honor, may I publish to the jury?

21 THE COURT: Sure.

22 Q So what do you see in this picture?

23 A The black colored sheath just outside the driver's  
24 door of the Crown Victoria.

25 Q And there are -- there are shadows in this picture?

1 A There are shadows, yes.

2 Q If what I'm sort of circling with my pen without  
3 touching the paper, is that the sheath that you see?

4 A Yes, it is.

5 Q Is -- I am holding up what's been premarked as -- or  
6 what is now as evidence as State's Exhibit 6. Is this the  
7 sheath --

8 A Yes, it is.

9 Q -- that you found on the ground?

10 A Yes, it is.

11 Q And who's car is that?

12 A That's going to be Mr. Ficklin's, the Defendant.

13 Q Can you -- do you see Mr. Ficklin here?

14 A Yes. He's at this table with the maroon shirt.

15 Q And I know you're used to this, but goofy question.  
16 What county did this happen in?

17 A This happened in Greenwood County.

18 Q Happened in Greenwood County. All right. So you  
19 observed this sheath. What did you do once you observed  
20 this sheath?

21 A We had officers -- several officers up there trying  
22 to get witnesses together, get -- find out what was going  
23 on. You know, what led to the sheath being on the ground.  
24 I mean, I think I -- like I said, I made contact with Mr.  
25 Ficklin first and then talked to Mr. James afterwards and

1 kind of got his statement, since he appeared to be the  
2 victim in this -- in this case. I talked to him and got  
3 his side of story.

4 Q Did you speak with any other witnesses?

5 A I did. I talked to a Cayla Quinn and a -- sorry. It  
6 was a young gentleman. I can't remember his name, but I  
7 got a statement from him, he lived with next door to the  
8 Stop-A-Minit.

9 Q Would it -- would it sound right if I said it was Mr.  
10 Caleb Thurston?

11 A Thruston, yes.

12 Q After speaking with those witnesses did you observe  
13 any more about the scene?

14 A Yeah. I opened the door of Mr. Ficklin's car. I did  
15 observe a large knife on the floorboard of the driver's  
16 side of the vehicle.

17 MS. PENNY: Your Honor, may I approach?

18 THE COURT: Sure.

19 MS. PENNY: I'm showing Interim Chief Louis what's  
20 been premarked as State's Exhibit number 1.

21 Q Can you tell me what you see in that photo?

22 A Yeah. I see the knife that's in the black sheath now  
23 laying on the floorboard of the driver's side of the Crown  
24 Victoria.

25 Q And again, you took this photo?

1 A I did take that.

2 MS. PENNY: I'd like to move State's -- what's been  
3 premarked as State's Exhibit 1 into evidence.

4 MS. ABLE: No objection.

5 THE COURT: State's 1 without objection.

6 (Whereupon, State's Exhibit number 1 was admitted  
7 into evidence.)

8 MS. PENNY: Your Honor, may I publish to the jury?

9 THE COURT: Sure.

10 Q So tell me what -- again what you see here?

11 A That is the knife that's currently in the black  
12 sheath that was found on the driver's side door of the  
13 Defendant's vehicle. The white Crown Vic.

14 Q And I'm holding up the knife portion of Exhibit 6. Is  
15 this that same knife that's in State's Exhibit 1?

16 A Yes, ma'am.

17 Q And is this about the condition that knife was in  
18 that day?

19 A Yes, ma'am.

20 Q What did you do with this knife once you found it?

21 A It was put in the evidence bag and placed in the back  
22 of my vehicle.

23 Q Ultimately where did -- what did you do with it after  
24 that?

25 A I turned it into the police department and it was

1 placed into evidence.

2 Q Has it been there since that day?

3 A It has.

4 Q How did it get to Court?

5 A I signed it out and transported it here.

6 Q Today?

7 A Yes.

8 Q Has it been anywhere else since then?

9 A No.

10 Q So you observed this knife on scene. You observed  
11 the sheath. Any other observations?

12 A Other than the vehicles almost touching, being as  
13 close as they were, no.

14 Q Did you observe any damage to Mr. James' car?

15 A I did not. Nothing apparent from being struck and  
16 pushed. It appeared to be a rubber bumper in front of the  
17 Defendant's car. I didn't see any really noticeable  
18 damage.

19 Q Was damage to the car your chief concern that day?

20 A It was not.

21 Q So after you spoke with the witnesses and observed  
22 the scene and collected evidence, then what did you do?

23 A Mr. Ficklin was advised of his legal rights by  
24 Officer Simpson on scene. He was then identified as the  
25 aggressor. He was placed under arrest.

1 Q What was he -- scratch that.

2 MS. PENNY: That's all I have for now, Interim Chief  
3 Louis. If you will, answer any questions from Defense  
4 counsel.

5 MS. ABLE: Your Honor, can we approach?

6 (Whereupon, a bench conference was held in the  
7 presence of the jury but out of the hearing of the  
8 jury.)

9 THE COURT: Folks, we're going to take a five minute,  
10 10 minute bathroom break. Come back in here and try to  
11 finish up, see what else we can do before lunch. You all  
12 step in the jury room and have you right back in here.

13 (Whereupon, the jury was excused from the courtroom.)

14 THE COURT: All right. We'll stand down for a couple  
15 of minutes.

16 MS. ABLE: Thank you, Judge.

17 (Whereupon, a short break was taken.)

18 MR. SHAFFER: Your Honor, at the bench conference we  
19 talked about we had requested a limited purpose charge  
20 under Rule 1.5 of the Rules of Evidence for -- related to  
21 the Officer's statement about they found him to be the  
22 aggressor. To the extent that that has any relevance at  
23 all I think that the elements that would have, would be to  
24 show that he did some sort of investigation. I don't  
25 think it's an element of Defense, and I think that it's

1     improper under Rule 602 of the South Carolina Rules of  
2     Evidence and Rule 701 of the South Carolina Rules of  
3     Evidence. I'll cite State versus Westmoreland. It's 421  
4     S.E. 410, which basically is a case that says whenever a  
5     lay witness is giving an opinion to an ultimate issue of  
6     fact, the lay witness' opinion must be based off of  
7     personal knowledge. So we would like a curative  
8     instruction under Rule 105 to say that the jury should not  
9     take the fact that the Officer found him to be the  
10    aggressor to weigh in any way related to guilt or  
11    innocence of the client.

12           THE COURT: All right. I understand your objection.  
13    First of all, this Officer is not a lay witness. He's the  
14    investigating officer. So his determination of who's to  
15    be placed under arrest is making a probable cause  
16    determination. The issue to be presented to the jury will  
17    be determined after hearing all the testimony and  
18    determining whether or not there is a self-defense  
19    instruction to be had. So I understand your objection. I  
20    think that will get cleared up in all the testimony the  
21    jury will hear and my instructions.

22           MR. SHAFFER: And respectfully, Your Honor, since you  
23    brought it up, he never was qualified as an expert,  
24    therefore he is a lay witness.

25           THE COURT: No, he's a police officer. He's not a

1 lay witness. I didn't say he was an expert in the field.  
2 He's a police officer. He's making a probable cause  
3 determination. He's not a general lay witness that you  
4 were speaking of. There's a difference.

5 MR. SHAFFER: Your Honor, the Rules of Evidence don't  
6 make a distinction for officers. They --

7 THE COURT: They do in a courtroom. And so I have  
8 heard enough.

9 MR. SHAFFER: Okay.

10 THE COURT: All right. Bring the jury in.

11 MS. PENNY: Thank you, Your Honor.

12 (Whereupon, the jury came into open court at  
13 approximately 11:59 a.m.)

14 THE COURT: All right. Ms. Able?

15 MS. ABLE: Thank you, Judge.

16 CROSS-EXAMINATION

17 By Ms. Able:

18 Q Good afternoon.

19 A Good afternoon.

20 Q How are you doing?

21 A I'm fine, thank you.

22 Q It's been a while. Mr. Louis, you may have said this  
23 earlier and I missed it, but how long have you actually  
24 been in law enforcement in total?

25 A Last month will be 20 -- civilian side, 20 years.

1 Q Twenty years, okay. Can you go through with us a  
2 little bit about how you're trained? How you become a law  
3 enforcement officer?

4 A I went through training at the South Carolina  
5 Criminal Justice Academy.

6 Q What do you learn there?

7 A Basically -- it's been so long ago. How to work  
8 accidents, how to respond to calls, a little  
9 investigations.

10 Q Okay. Most importantly, do they teach you -- or they  
11 do teach you how to document a case?

12 A Yes.

13 Q They teach you how to take statements?

14 A Yes.

15 Q What you're supposed to do? How to keep good logs  
16 from a scene?

17 A Yes.

18 Q You write down who does what?

19 A To some extent.

20 Q You -- are you taught you're supposed to get good  
21 contact information from everybody, names?

22 A If they have good contact information, yes.

23 Q Well, I guess, let me -- let me clarify. Contact  
24 information if you can, but should list peoples' names on  
25 the scene?

1 A Correct.

2 Q You learn how to take photographs --

3 A Yes.

4 Q -- at the scene? How to take things into evidence?

5 A Uh-huh.

6 COURT REPORTER: Is that a yes?

7 A Yes.

8 Q How to write tickets?

9 A Yes.

10 Q How to write and serve warrants?

11 A Correct.

12 Q Now, in this case, you said you arrived. You spoke  
13 with three people?

14 A I believe it was three people that I spoke with, yes.  
15 It might -- it might have been a fourth with the young  
16 witness that lived next door to the store.

17 Q Well, who -- who talked to Mr. James?

18 A I talked to him at one point.

19 Q Who took down his statement?

20 A I don't remember who took his statement down. It was  
21 at shift change, so pretty much every officer that was  
22 working first and second shift were there.

23 Q How many officers were there?

24 A By that time, it would have been four to five  
25 officers.

1 Q Do you know who they were?

2 A That would have been Chief of Police, myself, Officer  
3 Simpson. I don't know who the other two would have been.

4 Q Okay. Who was -- who was the Chief at that time?

5 A Terry Carpenter.

6 Q Okay. You, Carpenter, Simpson, Officer Dudley? Does  
7 that ring a bell?

8 A It might have been Dudley, yeah. We had a turnover  
9 rate up there, so--

10 Q You don't remember though?

11 A I don't remember.

12 Q And you don't remember who spoke to Jacob James, who  
13 took that statement?

14 A I don't.

15 Q I think you testified you took Caleb Thurston?  
16 That's --

17 A Yeah, I remember talking to him.

18 Q And Ms. Quinn?

19 A Correct. I believe I remember taking her statement.  
20 It's over a year ago, and I haven't seen her since.

21 Q Do you remember if Caleb Thurston wrote a statement  
22 for you?

23 A I believe he wrote one.

24 Q Would you believe me if I told you he did?

25 A If you told me he did, yeah.

1 Q Cayla Quinn, she also wrote a statement?

2 A Correct.

3 Q The other person you spoke to was Mr. Ficklin?

4 A I did.

5 Q Did you give him an opportunity to write down the  
6 statement?

7 A At that time we didn't. I believe his statement was  
8 after he was already placed under arrest.

9 Q Okay. So you never gave him that chance to write  
10 down a statement?

11 A No, he had a chance after he got out of jail to come  
12 give us a statement.

13 Q Okay. But before that there was no audio recording  
14 or video recording or written statement you got from him?

15 A No.

16 Q And you've testified you took the picture in this  
17 case?

18 A Right.

19 Q That's not in your report anywhere?

20 A No.

21 Q You just remember taking those?

22 A Yes, ma'am.

23 Q How about any video for this case?

24 A Other than, to my knowledge outside -- are you  
25 talking about store video?

1 Q Any video?

2 A There's no video.

3 Q So there's no body camera footage?

4 A I'm not sure if there's not a body cam. I know  
5 there's no store video.

6 Q Would you believe me if I told you Officer Simpson  
7 had a body camera on that day?

8 A He probably did. It was a shift change. Like I  
9 said, he was coming on, so he probably had his with him.

10 Q Is Ware Shoals capable of using body cameras?

11 A We are.

12 Q Does everybody have a body camera?

13 A They do now.

14 Q When did that happen?

15 A Right around a year ago. Right before I got there, I  
16 think everybody was finally equipped. Some of them went  
17 down, Officer Dudley's --

18 Q -- did you have one a year ago?

19 A I did. I believe I did.

20 Q But you didn't have it on?

21 A I think I -- like I said, we had a shift change, we  
22 throw it on charge and download it.

23 Q Your shift change is at 6:00. This was at 5:00,  
24 right?

25 A You get there early. If I can go home early, I'm

1 going home early.

2 Q But you didn't. You went to a scene --

3 A Right, because we --

4 Q -- but you didn't have your body camera?

5 A Correct.

6 THE COURT: Let him answer and then you can ask, so  
7 Joy doesn't get overworked.

8 MS. ABLE: Thank you, Judge.

9 Q How about dash cam videos? Do the cars up there have  
10 dash cam capability?

11 A They do. Most of the time if they are working, yes.  
12 It is a small department.

13 Q Sure.

14 A Maintenance is a problem.

15 Q And nothing about video if there was video? Anything  
16 like that's in your report either, is it?

17 A No.

18 Q While we're talking about video, you asked about the  
19 store surveillance. You asked if I was asking you that  
20 earlier.

21 A Right.

22 Q Was there any store surveillance video?

23 A Not outside. There's no outside surveillance. Just  
24 inside the store.

25 Q You checked that day?

1 A I know from -- from working there that there's  
2 nothing on outside the store.

3 Q So when did you start working Ware Shoals?

4 A I think it was September of last -- of '18. Right  
5 around that time period.

6 Q So within two or three weeks you knew there was not  
7 outdoor video camera?

8 A Oh, yeah. Yeah, definitely.

9 Q Okay.

10 A Yeah.

11 Q But there is inside?

12 A There is inside.

13 Q There was no surveillance that you guys got for this  
14 case?

15 A No.

16 Q Did you try?

17 A No. Just it would have been him in the store by  
18 himself, and it has it in the store.

19 Q But we don't know because you didn't get the video?

20 A Correct.

21 Q And you have testified you know how to do evidence  
22 logs, things like that. You took in the knife for this  
23 case?

24 A Correct.

25 Q You took it to the evidence department?

1 A Correct.

2 Q But, and -- and it's not specifically written in here  
3 there's four officers on scene. You didn't write who took  
4 that up to Ware Shoals?

5 A I did not.

6 Q Contact information log. Did you -- did you write  
7 down any good contact information for --

8 A On who?

9 Q Any of them.

10 A Suppose to be on their statements. And if they were  
11 already in the system that we had that would be how we --  
12 excuse me, write out reports.

13 Q I think the statements have phone numbers, no  
14 address. Would you agree with that?

15 A Probably so.

16 Q Did you take any sort of written notes that day?

17 A I believe I did, yeah.

18 Q And all that information you take that you get on  
19 scene, you condense it down and we're supposed to rely on  
20 this report that you made for us?

21 A Correct.

22 Q Because it's fresh when you write it?

23 A At that time, yes.

24 Q So you have been in law enforcement 20 years. How  
25 many tickets and warrants do you think you've written

1 total?

2 A Tickets? Not a lot, I am not a big ticket writer.  
3 More it's several reports.

4 Q Several? How many?

5 A Probably in the hundreds. Probably in the hundreds.

6 Q That's all? You don't think thousands?

7 A It could be. I don't know. I mean, Ware Shoals we  
8 don't actually write our own warrants. The Judge writes  
9 them and we just sign them.

10 Q Okay. You lead me to my next point. Do you know who  
11 wrote the tickets in this case?

12 A I believe it was Officer Simpson.

13 Q But your name's on it?

14 A It should be a slash next to it.

15 Q Well --

16 A He transported, so he wrote the tickets on that.

17 Q Would you disagree with me if I told you on the video  
18 he asked for your number and he'd write the tickets for  
19 you?

20 A I wouldn't disagree with that at all.

21 Q But you know how to write tickets?

22 A I do.

23 Q And you've explained as far as the warrant that was  
24 served, you didn't write that.

25 A No, I did not. The Judge -- the Judge writes out

1 warrants.

2 Q Okay. And you originally made the call as to what to  
3 charge Mr. Ficklin with?

4 A Well, that would be the Chief of Police at the time.

5 Q Okay. But you as a -- you know, you and him arrive  
6 on the scene, you all decided what he was going to be  
7 charged with?

8 A Correct. Basically him being the Chief of Police, he  
9 told me what --

10 Q You defer? He was charged with an assault and  
11 battery third?

12 A Initially, yes.

13 Q That's the lowest level of assault and battery charge  
14 --

15 A It is.

16 Q -- in South Carolina?

17 A It is.

18 Q That was written on a ticket, wasn't it?

19 A It was.

20 Q You did not charge him with assault and battery first  
21 degree?

22 A I did not.

23 Q Chief of Police didn't charge him with --

24 A He did not.

25 Q -- assault and battery first?

1 A He didn't.

2 Q All right. Let's go flip back around. So you  
3 arrived on scene -- were you first on scene?

4 A I was either the first or second on scene. I'm not  
5 sure.

6 Q Okay. And you saw these two vehicles?

7 A Correct.

8 Q Let me back up. You testified dispatch told you to go  
9 out there. Do you know who called law enforcement on this  
10 day?

11 A I was told it was Cayla Quinn who initially called  
12 911.

13 Q Do you know who told you that?

14 A I think she did out there. That's why we got a  
15 statement from her.

16 Q Okay. So you go out there. You see the vehicles.

17 A Right.

18 Q You've testified they were pretty close together?

19 A Correct.

20 Q They weren't touching?

21 A No.

22 Q And if you -- you've testified to this photo, State's  
23 Exhibit number 4, which demonstrates how close together  
24 these vehicles are?

25 A It does.

1 Q Okay. You don't -- you can't see any damage?

2 A I didn't see any damage there when I was on scene.

3 Q Okay. If there had been damage to that vehicle would  
4 you have made sure you got a picture of the damage you  
5 could see?

6 A I would have.

7 Q But you didn't?

8 A I didn't observe any damage.

9 Q You didn't see any damage. If you had just walked up  
10 on scene without being dispatched out there, you wouldn't  
11 have thought there was a wreck or any sort of accident?

12 A No.

13 Q And through your investigation did you determine  
14 there is another occupant of Mr. James' vehicle?

15 A I was told there was. I never talked to that  
16 occupant. I remember him saying he had somebody in his  
17 car. I don't believe I ever spoke with -- I believe he  
18 was referred to as Jerry.

19 Q Right, Jerry Brooks. He was in the vehicle with Mr.  
20 James.

21 A Uh-huh.

22 Q Nobody talked to him?

23 A No. I remember seeing him on scene. You know, with  
24 the other officers there I just focused on the Defendant  
25 and the victim in this case, and then witnesses as they

1     came up.

2     Q     You talked to other independent witnesses but you  
3     just didn't choose to speak with Jerry?

4     A     I don't remember seeing Mr. Brooks, I guess his name  
5     is.

6     Q     So we didn't even -- you didn't know his name?

7     A     I didn't.

8     Q     That's not in the report?

9     A     It's not.

10    Q     No contact information for him in the report?

11    A     Correct.

12    Q     Nobody spoke to him?

13    A     No.

14    Q     That could have been a whole other source of  
15    information for this jury?

16    A     Is that a question for me?

17    Q     Yes.

18    A     Yeah, it could have.

19    Q     Could it have been?

20    A     It could have been.

21    Q     And you have -- you testified you were concerned with  
22    the Defendant? You spoke with Mr. Ficklin?

23    A     I did.

24    Q     When you arrived on scene tell us a little bit --  
25    what was that scene like?

1 A I believe Mr. Ficklin was in -- by his vehicle, maybe  
2 toward the back of it. Mr. James was up at his vehicle.  
3 And we had -- there's, you know, customers in the parking  
4 lot pumping gas. Like I said, the vehicles were close  
5 together. It wasn't -- you know, there wasn't no yelling  
6 or anything when I arrived.

7 Q How long do you think it took you to get up there?

8 A The report here says about two minutes, which is  
9 probably pretty accurate.

10 Q Okay. So two minutes since this alleged incident,  
11 Mr. Ficklin's standing there waiting on you?

12 A Yeah, he was standing there. I don't know if he was  
13 waiting on me, but he was standing there.

14 Q As well as Mr. James?

15 A I don't know if he knows -- I don't know if he knows  
16 if law enforcement was notified.

17 Q Well, what was he doing when you got there?

18 A I think he was just standing there.

19 Q He wasn't pumping gas?

20 A I don't think he was.

21 Q Okay. And when you arrived how long did it take you,  
22 do you think, to identify him as a suspect?

23 A Once talking, not just getting actual written  
24 statements but talking to witnesses, timeframe could have  
25 been anywhere from the time we arrived on scene to right

1 before he was arrested and transported, which would have  
2 been 8:00 -- 6:00 o'clock p.m.

3 Q So you arrived on scene, I think, 5:07 until 6:00  
4 o'clock --

5 A Correct.

6 Q -- until he's arrested? You can't -- you can't tell  
7 me when he was arrested?

8 A I don't know at that time -- exact time in between  
9 those.

10 Q Right. He stays on scene?

11 A He did.

12 Q He talks to you --

13 A He did.

14 Q -- willingly?

15 A He did.

16 Q What did he say?

17 A As it reflects in my report --

18 MS. PENNY: Objection, Your Honor.

19 THE JUDGE: Why is that?

20 MS. PENNY: Anything that he's going to say is going  
21 to be self-serving hearsay.

22 MS. ABLE: Your Honor, if I may, I think it's an  
23 excited utterance. He's testified he got there within two  
24 minutes of this alleged incident.

25 THE COURT: I know, but you haven't done that.

1 MS. ABLE: I'm sorry?

2 THE COURT: You interviewed him. He stayed around.  
3 It's not excited after --

4 MS. ABLE: Excuse me, Your Honor. Sorry, Your Honor.

5 THE COURT: What can he -- your question was what did  
6 your client tell him in his -- on the scene interviewing?

7 MS. ABLE: Yes, sir.

8 THE COURT: He can answer that question. Is this --  
9 it's not -- this is the State's witness. He can answer  
10 that question.

11 MS. ABLE: Thank you.

12 A As it -- as it reflects in my report, he -- when  
13 talking with Mr. Ficklin initially he said he pulled a  
14 knife on the -- because two occupants of the vehicle,  
15 which I guess the alleged ram, approached him and he was  
16 in fear for his life.

17 Q What else did he say?

18 A He then told me the knife was back in his vehicle.

19 Q And he -- he showed you where it was, right?

20 A Right.

21 Q So he told you -- willingly talks to you, waits on  
22 you, and says, "I pulled the knife because the two  
23 occupants of the vehicle approached me and I was in fear  
24 for my life."

25 THE COURT: He can say what he said. You can't keep

1 reading. So asked and answered.

2 MS. ABLE: Thank you, Your Honor.

3 THE COURT: Ask your questions.

4 Q Based on this conversation, you go over to his  
5 vehicle?

6 A Correct.

7 Q You take the knife from the floorboard?

8 A Correct.

9 Q First you photograph it?

10 A Right.

11 Q Because he told you it was there?

12 A Right.

13 MS. ABLE: No further questions.

14 THE COURT: Any redirect?

15 REDIRECT EXAMINATION

16 By Ms. Penny:

17 Q Interim Chief Louis, you showed up after the incident  
18 was over, correct?

19 A Correct.

20 Q So would any body cam that you potentially could have  
21 had theoretically shown anything about the actual  
22 incident?

23 A It would not have.

24 Q Did you have any information about the name of the  
25 passenger in the vehicle?

1 A I didn't at the time. I just knew -- I was advised  
2 there was a passenger. I don't know where he went after  
3 -- after we showed up.

4 Q So you didn't have an opportunity to talk to him?

5 A I did not.

6 Q Did -- are you familiar with a Mr. Jerry Brooks?

7 A I'm not. I'm not familiar with him.

8 Q In processing the scene, even if -- in processing the  
9 scene would you have searched the car anyway?

10 A I would have.

11 Q You would have found the knife anyway?

12 A Yes, ma'am.

13 MS. PENNY: That's all I have.

14 THE COURT: Anything else?

15 MS. ABLE: Yes, Judge.

16 RECROSS-EXAMINATION

17 By Ms. Able:

18 Q Mr. Louis, on that body camera, if you had had it, we  
19 would have been able to see the demeanor of Mr. James that  
20 day?

21 A Briefly. The time I talked to him, yes.

22 Q And you didn't have an opportunity to speak to Mr.  
23 Brooks in order to do any follow-up to try to find Mr.  
24 Brooks?

25 A No, I was unaware of his name at the time.

1           THE COURT: You can step down. Ms. Penny, so I'm  
2 clear, the other two witnesses the State has called can  
3 come in after lunch?

4           MS. PENNY: Yes, Your Honor.

5           THE COURT: Is 1:30 too quick?

6           MS. PENNY: I'm sorry?

7           THE COURT: Is 1:30 too early, or 1:45?

8           MS. PENNY: We're trying to get them here by 1:00.

9           THE COURT: Okay. So if we break until 1:30 we  
10 should be okay?

11          MS. PENNY: Yes, Your Honor, in our opinion.

12          THE COURT: All right. Y'all heard our plan. The  
13 witnesses are suppose to be here at lunchtime. We kind of  
14 moved it along a little quicker than they thought. So  
15 we're going to break for lunch. Put your notebooks  
16 wherever -- you can leave them in the seats, I guess.  
17 Don't discuss the case. Go to lunch wherever you like.  
18 Be back in the jury room just prior to 1:30 and we'll try  
19 to get started right back. Don't discuss the case. Have  
20 a good lunch.

21          (Whereupon, the jury was excused from open court for  
22 a lunch break.)

23          THE COURT: All right. We'll stand at ease until  
24 1:30.

25          MS. PENNY: Thank you, Your Honor.

1 (Whereupon, a lunch break was taken.)

2 THE COURT: All right. If you all are ready to go.

3 Your witness is here?

4 MS. PENNY: Yes. Yes, Your Honor.

5 THE COURT: Excellent. Okay. Let's get the jury in.

6 (Whereupon, the jury came into open court at

7 approximately 1:37 p.m.)

8 THE COURT: All right. You all have a good lunch?

9 Ready to continue on? Solicitor, call your witness.

10 MS. PENNY: The State calls Caleb Thurston.

11 CALEB THURSTON, being

12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 By Ms. Penny:

15 Q Good afternoon, Mr. Thurston. How are you doing?

16 A Good.

17 Q Good. If you will, say and spell your name for the  
18 record.

19 A Caleb Benjamin Thurston, C-A-L-E-B B-E-N-J-A-I --  
20 J-A-M-I-N T-H-U-R-S-T-O-N.

21 Q Mr. Thurston, what do you do?

22 A I go to school.

23 Q You're in high school?

24 A Yeah.

25 Q How old are you?

1 A Eighteen.

2 Q When did you turn 18?

3 A September 16th.

4 Q So you're a newly minted adult?

5 A Yes, ma'am.

6 Q Do you remember -- well, where are you from, Mr.

7 Thurston?

8 A I'm from Ware Shoals.

9 Q Were you in Ware Shoals last year about this time,  
10 October 10th of last year?

11 A Yes, ma'am.

12 Q Do you remember where you were at about five o'clock  
13 in the afternoon?

14 A Yes, ma'am.

15 Q Where were you?

16 A I was at the -- I was at my friend's house beside  
17 Stop-A-Minit.

18 Q And do you know the address where that is?

19 A No, ma'am. I don't know the address, but it's  
20 literally right beside Stop-A-Minit.

21 Q I'm going to turn on this Elmo and show you a picture  
22 and ask you if that's the Stop-A-Minit you're talking  
23 about as soon as we get fired up. And excuse me for the  
24 delay, but we'll move on while we get that ready. So what  
25 happened -- did anything of note happen while you were at

1 your friend's house that day?

2 A Yes, ma'am. Some guy started screaming about his  
3 grandma's car. And then, another guy came out of the  
4 Stop-A-Minit and tried to get into his car and the guy  
5 screaming about his grandma's car came and tried to shut  
6 the other man into -- like he tried to close him between  
7 his car. I guess, close him in the door. And then,  
8 another guy came around and he started -- I'm not entirely  
9 sure what to --

10 Q Just tell us what --

11 THE COURT: Just say what you saw and you can tell  
12 what you heard. Okay?

13 THE WITNESS: Okay.

14 A He came around his car and started fussing at the guy  
15 the same way the other man was and the other guy got out  
16 of his car and they all started screaming at each other.  
17 And I remember the guy that came out of the Stop-A-Minit  
18 started screaming that he had a knife and really, the next  
19 thing that happened was, the cops pulled up.

20 Q All right. What we'll do is, we'll kind of back up  
21 and try to unpack what you just said.

22 A Yeah.

23 Q This picture that I'm showing you, it's State's  
24 Exhibit number 3. Can you see this?

25 A Yes, ma'am.

1 Q Okay. Is this the Stop-A-Minit where you were at the  
2 house next door?

3 A Yes, ma'am.

4 Q Okay. And I'm going to start backing up and you tell  
5 me where to stop from how far you were away at the house  
6 to where that white car in the exhibit picture and that  
7 gray car in the exhibit picture are. Okay? I'm going to  
8 start backing up now.

9 A How far I was away from the cars?

10 Q You tell me when to stop.

11 A It's a pretty good distance.

12 Q Is it going to be past this wall?

13 A Yes, ma'am.

14 Q Okay. Well, I got, maybe, some of my steps in for  
15 the day. So that's good. So past that wall is how far  
16 away you were from what happened?

17 A Yes, ma'am.

18 Q Okay. And so, the men that you saw in this incident,  
19 were they on the gas pump side in this picture when this  
20 was happening?

21 A They were -- the cars are like right here and they  
22 were over towards this side.

23 Q So were they -- sorry. Excuse me. My hand's in the  
24 way. Were they kind of over here (indicating)?

25 A Yes, ma'am.

1 Q I'm gesturing to the driver's side --

2 A Yes, ma'am.

3 Q -- of the gas pumps. Okay. So they were over there  
4 and you were beyond that wall, far away from them. What  
5 caught your attention to start paying attention to what  
6 was going on?

7 A The first guy screaming about his grandma's car.

8 Q And so, what did you do when you heard him screaming?

9 A Honestly, we kind of just watched it all play out.

10 Q Certainly. So that's what got your attention and you  
11 started watching?

12 A Yes, ma'am.

13 Q Okay. So when you talk about the guy screaming about  
14 his -- you thought it was his grandmother's car? That's  
15 what you heard?

16 A Yes, ma'am.

17 Q Was it the driver of this gray Kia that I'm pointing  
18 to? Could you tell who it was?

19 A No, ma'am.

20 Q Had you ever met any of these people before --

21 A No.

22 Q -- or knew their names? Okay. When the man came out  
23 of the Stop-A-Minit and got into his car, what appeared to  
24 you to be his car. Was it this white car that I'm  
25 pointing to in the same exhibit?

1 A Honestly, I couldn't tell you.

2 Q You don't remember?

3 A No, ma'am.

4 Q So you don't -- you couldn't even tell me what car  
5 that guy got into, but you heard the man who got into the  
6 car -- or it looked to you like he was trying to get into  
7 the car, right? You heard him say he had a knife?

8 A Yes, ma'am.

9 Q And then, those men or, at least, that man, that man  
10 spilled over into the other side of the gas pumps? Not  
11 spilled. He moved over into the other side of the gas  
12 pumps?

13 A Yes, ma'am.

14 Q Did the man who was yelling about the Kia or the  
15 grandmother's car, did he also go on the other side of the  
16 gas pumps?

17 A Yes, ma'am.

18 Q Did anybody else go on the other side of the gas  
19 pumps?

20 A Yes, ma'am. All three of the men were.

21 Q So one other man?

22 A Yes, ma'am.

23 Q Did you see a knife?

24 A No.

25 Q Did you call the police?

1 A No.

2 Q But you saw the police show up?

3 A Yeah.

4 Q And is that when this all ended?

5 A Yes, ma'am.

6 MS. PENNY: Beg the Court's indulgence. Your Honor,  
7 may I approach the witness?

8 THE COURT: Sure.

9 MS. PENNY: Excuse me for that little break.

10 Q Mr. Thurston, what does this appear to you to be?

11 A Stop-A-Minit.

12 Q The Stop-A-Minit we're talking about?

13 A Yes, ma'am. The Stop-A-Minit in Ware Shoals?

14 Q Do you see --

15 MR. SHAFFER: Your Honor, just for a matter of -- is  
16 that marked? I just want to make sure the record's clear  
17 that we're showing him something that's actually marked.  
18 I'm not sure--

19 THE COURT: Well, he's identified it. She can ask  
20 for it to be marked.

21 MR. SHAFFER: Okay.

22 MS. PENNY: That was my intent.

23 THE COURT: Yeah.

24 MR. SHAFFER: I just wanted to make sure.

25 Q Do you see the house where you were that day --

1 A Yes, ma'am.

2 Q -- in that photo?

3 A Yes, ma'am.

4 Q You do. Okay.

5 THE COURT: Let's mark it now.

6 MS. PENNY: I'd like to mark this --

7 THE COURT: Okay.

8 MS. PENNY: -- as State's Exhibit 7 and move it into  
9 evidence.

10 MR. SHAFFER: No objection.

11 (Whereupon, State's Exhibit number 7 was admitted  
12 into evidence).

13 THE COURT: All right. Now, Joy only has two hands  
14 and she can write and she can put stickers on them.  
15 That's her job to keep track of the evidence that comes  
16 in. And so, we've all got to be quiet while she's doing  
17 that other work other than her magic -- what do you call  
18 that, stroking, key stroking? Anyway. Now, it's into  
19 evidence by agreement. Everything's come into evidence  
20 thus far because it's just pictures. Okay.

21 MS. PENNY: Your Honor, may I publish this to the  
22 jury?

23 THE COURT: Sure.

24 Q All right. We talked about this up here just a  
25 minute ago, Mr. Thurston. Is this the Stop-A-Minit that

1 we've been talking about this whole time?

2 A Yes, ma'am.

3 Q And this house back here (indicating), you can kind  
4 of see the chimneys?

5 A Yes, ma'am.

6 Q And I'm indicating to the chimneys. Is that the  
7 house that you said you were at that day?

8 A Yes, ma'am.

9 Q Okay. And then, the men who you saw that day that  
10 were having that discussion and you heard about a knife,  
11 were they standing right here on these far gas pumps?

12 A Yes, ma'am.

13 Q Okay. And then, when they continued to have this  
14 controversy, then they moved into this sort of open area,  
15 is that right, that I'm indicating.

16 A I'm not entirely sure if they migrated necessarily.  
17 I just know they were in that area for -- probably, from  
18 the time he got out of the car to whenever the cops pulled  
19 up.

20 Q And so, you, and I'm indicating back towards the  
21 house, would have been standing outside the house. Is  
22 that right here where I'm indicating?

23 A Yes, ma'am.

24 MS. PENNY: All right. That's all I have for now.  
25 Thanks for coming and please answer any questions that

1 Defense counsel might have for you.

2 CROSS-EXAMINATION

3 By Mr. Shaffer:

4 Q Do you mind if I call you Caleb?

5 A Yeah. That's fine.

6 Q My name is Tristan Shaffer. I'm the attorney for one  
7 of the men. All right, Caleb. You gave a statement to  
8 the police that day, right?

9 A Yeah.

10 Q And I imagine when you gave that statement, your  
11 memory was perfectly clear, right?

12 A Yeah.

13 Q And everything you would have told them in that  
14 statement is correct, correct?

15 A Yes, sir.

16 MR. SHAFFER: Okay. I'd like this marked for ID  
17 purposes only, Defendant's Exhibit 1.

18 (Whereupon, Defendant's Exhibit number 1 was marked  
19 for identification purposes).

20 Q I'm showing you what's been marked as Defendant's  
21 Exhibit 1 for the purposes of identification. Does that  
22 appear to be your statement?

23 A Yes, sir.

24 Q Okay. Thank you. So you had a clear view that day,  
25 right?

1 A Yes, sir.

2 Q And you were close enough to hear what was being said  
3 to some degree?

4 A Yes, sir.

5 Q Okay. But you didn't see a knife, right?

6 A No, sir. I didn't.

7 Q What you initially saw was a guy screaming about his  
8 car getting -- I think, it was this car right here  
9 (indicating), the front one, right?

10 A Honestly, I don't remember.

11 Q Okay. But he was saying something about his car  
12 being hit, is that right?

13 A Yes, sir.

14 Q Did it appear that he was with some other guy?

15 A Not at first. No.

16 Q Okay. Eventually, did it appear like he was with  
17 another guy?

18 A Yes, sir.

19 Q So -- and you don't know any of these people, right?

20 A No, sir. I don't.

21 Q And just for clarification, I'm going to refer to  
22 three different people and for the purposes of this, I  
23 want you to understand that the driver of the front car,  
24 I'm going to call him Mr. James. Okay? The passenger of  
25 the front car, I'm going to call Terry Brooks. Okay?

1 A All right.

2 Q And the driver of the back car, I'm going to call Mr.  
3 Ficklin. Okay? Is that fair enough?

4 A Yes, sir.

5 Q Okay. So Mr. James, the driver of the front car, the  
6 first thing you heard was him yelling about the car being  
7 hit, right?

8 A Yes, sir.

9 Q Okay. And that caught your attention, right?

10 A Yes, sir.

11 Q So you all started watching, correct?

12 A (Witness nods his head.)

13 Q And you have to answer verbally. I'm sorry.

14 A Yeah. That's correct.

15 Q I know what you mean. They know what you mean. She  
16 can't write down, nod.

17 A Yeah.

18 Q So the driver of the back car, Mr. Ficklin, he goes  
19 in the store, right?

20 A Yes, sir.

21 Q And whenever he comes out of the store, the driver of  
22 the front car is yelling about the car getting hit, right?

23 A Yes, sir.

24 Q Did he seem mad?

25 A Oh, yeah.

1 Q Mad enough to get your attention?

2 A Oh, yeah.

3 Q Did you think a fight was about to happen, maybe?

4 A Definitely.

5 Q Okay. So when the driver of the back car got to his  
6 car, do you recall telling -- Mr. Ficklin, the driver of  
7 the back car, got to his car, he opened the door, correct?

8 A Yes, sir.

9 Q And do you recall saying that the driver of the front  
10 car, Mr. James, came and tried to shove the door closed on  
11 top of him?

12 A Yes.

13 Q Okay. Did Mr. Ficklin try to, maybe, push back a  
14 little bit?

15 A Yes.

16 Q And the passenger, Terry Brooks, he comes around the  
17 side of the car, the back car, correct?

18 A Yes, sir.

19 Q So did you ever hear anything about a knife before  
20 that?

21 A No.

22 Q Okay. When you heard about the knife, where was the  
23 driver of the back car, Mr. Ficklin, at?

24 A All three were on the far side of the pumps.

25 Q Okay. Was he closer to his door or further away?

1 A Of his car?

2 Q Yeah.

3 A It's kind of hard to say.

4 Q That's fair. So you never saw the knife, though,  
5 correct?

6 A No. I didn't.

7 Q Never saw this, right?

8 A Huh-uh (negative response).

9 THE COURT: All right, asked and answered three  
10 times, now.

11 MR. SHAFFER: Okay. I'm sorry.

12 Q State's Exhibit 6. That's what I was referring to,  
13 as well. So the driver of the back car, Mr. Ficklin --  
14 stand up for me. Is this him?

15 A Yes, sir.

16 Q Estimate his height for me.

17 A 5'6.

18 Q Okay. What do you think he weighs?

19 A Maybe, like --

20 Q I know. It's hard.

21 A -- 160ish.

22 Q Okay. Do you think that the people in the front car  
23 were bigger or smaller than him?

24 A I don't remember.

25 Q Okay. You can have a seat. But there were two of

1       them, right?

2       A       Yes, sir.

3       Q       Did you ever see Mr. Ficklin try to stab anybody?

4       A       No.

5       Q       Did you ever see him try to fight with anybody? Like  
6       aggressively attack someone?

7       A       No.

8       Q       At some point, he walks away from his car and tries  
9       to walk away from them, correct?

10      A       I don't remember.

11      Q       Okay. But you were close enough to see and hear  
12      this, correct?

13      A       Yes.

14      Q       And your memory on the day in question when you were  
15      questioned by the cops is --

16      A       Yes.

17      Q       -- better, yeah, than it is now?

18      A       Yes.

19             MR. SHAFFER: Okay. Court's indulgence. No further  
20      questions.

21             THE COURT: Anything else, Ms. Penny?

22             MS. PENNY: Nothing further.

23             THE COURT: All right. Mr. Thurston, you are  
24      excused, thank you for coming. You're free to go.

25             MS. PENNY: The State calls Ms. Cayla Quinn.

1 Cayla Quinn, being  
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 By Ms. Penny:

5 Q Good afternoon, Ms. Quinn.

6 A Hey.

7 Q If you would, please say your name and spell your  
8 name for the record.

9 A Cayla Quinn, C-A-Y-L-A Q-U-I-N-N.

10 Q Ms. Quinn, how old are you?

11 A Twenty-seven.

12 Q Are you -- where are you from?

13 A Ware Shoals.

14 Q Do you live there now?

15 A Yes, ma'am.

16 Q Did you live there about a year ago?

17 A Yes, ma'am.

18 Q What do you do, Ms. Quinn?

19 A I work at Walmart Distribution Center.

20 Q What -- were you at work today?

21 A Ma'am?

22 Q Were you at work earlier today?

23 A No, ma'am.

24 Q Where were you?

25 A At home.

1 Q Did you take today off?

2 A Yes, ma'am.

3 Q Why is that?

4 A My son had a real late football game last night. So  
5 I took today off.

6 Q How old is your son?

7 A I have three of them. My oldest son, he's 11.

8 Q What about your other sons?

9 A They're eight and five.

10 Q So thank you for being here today. About a year ago,  
11 you lived in Ware Shoals?

12 A Yes, ma'am.

13 Q Do you remember October 10th --

14 A Yes, ma'am.

15 Q -- of 2018?

16 A Uh-huh (affirmative response).

17 Q Did you go to the Stop-A-Minit that day?

18 A Yes, ma'am.

19 Q And I'm going to put a picture up here.

20 A Okay.

21 Q This is State's Exhibit 3, for the record. Can you  
22 see from where you are --

23 A Yes, ma'am.

24 Q -- well enough?

25 A Uh-huh (affirmative response).

1 Q Is this the Stop-A-Minit where you were --

2 A Yes, ma'am.

3 Q -- that day?

4 A Uh-huh (affirmative response).

5 Q Were you there about 5:00 p.m?

6 A Uh-huh (affirmative response). Yes, ma'am.

7 COURT REPORTER: Wait a minute. I need a yes or a  
8 no.

9 MS. PENNY: If you will, say yes or no.

10 THE COURT: This lady right here, the real quiet one,  
11 she's taking everything we're saying to each other --

12 THE WITNESS: Okay.

13 THE COURT: -- and she just wants a clear answer.  
14 That's all.

15 THE WITNESS: Okay.

16 A Yes, ma'am.

17 Q What were you doing there?

18 A Getting gas.

19 Q Who were you with? Do you remember?

20 A My boys were with me. Me and my --

21 Q All three?

22 A Uh-huh (affirmative response). Yes, ma'am.

23 Q Do you remember where you were in relation to these  
24 two cars that we see here, this gray Kia and this white  
25 Crown Vic.

1 A Yeah. I was right beside that Kia on the -- if  
2 you're looking at the Kia, I was on the right side.

3 Q So on the passenger side?

4 A Yes, ma'am.

5 Q So would your driver door have been on the same side  
6 as that passenger side?

7 A It would be -- my passenger side would be on the same  
8 side as the Kia.

9 Q So your car was facing the opposite way of the Kia?

10 A Yes, ma'am.

11 Q I see. Were you -- so were you getting gas while you  
12 were standing there?

13 A Yes, ma'am.

14 Q Did anything of note happen?

15 A Yeah. The guy that was driving the Kia, he was  
16 talking to somebody and he kind of started easing up and  
17 the guy in the white car, he like floored it and that's  
18 what made me look. And the guy in the Kia, he jumped out  
19 like he gotten, you know, hit. That's what made me look  
20 over there. And then, the guy in the white car, he got  
21 out and went in the store and they were arguing and stuff.  
22 When he came back out, he went to his car and the other  
23 guy, he was standing right there at his door, too, but he  
24 was doing something at his car. And so, when he --

25 Q When you say, somebody was doing something at their

1 car, are you talking about --

2 A The guy in the white car was in his car doing  
3 something in his car. So then, when he came out, he like  
4 slung the door open and hit the guy that was driving the  
5 Kia. He was standing there. He hit the guy and slung  
6 him. And then, he got out and he had a knife in his hand.  
7 The guy in the white car had a knife in his hand.

8 Q Did you see the knife?

9 A Yes, ma'am.

10 MS. PENNY: I think it is getting a little hot in  
11 here because I'm having a harder time getting these gloves  
12 on.

13 Q All right. Ms. Quinn, I am going to take the sheath  
14 off of what's been marked as Exhibit 6, this knife. Is  
15 this the knife that you saw --

16 A Yes.

17 Q -- that day?

18 A That's it.

19 Q This is the knife that you saw the man in the white  
20 car --

21 A Yes, ma'am. That's it.

22 Q And where did you see it?

23 A He was holding it like up against his hand.

24 Q If I give you this pen rather than this knife, can  
25 you demonstrate to the jury, and make sure they can see

1 it, how he was holding it?

2 A Yes, ma'am. When he got out of the car, he was  
3 holding it like that (indicating) up against his arm.

4 Q Did you hear him say anything about the knife?

5 A Yeah. He said something about slicing somebody.

6 Q Did he -- was he saying that to the man that had been  
7 driving the Kia?

8 A Yes, ma'am.

9 Q Did he say it to anybody else?

10 A No, ma'am. Just to the guy that was -- because they  
11 were arguing.

12 Q The driver of the Kia and the driver of the --

13 A Yes.

14 Q -- white Crown Vic?

15 A Uh-huh (affirmative response).

16 Q Do you know either of their names? Do you know --

17 A No, ma'am.

18 Q Do you know them independently of what happened there  
19 that day?

20 A No, ma'am.

21 Q So back up a little bit and make sure that I  
22 understand everything that you saw. Did anything happen  
23 before the man in the white car -- and can you tell me if  
24 this man right here -- sitting right here with the beard  
25 in the garnet shirt, is that the man that you saw in the

1 white car?

2 A Yes, ma'am.

3 Q And we'll call -- we can call him Mr. Ficklin so we  
4 can stop saying the man in the white car. Did Mr. Ficklin  
5 do anything before he hit the Kia -- you saw him hit the  
6 Kia?

7 A No, ma'am. He just pulled up. Like floored it.

8 Q So he hadn't already been talking to --

9 A No, ma'am.

10 Q -- anyone else? Okay. And what happened to the Kia  
11 when he hit it?

12 A The guy in the Kia, he jumped out and was saying  
13 something about he hit his grandma's car and he was  
14 freaking out because he hit his grandma's car.

15 Q When you say freaking out, what do you mean?

16 A Like hollering and, you know, arguing and yelling and  
17 stuff.

18 Q Was he yelling just generally?

19 A Yeah. Like, you hit my grandma's car, and stuff like  
20 that.

21 Q Okay. Now, when he started yelling, what did Mr.  
22 Ficklin do?

23 A He just jumped out of the car and he was arguing with  
24 him, but he went on in the store and did whatever he had  
25 to do.

1 Q Okay. Did Mr. -- did the man in the Kia follow him  
2 into the store?

3 A No, ma'am.

4 Q So eventually, did Mr. Ficklin come back out of the  
5 store?

6 A Yes, ma'am.

7 Q And then what happened?

8 A Then, that's when he went to his car and got  
9 something out of his car or did something in his car.

10 Q And then, that -- and then, you saw -- and then, what  
11 did you see after that?

12 A Then, he -- that's when he slung the door open and  
13 hit that guy in the Kia and came out with a knife.

14 Q Had they been talking, those two men, this whole  
15 time? Had they been talking back and forth or arguing  
16 with each other while this was happening before he hit him  
17 with the car door and pulled out the knife? Had they  
18 continued to argue?

19 A Yes, ma'am.

20 Q Did you ever hear the man driving the Kia threaten  
21 Mr. Ficklin?

22 A No, ma'am.

23 Q Did you ever see him pull out a knife?

24 A No, ma'am.

25 Q Did you ever see him pull out a gun?

1 A No, ma'am.

2 Q Did you notice anybody else that appeared to be with  
3 the man in the Kia?

4 A Huh-uh (negative response). No, ma'am. There was  
5 another guy with him, but, I mean, he stayed off to the  
6 side. He wasn't doing anything.

7 Q And then, again, you don't know any of these people  
8 independently?

9 A No, ma'am.

10 MS. PENNY: That's all I have for right now. If you  
11 will, answer any questions that Defense counsel has.

12 THE WITNESS: Yes, ma'am.

13 CROSS-EXAMINATION

14 By Ms. Able:

15 Q Hey, Ms. Quinn.

16 A Hey.

17 Q Did you all win the game last night?

18 A No, ma'am.

19 Q Where was it?

20 A Greenwood. They were undefeated. Both teams that  
21 were playing were undefeated.

22 Q Which son was it?

23 A My oldest. My 11-year-old.

24 Q Did he get to skip school today?

25 A No.

1 Q Okay. All right, Ms. Quinn. So I'm going to go back  
2 to this picture. You testified that you were to the right  
3 of this Kia facing the other way, over here (indicating)?

4 A Yes, ma'am.

5 Q When this all began -- well, let me ask you this.  
6 When you pulled up, was the Kia already here?

7 A Yes, ma'am.

8 Q Okay. It was. There wasn't anybody in front of that  
9 Kia?

10 A No, ma'am.

11 Q Had this man already pumped gas?

12 A Yes, ma'am.

13 Q Do you know what he was doing there?

14 A He was standing there talking. He was in his car,  
15 but there was somebody at the passenger side talking.

16 Q Okay. How long were you there? Do you remember?

17 A No, ma'am.

18 Q Okay. But he's just standing there shooting the  
19 breeze?

20 A Yes, ma'am.

21 Q Okay. Let's see. And this was about five o'clock in  
22 the afternoon?

23 A Yes, ma'am.

24 Q Would you say it was busy out there?

25 A Yeah. It was pretty busy.

1 Q People getting off work and everything. And you've  
2 testified you gave a statement to law enforcement and you  
3 talked to them? That's why you're here today?

4 A Yes, ma'am.

5 Q And I believe you said that he floors his car to get  
6 to the pump?

7 A Yes, ma'am.

8 Q Did you hear anything?

9 A Yeah. He revved the motor up.

10 Q He revved it up?

11 A Yeah.

12 Q And slammed into that Kia?

13 A I don't know if he slammed into it, but, I mean, to  
14 me, it looked like he hit it.

15 Q Did you see any damage?

16 A No. I didn't see any damage, but the car bounced  
17 like it hit it.

18 Q But nothing like fell off?

19 A No, ma'am.

20 Q You didn't see any big scraps?

21 A No, ma'am.

22 Q Nothing like that. And Mr. Ficklin went inside the  
23 store. What was the Kia driver doing during that time?

24 A Standing outside, I guess, waiting for him to come  
25 back out.

1 Q You didn't see him run across the top of that Crown  
2 Vic?

3 A No, ma'am.

4 Q And Mr. Ficklin comes back out and you say he does  
5 something in his car. Was he crouching down? I mean, was  
6 he like in there?

7 A Yes, ma'am.

8 Q Maybe, pulling the lever to open the gas pump?

9 A I'm not sure.

10 Q Could be?

11 A I guess. I'm not sure.

12 Q He comes up and you're now saying he slams that door  
13 open against --

14 A Yes, ma'am.

15 Q -- Kia guy, Mr. James? Okay. Is that what you  
16 originally wrote in your statement to law enforcement?

17 A What?

18 Q That he hit him with that car door?

19 A Yes, ma'am.

20 Q Okay. I think you have a copy of that up there,  
21 don't you?

22 A Yes, ma'am.

23 Q Can you look at it with me? I'm going to let you  
24 reread it.

25 A Yeah. When the guy -- when the guy -- Mr. Ficklin,

1     when he's in his car, the door is still open, but he's  
2     still in his car. So when he gets up, he comes back out  
3     of his car and he slams the door open and he hits the guy  
4     that's in the Kia standing there and knocks him down.

5     Q     Right. But is that what you wrote back in October of  
6     last year?

7     A     I put, when he got back out of his car, he hit the  
8     guy in the white car with his door.

9     Q     Which is Mr. Ficklin, right?

10    A     Yes, ma'am.

11    Q     So you wrote, "Mr. Ficklin comes back out, does  
12    something in his car, gets back out, hits the guy in white  
13    car with his door when he gets out." So he's getting out  
14    and he's in the white car. So -- but you agree with me,  
15    back then, you said the guy in the white car got hit with  
16    that door?

17    A     No. It was the other guy that got hit with the car  
18    door.

19    Q     What did you write? Do you want me to point you to  
20    it?

21    A     Yeah. I put, the guy in the white car got hit with  
22    the door, but I meant the guy in the Kia.

23    Q     Did you read over this when you wrote it last year?

24    A     Yes, ma'am.

25    Q     Okay. And I think you mentioned Mr. James had a

1 passenger with him?

2 A Yes, ma'am.

3 Q And on further down -- strike that. Never mind. So  
4 there's these two guys and Mr. Ficklin?

5 A Yes, ma'am.

6 Q And I may have missed it when you testified earlier.  
7 Did they kind of gravitate this way (indicating), do you  
8 remember?

9 A They were, yeah.

10 Q So --

11 A It started --

12 Q When they were over here (indicating)?

13 A Yes, ma'am. They started like right beside that --  
14 the white car. And then, they ended up like on the other  
15 side of the gas pumps. It's not in the picture, so--

16 Q -- the one towards the road out here?

17 A Yes, ma'am.

18 Q Okay. Both of those two guys and Mr. Ficklin?

19 A No. No, ma'am. Just Mr. Ficklin and the guy driving  
20 the Kia.

21 Q Okay. All right. And you -- all you heard was  
22 something about slicing somebody? You didn't hear Mr.  
23 Ficklin say, stay back, get back?

24 A No, ma'am.

25 Q Nothing like that. But the guy in the Kia, you said

1     what grabbed your attention was, he was freaking out,  
2     hollering and yelling that his grandma's car was hit?

3     A     Yes, ma'am.

4           MS. ABLE:   That's all.   Thank you, Ms. Quinn.

5           THE COURT:   Any redirect?

6                         REDIRECT EXAMINATION

7     By Ms. Penny:

8     Q     Hey again, Ms. Quinn.   A lot was just talked about  
9     your statement.   If you would, can you just read it --  
10    read the actual description of what happened of your  
11    statement out loud so that everybody can read what was  
12    wrote -- read what you wrote?

13           THE COURT:   No.   She's here to answer questions.   She  
14    can't publish that statement.   That's not fair to her.  
15    You can ask her questions.   If she needs to have her  
16    recollection refreshed, she can refresh it.   There's no  
17    point in republishing a written statement because she's  
18    here live in person.   That's better evidence.

19    Q     Ms. Quinn, you testified to Ms. Able that you wrote  
20    that he -- that -- I want to make sure I say this right,  
21    that the guy in the white car got hit with the door.   Is  
22    that correct?

23    A     Yes, ma'am.

24    Q     But that's not what you saw that day --

25    A     No, ma'am.

1 Q -- right?

2 A I was writing fast and I had my kids in my car. I  
3 was trying to hurry up.

4 Q And you were trying to get out of there?

5 A Yes, ma'am.

6 Q And so, what you meant -- and correct me if I'm  
7 wrong, but what you meant was, the guy in the white car  
8 hit the man in the Kia with his door?

9 A Yes, ma'am.

10 Q And that's what you testified to earlier, independent  
11 of this statement?

12 A Yes, ma'am. That's what I meant to write, but I was  
13 writing fast. I had my kids with me and I was trying to  
14 get out of there.

15 Q And, you know, you made a mistake on this piece of  
16 paper?

17 A Yes, ma'am.

18 Q But other than that, you recall all of this from that  
19 day that we've already talked about and you were standing  
20 right there?

21 A Yes, ma'am.

22 MS. PENNY: That's all I have. Thank you.

23 THE COURT: Anything else?

24 MS. ABLE: No, Your Honor.

25 THE COURT: Okay. You may step down.

1 MS. PENNY: The State rests.

2 THE COURT: Very well. All right. I've got a few  
3 things to put on the record. You all step in the jury  
4 room and take yourself a break. You can't talk about the  
5 case yet.

6 (Whereupon, the jury was excused from the courtroom.)

7 THE COURT: All right. Ms. Able or Mr. Shaffer.

8 MS. ABLE: Thank you, Judge. Your Honor, at this  
9 time, we would move for a directed verdict in this case.  
10 Your Honor, I don't think anything has been introduced  
11 into the record that tends to reasonably prove the guilt  
12 of Mr. Ficklin. Specifically, I don't think anything  
13 whatsoever has been introduced to show the elements of  
14 assault and battery, first degree. 16-3-600-(c)(1)(b),  
15 offers or attempts to injure another person with the  
16 present ability to do so and the act is accomplished by  
17 means likely to produce death or great bodily injury.  
18 Your Honor, at best, I think we would be looking at an  
19 assault and battery third degree because there could  
20 possibly be an indication that someone was hit with this  
21 door. But as far as, you know, the knife, I'm under the  
22 impression that's what the State's going forward on is  
23 this knife constituting the assault and battery in the  
24 first degree. I don't think there's been any evidence  
25 introduced whatsoever to show any offer or any attempt to

1 hurt anybody with the knife. I mean, the victim himself  
2 said Mr. Ficklin told him, stay back, don't come at me, I  
3 have a knife, which indicates to me he's moving backwards  
4 saying, stay back there, buddy, I'm not doing anything to  
5 you right now, but don't come at me. I don't think that's  
6 a threat. I don't think that is an offer or an attempt  
7 whatsoever to injure this man. I think all we have so  
8 far, Judge, like I said, is evidence that possibly  
9 somebody got hit with the door of a Crown Vic.

10 MS. PENNY: Your Honor, obviously we're saying that  
11 this seven inch, very sharp knife would cause great bodily  
12 injury to someone and that it's the offer, the threat, the  
13 saying, I will slice you -- we've heard testimony that he  
14 said, I will slice you. We've heard testimony that he  
15 said, I will kill you. I will kill you with this knife.  
16 That is an offer or an attempt with the present ability to  
17 do so. He has this seven inch knife in his hand and it  
18 could -- if he actually went through with that offer, it  
19 could cause death or great bodily injury.

20 THE COURT: All right. Well, did anybody other than  
21 the victim -- the victim said he was retreating the entire  
22 time, very clear on retreating.

23 MS. PENNY: That who was retreating?

24 THE COURT: The Defendant was retreating. He was  
25 backing away, moving away, other side of the gas pumps.

1 He did not step toward or come towards the victim per the  
2 victim's testimony that I heard, did he? I didn't hear  
3 that. I heard a man and a lot of yelling going on, a  
4 knife comes out. The victim said the knife was out this  
5 way. This witness says it was shielded this way. So I've  
6 got a knife, but I don't have the ability to cut you  
7 because I've got, turned around. That was the independent  
8 witness. The victim says, he's moving away. Don't come  
9 near me, I'll cut you, I'll slice you. Whatever words.  
10 He said those things as he was moving away, retreating,  
11 going to the other side of the gas pump, was creating  
12 distance. Choose your words, I mean, nobody came at  
13 either of them. They really were just yelling. I mean,  
14 did I miss something?

15 MS. PENNY: I think -- to be respectful, Your Honor,  
16 yes, I do think that you did because an offer is the  
17 threat alone with the present ability to do so. We have  
18 heard testimony -- you just said that he's holding it like  
19 this from the victim and --

20 THE COURT: Retreating.

21 MS. PENNY: He's holding it like this (indicating).  
22 He pulled the knife out while he was being yelled at and  
23 he said, I will kill you, while holding a knife. That's  
24 an offer. I think that gets us, certainly, past DV. And  
25 so that the jury could consider what they think happened

1 that day.

2 MS. ABLE: And, Judge, just in response, I went back  
3 to my notes. I wrote down in quotations, "Don't come near  
4 me. I'll cut you." I'll cut you, this alleged threat, is  
5 conditioned on him coming towards my client, which he  
6 continued to do. James Ficklin went into the store to let  
7 things diffuse, comes back out after this man jumps over  
8 his car, walks over his car coming after him. James goes  
9 to his car trying to pump his gas. He gets in there and  
10 opens the gas pump. He comes at him again. So he moves  
11 way over here away from the public trying to say, don't  
12 come at me.

13 THE COURT: I think that y'all both heard the same  
14 things. Y'all are interpreting them differently. But I  
15 don't see the present ability to do so when the  
16 Defendant's moving away, backing away, not even holding  
17 his own ground.

18 MS. PENNY: But he's holding a knife, Your Honor. He  
19 has a giant knife in his hand saying, I will kill you, I  
20 will slice you. It doesn't need -- like the condition  
21 doesn't matter. There's no reason for him to be doing  
22 that. He has assaulted someone by offering or attempting  
23 to hurt them with a knife in his hand.

24 THE COURT: I kind of agree with you on the assault.  
25 The battery side, I'm not getting. There's no battery.

1 Battery is the execution of the assault. I will do thus  
2 and so and you carry out that threat.

3 MS. PENNY: There's -- yeah. The statute just says  
4 offer. It has to be an offer or an attempt. That's all  
5 you have to have for the statute.

6 THE COURT: This ain't a first.

7 MS. PENNY: I think that that's up to them. That's  
8 up to the jury.

9 THE COURT: I don't think so. I think -- I don't  
10 think this is a first. I think it's very thin facts.

11 MS. PENNY: But very thin is still enough to overcome  
12 the burden to get past domestic -- directed verdict. I  
13 have domestic violence in my head.

14 MS. ABLE: Your Honor, I would just point out, you  
15 know, on your reasoning, which certainly I agree with your  
16 reasoning. It wouldn't be an assault and battery second  
17 either because you're arguing there's no present ability  
18 to do so if he's retreating with his knife down like this  
19 (indicating), which is the language under the (d)(1)  
20 section for second degree.

21 THE COURT: I've read -- I was reading this -- the  
22 section when we were going through the trial trying to  
23 figure -- and I will say on the record, it's not a well  
24 written statute. It was written by somebody who never  
25 practiced criminal law. And so it creates issues like

1 this for all three sides. Prosecution, Defense and the  
2 Court because it's -- it sure would be nice if either of  
3 the cameras worked, wouldn't it, any of them. All right.  
4 I'm going to give you all a couple of minutes to think up  
5 something better. I just -- I don't know how --

6 MS. ABLE: Your Honor, I will just put further on the  
7 record. I think that sets a really dangerous precedent if  
8 somebody's saying, hey, I'm going to hurt you, and they're  
9 walking back here just because they have a weapon. That's  
10 not an assault. I'm walking away.

11 MS. PENNY: He's actually -- and that wasn't the  
12 testimony of everyone. That was the testimony of one  
13 person.

14 MS. ABLE: That was the testimony of the victim.

15 THE COURT: That was the testimony of the victim.  
16 That's who I was trying to go with the most was the  
17 victim. He's the guy out there in it.

18 MS. PENNY: Well, then, if you're going with the  
19 testimony of the victim, he's holding it like this  
20 (indicating). So this is why we have to think about all  
21 of the testimony and let them have their chance to decide.

22 THE COURT: And retreating.

23 MS. PENNY: He's still holding a knife and at any  
24 second he could have changed his mind.

25 MS. ABLE: Your Honor, that's --

1 MS. PENNY: He is offering.

2 MS. ABLE: That's incorrect.

3 MS. PENNY: He is saying, I am going to slice you, I  
4 am going to kill you.

5 THE COURT: I got -- I think I'm clear on the  
6 testimony. It was --

7 MS. PENNY: That's an offer.

8 THE COURT: It was a yelling match.

9 MS. PENNY: It should have been a yelling match and  
10 it turned into an assault.

11 MS. ABLE: Judge, one more point. I'm sorry. I  
12 would just point out testimony that was given that was not  
13 from the victim was from Bryan Louis who originally  
14 charged Mr. Ficklin with assault and battery third.

15 THE COURT: I remember that.

16 MR. SHAFFER: Judge, can we approach?

17 THE COURT: Yes.

18 (Whereupon, a bench conference was held.)

19 THE COURT: All right. Let's take a quick break. I  
20 need to go to the bathroom. But to get by directed  
21 verdict, the car and the knife, that's any evidence, two  
22 pieces of evidence, that is any evidence, if any evidence.  
23 So it is any evidence so y'all decide what you are going  
24 to do. I don't know that we will get past directed  
25 verdict on any evidence. So I want that on the record,

1 it's directed verdict respectfully denied. Directed  
2 verdict, there is some evidence, there is the testimony  
3 about the car, striking the victim's grandmother's car,  
4 his mother's car, whoever it was, the Kia got struck with  
5 the Crown Vic and a knife was presented in some fashion.  
6 That is, under the any evidence standard, that is, meets  
7 the any evidence. So that is not measuring weight, any  
8 evidence. We will take a short break, y'all figure out  
9 what you are going to do, Defense.

10 (Whereupon, a short break was taken.)

11 THE COURT: Y'all tell me this. We're back on our  
12 assault and battery first. Let me make sure I'm reading  
13 the right code section. "A person commits the offense of  
14 assault and battery in the first degree if the person  
15 unlawfully: (B), offers or attempts to injure another  
16 person with the present ability to do so. And the act:  
17 Is accomplished by means likely to produce death or great  
18 bodily injury." Is that it?

19 MS. ABLE: That's what my understanding was. That is  
20 the applicable section.

21 MS. PENNY: That's right.

22 THE COURT: Okay. That's what you all want  
23 instructed?

24 MS. ABLE: Yes, Your Honor.

25 THE COURT: Okay.

1 MS. PENNY: And, also, obviously, lesser included as  
2 applicable.

3 THE COURT: So it's (C)(1)(b), little (i)?

4 MS. PENNY: Right. Correct, Your Honor.

5 THE COURT: And then second would be (D)(1)(a),  
6 correct?

7 MS. PENNY: Correct.

8 THE COURT: Okay. All right. Are you all ready for  
9 the jury?

10 MR. SHAFFER: Your Honor, we have a couple of  
11 specific requests on the self-defense we'd like to charge.  
12 One, something to the effect of or words, hostile acts,  
13 size and age differences, increased risk of harm by  
14 retreating. The language from the, without fault means,  
15 if the Defendant's conduct was reasonably calculated to  
16 and did provoke a deadly assault the Defendant would be at  
17 fault in bringing on the difficulties.

18 THE COURT: I mean, how are you getting around the at  
19 fault and bringing on difficulties when the car was struck  
20 first. The white car or the silver car --

21 MR. SHAFFER: The accident.

22 THE COURT: -- or whatever color the Kia was.

23 MR. SHAFFER: Accident. I mean, they haven't proved  
24 that that was an actual intentional act. So we'd like the  
25 charge of accident as well. Because they haven't provided

1 -- they have one witness who says that the car -- his  
2 engine revved before he bumped into him. So the other  
3 witnesses don't mention anything about that. So we'd like  
4 to charge on accident related to that.

5 MS. PENNY: Your Honor, in response, I would just say  
6 that the fact that he's brought about the difficulty, as  
7 you said, just negates the fact that we would even charge  
8 self-defense. But if you choose to charge self-defense,  
9 the standard self-defense charge is fine.

10 MR. SHAFFER: Your Honor, whenever there's evidence  
11 in the record supporting specific parts of the  
12 self-defense charge, if it's good law, I think, you know,  
13 we're obligated to charge it. Size differences is all  
14 directly -- and I can email this over, but all of these  
15 are copied and pasted from the pattern jury instructions  
16 that I'm requesting here. So we're not asking for  
17 anything off the wall. The only one that is any way  
18 modified is, I wanted to make sure that the second half of  
19 the at fault is charged. Everything else is a direct copy  
20 and paste from the charge book, Your Honor.

21 MS. PENNY: I would just ask that, obviously, as it's  
22 standard practice for us to be able to all see this and  
23 review this in any event before we move forward.

24 THE COURT: I think y'all got a sirloin steak  
25 argument over a hotdog. That's what I'm hearing. All

1 right. Y'all got proposed charges like that, send them to  
2 me. We're going to bring the jury in. Are y'all putting  
3 anything up.

4 MS. ABLE: No, Your Honor.

5 THE COURT: Nothing. So the State will go first.  
6 The Defense will go last. Fair enough?

7 MR. SHAFFER: Your Honor, there's one other charge  
8 that I'm going to look for while we're doing the jury  
9 instruction.

10 THE COURT: Sure.

11 MR. SHAFFER: I mean, while we're --

12 THE COURT: And if anybody has exceptions to my  
13 charge whenever I decide what to give, y'all can make  
14 exceptions and we can bring the jury back through and  
15 discuss it. But we're not going to have a pre-printed out  
16 charge before the closing arguments. I don't think we've  
17 got time for that. Are you all ready for the jury? We  
18 know where we're going?

19 MS. PENNY: Yes, Your Honor.

20 THE COURT: Bring them. Y'all rest on the record.

21 (Whereupon, the jury came into open court at  
22 approximately 2:57 p.m.)

23 (Whereupon, a bench conference was held in the  
24 presence of the jury but out of the hearing of the  
25 jury.)

1 THE COURT: All right. The State's rested. Defense,  
2 you may call any witness if you so choose.

3 MS. ABLE: Thank you, Your Honor. At this time the  
4 Defense rests, as well.

5 THE COURT: Very well. All right. Folks, the  
6 Defense has an opportunity, if they want to call  
7 witnesses, they can. If they don't want to call any, they  
8 don't have to. They've chosen to not do so. Now, what  
9 that means is, you all have heard the testimony. We've  
10 got -- I don't know, five or six photographs and a knife.  
11 That's the evidence, the testimony you get to consider.  
12 There's now an opportunity for both sides to summarize  
13 what they believe the facts have shown. Then, I'll give  
14 you instructions on what the law in South Carolina is.  
15 All right. Because the Defense has put forth nothing,  
16 they get to argue to you last. So the State goes first.  
17 Ms. Penny.

18 MS. PENNY: May it please the Court.

19 THE COURT: Yes, ma'am.

20 MS. PENNY: Mr. James got gas at a gas station. A  
21 busy gas station at five o'clock in the afternoon in Ware  
22 Shoals in Greenwood County. He got gas. He's sitting at  
23 the gas pump. Some guy comes up behind him, our  
24 Defendant, Mr. Ficklin, and starts blowing his horn and  
25 yelling. Wants him to go faster. He testified that he

1     couldn't get away from where he was, that he was kind of  
2     stuck there and all of a sudden he feels this guy hit him  
3     from behind. He gets out of his car and wants to know  
4     what happened. He wants to know what happened. He's  
5     upset. If somebody hit my car at the gas pump because  
6     they didn't think I was moving fast enough, I'd be upset.  
7     He was upset. And then he sees the Defendant just get up  
8     and go into the gas station. Just get up and go into the  
9     gas station. And so, he says, hey, hey, hey, I want your  
10    insurance. How are you going to pay for this? This is my  
11    mom's car. This isn't even my car. My mom was nice  
12    enough to let me borrow her car and now, I'm going to come  
13    back and it's going to be messed up. That's why I need  
14    your insurance. The guy goes into the gas station. Our  
15    victim has the presence of mind to think to himself, I'm  
16    not going to follow him in there. I'm going to stay out  
17    here. I'm not going to take this to the next level. So  
18    then the guy comes back out who's hit his car, his mom's  
19    car, and he walks back over there and he says something to  
20    the effect of, I need your insurance. I need to figure  
21    out how I'm going to pay for this. I need to know what  
22    I'm going to tell my mom when I take this car back to her.  
23    She might be mad at me. I still -- I'm 37 years old. I  
24    still don't want my mom mad at me. He's older than me.  
25    He probably still doesn't want his mom mad at him. So he

1 goes over there and he says -- and he may be upset. He  
2 may be upset. We've all been upset probably -- and I've  
3 been upset in similar situations before. And so, he walks  
4 over and he says something to the effect of, what are you  
5 doing. What's going on? What are you going to do about  
6 this? And the guy, Mr. Ficklin, instead of having an  
7 adult, reasonable conversation, even if it is an upset  
8 conversation, about the damage that -- well, not even  
9 damage, but about what he just did to him, about running  
10 into his car for what appears to be no good reason at the  
11 gas station. Instead of having an adult conversation with  
12 him about it, he hits him with a car door and pulls out a  
13 knife. Can you believe that? I can't. I still can't and  
14 I've had this in front of me for a year. So you go to the  
15 gas station, you're talking to your friend, you get gas,  
16 somebody hits you from behind and when you want to talk to  
17 them about it, he pulls a knife. He says, I'm going to  
18 slice you. He says, I'm going to kill you, because he hit  
19 your car to start with. That's unbelievable to me and  
20 what's more is, it's against the law. I'm going to show  
21 you the law. Back to our trusty Elmo. Mr. Ficklin is  
22 charged with assault and battery in the first degree and  
23 Mr. Thomas is going to help me make this so that you all  
24 can see it better. Mr. Ficklin is charged with assault  
25 and battery in the first degree. So there's a whole lot

1 of the assault statute. We've tried to condense some of  
2 it down and I'm going to condense it down even more.  
3 Assault and battery in the first degree, what we're  
4 talking about here, is this. What I've just underlined.  
5 (C) (1) (b), little (i). Assault and battery in the first  
6 degree is when Mr. Ficklin offers to injure another person  
7 with the present ability to do so and the act is  
8 accomplished by means likely to produce death or great  
9 bodily injury. We're going to talk about what great  
10 bodily injury is in a minute, but, again, we've talked a  
11 lot about -- well, not a lot, but we've talked some about  
12 common sense and I think that you guys can use your common  
13 sense. And then also look at the law and it all kind of  
14 comes together. So offer is the word that we're worried  
15 about the most here and excuse me for nerding out about  
16 the law and talking to you about what the law means, but  
17 it's important here because that's what you're trying to  
18 decide. Did he break the law when he did this. He did,  
19 he broke the law when he did this. He pulled out a knife.  
20 He offered to injure another person with the present  
21 ability to do so. He offered to do it. When he pulled  
22 out this knife, this big knife, and said, I'm going to  
23 kill you because I bumped your car. I'm going to kill you  
24 because I bumped your car and you're now mad at me about  
25 it and want to talk to me about it. I'm offering to slice

1     you. I'm offering to kill you and I have the ability to  
2     do it because I have a knife in my hand. I, of course, am  
3     not me. The Defendant, Mr. Ficklin. And if I did this,  
4     it could produce -- if I cut you, if I sliced you, it  
5     could produce death or great bodily injury. I think  
6     that's where our common sense comes in. You don't need a  
7     doctor to tell you, you don't need medical testimony to  
8     tell you that something like this (indicating) -- you all  
9     have seen it. I'm not going to pull it out of the sheath  
10    again because I don't want to have to fool with my gloves.  
11    You've all seen it. This is going to produce some great  
12    bodily injury if it's used. If somebody's stabbed or  
13    sliced or somebody tries to kill somebody with it, it's  
14    going to really hurt you. We all know, after hearing the  
15    testimony and seeing the pictures, that that's not what  
16    happened, right? That there is no great bodily injury in  
17    this case. We all understand that. This is not the crime  
18    of the century, obviously, because no one was hurt that  
19    badly. But they could have been and they could have been  
20    because of the way somebody acted at a busy gas station at  
21    five o'clock in the afternoon. There were three kids in  
22    the car next door. We heard that testimony and this is  
23    how he acts. He pulls out a knife after he has hit  
24    somebody's car. So, great bodily injury. Bodily injury,  
25    which causes a substantial risk of death or which causes

1 serious permanent disfigurement or protracted loss or  
2 impairment of the function of a bodily member or organ.  
3 So, again, that didn't happen here, but it sure could have  
4 and aren't we glad it didn't. Aren't we glad it didn't  
5 happen. Still against the law because it's the offer.  
6 It's the threat. It's the saying, I'm going to do it to  
7 you with the present ability, with a deadly weapon. So  
8 I'm not sure exactly what you're going to hear about  
9 self-defense or something that is akin to self-defense.  
10 But I want to talk about that law, too. So that's what  
11 I'm going to put up here. This is from a South Carolina  
12 Court of Appeals case.

13 MR. SHAFFER: Objection, Your Honor. May we  
14 approach?

15 (Whereupon, a bench conference was held in the  
16 presence of the jury but out of the hearing of the  
17 jury.)

18 THE COURT: All right, folks. What we're doing is,  
19 this case moved along a little quicker than we thought.  
20 I'm going to instruct you on the law. I've told you that  
21 three times. These lawyers are kind of guessing at what  
22 I'm going to instruct you and I've told them, don't guess.  
23 Just say, the Judge will instruct you. So they've both  
24 been kind of put in that box, so to speak. They're  
25 arguing what they think the facts show. So we'll let Ms.

1 Penny continue on and Ms. Able's going to have the same  
2 issue of not doing exactly what my instructions are going  
3 to be because this case is unique in and of itself.

4 Continue on.

5 MS. PENNY: Thank you, Judge. Self-defense or  
6 something akin to self-defense. I don't know what the  
7 Judge is going to tell you, as he just told you. But the  
8 law in South Carolina that I know, and I don't know if it  
9 will be instructed, is that the Defendant cannot bring  
10 about the difficulty. So if that's where we're going with  
11 this, then the very beginning of where this all starts is  
12 he pulls up behind Mr. James honking his horn, waving his  
13 hands, I guess, yelling at him, wanting him to move. And  
14 then he bumps him. That's what, if anything, makes our  
15 victim mad, that's what makes him mad. I think that's a  
16 reasonable thing. And my estimation that it's a  
17 reasonable thing, I would also be mad. In this part of  
18 the case, he's bringing about the controversy. He's the  
19 one who started all of this, essentially, is when we get  
20 down to it. He's the one who started all of this. So he  
21 doesn't get to say, now that this guy's mad at me, oh, I'm  
22 scared. Oh, I'm scared. He's going to hurt me. I've got  
23 to pull my big ole knife. He doesn't get to say that  
24 because this is his fault. He did this. He may tell you  
25 that it was an accident. I don't know what he's going to

1 say or if he doesn't have anything to say at all, he  
2 doesn't have to say anything and the Judge will instruct  
3 you on that, but he did this. He did all of this. Mr.  
4 James just happened to be at the gas station in the wrong  
5 place at the wrong time and acted in a way that I  
6 certainly would act in a certain situation like that. So  
7 we've talked about the facts, we've talked about the law  
8 and now the State's burden is to prove to you that Mr.  
9 Ficklin did all of this beyond a reasonable doubt and  
10 that's kind of a heavy term. Beyond a reasonable doubt.  
11 I'm sure, if you guys watch Law & Order or anything like  
12 that, you've heard it a lot, but what does it really mean?  
13 What does it really mean? So it's not beyond all doubt.  
14 I said that to you all earlier. It's not beyond any  
15 doubt, but it's beyond a reasonable doubt. We keep using  
16 that word a lot today. And another way to say that is  
17 that the evidence that we have offered from up here, the  
18 State, leaves you firmly convinced that Mr. Ficklin hit  
19 Mr. James with his car. And then, when confronted, hit  
20 him with his door and pulled a knife. So you, to convict  
21 Mr. Ficklin of assault and battery in the first degree,  
22 the law that we talked about up there and the law that the  
23 Judge will instruct you on, you have to be firmly  
24 convinced that all of that happened. You have to be  
25 firmly convinced that he offered -- like the law says,

1     that he offered -- let's read it together to make sure we  
2     get it right.  Firmly convinced that he offered to injure  
3     another person with the present ability to do so and it's  
4     accomplished by means likely to produce death or great  
5     bodily injury.  The knife is the means.  You have to be  
6     firmly convinced.  So think about all of the evidence that  
7     you heard.  You heard from Mr. James, the guy who just  
8     shows up at a gas station and all of this happens to him.  
9     He sat up here and he walked you through everything.  He  
10    told you what happened that day and, in fact, I asked him  
11    lots of questions.  Another lawyer asked him lots of  
12    questions and his story didn't really change, right?  He  
13    sat up here and he told you that the guy pulled up behind  
14    him -- Mr. Ficklin pulled up behind him, and then he --  
15    whether he honked the horn or yelled, then he rammed into  
16    him and he didn't have anywhere to go.  You know what?  
17    Even if he had somewhere to go, even if he didn't have  
18    anything in front of him, it doesn't matter.  That's not  
19    what you do.  That's not what you do when someone's in  
20    your way.  You don't ram their car.  So Mr. James is up  
21    here and tells us what happens.  That's our evidence.  He  
22    tells us his version of the story and he tells us about  
23    having the knife pulled on him and it's in that moment  
24    that the assault happens.  So Mr. Ficklin throws the door  
25    open and hits Mr. James.  And then, he pulls the knife out

1 and that's the moment. That's really the only moment that  
2 we need to think about. That's the assault right there.  
3 He pulls the knife out. Mr. James backs up. And then,  
4 what does he say? He got mad at him. He got madder and  
5 he kind of wanted to defend himself, right? And then, it  
6 spills over into this other side that we've talked about.  
7 We've talked about this gas station. It kind of spills  
8 over into here, it's gotten bigger. It kind of spills  
9 over into here but what's really important is that moment  
10 at the car door when he opens it, he hits him and he pulls  
11 out the knife. And then, he backs up. Mr. James backs  
12 up. Mr. Ficklin pulls the knife. Mr. James backs up.  
13 That's the assault. That's the offer with the present  
14 ability to hurt him and, again, gosh, we're all lucky that  
15 nothing else happened that day. There was three kids  
16 there, that lady pumping gas that you heard from. You saw  
17 her perspective. You heard from her. She was standing  
18 right there. She doesn't know these people. She doesn't  
19 -- she's not friends with one or the other. So think  
20 about what she said. Mr. Thurston, our newly minted  
21 adult, he was a little bit further away, but he also sort  
22 of saw what happened. The police talked to him that day.  
23 He made a statement. He heard Mr. Ficklin yelling about  
24 the knife. Ms. Quinn saw the knife. She saw him hit the  
25 Kia that Mr. James was driving. These are all things to

1 think about. You heard about entering Chief Louis'  
2 investigation of the case, who he talked to, the decisions  
3 that he made once he had all of the evidence once he'd  
4 spoken to folks and what he recovered at the scene, the  
5 pictures he took. So you think about all of that  
6 evidence. Everything you've heard and have seen and have  
7 seen up here and are you firmly convinced that Mr. Ficklin  
8 pulled this knife and threatened to slice, to kill, Mr.  
9 James. That's the moment that we're worried about right  
10 there and if you are, if you are firmly convinced that Mr.  
11 Ficklin did that then he is guilty of assault and battery  
12 in the first degree. Thank you.

13 THE COURT: Ms. Able.

14 MS. ABLE: Thank you, Your Honor. Good afternoon.  
15 Okay. I'm going to do my best for you guys and just tell  
16 you three stories. These guys kind of laugh at me. I  
17 like to get up here and tell stories. I'll tell you one  
18 over here, which is my story. I'm going to tell you one  
19 here, which is James Ficklin's story. And I'm going to  
20 tell you one over here, Jacob James' story. I'm going to  
21 start with mine. I'm from Laurens. I don't know if any  
22 of you all are blessed enough to get over that way, but  
23 I've been working in Greenwood for about five years. I  
24 drive the same way every day. I go over the lake, come  
25 onto 70 -- 72, excuse me, go straight through and take a

1 left on Cokesbury and come on down and go the back way on  
2 Seaboard. I don't know if you all know where that is, but  
3 every day for five years. So back in May -- we had two  
4 court terms back in May. This was two weeks back to back.  
5 This was one of the weeks we're not in court. So I'm just  
6 coming up to the office and I'm going on Cokesbury. This  
7 guy in front of me on Reynolds cut me off. I'm a woman  
8 trying to get to work. Turn on Cokesbury, he pulled up at  
9 the light beside that Lil Cricket. I don't know if you  
10 all know where that is. We're sitting there and waiting  
11 on to turn, I've got to get to work, let's go. He just  
12 sits there. I tooted my horn. This man got out of his  
13 car and came back to my vehicle. I opened my window about  
14 this much. And I said, sir, can I help you. He said, I  
15 want you to know you're riding my tail the whole way down  
16 this road. You need to calm down. Blah, blah, blah,  
17 blah. Scared me to death. I had no idea what he was  
18 doing. He comes at me. He cut me off. I said, you need  
19 to get back in your car, which he did. Nothing happened,  
20 but I was terrified. I didn't like how that made me feel.  
21 Now, let's go to James Ficklin. October 10th of last year  
22 at five o'clock, James is going to work. I'm thinking he  
23 was probably running a little late. Pulls up to the  
24 Stop-A-Minit, he's got to get some gas before he goes to  
25 work, he sits there. The man in this Kia was running his

1 mouth. Three, four, five minutes, I have got to get gas.  
2 I don't know if you all have ever done this, but I  
3 certainly have. Sometimes, my foot slips when I'm  
4 driving. I'm not the best driver in the world, I will  
5 tell you that. He hits the gas instead of the brakes and  
6 bumps him. Whoops, didn't mean to do that. Still got to  
7 get to work. Let me run into this gas station real quick  
8 and pay for my gas. There's no damage, didn't mean to do  
9 that. Sorry, man. I'm going to keep on with my day. Let  
10 me go in this gas station. I'm going to come back out.  
11 I'm going to reach down in my car and pull the lever to  
12 open my fuel pump to my gas tank so I can put the gas in  
13 my car I just paid for. Here comes somebody else. Okay.  
14 Maybe, I bumped this open. Maybe he pushes it on me. It  
15 didn't matter. I don't know. What I do know is  
16 somebody's coming at me yelling and hollering, but I  
17 bumped his car. Somebody's coming at me. You don't know  
18 what they're going to do. It's a scary feeling. I have a  
19 knife. I grab it. Mr. James told us in his own words --  
20 now, let me make sure I get it. I stand up. Don't come  
21 near me. I'll cut you. Don't come near me. I don't know  
22 what you're capable of. I don't know what you're doing.  
23 You're yelling at me. You're mad at me. You just ran  
24 across the top of my car to get to me while I'm in the --  
25 in the station, in the store, because you couldn't take

1 the time to walk around. Don't come at me. We also had  
2 testimony his knife was down here like this, (indicating).  
3 Not like this, (indicating). Like this (indicating).  
4 Now, I'm going to walk away. I walk back. The testimony  
5 is, maybe, all the way to somewhere in here, (indicating),  
6 trying to avoid acting unadult like. I'm trying to avoid  
7 this situation. Don't come at me. I'm getting my gas.  
8 Now, Mr. James. Five o'clock, I've been laying bricks all  
9 day. I'm off work. It's time to get home. So I'm going  
10 to go by the store, I'm going to get me some gas, I'm  
11 going to sit here, I'm going to shoot the breeze. It's  
12 busy. All of those pumps were full he said, all of them.  
13 I'm going to sit here and leave my car right here and run  
14 my mouth while other people are trying to get gas. A man  
15 bumps him. He turned around. It's my mama's car or my  
16 grandma's car. There's no damage on it. Mr. Ficklin  
17 walks into the store and hadn't even realized anything had  
18 really happened. What's going on? He says he's mad. You  
19 just hit me. I can't take the time to walk around the  
20 back of this car to come in there and have an adult  
21 conversation with you that I have to run over the top of  
22 this vehicle that's not mine to come to you. That's Mr.  
23 James' story. He said that. Mr. Ficklin comes back out.  
24 He's at his car minding his business. What are you doing?  
25 Mr. Ficklin's in the apex of this door. Does he push that

1 door on Mr. Ficklin? Right here said he did. It  
2 escalates from there. We've heard there's yelling,  
3 there's hollering. What are you going to do about my  
4 grandma's car. It doesn't sound like anybody did anything  
5 about this incident. There wasn't a damage report. There  
6 was no damage. There was Bryan Louis who could have taken  
7 a photo of it. You all heard that this is not the crime  
8 of the century. To somebody in this courtroom, it is.  
9 It's very important and it's very serious to Mr. Ficklin.  
10 He has a right to come in here today to have his fair  
11 trial. He's telling me he didn't do anything wrong. It's  
12 important to us. He's here. He doesn't have anything to  
13 hide. Where's Mr. James? Now, I don't usually like to go  
14 into the law too much. I leave that to this man. I don't  
15 get paid for that, but when Ms. Penny was going through it  
16 with you, she said, if I cut you, if I slice you, if I  
17 come at you, that would be assault and battery first. We  
18 don't have that, do we? We have, don't come at me, I'll  
19 cut you. Ladies and gentlemen, this isn't an assault and  
20 battery first degree. This isn't an assault and battery  
21 second degree. This isn't an assault and battery third  
22 degree. You have an accident where two cars bump. One  
23 bumps off. There's no damage. That should have been it,  
24 but it wasn't because Mr. James decided to not act like an  
25 adult and cause all of this trouble. He's the one

1 following Mr. Ficklin in the store, running over the top  
2 of the car, waiting on him to come out, approaches him at  
3 his vehicle. Why do we need insurance information?  
4 Nothing's happened. There's no damage. That's an  
5 accident. The rest of it escalated. People come at you  
6 and you get scared. We all live in this country. We all  
7 know our rights. We all know we have a right to protect  
8 ourselves. That's all this was. If Mr. Ficklin had  
9 wanted to do anything, they're close at that car door.  
10 They're a car door length away from each other. He could  
11 have. He didn't. He chose to walk over here, don't come  
12 at me. I ask that you please take all of that into  
13 consideration. I ask that you find him not guilty.

14 THE COURT: Thank you, ma'am. All right, folks.  
15 It's been about 30 minutes since the closing began. Is  
16 that right, it started at 3:00. I have got about 20  
17 minutes, 25 minutes of instructions. Do you all want a  
18 quick break and come back in or do you want me to go on  
19 with the instructions.

20 FOREMAN: Keep going.

21 THE COURT: Do you want to take a short break or keep  
22 going?

23 MS. ABLE: Keep going.

24 MS. PENNY: Just keep going.

25 THE COURT: All right. How are you, Joy?

1 COURT REPORTER: I'm good.

2 THE COURT: Okay. She's got to take it down. So  
3 I've got to be aware of her, too. All right, folks. I'm  
4 going to give you the instruction. I'm going to read part  
5 of it to you and I'm going to tell part of it to you. I'd  
6 like to be able to stand over there and just talk to you,  
7 but I've written a large majority of it down to get it  
8 done to you clearly.

9 I told you earlier on, the indictment, which is this  
10 piece of paper, this is an accusation made by the State to  
11 Mr. Ficklin telling him to be prepared to come into court  
12 to defend himself. He pled not guilty. That entitles him  
13 to a jury trial. Now, I described to you all during -- in  
14 qualifications, I was in a lengthy five week trial. Very  
15 important trial. That trial is no more important than  
16 this one. This is Mr. Ficklin's only opportunity to come  
17 into court to defend himself on these charges. You only  
18 get one chance. This is his day in court and it's  
19 actually a day in court, not weeks in court. I don't want  
20 to minimize the importance. The State's got to prove its  
21 case. It's his day in court. He has nothing to prove or  
22 disprove. The State has to prove beyond a reasonable  
23 doubt the accusations they've made. Now, what adds some  
24 wrinkles to this -- I'll get to this in a little bit. The  
25 specifics of the law because there's some stair steps of

1 severity of the assault statutes. I'm going to get to  
2 those momentarily.

3 First of all, I'm going to start with the general  
4 premises of the law for y'all. But he's presumed innocent  
5 until the State removes that presumption of innocence,  
6 after the State's proved and presented all of its evidence  
7 and y'all are convinced of each and every element of the  
8 charges beyond a reasonable doubt.

9 Now, as I told you earlier, the Constitution and the  
10 statutes make me, as the presiding Judge, the instructor  
11 of the law. You all have to accept the law as I am  
12 instructing it and if you have a misunderstanding or  
13 different understanding of the law, you must set that  
14 understanding aside and accept it as instructed by the  
15 Court. It is my task to instruct the law properly as it's  
16 handed down from the General Assembly as well as the  
17 Supreme Court. Now, as I told you, the State has to prove  
18 its case, that's why they go first. They have to prove  
19 their case to the standard of proof called beyond a  
20 reasonable doubt. I will define reasonable doubt  
21 momentarily, also, but I'll tell you this. If the State  
22 fails to meet that burden, then the State's burden is  
23 failed and the Defendant, Mr. Ficklin, will be entitled to  
24 a verdict of not guilty. You, as a group, are the fact  
25 finders. Y'all are going to answer questions of fact.

1 What exactly happened, what exactly happened factually.  
2 That's what juries do, is they resolve questions of fact.  
3 Under the Constitution and laws of South Carolina, the  
4 jury are the sole fact finders in cases. I'm not allowed  
5 to even have an opinion as to the guilt or innocence of  
6 Mr. Ficklin or any other person accused in court. I only  
7 instruct the law. Juries are solely responsible for  
8 resolving the questions of fact.

9 Now, as judges of facts, necessarily y'all judge  
10 credibility of the witnesses who have testified and of the  
11 evidence which has been presented. Credibility means  
12 believability. Who do y'all believe, what caused you to  
13 believe that. Now, you get to judge and evaluate the  
14 credibility and believability of all of the witnesses who  
15 have testified. You can use anything in your collective  
16 twelve lives and experiences that you use in your every  
17 day life when evaluating a person's believability. Now,  
18 also, the Court's observed several things you can consider  
19 and you may have done it and not known about it. This is  
20 what the Court's observed. You can, also, in evaluating  
21 credibility, kind of evaluate the manner and appearance of  
22 the witness who's testified. Were they straightforward in  
23 answering the questions. Were they hesitant in answering  
24 the questions. How did a witness come to know the facts  
25 to which they testified. What was their ability to

1 recollect the facts to which they testified to. Is there  
2 some reason a witness would want to give testimony which  
3 would help or hurt one side or the other. Were there  
4 testimonies strengthened or weakened by other testimony or  
5 other evidence. You can believe as much of a witness'  
6 testimony as you deem appropriate. You can believe one  
7 witness against many, several against one or any  
8 combination as you twelve collectively find as facts. You  
9 can believe part of witness' testimony and disregard the  
10 rest. It's up to you to decide what you believe based  
11 upon what's been presented. Now, the fact that testimony  
12 is not controverted does not mean you must accept it as  
13 true and undisputed. You gauge the credibility of the  
14 witness who's testified and make the determination of the  
15 believability of the truth of the facts offered. In  
16 weighing evidence -- we use weighing. Y'all weigh the  
17 evidence. Weighing evidence is entirely a mental process,  
18 you weigh its believability. What caused you to believe  
19 it, you weigh evidence using your good judgment and common  
20 sense.

21 Generally, in cases -- this case presented some of  
22 this. There are two types of evidence. There's direct  
23 evidence and circumstantial evidence. Direct evidence is  
24 the testimony of the person who asserts to claim to have  
25 actual knowledge, like an eye witness. I saw this. I

1 smelled that. That's direct evidence. Circumstantial  
2 evidence is the proof of a chain of facts and  
3 circumstances indicating the existence of another fact.  
4 Our law makes no distinction between the weight or value  
5 to be given to direct evidence over circumstantial  
6 evidence. There's no greater degree of proof required of  
7 circumstantial evidence and direct evidence no matter  
8 which type of evidence. Whether it's proof of a chain of  
9 facts that showed the existence of another fact or direct  
10 evidence testimony. You weigh the evidence and consider  
11 the evidence that's presented to you and make findings of  
12 fact in this case. After weighing all of the evidence, if  
13 you're convinced of the guilt of Mr. Ficklin and his guilt  
14 has been proven to you beyond a reasonable doubt, you  
15 return a verdict of guilty. If you believe the State's  
16 not met its burden of proving its case beyond a reasonable  
17 doubt, you're to return a verdict of not guilty.

18 Reasonable doubt. What is a reasonable doubt. It's  
19 simply this. A reasonable doubt is the kind of doubt  
20 which would cause a reasonable person to hesitate to act.  
21 Reasonable doubt can arise from evidence which is in the  
22 case or from a lack or absence of evidence in the case.  
23 Proof beyond a reasonable doubt is proof that leaves you  
24 firmly convinced of a person's guilt. It is the kind of  
25 doubt that you can assign a reason, if the reason

1 assignment can be done firmly and convincingly.

2 Now, a person accused, such as the Defendant in this  
3 case, is entitled to every reasonable doubt which may  
4 arise. And what this means is, if you have a doubt about  
5 anything, you're required to resolve that doubt in his  
6 favor. The very fact that the jury has a full and free  
7 discussion of the guilt or innocence of a person accused  
8 does not, in and of itself, create a reasonable doubt.  
9 You still must make the determination of whether the State  
10 has met its burden of proof beyond a reasonable doubt.

11 Now, criminal intent is also a necessary element of  
12 the crimes charged here. And the State must prove intent  
13 beyond a reasonable doubt. Criminal intent is the  
14 determination by the jury based upon the circumstances  
15 surrounding the entire situation. There's no way to prove  
16 intent to a mathematical certainty. Medical science does  
17 not allow us to dissect a person's brain to determine what  
18 he or she had in mind. So our law states that criminal  
19 intent may be inferred from the circumstances which were  
20 shown to have existed before and after the fact. That's  
21 how you, the jury, make a determination of whether or not  
22 the element requiring intent was present. I'll tell you,  
23 criminal intent is a state of mind that operates jointly  
24 with an act or an omission to act in the commission of a  
25 crime. Criminal intent is a mental state of conscious

1 wrongdoing. It is for you, the jury, to determine what  
2 the Defendant intended to do based upon the circumstances  
3 shown by the evidence in the case. The State must prove  
4 criminal intent to commit the act beyond a reasonable  
5 doubt.

6 To go over your note taking again. Some people are  
7 allowed to take notes. Anyone is allowed to take notes.  
8 The fact that people took notes and people didn't take  
9 notes is not an issue for the Court. But I'll tell you  
10 this, that the people that took notes can use them, their  
11 notes for their own personal recollection of what the  
12 testimony showed. But a person's notes does not carry  
13 greater weight in the jury room than another person's  
14 recollection of the testimony. Everyone has an equivalent  
15 vote. Your verdict must be unanimous. So a note takers  
16 note does not trump or beat out a good listener's  
17 recollection, nor the other way around. Everyone's  
18 equivalent in the jury room. All right.

19 Now, I'm going to tell you about the specifics on the  
20 law of the case. And this is where -- the law I just gave  
21 you, just about all of that came from the Supreme Court  
22 and it's more general in nature. Some of the specifics of  
23 the law and the statutes come from the General Assembly.  
24 And those are a little more written like statutory laws  
25 and sometimes they're a little more cumbersome to explain,

1 but I'm going to do my best to explain in this fashion.  
2 The State's accused, by virtue of the indictment, Mr.  
3 Ficklin of the offense of assault and battery first. Now,  
4 the State must prove the elements of assault and battery  
5 first beyond a reasonable doubt. I'm going to give you  
6 those elements momentarily. Now, if the State doesn't  
7 meet the burden of proving the elements of assault and  
8 battery first, which is here, the next step down in  
9 severity of assault and battery is assault and battery  
10 second degree. That has elements the State must prove. A  
11 step below that is a less severe assault and battery,  
12 assault and battery third degree. Ten years ago or so,  
13 there was formally a simple assault, assault and battery,  
14 assault and battery high and aggravated, assault and  
15 battery with intent to kill. Those were the steps. The  
16 General Assembly rewrote everything and they renamed them.  
17 So now, assault and battery first degree, assault and  
18 battery second degree, assault and battery third degree.  
19 And some of the definitions in the statute change from  
20 what originally I learned as a young lawyer. Because it  
21 came out, like I said, twelve years ago or so. The new  
22 laws came out and we had to start applying them  
23 differently. I'm going to charge you the law. So this  
24 is, again, where I thought assault and battery was thus  
25 and so. This is one of those you've got to disregard your

1 prior understanding because that's exactly what I had to  
2 do when the law came out because I had a good  
3 understanding of what those old rules were. I'd used them  
4 for years. The law changed. You need to learn the new  
5 rules. All right.

6 In order to sustain a conviction for assault and  
7 battery first, the State must prove beyond a reasonable  
8 doubt that a person unlawfully offers or attempts to  
9 injure another person with the present ability to do so  
10 and his act is accomplished by means likely to produce  
11 death or great bodily injury. Now, that's the statutory  
12 definition.

13 I'm going to define what great bodily injury is  
14 momentarily because I'm going to now tell you the lesser  
15 offense, assault and battery second degree. So if you  
16 find the State's failed to prove assault and battery  
17 first, you can consider the lesser offense of assault and  
18 battery second degree. Assault and battery second degree,  
19 is when a person commits the offense of assault and  
20 battery if they unlawfully injure another person or offers  
21 or attempts to injure another person with the present  
22 ability to do so and moderate bodily injury to another  
23 person results or moderate bodily injury to another person  
24 could have resulted.

25 All right. I've yet to define the great bodily

1 injury and moderate bodily injury. I'm coming back to  
2 those. If you find the State's failed to prove beyond a  
3 reasonable doubt the assault and battery second degree,  
4 you then can consider the lesser offense of assault and  
5 battery in the third degree. Assault and battery in the  
6 third degree is when a person unlawfully injures another  
7 or offers or attempts to injure another person with the  
8 present ability to do so. Assault and battery third. The  
9 definitions now, for y'all's benefit, I will redefine  
10 those if y'all need that. It's a little difficult  
11 catching all of this on one pass sometimes.

12 I define for you, under the statute, great bodily  
13 injury means a bodily injury which causes substantial risk  
14 of death or it causes serious permanent disfigurement or  
15 protracted loss or impairment to the function of a bodily  
16 member or organ. Moderate bodily injury is defined under  
17 our statute as a physical injury that involves prolonged  
18 loss of consciousness or that causes temporary or moderate  
19 disfigurement or temporary loss of a function of a bodily  
20 member or an organ or an injury that requires medical  
21 treatment or the use of general anesthesia or the injury  
22 results in a fracture or dislocation of a joint or bone.  
23 Minor bodily injury does not include a one time treatment  
24 or subsequent observation of scratches, cuts, abrasions,  
25 bruises, burns, splinters or other minor injuries that do

1 not ordinarily require extensive medical treatment.

2 Now, those are the definitions of assault and battery  
3 first degree, the definition of great bodily injury,  
4 assault and battery second, which involves moderate bodily  
5 injury, or assault and battery third degree.

6 Now, mixed in with the facts presented to you is, the  
7 Defense has presented through its questions a semblance of  
8 a self-defense presentation. Our law recognizes the right  
9 of every person to defend himself from serious bodily  
10 harm. To do this, a person may use such force as  
11 reasonably necessary even to the point of taking a human  
12 life if that taking was reasonable. The right of  
13 self-defense is found upon necessity, either actual or  
14 reasonable apparent necessity. It's a complete defense to  
15 the charge of assault and battery. The existence of this  
16 defense entitles a person charged with assault and battery  
17 to a verdict of not guilty. Now, although the Defendant  
18 has raised the defense of self-defense, the burden is not  
19 upon him to prove its existence. The State has the burden  
20 of proving its case and the State must prove the  
21 Defendant's guilt of the crime which he's accused beyond a  
22 reasonable doubt and thus, necessarily, the burden of  
23 proof requires the State to prove beyond a reasonable  
24 doubt the absence of self-defense. In order for you to  
25 consider the self-defense you must know what the elements

1 are. There are four basic elements before self-defense is  
2 established. First, it must be shown the Defendant was  
3 without fault in bringing on the immediate difficulty  
4 which gave rise to the necessity of using force which  
5 resulted in the injuries or taking of human life, if that  
6 were the case. One cannot provoke, initiate or otherwise,  
7 through his own fault bring about the difficulty and then  
8 claim the right of self-defense in force against an attack  
9 which was caused by the provocation which he initiated.  
10 Second, it must be shown that at the time of the act was  
11 committed by the Defendant, that the Defendant actually  
12 believed he was in imminent danger of sustaining serious  
13 bodily injury. The term, imminent danger, must mean  
14 immediate or present danger and not a past or a future  
15 danger. Third, it must be shown that his belief, the one  
16 claiming self-defense, of being in imminent danger was a  
17 reasonable belief. Thus, it must be shown that a  
18 reasonable, prudent person of ordinary firmness and  
19 courage would have entertained the same belief. Our law  
20 of self-defense encompasses preventative action, taken to  
21 prevent one's own injuries if such action were taken in  
22 anticipation of imminent danger or sustaining serious  
23 bodily injury. A Defendant has a right to act upon  
24 appearances. He may be mistaken. The law does not hold  
25 someone to refined assessment that the danger might have

1    been accomplished having adequate time to reflect provided  
2    the Defendant must have acted or should have acted meeting  
3    the appearance of the danger. In other words, one does  
4    not have to wait until someone -- the assailant gets the  
5    advantage of you or -- one always has the right to act,  
6    under our law of self-preservation, to prevent another one  
7    from getting an advantage. There's some requirement of  
8    objectivity. So this belief must be reasonable and that  
9    belief is called a reasonable and prudent person's actions  
10   under the same or similar circumstances. So if a person  
11   -- a reasonable person would have acted similarly under  
12   the same facts presented to them, then that's a reasonable  
13   and prudent person's actions. Now fourth, it must be  
14   shown the defendant had no other means of avoiding the  
15   danger of sustaining the infliction of serious bodily  
16   injury other than the action which he undertook under the  
17   particular circumstances of the case. So that's why y'all  
18   have got to find the facts. I'm not allowed to have an  
19   opinion on the facts, the facts are for you to determine.  
20   The facts of the case for the jury to determine whether or  
21   not this necessity existed. I'm summarizing the  
22   self-defense. If you find the State's met its burden of  
23   proving its case beyond a reasonable doubt, including the  
24   disproving of self-defense, then you must return a verdict  
25   of guilty. If you have a reasonable doubt as to Mr.

1 Ficklin's guilt as it relates to the proof of the assault  
2 and battery, whether it be first degree, second degree or  
3 third degree, after considering all of the evidence  
4 received, including the evidence related to self-defense,  
5 it's your duty to resolve that reasonable doubt in his  
6 favor and find him not guilty.

7 Now, I instruct and emphasize -- I told you this  
8 earlier and I'll tell you again. The fact that Mr.  
9 Ficklin did not testify is not a factor to be considered  
10 by you in any way in your deliberations. It's not to be  
11 considered in your resolution of the question of guilt or  
12 innocence of him. It must not be considered by you in any  
13 manner whatsoever. He has a Constitutional right to  
14 remain silent. His assertion or claiming this right must  
15 not be considered by you in the deliberations. So during  
16 your deliberations, you're to draw no conclusions  
17 whatsoever from the fact that he made a decision to not  
18 testify. Thus, his decision to not testify should not  
19 even be discussed in the deliberations. The burden of  
20 proof is on the State. He's not required to prove his  
21 innocence.

22 Now, remember, I told y'all you would have everything  
23 you needed to decide this case from here in the courtroom.  
24 One thing you're not allowed to do is wonder why so and so  
25 witnesses weren't called. You can't consider that either.

1 You're to consider what's presented and make a  
2 determination of what you believe the true facts are and  
3 what happened. Consider what was presented and what you  
4 believed, confining your deliberations to what you heard  
5 here in the courtroom and my instructions on the law.  
6 Your verdict must be unanimous. All right. Now, my  
7 verdict form -- the gentleman in the back corner, tell me  
8 your name.

9 THE JUROR: Tim.

10 THE COURT: Tim, would you preside over the  
11 deliberations for me?

12 THE JUROR: Sure.

13 THE COURT: Okay. My verdict form is going to have  
14 this. And I haven't printed it out because, Mr. Dennis,  
15 my young lawyer here, has been working on it, but he's  
16 going to print it out. It's going to have this. State of  
17 South Carolina versus Mr. Ficklin, case number, assault  
18 and battery first, guilty, not guilty. If you find not  
19 guilty, just go to an assault and battery second, and  
20 consider it, and assault and battery third, or not guilty.  
21 So you'll have all three. They are stair steps, just like  
22 I described. Most severe, next, next. That's a way to go  
23 through. You can work from the bottom up or top down. It  
24 doesn't matter. Now, here's the thing. He can -- really,  
25 only one verdict needs to be found. Either, he's guilty

1 of the first and not of the last two; guilty of the second  
2 but not the first or the last; guilty of the third or not  
3 guilty at all. So he can't be guilty of more than one.  
4 Either one assault and battery first; assault and battery  
5 second; assault and battery third. But you can -- some  
6 juries consider it this way. Not proven on the first one  
7 and they consider the lesser one, and then decide whether  
8 it's proven or not and that's a different way to consider  
9 it. But the State's got the burden of proving the case.  
10 So not proven is another way to consider that. So I'm  
11 going to have the jury verdict form printed out  
12 momentarily. I've got to ask the lawyers about my  
13 instruction because I kind of put them in a box and said  
14 look, since we moved on more rapidly than I thought, they  
15 weren't going to be privy to reading my instructions  
16 before their closing arguments. And that's a challenge  
17 and they did well. So I'm going to put you in the jury  
18 room and ask them, did I omit something that I think --  
19 that we think we need to instruct the jury on. If my  
20 instructions were sufficient I'll bring you -- I won't  
21 bring you back in here. I'll send the evidence and the  
22 verdict form to you. Once you get that, then you begin  
23 the deliberations. This is a good time to go to the  
24 bathroom and get something to drink because you can't  
25 start your deliberations until you get the verdict form.

1 At that time, I will retrieve the alternate out and that's  
2 when you begin the deliberations. Okay? All right. You  
3 all step in the jury room.

4 (Whereupon, the jury was excused from the courtroom.)

5 THE COURT: All right. The way I did it last -- and  
6 Rob was kind of listening and I'm going to show you all  
7 the verdict form. It is a little different, it is his  
8 first shot at it. So once you consider it, it may be a  
9 good way to go. Choose only one.

10 MS. PENNY: That's not how you explained it would  
11 look to them, though. That would be my only -- that would  
12 be my problem with it --

13 THE COURT: Okay.

14 MS. PENNY: -- because you explained that it would  
15 say --

16 THE COURT: Can I go -- just move not guilty to the  
17 bottom?

18 MS. PENNY: Sure. Yeah. I mean, that makes sense.

19 THE COURT: I said give me a verdict form and that is  
20 what he did.

21 MS. PENNY: I would -- and well done for --

22 THE COURT: Okay. Amber, have you got, can you flip  
23 and put not guilty as the four selections as opposed to  
24 the first. She can change it.

25 AMBER: Okay.

1 THE COURT: I've got to go bottom up or top down.  
2 Okay. We're going to go with that. All right. Now, I  
3 asked about the verdict form first. So any exceptions to  
4 the instructions as given. I know we kind of were working  
5 on a fluid instruction and I appreciate y'all's  
6 understanding. Y'all did very well. So any exceptions?

7 MS. PENNY: Not that I can think of right now.

8 MR. SHAFFER: Yes, Your Honor. Related to -- first,  
9 we'd like the language of State versus Bryant. That's 336  
10 SC 340. It's a 1999 --

11 COURT REPORTER: We've got too much. Hold on.

12 MR. SHAFFER: It's okay.

13 COURT REPORTER: I've got a door closing back here  
14 and people talking over here.

15 MR. SHAFFER: Okay.

16 COURT REPORTER: Wait a minute. Can you start that  
17 over, please?

18 MR. SHAFFER: Yes.

19 THE COURT: The instruction you want. Not the case  
20 law.

21 MR. SHAFFER: Okay.

22 THE COURT: You can get the case law in later. What  
23 language are you looking for?

24 MR. SHAFFER: We want the instruction of, If after  
25 commencing the assault, the aggressor withdraws in good

1 faith from the conflict and announces in some way to his  
2 adversaries his intention to retire, he has restored the  
3 right to self-defense. One's right to self-defense is  
4 restored after withdrawal from the initial difficulty with  
5 the victim if the withdrawal is communicated to the victim  
6 by words or acts. And that's the Bryant case, 336 SC 340.

7 THE COURT: All right. What else have you got?

8 MR. SHAFFER: Also, the size -- I mean, the Defendant  
9 is then able to take into account relative sizes for  
10 self-defense. There's some language in there. I can read  
11 it if you want.

12 THE COURT: I know the relative size and prior bad  
13 blood and that kind of stuff.

14 MR. SHAFFER: And then, also, Your Honor, you had  
15 said that the jury can't hold against one of the sides if  
16 they do not call a witness. I think that's only  
17 applicable to us. They completely can hold against the  
18 State if the State fails to call witnesses.

19 THE COURT: But the State called witnesses. That's  
20 not -- that's me commenting on the facts. So I can't say  
21 that.

22 MR. SHAFFER: And, Your Honor, what we're saying is  
23 that if they failed to call a certain witness, I think  
24 that that's your wording, you can hold that against the  
25 State. If they --

1           THE COURT: No. No. No. You can't hold anybody at  
2           fault for not calling another -- I wonder why they didn't  
3           call so and so. You can't hold that against anybody,  
4           adverse instruction and that's not the case --

5           MR. SHAFFER: -- and, Your Honor, I think the  
6           statute--

7           COURT REPORTER: We'll just have to start that last  
8           sentence over. I can't hear with the printer going.

9           MR. SHAFFER: I think that the statute allows us to  
10          make any exceptions after the actual jury charge. We're  
11          not under any requirement.

12          THE COURT: I know, but what you're asking me to do  
13          is, there's -- the case law you're talking about, I  
14          believe is, if the State had a witness under its control  
15          and it failed to call that witness, then they can give an  
16          instruction. The Court that says, that witness would have  
17          testified favorably to me. And that's what you're asking  
18          for and they don't get that because you didn't tell me who  
19          that witness was. So you don't get that.

20          MR. SHAFFER: And, Your Honor, that's not exactly  
21          what we're saying. What we're saying is that they still  
22          have a burden to call relevant witnesses regardless of  
23          whether or not they're under their control and to say that  
24          they can't be held accountable or that they shouldn't be  
25          prejudiced for not calling them -- they have the burden of

1 proof.

2 THE COURT: I think you're wrong on that.

3 MR. SHAFFER: Okay.

4 THE COURT: So I'm not giving that instruction again.  
5 The jury -- well, my point was, the jury only considers  
6 the witnesses who were presented.

7 MR. SHAFFER: Okay. There's also -- you referenced  
8 semblance of self-defense at the beginning of your charge  
9 on self-defense. We think that that may be a comment on  
10 the facts.

11 THE COURT: I don't think so, but go ahead. I would  
12 think that's -- the facts are pretty thin on defending  
13 ones self. He pulled a knife and backed away. This is  
14 not a real complicated case. It's just -- so I don't  
15 think that's commenting on the facts. Commenting on the  
16 facts would be, it's a real crappy self-defense case and a  
17 real crappy assault and battery case. I didn't say that.  
18 I may have should have said it, but I didn't.

19 MR. SHAFFER: Okay.

20 MS. PENNY: If I may respond, the only -- the first  
21 suggestion that you made that I think you were  
22 referencing, State v. Bryant, I don't think that fits the  
23 facts here and I don't think it's appropriate. I would  
24 object to that.

25 THE COURT: That's the one trying to withdraw and

1 saying --

2 MS. PENNY: Right.

3 THE COURT: -- re-establish self-defense? I don't  
4 think it's either because it was all one continuous five  
5 minute, three minute act.

6 MS. PENNY: Right.

7 THE COURT: There wasn't an event and then a  
8 retraction, and then a re-institution of aggression. It  
9 was just one little melow.

10 MR. SHAFFER: And just for the record -- I understand  
11 your ruling, but just for the record, he walked inside the  
12 store after he's getting yelled at about the car --

13 THE COURT: And then he pulls his knife out the  
14 second time.

15 MR. SHAFFER: Yeah. But he withdrew and they're  
16 saying the reason that he can't be entitled to it is he  
17 ran into the car. That's the reason they're saying that  
18 he's not entitled to self-defense is because he ran into  
19 the car. Well, after he ran into the car, he went inside  
20 the store because he's getting yelled at. That's, by act,  
21 withdrawing from any sort of fight.

22 THE COURT: That's a comment on the facts. So I'm  
23 not going to give that instruction. The only one I think  
24 you had some merit to were the size of the parties.

25 MS. PENNY: The only thing that I would say in

1 response to that, Your Honor, is just that there wasn't a  
2 lot of testimony about size. It would just be something  
3 that they observed on their own. I mean, we can all see  
4 him and we could all see Mr. --

5 THE COURT: I mean, that's --

6 MS. PENNY: -- James.

7 THE COURT: That's the evidence is --

8 MS. PENNY: So -- yeah.

9 THE COURT: -- the observations.

10 MS. PENNY: I think you've already talked about  
11 observation and common sense to the jury in considering  
12 everything. But that's my only comment on that.

13 THE COURT: A statement in there, a person's allowed  
14 to act upon appearances and not -- even if the belief is  
15 mistaken. I think that's sufficient in totality in the  
16 definition I gave of self-defense. If he acted on  
17 appearances -- if the belief and behavior was reasonable  
18 in light of all the circumstances known to the person at  
19 that time. So respectfully, I'm going to decline to  
20 change that -- add to that instruction --

21 MR. SHAFFER: Thank you, Your Honor.

22 THE COURT: But you're protected.

23 MR. SHAFFER: Okay.

24 THE COURT: If you need to put those cases on the  
25 record for the Court Reporter.

1           MR. SHAFFER: The one I was going to put, I think I  
2 did.

3           THE COURT: Okay.

4           COURT REPORTER: He did.

5           MR. SHAFFER: There's all those other cases for  
6 different parts. I'm not going to go through the  
7 footnotes.

8           THE COURT: All right. I'm going to print out the  
9 jury instruction. I'm going to guess that they're going  
10 to ask for it. I generally give it to them. I've done it  
11 two ways. If the jury asks for a particular instruction  
12 -- and I did not tell them that is, if they've got a  
13 question, write it. I've got to tell them that. So I've  
14 got to bring that, but if they say, give us the law on  
15 reasonable doubt or assault and battery, I generally give  
16 them all of that or I give them the entire charge. If you  
17 all have a preference for one way or the other, I'll go  
18 either way. Bring me Mr. Bender and the alternate. You  
19 all check your evidence. I'm going tell them, if they  
20 have any questions, write it down.

21          MS. PENNY: Your Honor, what would we do about the  
22 knife?

23          THE COURT: We're going to send a picture. Do we  
24 have a picture of it?

25          MS. PENNY: It's in the --

1 MR. SHAFFER: Number 1.

2 MS. PENNY: Yeah. Number 1 --

3 THE COURT: Okay and we're going to keep it here and  
4 if they want to see it, we can present it to them and then  
5 bring it back. Bring Mr. Bender and my alternate.

6 (Whereupon, the alternate juror was excused from the  
7 trial of the case.)

8 (Whereupon, the jury started deliberations at  
9 approximately 4:07 p.m.)

10 (Whereupon, the jury sent out a note for The Court.)

11 THE COURT: They want an instruction on intent. So  
12 this gets to what Elizabeth and I were debating. Do I  
13 give them just criminal intent or that whole instruction?

14 MR. SHAFFER: Criminal intent.

15 MR. THOMAS: Well, I think there's a case that says,  
16 if you're going to send the jury instructions back, send  
17 the whole thing. Not just part of it.

18 THE COURT: Y'all can see it.

19 MS. ABLE: I say, bring them out and charge them on  
20 intent again.

21 MR. THOMAS: Yeah. That would be my --

22 MS. PENNY: That would be, I think, a good  
23 alternative.

24 THE COURT: Do we have to believe that question can  
25 be answered in the negative. They have to find there was

1 intent.

2 MS. ABLE: Yeah.

3 MR. THOMAS: That's in your charge.

4 THE COURT: It is, but that question is, do they  
5 believe --

6 MS. ABLE: Do we have to believe there was intent.

7 THE COURT: The answer's no. They have to prove it.  
8 So I think bringing them out here to say that would be  
9 better than sending the charge back.

10 (Whereupon, Court's Exhibit number one was marked for  
11 identification purposes).

12 THE COURT: Bring them out, please.

13 (Whereupon, the jury came into open court at  
14 approximately 4:30 p.m.)

15 THE COURT: All right. I read your questions and you  
16 kind of asked two questions, I think. So I'm going to  
17 answer the second question first. The State has to prove  
18 everything, every element beyond a reasonable doubt. It's  
19 not a belief, it's proof beyond a reasonable doubt.  
20 They've got to prove it. Criminal intent, I think, y'all  
21 want, I will redefine that for you. Criminal intent is a  
22 necessary element of each crime that needs to be proven by  
23 the State beyond a reasonable doubt. It's a matter that  
24 must be determined by the jury from the circumstances  
25 surrounding the situation and there's no way to prove

1 intent to a mathematical certainty. There's no way  
2 medical science can dissect a person's brain to determine  
3 what he or she had in mind. Criminal intent may be  
4 inferred from the circumstances shown to have existed both  
5 before and after the fact. That's how you, the jury, make  
6 a determination of whether or not the element requiring  
7 the intent was present. Criminal intent is a state of mind  
8 that operates jointly with an act or the omission in the  
9 commission of a crime or act. Criminal intent is a mental  
10 state of conscious wrongdoing. That's what you, the jury,  
11 must determine, whether the Defendant intended to do  
12 based on the circumstances which were shown to have  
13 existed from the facts in this case. The State must prove  
14 that intent beyond a reasonable doubt. I believe I've  
15 answered the question. If you all have another question,  
16 you can write that down, also. Okay? All right. Now, I  
17 wrote and marked this -- Joy's marked it as a Court  
18 Exhibit. So I'm going to keep that question. Okay. So  
19 if you've got another one, I'll keep it also.

20 (Whereupon, the jury continued deliberations at  
21 approximately 4:35 p.m.)

22 THE COURT: Any exceptions to the response?

23 MR. SHAFFER: Nothing, Your Honor.

24 THE COURT: Okay.

25 MS. PENNY: Nothing.

1 THE COURT: Okay. We're off the record now.

2 (Whereupon, a break awaiting a verdict from the  
3 jury.)

4 THE COURT: The jury has reached a verdict. Bring  
5 them in, please.

6 (Whereupon, the jury came into open court at  
7 approximately 5:34 p.m. with the verdict.)

8 THE COURT: Mr. Fender, have y'all reached a verdict?

9 MR. FOREMAN: We have.

10 THE COURT: Was it unanimous?

11 MR. FOREMAN: It was.

12 THE COURT: All right. It appears to be consistent  
13 with the verdict form.

14 MADAM CLERK: In the case of the State of South  
15 Carolina versus James Lamar Ficklin, indictment number  
16 2019-GS-24-1187. We, the jury, find the Defendant, James  
17 Lamar Ficklin, guilty of assault and battery in the third  
18 degree. Ladies and gentlemen of the jury, if this was  
19 your verdict and remains your verdict, please signify by  
20 raising your right hand.

21 (Whereupon, the jury raised their right hands).

22 MADAM CLERK: Thank you.

23 THE COURT: All right. Any further issue for the  
24 jury?

25 MS. ABLE: No, Your Honor.

1           THE COURT: Okay. Folks, I told the alternate, the  
2 other jurors are calling back in a little bit. Y'all  
3 have done your job, a couple of you twice. So y'all are  
4 off the hook, so y'all need not call back or come back.  
5 Y'all are off the hook, y'all have done your turn. We may  
6 do another short trial tomorrow and try to get it done  
7 this week, but thank you for your service and thank you  
8 for your hard work. Now, you may talk about the case when  
9 you go home with your spouse or whomever you want to talk  
10 about. You're free to go. Thank you.

11           (Whereupon, the jury was excused from the courtroom.)

12           THE COURT: Ms. Penny, what have you got on  
13 sentencing?

14           MS. PENNY: He does not have any convictions on his  
15 record except a juvenile conviction.

16           THE COURT: How much did he serve on pre-trial.

17           MS. ABLE: He did one day, Your Honor.

18           THE COURT: Does he work. Says he doesn't have any  
19 prior record.

20           MR. SHAFFER: Your Honor, he was working as a  
21 mechanic and I think he's having some problems doing that.  
22 He does have a wife who's pregnant. Your Honor, I think  
23 that time served is not out of the question on this  
24 because, realistically, obviously, nobody got hurt. He  
25 didn't try to hurt anybody. We'd just ask you to consider

1     that.

2           THE COURT: All right. I was thinking a small fine  
3     and time served. That's kind of what I was thinking  
4     considering his prior record, the juve conviction. So I  
5     was thinking that and allowing him time to pay. I'm not  
6     going to put him on probation on a 30 day offense because  
7     that's more supervision fees and whatnot. How about 90  
8     days to pay a \$300 fine, cost and assessments, credit for  
9     the day. And Ms. Penny will prepare me a sentencing sheet  
10    and I'll sign it, probably, in the morning. But you've  
11    got to come back and pay the clerks there in that corner  
12    of the courthouse. Pay them directly and pay them within  
13    90 days. The fine will be up \$5 or \$600 dollars with  
14    assessments, okay. It's \$300 dollars plus the  
15    assessments. They'll tell you what that is downstairs.  
16    Can you pay that in 90 days?

17           MR. FICKLIN: I can do that, sir.

18           THE COURT: Okay. Do your best.

19           MR. FICKLIN: Would you take into consideration that  
20    I do care for my father who recently had his leg cut off,  
21    as well, as the other tenants that are within the home and  
22    my wife --

23           THE COURT: Yeah.

24           MR. FICKLIN: -- and that consumes the majority of my  
25    time. I hardly have time to go out and work on my own

1 projects so I can settle down and make a little bit of  
2 money.

3 THE COURT: If I gave you a little more time --

4 MR. FICKLIN: I might be able to come up with that  
5 much in six months.

6 THE COURT: All right. I'll give you 180 days. I'll  
7 do that. 180 days to pay, \$300 dollars in assessments and  
8 I'll put that on the sentencing sheet. Okay, good luck to  
9 you and good luck with your baby and whatnot.

10 MR. FICKLIN: I do appreciate that.

11 THE COURT: Okay.

12 MS. ABLE: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 MS. PENNY: Thanks, Your Honor.

15 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4 CERTIFICATE OF REPORTER5 State of South Carolina )  
6 )  
7 County of Newberry )8 I, Joy E. Holston, Official Court Reporter for the  
9 Eighth Judicial Circuit of the State of South Carolina, do  
10 hereby certify that the foregoing is a true, accurate and  
11 complete transcript of record of the proceedings had and  
12 evidence introduced in the trial of the captioned case,  
13 relative to appeal, in the County of Greenwood, South  
14 Carolina on the 2nd day of October, 2019.15 I do further certify that I am neither of kin,  
16 counsel nor interest to any party hereto.  
1718 February 7, 2020  
1920 *Joy Holston*  
21 \_\_\_\_\_

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026  
24  
25

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

September Term, 2019

Indictment #2019GS24-1187

THE STATE

vs.

JAMES LAMAR FICKLIN

INDICTMENT FOR

Assault and Battery – First Degree

SC Code: § 16-03-0600(C)(1)

CDR: 3412

WITNESSES

Bryan Loui  
Ware Shoals Police Department

WARRANT NUMBER  
DIRECT INDICTMENT

Ref. Ind. No. 2019GS24-0100

TRUE BILL

Julie Nelen

Foreman of the Grand Jury

Date: 9-27-19

VERDICT

Guilty A+B 3rd Degree

Tracy Fenlon 10/2/2019  
Foreman

## THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

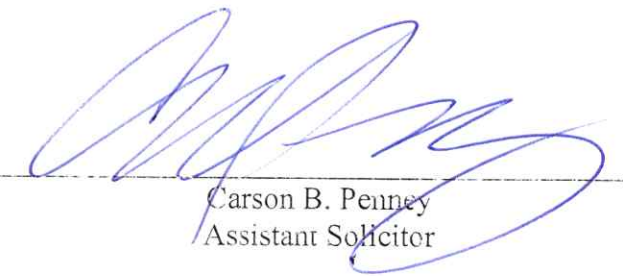
## INDICTMENT FOR

Assault and Battery – First Degree  
§16-03-0600(C)(1)

At a Court of General Sessions, convened on the 27th day of September, 2019, the Grand Jurors of Greenwood County present upon their oath:

The defendant, James Lamar Ficklin, did on or about October 10, 2018, in Greenwood County, South Carolina, commit the crime of assault and battery in the first degree against the victim, Jacob James, in that the defendant offered or attempted to injure the victim with the present ability to do so and the act was accomplished by means likely to produce death or great bodily injury. All in violation of 16-03-0600(C)(1), Code of Laws of South Carolina, (1976, as amended).

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

  
Carson B. Penney  
Assistant Solicitor