Volume II of III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

JAMAAL HINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2020-001316

APPENDIX

LARA M. CAUDY
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MICHAEL D. DAVIDSON
Assistant Attorney General
1000 Assembly Street
Columbia, SC 29201
(803) 734-1680

ATTORNEYS FOR RESPONDENT

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Defendant, Jamaal Hinson, that was your task, right?
A No, ma'am, that was me, yes.
Q And you didn't know anything about the actual case, you just knew that he was wanted and had a warrant for his arrest, right?
A That was it.
Q All right. And is that the extent of your involvement -- well, let me back up. Were you all actually -- once you apprehended him, where did you take him?
A Mr. Hinson was transported to the Fulton County Jail by the City of Atlanta Police Department. I went back to the office and closed out the case. That was the extent of my involvement.
Q Okay. No further questions. Thank you.
THE COURT: Please answer any questions Ms. Cleary may have, sir.
THE WITNESS: Yes, ma'am.

CROSS-EXAMINATION

BY MS. CLEARY:
Q Sir, just real briefly, did you file a report in this case?
A Not with the City of Atlanta Police Department, no, ma'am.

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Q Okay. And when you went to arrest Jamaal, did he resist arrest?
A No, ma'am, he did not.
Q Did he struggle?
A No, ma'am.
Q Was he cooperative?
A Yes.
Q Okay. And did you do a pat-down of him at that time?
A I can't remember if I did or if one of the Atlanta Police officers did.
Q Did you remove any items from him?
A No, ma'am.
Q From his person? Okay. That's all the questions I have. Thank you.
A All right. Thank you.

MS. SIMPSON: Nothing further from the State.

THE COURT: All right, sir, you may step down.

(Witness steps down.)

THE COURT: Any objection to this witness being excused?

MS. SIMPSON: No objection.

MS. CLEARY: None.

THE COURT: You are free to leave.

THE WITNESS: Back to Atlanta.

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(Witness excused.)

THE COURT: All right, call your next witness.

MS. CAMPBELL: Thank you. The State calls Sergeant Ellis, Matt Ellis.

THE BAILIFF: Place your left hand on the Bible, and raise your right hand, please.

(Witness complies.)

THE CLERK: Do you solemnly swear or affirm the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes ma'am.

THE CLERK: Please have a seat, and state your full name for the record.

THE WITNESS: Matthew Ellis.

MATTHEW ELLIS,

after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Sergeant Ellis, where are you employed?

A Richland County Sheriff's Department.

Q What do there, sir?

A I'm currently a supervisor in the major crime unit of the criminal investigative division.

Q How long you been in law enforcement?

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A Approximately 14, 15 years.
Q And you have been an investigator for how long?
A Ten.
Q And I want to turn your attention back to January the 16th of 2010. Did you become involved in the investigation of a murder that occurred on Baccharis Drive here in Richland County?
A I did. I was the on-call supervisor for the investigative division. I was actually proceeding to or heading to our office when I heard a call go out of shots being fired and a subject being hit. I started monitoring the radio traffic of this incident. I was close to our office, so I went by our office to see if any of my investigators were in to see what kind of manpower I had already before I might need to call out for additional people.

I got to the office and one of my investigators, Mr. Gator Hicks was there, so I had him and myself go ahead and start responding. And I also notified Investigator Lindler or Sergeant Lindler of the incident.

Q And you said you then proceeded from the office to the crime scene itself?
A That's correct.

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Q On the way to the crime scene, did you receive any additional information as far as the status of the victim in this case?
A I did. I was monitoring the radio traffic and I learned via our radios that the -- our code for a homicide was broadcast over the radio, that the incident had turned into a homicide.
Q Homicide?
A Yes. So I then called the supervisor who was on the scene to try to guide us on the information on what had happened.
Q And you then proceeded to the scene itself?
A I did.
Q And approximately what time was it when you got to the scene that afternoon?
A I believe it was just before 3:00 o'clock when I arrived on the scene.
Q At that point had EMS already come and gone and the victim been taken away?
A They had. I arrived on the scene and couldn't quite get to the incident location. The deputies had properly secured the scene, including several houses adjacent to the incident location, along with the roadway. So I wasn't able to get down there.

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When I got there, I inquired as to where the victim was located, and I was told that he had actually been transported in the ambulance and died on the way to the hospital so he was not there at the scene.

Q Were there any witnesses that had been secured by the responding officers for you to interview once you got to the scene?

A There were. There were two individuals that lived a couple of doors down from this incident location who needed to be interviewed in reference to the individual that was seen shooting. The victim had come from this location, and also the girlfriend, who I was told was the girlfriend of the victim had actually witnessed the incident was still on the scene.

Q And the two people that you indicated knowing about his whereabouts before the shooting occurred, what was their name?

A I believe it was Kenny, or Kenneth and Lauren Banks.

Q Banks?

A Banks.

Q And how far from the actual house where this occurred was their house where they lived?

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A Two houses down.
Q On the same street?
A Yes, same side of the road.
Q And you also had information that was given to you about an actual eyewitness to the scene -- to the crime as well?
A That's correct.
Q And what was her name?
A Andina Lee.
Q Andina Lee?
A Yes.
Q And once you got that information, did you then make arrangements to have these witnesses interviewed either there at the scene or headquarters?
A I did. Investigator Hicks, who responded with me, was on the scene approximately the same time I was. After I was provided the location of the two witnesses at the house, I had Investigator Hicks respond down to that location to start interviewing them separately while I was waiting on additional manpower to arrive, and also at that time I asked the deputy who had the girlfriend Ms. Lee with her to bring her to my vehicle so I -- there was no need for me to enter the crime scene, so I had them

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bring her to me. And we sat in my truck and I talked to her.

Q What was her demeanor that day?

A I'm sorry?

Q What was her demeanor that day?

A She was very upset. She was emotional.

Q Was she able to give you any information about the possible identity of the shooter, the murderer?

A She did. She said she knew the first name of the individual that had shot her boyfriend.

Q Was she also able to give you a physical description that later became useful in your investigation?

A She did.

Q And without going into the details of what she told you, was she able to relate to you there at the scene what had happened?

A She did.

Q Was she able to give you every detail at that point, or was that unreasonable?

A She was pretty upset. I got as much as I could from her at the time. She was upset to the point that her mother was actually called and came and actually sat with us during part of it.

Q Did you actually transport her down to headquarters

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to take a formal statement?

A I did. We left the location. There was a lot going on there. She had just witnessed her boyfriend being murdered at this location, and I wanted to get her away from that scene. She was very hysterical. To see if that would calm her down.

Q And you then transported her or had her transported to headquarters where you took a formal statement?

A Went to our office and her mother followed us there.

Q And at this point you were one of the lead investigators in the case, along with Sergeant Lindler?

A Yes. Sergeant Lindler was the on-call homicide investigator.

Q And during the course of that afternoon were other people on the scene coming forward with possible information as to the identity of the shooter?

A We did. We had received the name Jamaal and description, age. We reached out to our school resource officers who worked the schools in that area and to see if they might know of a Jamaal that lived or was from that area.

And we received a couple of possibilities.

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And later one of them was determined to be Jamaal Hinson, who in fact other people were providing us the same information.

Q And he lived at [redacted] Lee Ridge Court?

A He did.

Q Based on the information you were able to get that afternoon and into that evening as far as the identity of the shooter, did you compose a photo line-up?

A We had one prepared, a photo line-up consisting of six photos, including Jamaal Hinson.

Q And what was the purpose of you getting a photo line-up done that very evening when this happened?

A To show the witness the incident.

Q And the first thing you need to do is to confirm the identity?

A Correct.

Q And I am going to show you what has been marked as State's Exhibit Number 135. Is that a photo line-up that was developed in this case?

A It is. It is a photo line-up that was developed. And I see where I showed this to Andina Lee on the 16th of January.

Q That evening?

A That evening.

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Q And when you showed her that line-up -- the line-up itself, when y'all make up these pictures, what do you try to do to make sure that it is a fair line-up?

A Look at the characteristics of the individual and try to get them as close as you can with the limited access that we have to gather that information and put it together.

Q And that date, State's Exhibit Number 135 was the line-up that you developed in this case was used for multiple witnesses?

A It was.

Q And did you actually show it to Ms. Lee that evening?

A I did.

Q While she was at headquarters?

A I did.

Q And did you do anything to influence her decision or her recognition of the person that had shot and killed her boyfriend?

A I did not.

Q And tell this jury what happened when you showed her the photo line-up.

A I showed her the photo line-up. She immediately picked, without hesitation, Jamaal Hinson, who was

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Picture Number Five. She circled it, and I had her initial inside of the circle, then she signed the form.

Q And the person that she identified in State's Exhibit Number 135 was in fact the person y'all had identified as Jamaal Hinson, who is the Defendant in this case?

A Correct.

Q Once she was able to identify that, other investigators in your unit had also taken some information from the Banks, is that correct?

A That is correct.

Q And based on that information, did y'all obtain any warrants at that time?

A We did. I collected the information we had from different witnesses or individuals that we interviewed in this case, and I made contact with Deputy Solicitor John Meadors at the time, and gave him a full briefing of the case. We reviewed it, and it was determined that there was probable cause to issue a murder warrant on Jamaal Hinson for this incident.

Q And in order to get a murder warrant, do you then have to go and present evidence to a magistrate?

A We did. We prepare a warrant worksheet, which is

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sent to a Magistrate's Office, and the magistrate reviews that. And then we go before him and he swears us to the information that is in the affidavit.

Q And based on that, did the magistrate swear out a warrant for murder in this case?

A He did.

Q And at that point the information you had was coming from the Banks, who were not actual eyewitnesses to the crime, is that correct?

A They stated they did not see the crime.

Q And Andina Lee?

A Correct.

Q And as well as at that point in time you are processing things and things of that nature are going on?

A Yes, ma'am. There was no one else at the scene for us to interview.

Q At that point?

A Correct.

Q That evening into the next day, did your investigation continue?

A Yes, ma'am.

Q And y'all got a search warrant for [redacted] Lee Ridge Court?

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A We did. We also prepared a search warrant at the same time we seek the murder warrant for that location. And we would be --
Q That location would have been whose residence?
A The residence of Jamaal Hinson.
Q Jamaal Hinson?
A His parents.
Q And did y'all execute that search warrant?
A We did.
Q And were you able to find Jamaal Hinson in his home?
A No. His mother was the only one present at the time.
Q And what time of day or night was it that you actually executed the search warrant? Do you remember?
A It was I believe around 8:00 or 9:00 o'clock in the evening.
Q And that was the same evening this occurred?
A That's correct.
Q And there was no sign of him?
A No, ma'am.
Q Ad nothing of any evidentiary value as far as this case goes?
A Nothing we could locate.

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Q That evening did you also send out information on the NCIC as well as a wanted poster was prepared?
A We did.
Q And when you say you put information in the NCIC, can you explain to the jury what that is?
A We prepare -- typically with our warrants when we can't find an individual, a wanted poster -- it is a for that has an individual's picture on it, a brief description of the incident, what the incident is, the case number, the case officer's name, and this type of incident, put it into the NCIC, which is the National Crime Information Center. And what that does is that warrant with that individual's information is put into a nationwide computer so if any officer in the United States stops this individual and runs his name and date of birth or his information through that computer, he will come back as wanted and it will show that he is wanted for the particular crime that you have put him in for. You could have caution indicators. You could have all kind of additional information listed in there.
Q Okay. And everything we have talked about so far, all that was done the day this occurred, what day of the week?

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A That was -- I don't know if I recall the day of the week. I think it was a Saturday or Sunday, but I'm not sure. It was a weekend.
Q Okay. That Monday, on the 18th, did you continue to follow up the investigation of this case?
A We did, yes.
Q And over the weekend had certain information been developed that you wanted to follow up on?
A Yes, ma'am.
Q And did that information involve who?
A The Crudups.
Q The Crudups?
A Yes.
Q And that afternoon did y'all actually go to the Crudups' house and make contact with them?
A Yes, we did.
Q And did you take statements in this case about the information that Nicole and Jarrod Crudup had?
A We did, yes.
Q And did that information further corroborate the information you had already gotten from Ms. Lee and the Banks?
A It did.
Q In order to confirm that y'all were talking about the same person, were photo line-ups also then

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prepared to show to the Crudups?
A They were, yes.
Q And was specifically Nicole Crudup I think is the one you showed, was she able to identify the person that had come to her house?
A Yes, she was.
Q Or one of the two? Actually both of them?
A Actually --
Q At that point?
A I think -- I don't have it. I think maybe she narrowed it down between two.
Q That's right.
A Including him, if I'm not mistaken.
Q And Jarrod Crudup was actually able to pick someone out?
A Yes.
Q The next day, on January the 19th, had y'all also become aware of the person named Devan Bailey that may have information in your case?
A We were retained, yes -- we retained that name.
Q And without saying how you got it, but did Devan Bailey -- was the request made for him to come and talk to y'all on the 19th?
A Yes, ma'am.
Q And did he actually come to headquarters with his

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father, I believe?
A He did.
Q And at that point did you or investigators in your unit interview Devan Bailey?
A We did.
Q And was he forthcoming with information?
A No.
Q And, in fact, did he tell you a story, verbally first, that was a total fabrication?
A He did.
Q And later he gave you a story with some of the details but, as he said, not the complete truth on that day?
A Yes. This was a drawn out process to get what -- the information from him that was consistent with what the other witnesses were providing.
Q And what was his relationship with the Defendant?
A He was -- the information we received, he was with the Defendant at the time of the incident.
Q And he was friends with the Defendant?
A Yes.
Q Was a photo line-up shown to him that day including the Defendant's photo, Jamaal Hinson?
A Yes.
Q And was he able to identify him?

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A Yes, he was.
Q So he did at least do that?
A Yes, he identified Jamaal.
Q That evening did you receive a phone call from a Derrick Diamond?
A Yes, ma'am.
Q And that was after Devan Bailey's father had left headquarters?
A Yes, ma'am.
Q And he made contact with you and indicated he may have information y'all needed?
A He did.
Q And that evening, based on your telephone conversation with him, did you then proceed to Derrick Diamond's house?
A I did.
Q And was he able to give you information about what he knew about this crime?
A Yes, ma'am. He was very forthcoming.
Q And did you also show him some photo line-ups, including one of Jamaal Hinson and one of Devan Bailey?
A I did.
Q And was he able to identify both of them?
A He was able to identify both Jamaal and Devan in

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the photo line-up.

Q And, again, in all these photo line-ups we are talking about, y'all didn't do anything to suggest or tell them who to pick or anything?

A No, ma'am.

Q And did you actually take a formal statement from him that evening?

A Yes, ma'am.

Q And he was able to identify both of them that evening?

A Yes, ma'am.

Q Later did y'all arrange for Devan Bailey to come back in and be re-interviewed?

A Yes, I believe Sergeant Lindler arranged for him to come back.

MS. CAMPBELL: Beg the Court's indulgence.

(Pause.)

Q And did he come back into headquarters and talk to y'all on the 27th?

A He did.

Q And who was with him at that point?

A His attorney.

Q What was the purpose of you calling him back in?

A I'm not sure. That was to -- we thought there were still some inconsistencies in the statement that we

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wanted to iron out, so Sergeant Lindler had him come in to try to work through those issues.

Q Okay. And he came back in and gave another statement?

A He did.

Q During the course of that day on the 27th, did y'all also get information from Atlanta Police Department?

A Yes, we did.

Q And what information was that? We are talking about January 27th now, right?

A That's correct.

Q And what were they inquiring about or what were they asking y'all about?

A If we were being -- it was inquired as to whether or not we had a murder involving some information that they had received from an individual they arrested.

Q And that individual's name was Richard Johnson?

A Correct.

Q And the information they forwarded to you, did that coincide with this investigation?

A They sent it actually to Sergeant Lindler, but, yes, it did, and he sent them a photo line-up to show that individual.

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Q And later on the 29th did y'all become aware that a Roland Thomas had interviewed Mr. Johnson about the information that had been provided to him by the Defendant in this case?
A Correct.
Q Then on February 2nd of 2010, did the fugitive team from Richland County proceed to Atlanta and get the Defendant in this case?
A They did.
Q And he was then booked in on the murder charge?
A That's correct.
Q Did you also make any attempts in this case to get the 9-1-1 tape to see if it had any information?
A I did.
Q And you received that?
A Yes, we did.
Q And were you able to identify two different calls, I believe one from Andina Lee and one from another individual?
A Correct.
Q What was his name?
A Raymond Hall.
Q And those are the calls?
A Yes, ma'am.
Q The Defendant, you actually came face-to-face with

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him on February 2nd when he was transported back here?

A I did.

Q Has his appearance changed from the way he was then?

A I don't -- I don't recall.

Q And in preparation for this trial, did you assist them in attempting to find the Banks who lived two doors down from where this occurred?

A They did. I used every resource I had capability to to locate them. And the last I could find, they were somewhere in Texas. And all the addresses and phone numbers that we could use were no good.

Q Okay. And they weren't actual eyewitnesses to the actual crime itself, they just had knowledge about seeing him beforehand?

A Just before the incident happened.

Q And was their information corroborated by the other witnesses?

A Yes.

Q Also, the relationship to the people involved in this case, the victim versus the Defendant, they were actual friends of the Defendant, weren't they?

A Yes. He was at their house.

Q There has also been some reference to a witness

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named Demario Evans who may have seen the Defendant after the shooting.

A (Nods affirmatively.)

Q What was his relationship to the Defendant?

A They are obviously some type of friends. He was at the house that the Defendant ran to after the incident and got a ride with.

We have also tried to locate him and we have been unable to locate him after he learned that we were trying to serve a subpoena on him to come to court.

Q Is that unusual in a case when they are a friend of the Defendant?

A No, it is not.

Q There was also at the crime scene some swabs that were taken. Was identification ever an issue in this case?

A No, it wasn't.

Q Once y'all had completed your investigation, the Defendant was -- had been charged and was still charged with murder?

A Yes.

Q And that is the appropriate charge in this case?

A It is.

Q During the course of your investigation -- I'm

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sorry, I forgot this -- was a decision made to charge Devan Bailey?

A Yes.

Q And what was he charged with?

A Obstruction of justice.

Q And was he not forthcoming on a number of occasions as far as his involvement in the fight?

A That's correct.

Q Thank you. I don't have anything further.

THE COURT: All right. Please answer any questions that Ms. Cleary may have.

CROSS-EXAMINATION

BY MS. CLEARY:

Q How are you doing?

A Good. How are you?

Q You filed a report in this case, correct?

A Yes, ma'am.

Q And the State provided me with a 11-page report, Case Number 10011370-16?

A Yes.

Q And you can confirm that is your report?

A Uh-huh.

Q Is this report complete? Was there anything that happened additional that you need to add or wanted to add?

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A Not that I was a part of, that I know of, no.
Q Okay. And is it accurate?
A To the best of my knowledge.
Q And it is true to the best of your knowledge?
A Yes, ma'am.
Q Okay. Did you take any written notes?
A During the course of the entire investigation?
Q Yes.
A Yes, ma'am.
Q And where are they?
A After I type my follow-up and use my notes, they are destroyed.
Q You destroyed them?
A Yes, ma'am. I do that on every one of my cases.
Q And why do you do that?
A Because I -- they are handwritten notes that some people won't be able to read anyway, and I type it out in a formal follow-up that is saved on a computer.
Q Did you -- you said you interviewed the people who lived two doors down from the Salleys, right? I'm just going to show you --
A No, I said they were interviewed. I did not interview them.
Q Oh, okay. I am just going to show you what has

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previously been entered, 159, because it is a diagram of what we have.

So the Banks' house was over here, is that correct, [redacted] Baccharis?

A Yes, it would have been this way.

Q Okay. So who lived here?

A I have no idea.

Q Did you interview these people?

A There was nobody home.

Q Nobody was home? So you went up and knocked on the door and nobody was home?

A Yes. The area was canvassed. Other investigators arrived.

Q But you tried to talk to -- contact these people or to see if somebody was there that would have heard something?

A Me personally? No, I did not.

Q Were you in charge of the investigation?

A Was I --

Q Who was in charge of the investigation?

A Well, I was the supervisor that was on the scene at the time.

Q Okay.

A Until I left with Andina Lee and had the other two witnesses that were on the scene. There was only

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three people there at the time of the interview.
Q Okay. So you -- but you never asked anybody to see if someone was here in this house who could provide some information about the case?
A Yes, we had the deputies that were on the scene. And the investigators that arrived knocked on the doors surrounding the location. That house was actually encompassed in the crime scene.
Q Okay.
A Remember I testified that they had at least a house or two on each side of the residence were taped off.
Q Okay. But there is nothing in your report about whether you tried to talk to the people that live here?
A I didn't.
Q Okay. And you didn't instruct anyone to talk to the people? There is nothing in your report about this house at all, is that correct?
A Yes, because I had no involvement with that house.
Q Okay. Now, let me ask you this. When you interviewed Andina, did you ask her to show you where people were standing when these things happened, because I know she had said that Devan was there at some point and that Jamaal was there.

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Did you ever ask her to maybe show you on a diagram some sort of map where everybody was standing when things were happening or when the shots occurred?

A If I'm not mistaken, in her statement she said it happened in between -- in the grassy area between the driveways.

Q Okay. But you never asked her to kind of show where -- between these two houses where things happened?

A I can review -- refer to her statement that she provided.

Q Did you ever show her any sort of map so that she could mark --

A If I did, it is attached to it. I don't know, was the statement in there, in evidence?

Q No, there is no -- nothing.

A I mean, I didn't take her into the crime scene. Obviously they would contaminate any evidence that was there.

Q Right. So that's why I asked did you perhaps show her a diagram of where the houses were so that she could say where everyone was standing and how far apart they were when things happened.

A I don't think she could label on the diagram feet between people.

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Q But just a general idea of how far away.
A I think in the statement she said that they were in the grass area beside the driveway, which is not that tremendously big of an area.
Q Okay. And this grassy area between -- this is the Salley's driveway, correct?
A Yes.
Q Okay. And then this would be the people that live here's driveway, right?
A Correct.
Q And this is a grassy area?
A Right.
Q And you don't -- you wouldn't know where property lines are or anything on this grassy area so you can assume --
A No, ma'am.
Q I mean, you just don't know? You didn't bother to look that up or anything?
A No.
Q Okay. So we just know it was somewhere in the grassy area? In terms of what Andina told you, she said it was on the grassy area?
A I'm sure the crime scene photos will show exactly where it is as far as the --
Q Did anybody ever point out where, exactly where

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Anthony's body was resting? I mean, you have been here throughout the whole time?

A I wasn't here yesterday afternoon. I'm not sure what the crime scene people testified to.

Q That's fine.

A But I think there was some blood collected from somewhere, and I would assume that is where Mr. Salley was laying.

Q You would assume that, but there were people there who could tell you exactly where he had been laying, right? But that is not documented anywhere in your report?

A They were laying in the grassy area.

Q The grassy area is the distance from here to here, but you weren't interested in where on this grassy area that Anthony Salley's body rested?

A Without the body there, I don't know if she could tell you that at the time.

Q But there were people --

A Because the body was transported.

Q Andina was there with the body. She could tell you. So there was an officer who testified yesterday who was first on the scene.

A Well, I didn't take her back in the crime scene and risk contaminating the crime scene.

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Q Okay. But you were not --
A She can't tell me from a photo where exactly they were at the crime scene. She can tell me they were in the grassy area near the driveway.
Q Okay. So we just know that it was in the grassy area?
A Correct.
Q Okay. Now, did you -- did you get, in the course of your investigation, or did you ask someone to get Devan's actual cell phone or just his records that he produced today, or that he authenticated today? Did you get the actual cell phone from Devan Bailey?
A I believe there was a search warrant sent and the company never returned them.
Q No, what I want to know is did you get the actual --
A Oh, the actual phone itself?
Q Yes. You had talked to Devan on the 19th or talked to him again. Did you ask to see his cell phone at that time?
A I don't recall if I actually took it.
Q You probably didn't. It is not in your report that you asked for it.
A I don't recall if I did.

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Q Okay. Did you ask the phone company to provide you text messages from Devan's phone?
A The general search warrants that I type or have typed, and they normally include it.
Q Okay. But you did not get any text messages?
A No, the phone company did not return them.
Q Have you ever gotten text messages in any of your investigations?
A I have in the past.
Q Okay. And so why wouldn't you be able to get them in this case?
A The phone company didn't send them to us.
Q Okay. And you weren't interested in what Devan might have been texting before or after this incident?
A They didn't send it to us. I didn't have it.
Q Okay. But you weren't interested -- I don't see any -- did you make any effort to try to get it after they said -- after they didn't produce it, did you try to get them -- try to compel them to produce it or --
A Well, we sent a search warrant and told them.
Q Okay. And that's all you did?
A Yes.
Q Okay. I mean, you didn't feel the need to send

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what the text messages said? Okay. That's fine.
A I don't think -- it never came about.
Q Okay. And you said that you had to interview Andina Lee twice, correct?
A I interviewed her once I think Sergeant Lindler might have spoken to her a second time.
Q Okay.
A As I think she testified to that she was concerned about something she didn't tell him or tell me in the first interview because she was physically and emotionally a wreck at the time.
Q Okay. Now, did you -- in the course of your investigation did you ask or did you ask any of the other investigators to ask any of the other witnesses if they heard Jamaal say the statement that was introduced earlier from Andina that, "This is exactly what I want."

Did you ask Derrick -- Derrick Diamond if he heard that statement? It is not in your report that you asked him.
A Yes. In his statement I think -- and he testified to up until a point he heard, if I recall, he is the one that said that the window got put down. The window was up for the most part, so if he was inside the truck he would not have heard that

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when --

Q Okay. Did you ask --

A -- he originally came up.

Q Did you ask Devan Bailey if he heard that? You interviewed him or he was interviewed three times, I think? Did you ask Devan Bailey if he heard Jamaal say that?

A If I can have the statement I will tell you.

Q There is nothing in his statement about that.

A I don't --

Q Did you --

THE COURT: Hold on one second. Let him answer the question.

A I mean, I can't just take your word for it, I'm sorry. I don't see that actual question asked.

Q You had four people that saw at least parts of the fight between Anthony and Jamaal, is that correct? You had Derrick Diamond, Quinton Emerson, Devan Bailey, and Andina Lee, is that correct?

A Right.

Q And the only person who said that Jamaal said, this is exactly what I want, is Andina Lee, is that correct?

A That's correct.

Q Okay. So did you learn from any of those

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eyewitnesses, those four that I just named, anything that would make you think that Jamaal -- or that Anthony was the one who started the fight?

A Did I learn anything from the four of the witnesses that Anthony was the one that started the fight?

Q Yes. Let me -- I'll go through each one. Derrick Diamond, you said he was very forthcoming, is that correct? Isn't that what you testified to on direct?

A With me coming out to his house and talking to him?

Q Yes?

A Yes.

Q Did Derrick Diamond say that Anthony stormed up on Jamaal? Did Derrick Diamond tell you all that? Or you learned that in the course of your investigation?

A Stormed up on him?

Q Uh-huh. You can look at his statement.

A Okay. I believe he did say stormed towards them.

Q Okay. And did Devan say that Anthony had initiated the fight?

A Is that in the first statement? Devan says in the first statement that the man in the red shirt initiated things.

In the second statement he says, I saw the guy

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in the red shirt get out and then I saw Jamaal walk up from behind. I got out the truck. I met Jamaal. And he dumped everything on the ground.

Q Okay. So you did have some information, though, certainly from Derrick Diamond, that Anthony had come up and approached Jamaal?

A He had used the words --

Q In Derrick Diamond's statement he said that Anthony stormed Jamaal, is that correct? Okay. Is that correct?

A If you'll give me just a second. I don't have his exact statement. I do have that he was storming in my notes here, or in my follow-up.

Q In your typed notes, the one that I have. Okay. Okay.

A But, I mean, I don't have his statement in front of me to see, but if I just put that in there if that is what the context of the whole wording was around that.

Q So did you have any information from any of the eyewitnesses to make you think or that would make you have any suspicion that Jamaal may not have intentionally shot Anthony?

A Any information from the witnesses that Jamaal did not intentionally shoot him?

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Q Uh-huh?
A No.
Q Are you absolutely sure about that?
A That I had information that he did not intentionally shoot him?
Q Uh-huh? Did you have information from anyone who was an eyewitness? Anyone? Did you have any information from Jamaal?
A Did I have information from Jamaal?
Q Yes?
A No.
Q Di you have in here that you --

MS. CAMPBELL: Objection, Your Honor. May we approach?

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

THE COURT: The objection is sustained.

BY MS. CLEARY:
Q Did you -- in the course of your investigation, you said you executed a search warrant on Jamaal's parents' house?
A Yes, ma'am.
Q And that is where he lived? That is where Jamaal lived?

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A That is the information we were provided, yes.
Q And you didn't find anything that was relevant to your investigation?
A No, ma'am.
Q And did you ever receive any information about whether Jamaal contacted the warrant division?
A I did not.
Q Okay. Did --
A I know the warrant was put into the nationwide computer that night. And I'm not sure what you are referring to as far as contact.
Q Okay. That's all I have for now. Thank you.

THE COURT: Thank you. Anything else from the State?

MS. CAMPBELL: Just a few, Your Honor.

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q She asked you about the telephone that you didn't confiscate from Devan Bailey and whether or not you looked at the text messages. Was there any information that there was anything but phone calls between Devan Bailey and the Defendant in this case?
A That's all the information we had at the time.
Q And these are the phone records?

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A That's what was provided.
Q She also asked you about -- let me get this right -- asked Devan if what he said, what Jamaal said when he walked up. She asked you about that, what he told you?
A Correct.
Q And here in the top line that is highlighted, what did he tell you that he observed about Jamaal? The highlighted line at the top?
A "I could tell his eyes -- I could tell by his eyes and by the way he was walking something was up."

MS. CLEARY: Your Honor, may I --

MS. CAMPBELL: Your Honor, she opened the door to that. She asked specifically about what he said as he walked up.

THE COURT: What is your objection?

MS. CLEARY: Okay. I object because it is inadmissible hearsay and because I did not open the door. I asked him if he asked -- if Devan was able to verify that Andina said -- from what Andina said that Jamaal said, which was --

THE COURT: "This is exactly what I wanted," or something like that. But I think you did open the door by asking -- you asked if any of the witnesses ever said anything else -- anything about

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what happened when they pulled up, I believe.

MS. CLEARY: Well --

THE COURT: To him about it.

MS. CLEARY: I asked if they said anything, not what their eyes were doing. I think that is irrelevant hearsay. They didn't ask Devan about it.

THE COURT: All right, the objection is overruled. I think you opened the door.

MS. CAMPBELL: Thank you.

Q And that's what he observed. And was Devan Bailey forthcoming in this investigation?

A No.

Q Is that unusual?

A No, it is not.

Q Why?

A Because people tend to stick to their allies, so to speak, their friends.

Q She asked also about Derrick Diamond and his statement about who initiated this fight. In the highlighted part there that she didn't ask you to review, does he indicate who was the first person to pull out a weapon or throw a punch?

A It says, "I then saw Jamaal reach down and pull up his shirt. He pulled out a pistol from his waist

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area. It had a black handle and a chrome top. Jamaal and the light-skinned dude were about to arm's length away from each other, and Jamaal was pointing the gun at his face."

Q During the course of your investigation, from every witness in this case, who was the shooter in this case?

A Jamaal Hinson.

Q And from all of the eyewitnesses that you interviewed at the scene and the four that she mentioned, who did they indicate first initiated any kind of threat and/or blow in this case specifically as to the gun?

A The gun? Jamaal Hinson.

Q And that was prior to any blows?

A Correct.

MS. CAMPBELL: I don't have anything further, Your Honor.

THE COURT: Anything else of this witness?

MS. CLEARY: No, Your Honor.

THE COURT: All right, sir, you may step down.

(Witness steps down.)

MS. CAMPBELL: Your Honor, may we approach about scheduling?

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

THE COURT: All right, ladies and gentlemen of the jury, at this time we will go ahead and break for lunch. I'm a little bit behind, but we will start back -- it is about 10 after, I mean, 20 after, so we will start back at 2:30.

Thank you.

(Jury exiting courtroom.)

THE COURT: Can you bring them back in here for just a minute? It will be real quick, I promise. I'm sorry, I intended on telling you all that during your lunch break, yesterday y'all were here so it would not be an issue, but during your lunch break if you will keep that white tag on so that people will know that you are on the jury. If anyone tries to talk to you, please report it to the bailiff, who will report it to me immediately upon your return.

If they do try to talk to you let them know that you are on the jury trying a case. Anyone -- regarding jury service you are on a jury trying a case, you cannot discuss the case with anyone. You cannot discuss it with yourselves. And it would

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also be improper for you at this point to -- because all the evidence has not been presented -- for you to even form an opinion in your mind as to this case.

Once again, you are to be back around 2:30. I hope you have an enjoyable lunch.

Thank you.

(WHEREUPON, the jury is excused for lunch at 1:22 p.m.)

THE COURT: All right, they are getting out of the building, but I will go ahead and tell everybody else that is in the audience just as a word of caution that if you see the jurors while you are at lunch be careful about talking about the case and do not discuss the case with any member of the jury, do not approach any jurors, do not say anything to any of the jurors. And just be careful and make sure that they are not around while you are talking.

All right. Thank you. We will see you back at 2:30. For scheduling purposes, I think you may have one or two more witnesses. And then I'll let them take another break and hear motions.

All right. Thank you.

(Lunch recess.)

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THE COURT: Anything from you before I bring the jury in?

MS. CLEARY: No, ma'am.

(WHEREUPON, the jury came into open court at approximately 2:46 p.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: All right. I hope you all had a good lunch. We will continue with the State presenting their case. I am going to ask that they call their next witness.

MS. CAMPBELL: May it please the Court?

THE COURT: Yes, ma'am.

MS. CAMPBELL: The State calls Sergeant Chris Lindler.

THE BAILIFF: Place your left hand on the Bible, and raise your right hand, please.

(Witness complies.)

THE CLERK: Do you solemnly swear or affirm the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Have a seat, and state your full name for the record.

THE WITNESS: Chris Lindler.

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CHRIS LINDLER,

after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Sergeant Lindler, where are you employed?

A Richland County Sheriff's Department.

Q What do you do there, sir?

A I'm a supervisor in the property crimes unit.

Q And how long have you been in law enforcement?

A I've been in law enforcement approximately 15 years.

Q And how long have you been in investigations?

A Since 2004.

Q I want to turn your attention back to January the 16th of 2010. Were you the on-call homicide detective that day?

A I was.

Q And as an on-call homicide detective or investigator with your unit, what do your duties include?

A When there is a shooting which would most likely result in a homicide or death, I am tasked with responding to that scene and investigating that crime.

Q That afternoon did you get notification of a

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shooting and a person having been shot in the Vineyards Crossing neighborhood?

A I did. I was notified by Sergeant Medlin, who was my on-call supervisor that day, in reference to a shooting that had occurred at [redacted] Baccharis Drive in Northeast Richland County. And while responding I would learn that the victim was -- had died in route to the hospital.

Q And did you actually respond to the crime scene itself?

A I did.

Q And, again, what was the residence address?

A [redacted] Baccharis Drive in Northeast Richland County.

Q And was that the Salley home?

A That is the Salley residence.

Q When you got to the scene that day, what did you find?

A I made -- first made contact with Sergeant Ellis and Investigator Hicks, who were already on the scene. Investigator Hicks was taking a statement from Kenneth Banks, who lived a couple of doors down. Sergeant Ellis was with the victim's girlfriend, who I would later learn was Andina Lee.

Q While you were there at the scene that day, were you able to identify the victim in this case?

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A I was. I learned the victim was Anthony Salley of [redacted] Baccharis Drive.
Q And his date of birth was what?
A His date of birth was [redacted] of 1986.
Q That day did you also make contact with a Lauren Banks?
A I did. Lauren lived at [redacted] Baccharis Drive, which is two houses down on the same side of the street as the Salley residence.
Q And did that later become significant in your investigation?
A It did. Just before the actual incident took place, we would learn that the shooter had been at her house just prior to the incident taking place.
Q And that day, on the day this occurred, she was actually cooperative with you?
A She was.
Q And since then have you made attempts to find the Banks, both she and her brother that lived two doors down from there?
A We have. Sergeant Ellis and I have searched every database available to us and we have not been able to make contact with them.
Q That day as Sergeant Ellis was interviewing the Defendant's -- the victim's, I'm sorry, girlfriend,

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Andina Lee, was he able to come up with at least a first name to prove significant in your investigation?

A He was. He was able to come up with the name of Jamaal.

Q And based on that information and the information that you were able to get from the Banks, did you do some research and try to identify the person who committed this murder?

A I did. I also learned that his -- they knew him as -- the subject as Jamaal. And led to believe that he had gone to Blythewood High School and that he may stay in the Ashley Ridge subdivision. And she further went on to describe him as 5'7" or 5'8", light skin and heavyset, with three or four dreads in his hair.

I then made contact with -- we got in touch with Investigator Wyatt, and she made contact with the SRO's from Blythewood and Ridgeview High School.

Q Are those local high schools in the area?

A Yes, ma'am.

Q And specifically did you talk to I believe a Barron Williams?

A Yes, ma'am.

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Q SRO? What does SRO mean?
A He is a school resource officer for Blythewood High School. And I made contact with Barron Williams, and he called me back a short time later and gave us the name of Jamaal Reginald Hinson, who was a former student at Blythewood High School.
Q Based on the information you provided to him?
A Based on the information we had given him, yes, ma'am.
Q Later that day were you able to track down leads that led you to [redacted] Lee Ridge Road or Lee Ridge Court, I believe?
A Yes, ma'am. Based on our database searches and jail searches, we were able to establish the address for Jamaal Hinson as [redacted] Lee Ridge Road.
Q That day did you also develop some photo line-ups which were shown to the three witnesses I guess you had at that point, the two Banks and Andina Lee?
A We did.
Q And were those shown to those people?
A They were.
Q And were at least two of those people, or all three I guess in this case, able to identify Jamaal Hinson as the person they were referring to?
A Yes, ma'am, they did.

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Q In showing line-ups -- and we have talked about line-ups throughout this case. At any time did y'all influence anyone or try to affect their ability to recognize someone when viewing the line-up?
A No, ma'am.
Q And there is nothing about the procedures that were used in this case or anything but by the law?
A Correct.
Q After he was identified through photo line-ups as well as the information you were able to gain through your investigation, did you get some warrants that day, search warrants specifically, and an arrest warrant?
A We did. We got an arrest warrant and a search warrant for the -- for Jamaal Hinson's residence and an arrest warrant for Jamaal Hinson himself based on photo line-up pics and the identifications we had gotten.
Q That evening did y'all proceed to 204 Lee Ridge Road, the Hinson household, to conduct -- to execute the search warrants?
A We did. Sergeant Ellis and myself and Investigator Hicks along with several marked line units proceeded to that residence around 9:00 p.m.

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Q Was the Defendant there when you got to the residence that evening?
A He was not.
Q And did y'all attempt at this point to actively search for him?
A We were.
Q Were you able to find him that day?
A No, ma'am, we were not.
Q The next day, I believe the 17th, did you receive a Crime Stoppers tip?
A We did.
Q And what was that in reference to?
A The Crime Stoppers tip came in reference to a Raymond Asberry.
Q Raymond Asberry?
A Yes, ma'am. And the Crime Stoppers tip referenced that he may be hiding Jamaal out at his parents' house or somewhere closer inbound on Two Notch Road.
Q Did you attempt to follow up on that?
A We did.
Q With no luck?
A With no luck.
Q You were not able to find him? The next day, that Monday, January 18th, were you trying to get some

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information on a Demario Evans?

A I was. Mr. Evans was referenced on Saturday as being a possible acquaintance of Jamaal Hinson. He -- Jamaal was a student -- excuse me, Mr. Evans was a student at Blythewood High School and was present at the house that Jamaal ran to after the incident took place.

Q That day did you also receive additional information about a young man named Jarrod Crudup?

A Yes, ma'am. We had a caller call in, would not give his name, but referenced that the subjects that were involved in the shooting ran to [redacted] Baccharis Drive, which is in the same neighborhood as which the incident took place, and that one of the guys at that residence gave Jamaal a ride, gave Jamaal a ride away from that subdivision.

Q Later that day did you also receive information about a Joseph Cooper possibly having information?

A We did. Ms. Petramorcus(phonetic) had called me and I had gotten her phone number. She is close friends with Jamaal's family. And she called to tell us about a Mr. Joseph Cooper. We researched Mr. Cooper and learned that he was currently in the Alvin Glenn Detention Center, but he was friends with Jamaal, and she said that he may know where he

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may be headed to or where he may be hiding.
Q That day around 5:45 that evening did you and Sergeant Ellis go to [redacted] Baccharis Drive?
A We did.
Q The Crudups' residence?
A We did. We made contact with Jarrod and his sister.
Q And did you actually interview Jarrod that day?
A I did. I took a statement, written statement from him at headquarters. They accompanied us back to --
Q He did not actually witness the event himself, he was just someone he ran to afterwards?
A Right.
Q But was he able to pick -- was a photo line-up shown to him as well?
A He was shown a photo line-up as well as his sister. I showed the photo line-up to Jarrod. He was able to identify Jamaal Hinson as the one that ran into his house later that evening.
Q And did you take a statement from him?
A I did.
Q Turning your attention to the next day, January the 19th, did you track down Demario Evans?
A I did. He was -- we found him at Blythewood High

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School. He was in school that day. We made contact with him. And he came back to headquarters with us to give a statement.

Q And, again, he was not an eyewitness to the actual event that occurred, but to events afterwards?

A He was -- right.

Q And at that point he gave you a statement?

A Yes, he did.

Q And since then have we made attempts in preparation for this trial to find Demario Evans?

A We have. And with no luck. He being -- not being cooperative.

Q And his relationship is with whom in this case?

A He has a relationship with the Defendant, Jamaal Hinson.

Q That same day, on the 19th, did you and Sergeant Ellis also interview Devan Bailey and his father?

A They did. They came in around 2:00 p.m. that afternoon to speak with Sergeant Ellis and myself.

Q And when you first asked Devan Bailey -- and, again, what is Devan Bailey's relationship to the Defendant?

A He was with Mr. Hinson when the altercation took place. And we have learned through the course of our investigation that Devan was -- or Jamaal was

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with him and in the neighborhood and he had asked the boys that Devan was riding with to give him a ride over to that neighborhood.

Q And that day when you interviewed him initially, what if anything -- don't say what he said, but did he tell you anything close to the truth?

A He did not. It was quite a long drawn out process with Mr. Bailey that afternoon trying to get information from him.

Q At some point did his story change somewhat and it was reduced into a written form, or a typewritten form?

A It was. At a point that afternoon we got to a point where we put his statement on paper with he and his father present.

Q For the record, you actually advised him of his rights prior to talking to him?

A We did.

Q Did you at some point decide that you needed to go and try to get further clarification from Andina Lee in this case?

A Yes, ma'am. Based on the statement we were able to get from Devan Bailey, we felt we needed to go back and talk to Andina Lee again.

Q Is that unusual?

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A No, ma'am, it is not.
Q And why is that, sir?
A Usually after a traumatic incident we interview witnesses, victims, whatnot, and we go back several days later just to make sure there is nothing that was left out, nothing that they would have remembered over the course of the next few days.
Q And the next day -- you can't say what she said to you -- did you go in and take another statement from Andina Lee?
A We did.
Q That day, on the 20th, did you also make contact with Quinton Emerson's mother?
A We did. If I can refer to my notes.
Q Uh-huh.
A I believe they lived out in Blythewood. We had got the number for her, went out by the house. And Quinton was not at home. And I explained to her why we were there. And I left my card with her for her to call us whenever he returned.
Q Two days later did you actually make contact on the 22nd with Quinton himself?
A We did. Quinton came into the headquarters and sat down with me and gave a statement.
Q And in that statement he gave details of what he

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observed at least leading up to the actual shooting itself?

A Yes, ma'am, he did.

Q And during the course of this investigation too, was Derrick Diamond also interviewed?

A He was. Sergeant Medlin went to find Derrick Diamond and Sergeant Ellis interviewed Mr. Diamond.

Q Based on the information you had from Andina Lee, Mr. Diamond and Quinton Emerson, did you feel it prudent to try to talk to Devan Bailey again?

A Yes, we did.

Q And what was the purpose in asking him to come back in on January 27th?

A We had -- based on our conversations with Quinton and Sergeant Ellis' conversations with Derrick, we had noticed quite a few inconsistencies in Devan Bailey's statement, and we wanted to bring him in to clarify those inconsistencies and see if we could get those cleared up.

Q And on the 27th, did he come in with his lawyer?

A He did. He came in with Matt Bodman, his attorney.

Q And at that point did you then go through the events again, and was he more forthcoming at least?

A He was.

Q During the course of interviewing him, did he

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indicate that he had made a phone call that evening?

A He did. He had told us that he had attempted to call 9-1-1 at some point that afternoon, at some time after 4:00 o'clock, I believe, where he attempted to call 9-1-1, and --

Q During the course of interviewing him as well, did he also provide you with some phone records which you then independently verified?

A He did. When he came in with his attorney, they gave us his phone records for those.

Q And I am going to show you what has been marked as State's Exhibit Number 166. Is that a copy of the phone call?

A It is.

Q There are phone numbers in there that are highlighted and have a note next to them that says Jamaal. What is that number?

A That number is ([redacted])[redacted]-2319.

Q And whose number would that have been?

A That would be Jamaal Hinson's cell phone number.

Q And it indicates phone calls back and forth during that day?

A Yes, ma'am, all --

Q And highlighted?

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A All throughout the day up into the early evening hours.

Q There has been some question about y'all didn't get any text messages. Was there any indication from anybody involved in this case that there was anything but phone calls back and forth between the two?

A There was no indication of anything other than phone calls.

Q That day, on the 27th, did you also receive a phone call from Atlanta?

A We did. I received a message to make contact with a homicide sergeant, Lacoste.

Q Uh-huh.

A In Atlanta, Georgia. In reference to them having possible information on the whereabouts of a possible suspect in our homicide here.

She in turn put me in contact with an Officer Luis Medina, who is an officer with the Atlanta Police Department.

Q And when you made contact with Officer Medina, was he able to give you information that he had gotten from a Richard Johnson?

A He did. He told me they had arrested a young man by the name of Richard Johnson and he had given

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them some information in reference to an individual that he had been with over the last couple of weeks that had given -- had told him about a murder or homicide that had happened here in Columbia, South Carolina.

Q And was the information you were able to get regarding him corroborated by the information you already had?

A It was.

Q At that point did you then prepare another photo line-up?

A We did. And that photo line-up was scanned and e-mailed to Officer Medina in Atlanta, Georgia.

Q Mr. Johnson was not able to identify the person by name, real name, is that correct?

A Correct.

Q But he did have a nickname?

A Correct. He had a nickname for him. He would refer to him as Homie.

Q That next day were you aware that Investigator Thomas with Atlanta Police Department was interviewing Mr. Johnson?

A I was.

Q Further. As a result of that interview -- you can't say what he said, but as a result of that

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interview, were they able to get some information that ultimately led to finding the fugitive, Mr. Hinson?

A They were.

Q Was that information relayed to you?

A It was. Officer Medina would call me back and let me know that they had a possible location on him and that they were getting together with their U.S. Marshal's Fugitive Task Force in an effort to locate Mr. Hinson.

Q And then Mr. Hinson I believe was returned to y'all's custody on February 2nd, is that correct?

A February 2nd, yes, ma'am.

Q Later was there also a decision made about whether or not to charge Devan Bailey with obstruction of justice?

A There was. After consultation with the Solicitor's Office, we charged him with obstruction of justice.

Q The Defendant's appearance here in court, is it somewhat different from when he appeared back when you made contact with him on February 2nd?

A It is.

Q How is it different?

A He looks to be a little bit skinnier. His hair is cut in a clean-cut manner. Back when he was

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arrested on February the 2nd, he was a little bit more heavyset and had approximately three to four inch dreads.

Q I show you State's Exhibit Number 161. Is that a photograph that fairly and accurately depicts how he looked when you saw him?

A Yes, ma'am. This would be the jail photograph that was taken the night he was arrested and brought back into our custody.

MS. CAMPBELL: Your Honor, at this time I would offer State's Exhibit 161 in evidence?

THE COURT: Any objection?

MS. CLEARY: No.

(WHEREUPON, State's Exhibit No. 161 was marked for identification and received into evidence.)

Q There were a few swabs that were taken from the scene. And we have heard a lot about DNA testing. Was any DNA testing requested in this case based on these facts?

A No, ma'am, there was no DNA testing.

Q And was identification ever an issue in this case?

A Identification was never an issue in this case.

Q You actually went out to the crime scene. As a case officer you have reviewed the crime scene

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photos, is that correct?
A Yes, ma'am, I did.
Q There has been some question -- I show you State's Exhibits Number 17, 27 and 31. Does that show areas of the crime scene being processed that day?
A Yes, ma'am, it does.
Q And does that fairly and accurately depict how the crime scene was that day and the things collected at the scene?
A Yes, ma'am. The clothing where it is laid would have been laid there by the EMS personnel. They cut the clothes off of him where he lay on the ground.
Q I show you two diagrams, which are just overheads, State's Exhibits Number 164 and 165. Did you have an opportunity to review these?
A I did.
Q And do those fairly and accurately depict the area we're talking about on Baccharis Drive?
A Yes, ma'am, it does.
MS. CAMPBELL: Your Honor, at this time we would offer State's Exhibits 164 and 165 in evidence.
THE COURT: Any objection?
MS. CAMPBELL: These are already in evidence.

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These are the ones I'm putting in.

MS. CLEARY: No, I haven't seen these.

(Pause.)

MS. CLEARY: No objection.

(WHEREUPON, State's Exhibit Nos. 164 AND 165 were marked for identification and received into evidence.)

MS. CAMPBELL: Your Honor, may the witness step down?

THE COURT: Yes, ma'am.

(Witness steps down.)

Q I am going to show you what is marked as State's Exhibit 164. Come on this side so the court reporter can hear you better. What area of town does this show?

A This is the northeast side of Richland County. Most specifically it would be the Vineyards Crossing subdivision.

Q Okay. If you will step back so they can see on that side too. The Vineyards Crossing subdivision -- and we keep talking about Baccharis Drive. Is it shown here on the diagram?

A Yes, ma'am, this would be Baccharis Drive. Once you make the entrance into the Vineyards Crossing subdivision on Vineyards Crossing Drive you run

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into Baccharis Drive right here. At this intersection you need to go left to right.

Q And there have been several mentions of the Salley household and the house next-door as well as the Banks' house, which was two doors down, are those reflected here?

A Yes, ma'am. The Salley residence is four houses down from the corner, which would be this house depicted right here, the Banks' house is two houses down from that, which would be this house here.

Q As far as anyone having any relationship with anyone in the Vineyards, did Mr. Hinson have any reason to be in the Vineyards as far as living there or being related to anyone there?

A No, ma'am, he did not.

Q And State's Exhibit Number -- what did I do with it; there it is -- 165, is this a closer-up view of the Banks' house as well as the Salleys' house?

A It is. The Salleys' house is depicted here as [redacted] Baccharis Drive, and this is [redacted] Baccharis Drive, which would be the Banks' residence.

Q And where did the actual shooting take place?

A Based on the crime scene photographs and what we have observed, with some certainty we can say that it occurred in this area right here, which is the

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grassy knoll between [redacted] and [redacted] which is the house next-door to the Salleys.

Q And that would have been actually in the yard, the Salleys' yard?

A Yes, ma'am, it would have been in the Salleys' yard.

Q And I believe Marker B that was testified to earlier was where the actual blood was when he fell when he was shot. Is that shown here in this picture?

A It is.

Q And would that have been in the Salleys' yard?

A It would have been in the Salleys' yard, yes.

Q And State's Exhibit 17 as well, for the record, you can actually see the line between the houses?

A You can actually see the property line in between the houses based upon the grass right here.

Q And is that depicted here?

A It is actually depicted on the aerial photograph here.

Q And that would have occurred right in here in this yard?

A Yes, ma'am.

(Witness returns to witness stand.)

Q Thank you. In your review of this case of the

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evidence, who was the first person -- or who was the aggressor in this case?

A Jamaal Hinson.

MS. CAMPBELL: Beg the Court's indulgence.

(Pause.)

Q I'm sorry, I've misquoted something. The number that I referred to, the 834 number, I misspoke. That actually belongs to Raymond Asberry?

A Correct.

Q And then there is also a number of phone calls between him and Devan Bailey, and the Defendant's cell number would have been?

A 528-2001.

Q 2001. And it shows both accepted calls?

A Yes.

Q Jamaal Hinson, the shooter in this case, do you see him here in the courtroom?

A I do.

Q Can you identify him for the jury?

A Yes, ma'am. Seated between his lawyers at the table.

MS. CAMPBELL: Your Honor, may the record reflect he has identified the Defendant?

THE COURT: Yes, ma'am.

MS. CAMPBELL: Thank you.

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THE COURT: All right, please answer any questions Ms. Cleary may have.

CROSS-EXAMINATION

BY MS. CLEARY:

Q Investigator?

A Yes, ma'am.

Q Is this the report that you submitted on this case?

A Yes, ma'am, it is.

Q And it doesn't have the page numbers on it. Is this report complete?

A Yes, ma'am, it is.

Q And is it accurate?

A It sure is.

Q And truthful?

A Yes, ma'am.

Q Okay. And you just -- she -- the prosecutor asked you if Jamaal had any business in Vineyards Crossing. Do you have any evidence that he was trespassing on the Banks' property?

A No, ma'am.

Q And, in fact, didn't the Banks say that he had been there visiting?

A Yes, ma'am, he was --

Q They certainly didn't say that he was not welcome in their neighborhood?

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A Correct.
Q Okay. And Jamaal Hinson's parents' house where you served the warrant, it is actually in a subdivision right across from Longtown Road, is that correct?
A It is down I believe off of Lee Road off of Longtown, yes, ma'am.
Q And Lee Road is the road that is just -- it is kind of the main road close to Vineyards as well?
A Yes, ma'am.
Q So he was not very far from where he lived?
A Not far at all, no, ma'am.
Q Okay. Now, you said that Demario was not cooperative, is that correct?
A He -- he -- we had to go find him at Blythewood High School. I didn't say he wasn't cooperative. He -- we had to find him at Blythewood High School, and he gave us a statement as to what he did that day.
Q Okay. And there was no indication that he was present during this shooting?
A No, ma'am, no indication he was present during the shooting.
Q Okay. So did he try to obstruct your investigation in any way once you got a hold of him?
A No, ma'am.

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Q Okay. Now, this map here that you said shows the property lines, is this the first time you have seen this?
A No, ma'am.
Q Okay. And when did you first get this?
A Earlier in the week.
Q Oh, earlier in the week. Okay. This is the first time I have seen it, but. Okay, so when you were investigating this crime before this trial, you weren't interested in what property -- whose property anything occurred on?
A We were interested in whose property it occurred on. And we, during the investigation with some certainty we believed that it occurred on the Salley residence.
Q You also said that you interviewed Raymond Asberry, is that true?
A I did not interview Raymond Asberry. Sergeant Ellis interviewed Raymond Asberry, along with Investigator Kevin Preston.
Q Oh, okay. Now, you stated that all of your evidence indicated that the aggressor in this case was Jamaal Hinson?
A Yes, ma'am.
Q All of your evidence?

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A He pointed the gun at --
Q Okay. Did you receive any evidence that Anthony came storming towards Jamaal?
A Not to my knowledge. I know that one of the individuals that Sergeant Ellis talked to made reference to that.
Q So you had that information?
A We had that information, yes, ma'am.
Q Okay. So the only witness that testified that Jamaal came up and started it was Andina?
A I believe in all the rest of the statements that were taken the other witnesses there, the boys in the truck, as well as Devan Bailey, would tell you that the gun was pulled first and then the blows were thrown.
Q Okay. But they told you that he drew the gun first?
A He drew the gun first, yes, ma'am.
Q Okay. But they -- didn't they also tell you that Anthony had approached him, had come running up to him?
A They -- I believe they approached each other. And Jamaal approached Mr. Salley's residence where he was sitting in the car.
Q So you have evidence that he went up to the house?

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A He was walking towards the house based on the statements that we have from all of the witnesses, the boys in the truck, Devan Bailey --

Q No, let me --

MS. CAMPBELL: Objection, Your Honor, he has a right to finish answering.

Q I'm sorry. Go ahead.

A Based on the statements that we had gotten, Jamaal Hinson left the Banks' residence and was walking towards the Salley residence. Anthony Salley exited the vehicle he was in and was walking towards Anthony -- I mean, excuse me, was walking towards Jamaal Hinson.

Q So it is your testimony that all the witnesses have testified that Jamaal came across here and was going up here to the house?

A Was walking in that direction, yes, ma'am.

Q Didn't Devan say he was walking to give him a cigar?

A I believe Devan --

Q That they were parked around here?

A They were parked in front of the Salley residence. Jamaal was coming outside.

Q So he was going towards the truck, wasn't that the testimony?

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A I don't believe so.
Q Okay. So you are saying that the witnesses said that he walked across here and went up towards the house?
A That he was walking towards --
Q Or the car?
A -- up towards [redacted] Baccharis Drive.
Q And did you do any investigation into Anthony's background at all?
A We routinely run their criminal background as well as any other information that we have. That is routinely ran throughout the course of the investigation.
Q Okay. In the course of your investigation did you learn about --

MS. CAMPBELL: Objection, Your Honor. Can we approach?

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

THE COURT: Overruled.

BY MS. CLEARY:
Q Did you -- in the course of your investigation did you have an occasion to learn that there might be photos that showed that Jamaal had injuries as well

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as Anthony?
A While he was in Atlanta?
Q Yes?
A Yes.
Q Did you try to get those?
A No, ma'am.
Q Okay. So you weren't interested in seeing whether Jamaal had any injuries as well?
A We didn't have access to those photographs.
Q You didn't have access to it?
A No, ma'am. He wasn't arrested -- he was arrested two weeks after the incident and he was transported to us I believe a day and a half after he was arrested in Atlanta.
Q Did you try to see if the Atlanta police had taken his cell phone from him when they arrested him?
A No, ma'am.
Q All right. Thank you.
MS. CLEARY: That's all the questions I have.
THE COURT: Anything else from the State?
MS. CAMPBELL: I don't have anything further.
THE COURT: Anything? All right. Sir, you may step down.
(Witness steps down.)
MS. CAMPBELL: Can I check one thing, Your

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Honor?

THE COURT: Yes, ma'am.

(Pause.)

MS. SIMPSON: Your Honor, at this time the State rests.

THE COURT: All right. Ladies and gentlemen of the jury, at this time the State has rested their case. There are some matters of law that I need to take up with the attorneys outside of your presence, and therefore I'm going to send you back to the jury room. This may -- it may take about 15 or 20 minutes. I'll bring you back in.

Thank you.

(WHEREUPON, jury retires to the jury room.)

THE COURT: All right. The State has rested. Any motions?

MS. CLEARY: Yes, Your Honor. We move for a directed verdict on behalf of the Defendant. Of course, as you know, murder is the killing of another with malice aforethought, express or implied. And the State must present direct evidence or substantial circumstantial evidence.

In this case we do not believe that they have presented evidence that Jamaal Hinson acted in malice after he retrieved the gun. There is no

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express malice. There are no words. There is no indication from any of the witnesses that he had any sort of reason for wanting to kill him.

The -- there is no evidence of any premeditation on his part. Devan testified he was just going to give him a cigar and that Anthony approached him and then they got into a fight. Obviously there was no sort of plan at all.

And so I don't believe that they have met their burden of proving the malice required.

THE COURT: Thank you. Yes, ma'am?

MS. CAMPBELL: Your Honor, the evidence in this case is pretty overwhelming as to the presence of malice. We don't have to prove premeditation; however, in this case he had it. Basically the Defendant met up with some young men who he was selling weed to. At that point he directs them before going in the neighborhood that he knows where Jamaal lives, he takes him by his home and he gets his tool, number one.

When he exits the home, the Banks' home, which is two doors down from the victim's home, he then is approaching. At that point he says something, I don't remember the exact words, about, this is going to be your day -- I don't remember what the

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words were. As he is approaching, according to one of the witnesses, at one time in the course of the fight, it is ongoing, he tells, according to one other witness, another guy to shoot the victim in the case. And I think the uncontradicted evidence in this case is that at that point he then did go get the gun and shoot the victim at his own residence.

To say that this case doesn't have malice, and of course in the light most favorable to the State, would be a mischaracterization. We don't have to prove premeditation in this case, but I would suggest we do. Devan Bailey was directed to pull in front of a house in which he did not drop off the victim earlier in order to box in the victim so that he could not leave his own yard, effectively he was held hostage in his own driveway. We feel like this case reeks of malice, respectfully, Your Honor.

THE COURT: All right. Based on the testimony that has been presented, I am going to respectfully deny the motion. I believe there are genuine issues of fact for the jury to decide regarding the case, and I will respectfully deny the motion.

All right. Give me one second.

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(Pause.)

THE COURT: All right. Ms. Cleary, I want to ask your client to stand. Is he prepared to testify? I have to read him his rights regarding --

MS. CLEARY: Well, I did want to take up scheduling with you, but certainly -- I mean, I'm not -- I don't know whether we need to go forward today with his testimony.

THE COURT: Well, it is 3:30. I'd like to keep the case moving.

MS. CLEARY: Okay. Well, then what I wanted to do is to be able to clarify the ruling in terms of what we can do -- in terms of proving our case or presenting evidence of self-defense, and I wanted to -- can I do that now?

THE COURT: Yes, ma'am. And I guess we need to address the issue, the 404 issue that we talked about again earlier as to -- I'm guessing that you are wondering if you put him up, if he presents evidence of the victim's character -- of course, all the case law says that he -- that they can rebut it by putting up evidence of the victim's good character, which I think your concern is whether or not they can put up any evidence of his

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character. And if they can, what can they put in.

MS. CLEARY: Exactly. And I just wanted to clarify, because she said I was wavering between accident and self-defense. As you know, the case law requires that in order to get a charge of accident I have to show that he was entitled to arm himself under the law, and one of the ways that that is done is arming one's self in self-defense. As in State v. Burris and State v. McCaskill.

So that is why that I have been -- that is why I have to bring up the self-defense because I have to show that he lawfully armed himself in self-defense, not that he acted in self-defense when he fired the weapon, but that when he armed himself he was entitled to do so in self-defense.

And so I do not intend to be wavering between the two defenses. Clearly our defense is accident, and that is what I told the jury.

And in order to establish that self-defense that I have to prove, I have to show in order to get an accident charge, one of the things, the elements I have to show is that he had a reasonable belief that Anthony was armed.

And so all of my research prior to this trial in discussing it with the experts showed that I was

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entitled to show evidence that Anthony carried a gun and that Jamaal knew about that and that was the cause of his fear. And that they would then be entitled to rebut evidence, for example, to try to show that Jamaal did not know that Anthony carried a gun or to show that Anthony did not carry a gun, but that by introducing that, just to show his state of mind, I was not opening the door for any sort of, you know, alleged gang affiliation in Atlanta two weeks later or every bad thing ever said about Jamaal, and so I need to know what the parameters are before I can even know how to proceed with my case.

And since I've been just a little bit thrown for a loop, I would just respectfully ask that I be allowed to begin it tomorrow. Jamaal is not even going to be my first witness. I have other witnesses that are not going to be lengthy because -- well, Shanicka Lee is the witness that I want to have to establish that -- because in her statement she said that, he told me -- and that was referring to Anthony -- that he was going to blast me and show me a gun.

Okay. Now, she is not anxious to testify and does not want to testify because -- and even

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suggested that we might have to send the police out to get her. But that is all that we want from her. And I believe -- I don't know whether she is going to say that she told Jamaal that or not, but Jamaal will testify that they were good friends, they were very good friends. And there is other evidence in the record to show that. And that she did tell him that about Anthony, and so that he knew that Anthony was telling him that he -- you know, he had a reason to be afraid of him.

And then we would also want to be able to put up Raymond Asberry who could corroborate that he was there when these discussions about Anthony having, you know, carrying a gun and being willing to show it took place.

THE COURT: All right. Are they here prepared to testify?

MS. CLEARY: I'm sorry?

THE COURT: Are they here prepared to testify?

MS. CLEARY: Well, Shanicka -- I may have to -- well, I just need 15 minutes to try to get them here. I mean, I admit that it is my life experience that I didn't realize it was going to, you know, move so quickly, but we have all had scheduling issues, and I have not objected to

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any -- you know, starting after their witness from Atlanta got here. And I would just, since it is 3:30, well, 3:35, and I still think that the case can be done by tomorrow -- I would first of all ask that you allow me to find out today what the parameters of the prior bad acts are going to be so I can know whether I even want to have to call a case at all. And then, secondly, I would ask that you allow me to wait until first thing tomorrow morning.

THE COURT: Yes, ma'am?

MS. CAMPBELL: Your Honor, we have no problem if she needs 15 minutes to get her witness here. We will be glad to accommodate her. We still have hours in the day that are useful and we can go ahead and start, we would just ask. And as far as accommodating anybody's schedule, I mean, we had no problem yesterday morning when we couldn't work at all accommodating her schedule. And, you know, you have been very good about accommodating ours as well, your Honor. And if she needs 15 minutes to get them here, we'll be glad to. We don't have a problem waiting 15 minutes.

MS. CLEARY: Judge, may I just emphasize that maybe they didn't work at all yesterday morning,

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but I was doing an oral argument I was compelled to do by the Court of Appeals.

MS. CAMPBELL: I understand. And I would just put on the record you required as far as scheduling when we thought we would be finished this morning in front of the defense attorney we told you lunchtime. We even went a little bit past that and gave her some extra time as far as, you know, scheduling everything. You know, we're aware of the scheduling conflicts and problems that come with that, Your Honor. We would like to go forward.

As well as her wanting you to rule kind of in space about what, you know, comes in and doesn't come in as far as her client, I think that she can -- you read the law to her on several occasions as to what she opens the door up to and what the State is able to do, I believe, Your Honor. You have been very clear with her about what may or may not come in.

MS. CLEARY: Well, I'm entitled to know what bad acts it is that they want to bring in.

THE COURT: I think the way -- in reading 404 (a)(1) it says that: If in a criminal case evidence of a pertinent trait of character offered

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by an accused -- and I have it here. It goes in. And the federal gives a little bit more detail. But it talks about basically if you put in evidence offered by an accused, then the prosecution can rebut -- I mean, offered by the accused regarding the victim, the prosecution can rebut the same. So basically you can't say -- by virtue of you saying, oh, my client just went over there to --

MS. CLEARY: Give him a cigar.

THE COURT: -- give him a cigar. And then he, by saying that, and then you want to introduce evidence to say that the victim is -- he thought the victim was violent because the victim --

MS. CLEARY: He had reason to be afraid of the victim and that is why he saw fit to arm himself.

THE COURT: I'm just trying to see how that is going to play out. How -- if you think that somebody is afraid -- if you are afraid of somebody, you are just going over there to offer him a cigar?

MS. CLEARY: No, he was bringing it to Devan. And Devan testified that the reason he parked in front of Anthony's house was because he thought that that was Jamaal sitting in the car. So that there is no sense or reason shown there. But in

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any case --

THE COURT: I think -- and what is it that you want these people to be able to testify to regarding the victim's violent nature, that he had --

MS. CLEARY: Not his violent nature, but that he possessed a gun and showed it to Shanicka. That's it.

THE COURT: All right. And which means they would be able to, if they had evidence of the Defendant possessing a gun --

MS. CLEARY: No, that is a completely different issue.

THE COURT: No. It says -- the rule says, evidence of a pertinent trait of character offered by an accused by the prosecution to rebut the same or if evidence of a trait of the character of the alleged victim of the crime is offered by the accused and admitted under 404 (a)(2).

And this is -- I'm reading this from the federal evidence book. And it says: Evidence of a pertinent trait of character offered by the prosecution. Because you are in essence saying that he is going there to be peaceful.

MS. CLEARY: No.

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THE COURT: To give -- well, you are saying he went there with no malice -- he didn't go there to cause a fight?

MS. CLEARY: He didn't go there to see Amp at all -- I mean, Anthony at all.

THE COURT: To his house?

MS. CLEARY: No. I mean, he went -- walked over to where the truck was parked in front of Anthony's house. He didn't go to his house. He -- the testimony is that he walked from the Banks' house over towards where the car was parked on the street and that he and Amp met up at that point.

But in any case, I just want to clarify, I am not trying to introduce testimony of his reputation. I am not going to ask anybody about his reputation. I'm asking about specific instance, which I think they can rebut, and they can rebut that -- whether he was a gun carrier or not. And they can rebut whether there was any reason for Jamaal to fear him.

But in terms of -- and, like I say, I don't even know what the bad act evidence is that they want to bring in, and I believe I'm entitled to know that.

THE COURT: Is there any evidence that he

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carried a gun?

MS. CAMPBELL: Oh, lots of it. I mean, he is out on an assault charge where he shot another guy and said it was an accident -- or he shot at, he missed that one -- when this happened. And I can go on and on.

There is also evidence that at one point he tried to get a gun and he was trying to -- he was going to rob this victim on a prior occasion. And let me get my list, Your Honor.

(Pause.)

MS. CAMPBELL: There is other evidence of bad blood between the two. We tried to stay within the rule and keep it clean, Your Honor. We haven't gone into any of the gang stuff, which is another reason that they didn't get along is because he was in a gang and he hated the victim's best friend.

There is all kinds of reasons he had to go there. And, of course, Your Honor, just the very fact that he armed himself prior to going to the neighborhood in and of itself kind of refutes some of what she is arguing.

He of course, because of his conviction, is not even allowed to carry a gun lawfully.

THE COURT: I was going to ask that too. She

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is saying he can lawfully arm himself. I was going to ask, if he has a felony he can't lawfully carry a gun.

MS. CLEARY: Your Honor, there are numerous cases specifically on point. State versus Burris being one. In that case the Defendant was in illegal possession of a handgun. Nonetheless, the Supreme Court said that he could still be entitled to arm himself if he met the elements of self-defense. And that case was specifically on point.

THE COURT: If he met the elements of self-defense.

MS. CLEARY: Right.

THE COURT: But you are saying you are not arguing -- your defense is not self-defense.

MS. CLEARY: No, it is also accident as well that they address in that case. There is specific case law on that.

THE COURT: I guess the -- tell me how he meets the elements of self-defense, the first element of self-defense.

MS. CLEARY: Okay. It is our assertion that with no interest in Anthony at all he came across the yard to give Devan a thing, a blunt, that he

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was not looking for any trouble.

So in that sense, then he would not be -- he would be without fault in bringing on the difficulty.

And in cases where the Court has found that the Defendant couldn't use that and he was at fault or cases where they could go and try to rob somebody and then that person fights back, well, no obviously you can't use self-defense in those circumstances, but we don't have that here.

And the act of arming himself, as I just stated, there are cases that are specific about this, and there was one case where -- I think Burris is a case where a 17-year-old boy had a gun -- that the act of arming himself does not mean that he intended to fight. I mean, in this country you are allowed to carry a gun if you think that you might be in danger. And when he went over to -- and I'm not -- when he -- I mean, it is our assertion that he knew that Anthony was a dangerous guy and that the whole -- there are numerous people in this neighborhood carrying guns. I mean, Shanicka can testify that she also brandished a gun at some point and that he felt it was necessary to be armed because of that. And so then he also has

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to show the fact he is in actual imminent danger of losing his life.

Now, at the point that he retrieved the gun, it had already been pointed at his friend, maybe at him. He had already been punched in the face. So we already knew that there was serious hostility by Amp against him. So the law wouldn't require him to just leave the gun on the ground or leave it with Andina. He retrieved the gun in self-defense, which he is allowed to do. He is not required to just leave it there and run from the scene and get shot in the back. I mean, there is obviously a fight going on and there is a lot of anger and animosity. So at that point his fear of losing his life would be obvious.

But in order to show -- and, like I said, I'm not showing self-defense, I just show that he armed himself in self-defense, so then we also would show that his belief that he needed to be armed was reasonable. And that is where we get into --

THE COURT: His belief that he needed to be armed -- and I would maybe understand that if he was going to the grocery store and he -- or the mall and the victim frequently hung out there and then he felt like he needed to be armed to protect

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himself, but the first part of self-defense says that he didn't bring about any part of the difficulty.

And I guess I just can't understand how, on a self-defense how you are going to get past the fact that he leaves his house, gets a gun, and goes to the Defendant's house or two doors down from the Defendant's house and ultimately ends up in front of the Defendant. And then the fourth element of self-defense says that he had an opportunity to retreat -- that he didn't have an opportunity to retreat.

MS. CLEARY: The -- he was at the Banks' house because he was having a relationship with Lauren Banks, and he can testify to that. He was invited there. He was welcome to be there. So going to their house and then going, you know, into the property in front of their house, I mean, that is not inviting difficulty in the sense that the case law shows, which is usually when you go up and you try to rob somebody. And in Burris the Defendant was entitled to an accident and self-defense charge. He had also --

(Pause.)

MS. CLEARY: Okay. He had previously shot the

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gun into the ground. That did not preclude an act of defense. He --

THE COURT: What is the cite for Burris?

MS. CLEARY: 334 S.C. 256, 513 S.E.2d 104. In addition, State v. Mekkler was a case where the jury had been charged accident. And the Court said that the intentional pulling of the hammer back on a shotgun in this case it can still be involuntary manslaughter because she claimed to discharge it accidentally.

So even if she unintentionally pulled the trigger, I mean, in this case she claimed to unintentionally pull it, and the Court said you still get that charge because intentionally pulling a hammer back on a shotgun can still be involuntary manslaughter.

And Mekkler is also instructive on the issue of -- in that case they allow the Defendant to bring in that she had made a statement -- the Defendant's statement had been, it was her or me, what was I supposed to do, sort of thing. Very similar to what we have.

And that is admissible to show that the Defendant believed he was in imminent danger of losing his life. But those statements were

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admissible to show self-defense.

THE COURT: Okay. All right. Let me hear the response from the State.

MS. CAMPBELL: Your Honor, may we just quote State versus -- which one do you want, involuntary manslaughter or the accident one first?

Involuntarily manslaughter, State versus Willie Reese, which was tried here in this courthouse, talked about how because he was there pointing and presenting a firearm that he was not entitled to an involuntary manslaughter charge. The Supreme Court, not Court of Appeals.

THE COURT: Which case is that?

MS. CAMPBELL: State v. Willie Reese, R-E-E-S-E.

State versus Goodson and everything else, Your Honor, as far as her getting an accident charge, she must then prove the elements that he was unlawfully in possession of a pistol. And I don't know how she differentiates -- I guess she admits that he wasn't entitled to be armed, it was unlawful for him to bring the pistol over there, but then the victim reacted and knocked it out of his hand and then he became lawfully armed after the fight and they were walking away is her

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argument? That is what I got.

THE COURT: All right.

MS. CAMPBELL: He still has a duty to retreat. He still has to be without fault. The first person uncontradicted, she can't say differently, that pulled out a weapon in this case and started the entire altercation is her client by every witness, by her own client's admission, I assume. If he says something different, I can't anticipate that at this point.

So to say he even gets a self-defense charge would not be proper in this case with these facts. The victim is in his own home and it is undisputed that the initial confrontation takes place in a driveway and that the actual shooting takes place in the grassy area of the front yard. So he has a duty to retreat. He is the one that brings the gun. He is the one that sets the whole thing up, he and Devan Bailey. And he is the one that pulls out the gun first. How was he without fault in bringing on -- at whatever point she wants to say he becomes armed, which I submit, Your Honor, that he becomes armed when he goes to his house to get his gun to go to this neighborhood, which he is not lawfully in possession of.

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I'm not saying that there are not cases where a person cannot arm themselves if they meet the other elements of self-defense, but the case law says she has to meet all the elements of self-defense, and she doesn't. State versus Reese is 370 S.C. 31. And that is on the involuntary manslaughter in that case.

Your Honor, I just don't see how under any way she tries to twist this that she can get past those two prongs, that he is without fault or, and/or that he didn't have a duty to retreat. No one is alleging this is his home, his car. I mean, there is nothing about Castle Doctrine here that applies. So at this point she is stuck with the four elements of self-defense. And, respectfully, Your Honor, I don't think she can meet at least two of them.

You know, it has to be imminent danger of losing his life. At no point, also, Your Honor which is integral to this, he has to be in actual imminent danger of losing his life or actually believed he was in imminent danger. There is no point that even anyone, any of his friends say that -- Mr. Salley is in his own yard. And as far as the testimony in this case, actually the others

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say that Mr. Salley was losing the fight, that he ultimately quit because he went to get the gun to finish it off.

THE COURT: All right. And some of this I guess will be -- the argument is probably more appropriate for a charge conference as to, you know, what I will charge at the end of the case.

MS. CAMPBELL: Yes, ma'am.

THE COURT: But I guess I would need -- we would need to proffer Shanicka Lee's testimony as to what she is going to say regarding the incident with -- I'm assuming you want to call her first, because she is going to have -- you are going to have to have her testify, number one, that he knew about what happened.

MS. CLEARY: Right.

THE COURT: In order -- he can't just say, I -- he can't -- I mean, you have got to be able to link his state of mind to the incident -- for him knowing of the incident. I'm assuming that is why you want to call her.

MS. CLEARY: Right. But she --

THE COURT: That she told him.

MS. CLEARY: She may say that she didn't tell him that.

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THE COURT: Then how are you going to establish that he knew about --

MS. CLEARY: Because they were friends. They were very close. He can testify that she told him and also Raymond Asberry was also present when she told him.

This is Andina Lee's sister. And I'm anticipating that she is not going to work with me.

MS. CAMPBELL: Has she talked to her?

MS. CLEARY: Yes.

MS. CAMPBELL: And she is not working with you. So she told you she didn't tell him that?

MS. CLEARY: I have a statement from her where she says --

MS. CAMPBELL: That she says that happened, not that she told you --

MS. CLEARY: Right. But she says that she -- that Anthony told me he was going to blast me and showed me a gun. And I also -- there is tons of evidence in the discovery that Shanicka and Jamaal are friends.

THE COURT: I guess -- well, but it doesn't matter if they are friends or not, it has to be something where she is saying that she told him so he would -- if she says, I told him that about the

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incident that happened, then he knows about it because she is saying, this is what happened and he told me, the victim told me this.

I'm just trying to understand how do you get to your client's state of mind being able to prove that he knew about this other than I guess him saying somebody told him. She is going to say she didn't tell him, he is going to say she did, according to what you are saying.

MS. CLEARY: I can impeach her credibility in terms of -- if she says, no, I never told him, you know, this was such a commonplace event in my life I never mentioned it to someone that I spend a great deal of time with. Then his testimony and Raymond's provide evidence that, yes, he did know about it.

My point is not to show that it happened, my point is to show that Jamaal knew about it, and that is what I believe would be inferred that she would have told him and then corroborate that with Raymond and Jamaal's testimony.

MS. CAMPBELL: So Raymond is going to corroborate triple hearsay testimony about what he heard --

MS. CLEARY: No, he was present.

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MS. CAMPBELL: -- Shanicka say to him.

MS. CLEARY: He was present when she said it, so -- and we're not --

MS. CAMPBELL: Said it or said it to him?

MS. CLEARY: It is the only way that we can show state of mind. It is the only way that we can show he had knowledge of it.

THE COURT: Well, I mean, I don't know if Raymond -- if she comes in and says it and she says that she didn't tell him, I'm not sure how Raymond is going to come in and say that she did.

MS. CAMPBELL: Thank you.

THE COURT: Which is definitely going to be -- how are you going to get it in under hearsay?

MS. CLEARY: Because we are not offering it for the truth of the matter asserted, we are offering it to show Jamaal's state of mind. And Mekkler speaks to how -- you know, what hearsay evidence is normally -- hearsay is admissible when it shows a state of mind necessary for it to show self-defense.

THE COURT: All right. I'll give you -- I mean, we worked -- I mean, it kind of defeats the purpose for working late last night to leave early today. I think you have an investigator. Y'all

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can try to see if y'all can locate her. If y'all can try to locate her and/or Mr. -- I mean, I just don't want to lose -- I planned on working till 5:30 or so, 6:00 o'clock this afternoon.

MS. CAMPBELL: She said she could get them in in 15 minutes. Can we go ahead --

THE COURT: She said she needed 15 minutes to try to see if she could locate her. She said she is not cooperating.

MS. CAMPBELL: What about Mr. Asberry? He was here earlier. Where is he? Did she send him away?

MS. CLEARY: I haven't talked to him. I didn't know he was here. And I don't really appreciate the implication.

MS. CAMPBELL: She doesn't know who her own witness is sitting in the courtroom?

MS. CLEARY: I haven't talked to him. My investigator talked to him. Stop impugning my integrity.

THE COURT: All right, guys. Try to see if you can get Mr. Asberry, if he is going to testify, or if Ms. Shanicka Lee is going to testify. I'm not inclined to lose an afternoon, an hour, hour and a half of testimony.

MS. CLEARY: Okay. Are we going till 6:00?

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THE COURT: Probably about 5:30. It just -- I was trying to get through with the case today if we could.

MS. CLEARY: Well --

THE COURT: And I'm not saying we are. I'm just saying I didn't intend on stopping at 3:30 or 4:00 o'clock. I mean, I think this morning they kind of knew that -- well, they anticipated that they were going to finish before lunch. They didn't. So we knew it was going to probably end sometime this afternoon, early part of this afternoon, their case would end the early part of this afternoon.

And as far as self-defense and accident and all that, at this point I guess the reason you are bringing that up is because you want me to make a ruling as to what they can put in if your client puts up evidence regarding the victim's -- bad act on the part of the victim.

And, like I said, I think it is pretty clear that if he is going to get up and they are going to say that he went over there to take -- you know, he didn't go over there to cause any problems, dada-dada-dada-da, then it goes -- it is going to be evidence to rebut what he is saying.

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MS. CLEARY: Okay, so --

THE COURT: Evidence of peacefulness. Did he go over there to be peaceful or did he go over there to -- it is either one or the other.

MS. CLEARY: Well, no, he went over there to talk to Devan. And that is what Devon's testimony was as well. Or to give Devan a cigar. I mean, that --

THE COURT: Well, there has also, Ms. Cleary, been testimony that for one person saying that, this is exactly what I wanted, there is another testimony where he says, I'm going to my house to get my tool. There has also been testimony that he goes to one house and then he comes back and they notice that he is in the other yard. There has also been testimony that he pulls the gun first. The victim strikes him, knocked the gun out of his hand. There has also been testimony that the victim -- that he is getting the best of the victim. And there has been testimony that the victim, I believe, was on the ground where she had to help -- when the girlfriend had to pick him up off the ground. So, I mean, I understand you are relying on the testimony of Devan Bailey.

MS. CLEARY: As well as Derrick Diamond and

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Quinton Emerson as well.

THE COURT: And they are both the ones that said he picked -- he took the gun and picked it up and pointed it at the victim.

MS. CLEARY: Right. But they also say that he was walking towards Devan to give Devan something and that Anthony approached him.

But what I need to know, though, before I decide how we're going to proceed is, is it your ruling that evidence that he told Richard Johnson that he was a GD, is that evidence more probative than prejudicial at this point? I mean, to show that he is not peaceful, like they are saying that they can do.

THE COURT: I guess I'm confused now.

MS. CLEARY: I need to know which specific act --

THE COURT: I'm trying to figure out -- now, evidence that he told Richard Johnson that he was a GD.

MS. CLEARY: Well, they proffered the testimony of Richard Johnson in Atlanta, for example, that Jamaal told him he was a GD. Is that the sort of evidence that you are saying would be admissible to show he is a bad guy?

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THE COURT: No, I think what you are trying to do, you are trying to show that the accused carried -- I mean, the victim carried a gun, right?

MS. CLEARY: Right.

THE COURT: I think they would probably have the ability to say, so did the Defendant. And unless --

MS. CLEARY: Well, we already know that.

THE COURT: He didn't say anything about -- but I think they can get into other past acts of him --

MS. CLEARY: I need to know for how many years and, you know, what I need to prepare for.

THE COURT: It is not -- I mean, under the rules she can go back --

MS. CLEARY: I mean, I don't think that is what the rules say. The rule says they can introduce prior bad acts if they are relative under any of these Lyles exceptions.

MS. CAMPBELL: No, Your Honor. I mean, you read her the rule over and over. It says what it says. And it limits us only in rebuttal to whatever she puts up. But once she puts in, you know, that trait, then we're allowed to go into it on specific instances.

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THE COURT: And you are saying those would be -- I'm not -- I'm still not sure of the stuff that happened in Atlanta afterwards because nobody --

MS. CAMPBELL: I'm not sure about that either. I'm talking about other things.

THE COURT: Nobody said anything -- he didn't say anything about a gun. He didn't say any -- so his proffered testimony --

MS. CAMPBELL: I proffered it out of an abundance of caution. And I don't know what he is going to say when he gets up there.

THE COURT: She is saying that they are going to -- if you put -- they want to put in the fact that he has had these assault charges, he's had this, he has had that, under his prior bad acts. And you can go back what, ten years on that?

MS. CAMPBELL: As much as we need to, Your Honor, but, you know, essentially she is putting his character in evidence.

MS. CLEARY: Your Honor, I believe that if he testified that he had never gotten into any trouble, then that would be opening it up to all sorts of evidence. And there are cases that show, you know, for example, the case where the Defendant

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said he'd always protected women and cared a lot about women. Well, that then allows the State to bring in evidence of prior conflicts with women and prior attacks on women because he opened it up by saying specifically, I protect women.

If Jamaal sits up there and says, I'm a peace-loving man, I don't ever carry a gun, then they can bring in the incidences.

And I just want to make sure for my record as well that you realize that I'm arguing that they are not admissible under these rules because we're trying to bring in a specific incident of conduct not to show that that conduct happened, but that Jamaal's state of mind was reasonable. Okay. We are not trying to show that Anthony is a bad person, we're not going to ask anybody about his reputation or any kind of bad things that he has ever done that we do have information about. This is a specific incident of him carrying a gun because of course they made it sound like, you know, he was --

THE COURT: But you don't want to just bring in the fact that he carries a gun, you want to bring in the fact that he pulled a gun on a female, that the victim pulled a gun on a female and told

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her that he was going to blast her or bust a cap in her, or something like that.

MS. CLEARY: Well, I mean --

THE COURT: And some people may not think carrying a gun, just simply carrying a gun is a bad act, but I think him pulling a gun on someone and telling them that he is going to bust a cap in them, if that is what it is that you are --

MS. CLEARY: Well, I think it is part of our obligation to show that Jamaal had a reasonable fear, and so just carrying a gun is not a reasonable fear, willingness to use it shows that he has a reasonable fear. And I also wanted to emphasize --

THE COURT: And don't you -- and if they have to prove -- they have to prove -- disprove your self-defense claim beyond a reasonable doubt.

MS. CLEARY: Uh-huh. So, as I said --

THE COURT: And so they would have the opportunity to put something up that says, no, he wasn't afraid and, no, he wasn't afraid, and this is why he wasn't afraid because --

MS. CLEARY: If they have evidence he wasn't afraid, yes. But to say he was engaged in a prior incident with something totally unrelated to this

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case, it doesn't show he wasn't afraid. It is not probative of that, and clearly it is prejudicial, unduly prejudicial and not probative. The only purpose is to show he is a bad guy.

THE COURT: All right. Well, what we are going to do first is, because the clock is ticking, we need to take that 15 minute break, see if you can locate Shanicka, and if you can locate her, get her in here this afternoon so she can testify. If I have to proffer her testimony I'll proffer her testimony. If I have to proffer Mr. Asberry's testimony we will proffer both of their testimony, and then I can make a ruling as to that.

MS. CAMPBELL: Thank you.

MS. CLEARY: Thank you.

THE COURT: Thank you. We'll take about a 15 minute break. We'll let them know it is going to probably be -- I will let them know another 15 or 20 minutes.

(WHEREUPON, a break was taken.)

THE COURT: Any luck?

MS. CLEARY: I have not been able to reach Shanicka. Just two seconds ago we had a missed call, we thought maybe it was her so she has gone out to try to return it. And then we were told

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that Raymond Asberry is in drug court, but in any case, if you want us to go ahead and keep going today, we can go ahead and just call Jamaal.

THE COURT: But the only problem with that it presents an issue of whether or not --

MS. CAMPBELL: I think she stipulated she wouldn't go into any of that. The other problem with Raymond Asberry is he is wanted, armed and dangerous.

THE COURT: He is what?

MS. CAMPBELL: He is wanted. He is armed and dangerous and has gang affiliations of a violent nature, according to his rap sheet.

THE COURT: But he was here today, according to you.

MS. CAMPBELL: I didn't know that at the time. I didn't get -- I didn't know she was putting him up and didn't run his rap until over lunch. And then we had to call confirming he was still wanted.

THE COURT: I'm sorry?

MS. CAMPBELL: We had to call and confirm he was still wanted. The U.S. Marshals want us to take him in custody if he shows up and they'll come get him. But he's not here, so it is not a problem. I'm just informing the Court when I found

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out -- I didn't know she was putting him up until --

THE COURT: I understand.

MS. CAMPBELL: So I had to run a rap sheet on him.

THE COURT: All right. And y'all have stipulated to what now?

MS. CAMPBELL: I think she indicated to us at the break, while we were on break that she would go ahead and put her client up today and just wouldn't go into those issues.

MS. CLEARY: I mean, well, he is going to testify as to why he was afraid, but he is not going to go into that. And then they can go into, you know, what they think is admissible or what you ruled is relevant, but, I mean, he's got to show that he had reasonable fear. I'm just saying --

THE COURT: Well, they said -- I mean, I wasn't going to allow them to go into any -- and I didn't make a final ruling on that, because even if she -- this is what I was prepared to tell you, even if she showed up, I think he wasn't there, he wasn't a witness. I mean, it is just too -- and what is his name, DeBerry -- Asberry, I mean, that is clearly hearsay and too remote from this

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incident, so I wasn't going to let him -- other than if he was going to give reputation testimony that the victim had the reputation or something of carrying a gun, or something like that, but not getting into the specifics of the incident. So if she shows up -- but he can -- I mean, we can go ahead and call him. How long do you think it is going to take?

MS. CLEARY: A long time.

THE COURT: I did not discuss with the jurors staying. You know, I told them the first day we would stay till 5:30 or maybe 6:00 o'clock, but if y'all think it is going to be longer than that -- I'm not trying to limit you in time, I just want to know if you think it will be longer than that.

MS. CLEARY: Than an hour?

THE COURT: Yes.

MS. CLEARY: Yes. Well, I'm thinking of her cross.

THE COURT: Yes. All right, well, I may just let them go and start in the morning at 9:30 calling the Defendant -- calling the witnesses.

MS. CLEARY: Do you want to go ahead and talk to him?

THE COURT: Yes. Well, let me bring the

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jurors in. They have been back there for a long time. And let's go ahead and excuse them. 9:30 in the morning works for everyone?

(WHEREUPON, the jury came into open court at approximately 5:02 p.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: All right, ladies and gentlemen of the jury, I apologize for the long delay, but there are some matters of law that I was taking up with the attorneys that I must do outside of your presence. And there are still some more matters of law that I need to take up. I am just going to let y'all go home for the afternoon instead of making you stay in the jury room.

We'll start back at 9:30 in the morning. Once again, the State has rested. And we'll start back in the morning at 9:30.

All right. Thank you. I apologize again for the delay.

Remember, don't discuss the case with anyone. No internet.

(WHEREUPON, the jury is excused for the day at 5:04 p.m.)

MS. CAMPBELL: Your Honor, if I may be heard? There is a person leaving the courtroom, she has on

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a T-shirt that says, Free Homie. That is a website dedicated to --

THE COURT: Hold on one second, ma'am. Ma'am?

MS. CAMPBELL: My concern is that the jurors are leaving the courtroom and she will go out and display her Free Homie T-shirt.

THE COURT: Ma'am, just have a seat.

PERSON IN AUDIENCE: I got to go to the hospital. My sister is having a baby.

THE COURT: Just have a seat.

MS. CAMPBELL: Thank you, Your Honor.

THE COURT: It won't be long. Actually, I'm not sure, can she even get out the front door? Is somebody down there at the front door since it is after 5:00 o'clock?

DEPUTY: Yes, ma'am. Yes, ma'am.

MS. CAMPBELL: And I'm sorry, Your Honor. I was just concerned. It has a picture on it that says, Free Homie.

THE COURT: All right. Well, I don't know if they saw it. I didn't see it. I couldn't tell what it said.

MS. CAMPBELL: I'm not worried about the distance. I'm just worried that she would run into them as she is leaving the building. And that was

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my concern.

THE COURT: Okay.

(Pause.)

THE COURT: All right. We're going back on the record. Mr. Hinson, let me have you stand, sir.

(The Defendant complies.)

THE COURT: And I'm sure your attorney has explained to you, but I will go ahead and I have to advise you of your rights, sir.

You understand that you have the right -- under our constitution, that the State has the burden of proving your guilt beyond a reasonable doubt. That you and your attorney do not have to present any evidence. You do not have to testify, sir. If you choose not to testify, the burden is solely upon the State to prove your guilt beyond a reasonable doubt. You have the right to remain silent. The burden, once again, is solely upon the State to present evidence and to prove you guilty beyond a reasonable doubt.

However, sir, if you wish to testify, the time to testify will be in the morning at 9:30. You do not have to give me a decision at this time. I will let you talk to your attorney about it this

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evening or first thing in the morning. All right?

THE DEFENDANT: Yes, ma'am.

THE COURT: But you do understand your rights, is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Thank you, sir.

THE DEFENDANT: All right.

THE COURT: All right, anything else? Oh, if you all have proposed charges, can you please e-mail those to Aaron, to my law clerk tonight? And he'll get you the e-mail address. He'll write it down for you if you need it. I think we'll start -- is Jackie still here?

THE CLERK: I'm here.

THE COURT: We will order lunch for the jurors tomorrow. But I think once -- I don't know if y'all are going to have anything on rebuttal, but once the Defendant puts up their case, if they put up one, we'll order lunch, and just be prepared to do closing arguments on tomorrow, argue and charge sometime tomorrow, I don't know what time tomorrow, but sometime tomorrow.

All right. Thank you. See you all in the morning at 9:30.

(WHEREUPON, court adjourned for the

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evening.)

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THE COURT: All right. Good morning. You may be seated.

All right, are you ready?

MS. CAMPBELL: The only thing, Your Honor, is his prior record. I think he has got to make a decision on whether or not he is testifying.

THE COURT: Ms. Cleary, is he testifying?

MS. CLEARY: Yes, he is.

THE COURT: All right. Yes, ma'am?

MS. CAMPBELL: As far as his prior record goes, he has a rioting conviction --

THE COURT: A what?

MS. CAMPBELL: -- and a burglary second degree. Rioting.

THE COURT: Oh, rioting. I thought you said writing. I was going to say --

MS. CAMPBELL: Not writing.

THE COURT: Rioting and --

MS. CAMPBELL: And that would be the extent of convictions. Pending in our office he also has a PWID marijuana and an ABHAN offense. Do you have his prior record?

THE COURT: Rioting and burglary second. And

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pending is PWID marijuana, you said?

MS. CAMPBELL: PWID marijuana.

THE COURT: And ABHAN?

MS. CAMPBELL: And ABHAN.

THE COURT: Yes, ma'am, I will be glad to hear from you.

MS. CLEARY: I need to make sure the record is clear for appellate purposes. There are a couple of issues we argued up here that were not on the record.

The first thing I'd like to make clear is that I believe that his statement to the police that he felt like it was him or me is clearly admissible, even without him testifying based on the State versus Mekkler where the Court specifically said that was admissible to show the element of self-defense that the Defendant believed that he was in danger of losing his life.

And also, I attempted to attack the police investigation by showing that even though the police knew that Jamaal explained that the killing was not intentional or not with malice, that they did nothing to investigate that possibility.

And under Kyle v. Whitley and other cases, of course the caliber of the investigation is

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certainly probative and can be attacked in order to present our case.

And I believe that the inability for us to be able to introduce that stuff under the State's -- or even bring it up during the State's case in chief is a violation of his Sixth Amendment right to present a defense. And also Article 1, Section 14 of the South Carolina Constitution which provides that Hinson has the right to be fully heard in his defense.

THE COURT: All right. Anything?

MS. CAMPBELL: Your Honor, we just rely on what we discussed, those were self-serving statements, in addition to the case law. In addition, she mischaracterized what the statement was to the police anyway.

All she said was, what was I supposed to do, I just picked it up. He always wanted to fight and stuff.

I don't see anywhere where it says what she just put on the record it says as far as any statements made to the police. But even if it did say that, Your Honor, I understand it comes in once he testifies; however, if it was a self-serving statement it would properly be excluded.

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THE COURT: All right. And my ruling was -- I believe my ruling at the bench was that -- well, I believe the question was, of the four witnesses didn't one witness -- didn't one witness -- did any of the witnesses tell you that he was acting in self-defense or that he was not initiating the fight. I believe that was the question. And there were four witnesses that, in the course of the question, that you were asking him about, which he was not one of the witnesses that -- one of the four witnesses that you were referring to. I think it was the three other people that were in the car, plus the young lady that was there, Ms. Lee.

When we approached the bench, I believe you asked at that time could you ask him if there were any other witnesses -- any other witnesses that told you that he was -- that he did not initiate the fight. There was some discussion, I guess, as to whether or not he was a Defendant, witness or what the Defendant was. But the question was not referred to as the Defendant, and I think that was one of the reasons that I sustained the objection.

The other reason was because it was self-serving, but I did state that if the statement came in that I would allow you to recall the

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officer to put them on the stand regarding the caliber of the investigation and their lack of investigation, if that is what I think you are alleging.

MS. CLEARY: All right. One more.

THE COURT: Yes, ma'am.

MS. CLEARY: I feel like I need to make the record clear about the prior bad acts as well. And, quite frankly, I believe that the State lacks standard in the tribunal in constantly asserting to you that if Jamaal testifies that he was afraid of Anthony and just went over there to give Devan a cigar, then the door is open for Evans to say that he was an active member of a gang or that he assaulted an unrelated person or that he has ever been arrested for a PWID.

THE COURT: All right. And I don't make a ruling on that. I think I left and I said, I will rule when I get back. And then you all, when I came back, y'all said y'all agreed to it.

And I said -- I think my ruling was that I really couldn't even rule on it until I heard the testimony of Shanicka Lee. And she was never called. Y'all told me that she would probably not be a witness and that she -- you were going to go

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ahead and call the Defendant. I never made a final ruling on that.

MS. CLEARY: Well, I proffered what her statement said, which was that Amp had held a gun on her. And you said that that was remote and not admissible under State versus Day. So therefore we decided not to call her.

THE COURT: You were going to -- but, no, the way you were trying to get it in was through the -- her sister.

MS. CLEARY: No, no, no. I'm talking about, I have a signed written statement from Shanicka that the police took where she said -- and I wanted to get that in with Shanicka testifying that Anthony had held a gun to her and then Jamaal would testify that he knew about that, but you said that that was not admissible because she didn't hold a gun on him.

THE COURT: But I also stated that we would proffer Shanicka's testimony, and she has never been presented to proffer her testimony.

MS. CLEARY: But I told you what it is that she said in her statement. I mean, so no matter what she said I could bring in that statement.

THE COURT: The problem is you are trying

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to -- the problem is you are trying to say, one, that it is state of mind. And I think we had some discussion. There is a difference between saying he carried a gun, that the victim carried a gun, and her getting into a specific instance that he was not involved in. And I further read, I think that case of State v. -- is it the State v. Day case? And in that case the facts are definitely different than the facts in this case.

In that case, the victim and the Defendant were riding around, they were plotting a murder. He was -- it was a murder for hire case, or something like that. They are riding in the car at the time. So, I mean, the facts in that case are totally -- the victim and the Defendant were riding in the car together at the time of the incident.

The Court held that evidence of a prior act of violence by the victim directed towards the witnesses was admissible in a murder prosecution and is relevant to an essential element of the Defendant's self-defense claim to prove the Defendant had reasonable apprehension of violence from the victim where four months prior to the victim's death the victim held a double-barrel gun to the witness's head for 18 hours as he drove

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around the county accusing her of being involved in a drug trafficking scheme in his residence.

The difference is the Defendant here was not a party to -- he and the sister and the sister possibly having a gun and the victim possibly having a gun, he was not a part of that. You have not been able to link him to knowing about that. If he was there, if the victim held a gun to him, then I would say, okay, yes, that can come in. If he was there and he saw it. If there was some criminal conspiracy going on and he was a part of it and he knew it -- that is what was happening in the State v. Day case -- and he knew about it, then that would -- I mean, that would come in. But there has been no link here to link Shanicka Lee -- him having -- his state of mind as to the victim carrying a gun or being -- not even carrying a gun. You want to say the victim pointed -- that he was afraid of the victim because of this incident because he knew that the victim had pulled a gun on somebody before. And there is nothing that puts anything to his state of mind to show that he knew about this.

And I think my ruling yesterday was that you were going to try to locate Ms. Shanicka Lee, and

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you asked for 15 minutes to do that. And I told you that I would -- before I could rule that I probably needed to proffer her statement. And she is not here to testify. So I can't -- I mean, I can't even hear what she is going to say.

There was some discussion you said yesterday that Shanicka Lee is going to say that she didn't tell him and but that he is going to say that she did tell him.

So until I hear her testimony, I don't know if she told him or not. The statement is not the issue. The issue is whether or not he knew about it. How did he know about it, how did he find out about it. And nobody has presented me any evidence to show me how he found out about it.

So I think -- I didn't rule on it as to whether or not the statement could come in because I never heard -- no one ever presented her to proffer her statement.

MS. CLEARY: Well, the only way that we could establish that he knew about it is from his testimony.

THE COURT: Well, his testimony and her testimony are conflicting, according to you.

MS. CLEARY: Right. But I can show that her

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testimony is not credible, that she and Jamaal were very good friends, and that that was the sort of thing that she would have told him because they were good friends. And there is also -- there was another -- the victim's sister, Elasias Salley, has said that Shanicka always talked shit about Amp to Jamaal.

THE COURT: I understand that. But I did not rule -- my ruling was that I was not going to rule until we proffered her testimony to hear what she had to say, and she has not been presented.

So, I mean, I understand, you can state it for the record, but I don't even think I made a ruling on as to whether or not she could testify to what it is that she is going to testify until I actually heard the statement.

Because the only thing I had was that you said that she is going to probably say, no, I didn't tell him that, and he is going to say, yes, she did. And then you also offered Mr. DeBerry -- is it DeBerry or Asberry -- Asberry to I guess corroborate that, yes, she is lying, I was there when he said it. But then he has not been called to testify either.

MS. CLEARY: Okay. Well, the reason that I'm

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not going to call them is because from what I understand your ruling to be is that if I attack the victim by saying that he had propensity for violence, then your ruling is that then they can bring in any kind of --

THE COURT: I said there is a chance, depending on what he said, there is a chance that they may be able to -- if he testifies that he went over there and he didn't go over there to cause any problems, he was peaceful, or if any of the other victims -- and that the victim was the aggressor, and if any of the other witnesses says that he was over there and he was over there and he was peaceful, dada-dada-da, then I think at that point that is when that probably comes in.

But a whole lot of this is just speculation because I can't -- I haven't heard any of that. And I'm more than happy to proffer any testimony that I need to proffer, but -- which is the proper way to go about doing it, is proffer the testimony and then I can make a ruling on it. But I haven't had the testimony to make any ruling.

And I already told her that I didn't know how she was going to get into anything that happened in Atlanta. And I think we pretty much agree. I

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pretty much suggested that that probably is not going to come in. But of course I would have to hear testimony before -- proffered testimony before I could even make a ruling on it. Because I'm just kind of ruling in a vacuum. And I don't -- until I hear the testimony I don't know.

I mean, so if you want to proffer Ms. Lee's testimony, if you want to proffer Mr. Asberry or if you want to proffer your client's testimony, I will be glad to do so, but -- and then make a ruling. But that was my -- I think my decision yesterday, is that we were going to proffer testimony, take 15 minutes, y'all were going to try to locate Ms. Lee to see what she said.

She may come in and say, yes, I did tell him.

MS. CLEARY: Okay. I understand. But yesterday you did say several times that you thought that evidence of a pertinent trait of character of the victim of the crime offered by an accused or by the prosecution to rebut the same or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor, that you interpreted that to mean that the prosecution can rebut the same meant that

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they could attack his character, but the rule states that if we attack the character of the victim, they can rebut the same, the character of the victim. They can show evidence that the victim was peaceful, not his character. That is not what the rule says. You cannot rebut bad character evidence about the victim with good character evidence, or you cannot rebut bad character evidence about the Defendant, only could they show good character evidence about the victim. And I think --

THE COURT: But I think if you open the door regarding primary aggressor and that the victim was aggressive and if the -- under the rules, if he says that he went over there to be peaceful, and peacefulness is a -- and we talked about that. Peacefulness as a characteristic -- and you said he is not going over there to say he is going over being peaceful. If he goes over there and says, I am being -- I was going over there to be peaceful, or, I was just going over there to -- for whatever reason, I wasn't going to cause any problems, then -- and it all depends on how he said it or what he says -- then once he invokes his character, I think then under Rule 404 they have a right to

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rebut his character, is what I think I was saying yesterday.

If he invoked his character, they have a right to -- they have a right to rebut his character, if the Defendant -- if he invokes the victim's character, they have a right to rebut the victim's character by putting up character witnesses to say he was a great person, dada-dada-dada-da.

But if he goes over there -- that is what I was saying to you, it just depends on what he is going to say. But we haven't heard anything, so I don't think I can rule on it. And my decision was that we were going to proffer the testimony of Shanicka Lee and anybody else, and we just haven't done that.

MS. CLEARY: Can I take one moment?

THE COURT: Yes.

(Pause.)

THE COURT: And I can have Debbie look it back up, if you'd like, to tell us exactly what I said when we broke yesterday for 15 minutes to locate Ms. Shanicka Lee. But I'm almost positive -- I might be wrong -- I'm almost positive that I said we would proffer her testimony to see what she would say and then I would make a decision.

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MS. CLEARY: Okay.

THE COURT: All right.

MS. CLEARY: I think I understand your ruling, but -- and we are going to go ahead and have Jamaal testify.

THE COURT: Do you want to proffer his testimony?

MS. CLEARY: No. But I believe that there is relevant evidence related to his prior altercation with Anthony's friend, Richard Thomas, that the State has provided me information about. So we would go ahead and address that issue.

THE COURT: And I think that is admissible. Prior conduct -- there is cases that say prior conduct --

MS. CLEARY: So --

THE COURT: I never ruled that that wasn't admissible.

MS. CLEARY: I know. I just wanted to let you know that we are going to go ahead and address that head-on and that part of our reason is to show, you know, the fear.

THE COURT: Yes, it is State versus Taylor. In a murder case, evidence of previous difficulty between the accused and the decedent is admissible.

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508 S.E.2d 870. There are several cases that state that.

MS. CLEARY: And this is actually testimony about a prior incident with Anthony's friend, I think some has testified that Richard and Anthony were friends. And my client will testify he saw Richard and Anthony earlier that day and he knew that they were friends. And we're not -- and that he was -- you know, that is why he got his gun because it was fear. I mean, obviously she can try to show that that is not true, but that is basically how we're going to present our defense instead of talking about Anthony and whether he carried a gun.

THE COURT: All right. Well, let me ask you this. Does he have any -- other than the Shanicka Lee, does he have any other knowledge -- is he going to testify to any other knowledge of him carrying a gun, the victim?

MS. CLEARY: No.

THE COURT: Because I think we talked about this yesterday. There is a difference between him carrying a gun and him pointing and presenting a gun at somebody.

MS. CLEARY: If you -- if it is admissible,

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he'll testify that, you know, he generally believed that he carried a gun.

THE COURT: And I don't think that is character.

MS. CAMPBELL: I'm sorry, Your Honor? I just missed what you said, I apologize.

THE COURT: That he knows that he carries a gun.

MS. CAMPBELL: That's fine. It opens the door of why he knows that.

THE COURT: That is not bad character. Somebody carrying a gun is not -- I don't think it invokes 404 because it is not --

MS. CAMPBELL: Well, it is illegal.

THE COURT: For the victim to carry a gun?

MS. CAMPBELL: Yes. Just as it is illegal as he was carrying a gun that day, it is illegal for the victim to carry a gun under unlawful carrying of a pistol. His is illegal because he has been convicted of a felony. Unless you have a permit, and there is no one indicating anyone has a permit.

MS. CLEARY: Well --

MS. CAMPBELL: But if she will just let him testify, then we can object, you know, at the proper time when they are going somewhere or

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something, but, you know, I mean -- and I understand her concerns in trying to tailor this testimony, but she kind of just needs to put it up and then, you know, I mean, we have a right to cross-examine.

THE COURT: She is just trying to make sure she didn't open the door so if she says -- if he says, I know he carried a gun, she doesn't want y'all to -- which I don't think it is going to rise to him being able to get any character evidence in. I mean, the most that they are going to be able to say is the Defendant carried a gun.

MS. CLEARY: Which we know.

MS. CAMPBELL: And I'm not saying it will come in at that point under character evidence; however, impeachment as to bad blood.

THE COURT: Impeachment as to bad blood between --

MS. CAMPBELL: Not as to specific prior instances as to why there is bad blood between the two, that is a different issue.

THE COURT: Which brings up the gang issue?

MS. CAMPBELL: No, ma'am.

THE COURT: I'm not familiar with what y'all are talking about.

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MS. CAMPBELL: Before I go into any gang or anything of that nature, Your Honor, I will let the Court know. I don't plan on -- I don't know what he is going to say. It is hard for me to do all this as it is for you in a vacuum without knowing what he is going to say. I don't think she has the right to have you rule on everything. I think she needs to put up the testimony and if we object, we object, or whatever. She understands the rules and where she is going with things. I don't know that it is fair to ask you in a vacuum to prejudge every single question or answer that she's going to get her -- that her client is going to say. You know, that is kind of the nature of what we're here for.

THE COURT: All right.

MS. CLEARY: Well, we are ready to go forward.

THE COURT: What is your position, Ms. Campbell, regarding her putting in -- I think the law clearly says that she can put in the information regarding previous difficulty between the Defendant and the victim.

MS. CAMPBELL: I have no problem with her putting in previous difficulty between them, other than I have then the right to cross-examine him on those issues.

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THE COURT: All right.

MS. CLEARY: I forgot, he has shackles on. I don't know how you want to address that, but I don't want the jury to see him in shackles.

THE COURT: Yes, sir. I will ask the deputy.

THE DEPUTY: Normally we just put them on the witness stand.

THE COURT: They won't be able to see him from the witness stand, will they?

THE DEPUTY: No, ma'am.

THE COURT: The shackles are not on his hands, are they?

THE DEPUTY: No, ma'am, just his feet.

MS. CLEARY: Can I look at the witness stand for a second?

THE COURT: Yes, ma'am.

(Pause.)

MS. CLEARY: Do you want to go ahead and put him up there?

THE COURT: Are you ready? Okay.

(The Defendant is seated on the witness stand.)

THE COURT: We will swear him in front of the jury.

You can bring them in.

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(WHEREUPON, the jury came into open court at approximately 11:24 a.m.)

THE BAILIFF: The jury is present, Your Honor.

THE COURT: All right. Good morning, ladies and gentlemen of the jury. As I told you yesterday, the State has rested and the Defendant has an opportunity to present a case if they choose to do so, and they do choose to present a case. And Ms. Cleary has already called her first witness, the Defendant.

Yes, ma'am, you may -- well, he needs to be sworn, I'm sorry, I didn't swear you.

THE BAILIFF: Place your left hand on the Bible, raise your right hand.

(Witness complies.)

THE CLERK: Do you solemnly swear or affirm that the testimony you give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, ma'am, I do.

THE CLERK: Please state your full name for the record.

THE WITNESS: Jamaal Hinson.

THE COURT: Yes, ma'am.

JAMAAL HINSON,

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after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CLEARY:

Q Jamaal, how old are you?

A I'm 21.

Q And where are you from?

A I'm from the northeast part of town.

Q And where did you go to school?

A I went to LR and I went to Blythewood High.

Q And have you ever testified before? Have you ever sat up there in the witness stand?

A No, I have not.

Q Are you a little nervous?

A A little bit.

Q Okay. You've had some problems with the law before, right?

A Yes. Not that many, though.

Q And you were convicted of burglary second degree in 2007?

A Yes, ma'am, I pled guilty to that.

Q You pled guilty? Why did you plead guilty?

A Because I was guilty.

Q Okay. Because you were guilty. And have you served your time for that conviction?

A I did, in '07.

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Q And I know that we just learned that on your rap sheet there is a 2004 conviction for rioting?
A Well, Luck Campbell said 2005. I don't remember that. I don't recall that at all.
Q Okay. But it is possible that there was some charge back then?
A Really it is not. I was in alternative school in '05.
Q But you admit that you have some convictions?
A I do.
Q All right. Now, let me ask you about Richard Thomas -- not Richard Johnson, who is the fellow in Atlanta, but Richard Thomas, who was mentioned in earlier testimony this week as being a friend of Anthony's. Did you know Richard Johnson -- I mean, Richard Thomas?
A Yes, well, I met Richard Thomas back in 2004. I had moved from Leesburg and I was going to go to Blythewood, but Blythewood wasn't finished being built, so therefore they had freshmen at Blythewood -- they had class at the middle school.
THE COURT REPORTER: I'm sorry, I didn't hear you.
A I met Richard Thomas in 2004. When I went from Leesburg I had moved to Ashley Ridge off of Lee

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Road, but I was supposed to go to either Ridgeview or Blythewood, but Ridgeview was too full and Blythewood wasn't finished being built yet, so therefore the ninth graders had to go to Blythewood Middle School. It was called Freshmen at Blythewood.

Q Freshmen at Blythewood?

A And I met him through a female that I was engaged with, named Ashley Thomas.

Q Okay. So you had known him for a good while in 2010?

A Right.

Q Okay. What was your experience with Richard in the past year or so before this incident?

A In the past year? I mean, we ain't like each other at all. Every time we see each other, it is always get into a physical contact or a verbal contact.

Q Did you know him to carry a weapon?

A Yes, ma'am. In fact -- in fact, he was on My Space, he had got a teardrop, bragging about how he killed somebody, so I knew he carried a pistol.

Q He was bragging about how he had killed somebody?

A Yes, ma'am.

Q All right. And did you know Anthony Salley?

A I didn't know him like that, I just knew that he

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was friends with Richard.

Q So had you ever had a fight, physical fight with Anthony prior to this?

A No, not prior to this situation. I only had one conversation with him ever in my life before the situation ever occurred.

Q And did you know that -- did you know whether he carried a weapon?

A No, I can't say that I knew that he carried a weapon because I didn't know him like that.

Q Okay. But you did know that he was best friends with Richard?

A I did know that.

Q Okay. All right, so tell us what happened in the Fall of 2009 with Richard.

A Are you speaking about the incident that occurred at the gas station?

Q Yes.

A Well, how it transpired was I got the call from Lauren Banks' brother, which is Kenneth. He was calling me telling me that Richard was riding through Falls Mills looking for my little friend, which was Derrick Randolph.

Q Riding through where?

A Falls Mills, another subdivision right after

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Vineyards Crossing. So he is riding through the neighborhood and he drew a pistol on Kenneth Banks asking where Derrick was. So being that that was my little friend, and I looked at him like a little brother, I called Richard to see what that was about.

So once -- soon as I got on the phone with Richard, he already started engaging in a verbal altercation. He told me to meet him at the gas station, which was the Murphy Express on Clemson Road. So I go to the Murphy Express and it was Richard, him, Lay Lay, which is Elasias, and another dude driving a truck, which was a white truck with a blue stripe on it.

But I had left. I had left the gas station because I ain't want to get in no physical altercation at no gas station. So I left.

And then one day I seen him at the AM-PM. Me and my friend, Raymond Asberry, we had pulled up to the gas station and I seen him. So I rode on. When I rode on, he had jumped in the car.

Q He had jumped into your car?

A In his car, which was an Explorer at the time. But as I approached the vehicle, he hopped back out the car. So I hit him. We got into a -- we got into a

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fight. And one of my friends jumped in. We in the vehicle now fighting. And he pulls off with me in the back of the truck.

So when he pulls off, Raymond fell out of the truck, so I'm still in the truck. I'm telling him to stop.

Q So you are in Richard's truck?

A Right. In the back seat of the truck, the Explorer. So he didn't stop. And I did have a pistol on me. And I hit him with it because I wanted him to stop, and he did stop. And I got out the car.

Q So how many times did you hit him with the pistol?

A I believe twice.

Q And why didn't you go ahead and shoot Richard then?

A Why didn't I shoot him? I mean, because I didn't want to shoot him. That wasn't my intention to shoot him.

Q Okay. So you and Richard were generally on bad terms?

A Yes, we was.

Q And he was angry that you had hit him with the pistol?

A He was angry that I hit him with the pistol, and I was angry that he put a pistol on my little friend,

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which I considered my little brother.

Q All right, let's go on to January 16th, 2010, the day of this incident. Why were you at Lauren's house?

A That was my girlfriend at the time. So that night I had stayed the night at her house.

Q Did she invite you there?

A Yes, ma'am.

Q Okay. And did you go over there to pick a fight with Richard or with Anthony?

A Ma'am, I didn't even know Richard or Amp or Lay Lay stayed there until that morning when she gave me the car.

Q So what happened that morning?

A Well, in the morning I had a couple of missed calls. I mean, I was selling marijuana out of there, which everybody knows. So I had a couple of missed calls. So I called them back. And I asked Lauren if I could hold the truck so I can go make them transactions.

So she let me hold the car, but the brakes ran out on me, so I had to use the emergency brake just to stop. But I pulled into the Murphy Express to see what was wrong with it. That's when I ran into Devan. He had said he had wanted some marijuana,

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some weed. But I didn't want to make no transaction at the gas station because that is hot. So I told him to follow me back to Lauren's house. He stated he had to get something out the store. And so I told him just to call me when he turned in Vineyards Crossing.

So I pulls up -- I pulls up to Lauren's house, and I don't -- I don't see -- I pulled back up to Lauren's house, but before --

Q You are in Lauren's truck at this point?

A Yes, ma'am. But before I hopped into the car on my way out, that is when I knew that Amp and Richard was there because we had got into a verbal altercation.

Q Okay, tell me about that discussion with Richard and Anthony.

A I don't really recall the words that we was saying towards each other, but I can say that we was threatening each other, though.

Q Okay. So -- all right. So at some point -- how did you end up in Quinton's truck?

A When Devan called me back and say he was turning in Vineyards Crossing, I told him when he get to the stop sign just make a right and I'll be walking up the street for him to pick me up.

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So when they pulled up, I told him to take me to my house. I told him that I was going to get my marijuana, but really I was going to go get my pistol.

Q And why did you go get your pistol?

A Because me and Richard had -- we made verbal threats to each other, so therefore I was scared of what he might try to do to me. So I went and armed myself for self-defense towards Richard.

Q And the last physical altercation you had with Richard was when you had hit him with the pistol?

A Yes, ma'am, the last physical altercation, yes, ma'am, at the AM-PM.

Q All right. And Richard is known for carrying a pistol?

A Yes, ma'am.

Q All right. Now, after Quinton dropped you off, what did you do then?

A Well, before he dropped me off we had stopped by the Mobile gas station right before Vineyards Crossing. I had got some cigars. So I had got him to drop me off at that -- at Lauren's house. So I go inside Lauren's house. I'm chilling with her. And we rolling up -- we rolling weed.

So I get another call, which is from Devan.

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He tells me he needs a cigar. At the time he was either 16 or 17, so I didn't want to have him -- I didn't want to have him going out the truck trying to find somebody to give him a cigar, so I told him just to come back.

Now, he didn't know what house I was at because on his way to come I was walking up the street, but he could get an idea because I was driving a red Jimmy truck, which was a Trailblazer. So I just told him to call me. He knew where I was at. I told him to call me when he is outside. So he calls me. And I go out there. And I see him parked in front of Anthony Salley's house.

Q Okay. Let me stop you there. Did you say anything to Devan about -- that day did you and Devan have any discussion at all about Anthony and Richard?

A No, ma'am. In fact, I don't even think he knew Richard or Amp.

Q So did you tell Devan to park in front of Anthony's house?

A No, ma'am.

Q Okay. Go ahead, if you would. Tell them about what happened after he pulled up.

A All right. So when he calls me and told me that he wanted -- when he called me and told me he was

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outside, I walked outside. But now I notice him parked in front of Anthony's house and I notice Anthony was at the car talking to him.

So I walk -- so I walks up there. And soon as Anthony seen me, he took off his jacket and he ran towards me talking about do I have a problem.

So me, not wanting to fight him because he was bigger than me and I ain't really want to lose no fight in front of my home boys, I pulled the pistol to scare him, but he wasn't scared. He walked up on the pistol closer and he told me to shoot him.

Q And did you shoot him?

A No, ma'am. I didn't say nothing. But I still had the pistol pointed at him, though.

Q And why didn't you shoot him?

A Because I ain't want to shoot him. I didn't even want to fight him, so why would I shoot him?

Q Okay. Did you dislike Anthony?

A I mean, really I didn't even know him to dislike him.

Q Okay. All right. So he wasn't scared off by the weapon?

A No, ma'am.

Q Okay. And so then what did you do?

A He walked up on the pistol and told me to shoot

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him.

Q Okay. And then after that?

A After that I didn't say nothing. He kind of pulled my card, which was called my bluff. So he punched me in the face. I stumbled a little bit, so he punched me again. And I had dropped -- I had dropped the pistol on the ground. So we get to fighting. And it turned --

Q And you are fist-fighting?

A Yes, ma'am, fist-fighting.

Q Okay. Tell me about the fist-fight. Well, let me ask you this. Have you ever been in a fist-fight before?

A Yes, ma'am, I been in a lot of them.

Q Okay. So, go ahead and tell me about this fist-fight.

A Well, it turns out that I got the best of him, you know, like I was beating him real bad. And --

Q This is after he had already punched you twice?

A Yes, ma'am. And I was beating him real bad. Then after I was beating him to the point where he stopped defending himself so I felt like the fight was over with because it wasn't no -- it wasn't no need to keep fighting him when he wasn't even fighting back. So --

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Q So why didn't you just punch him and punch him until he was --
A Why would I do that? He is not even defending himself. And I thought I had already won the fight anyway.
Q All right. So what happened?
A I got up. But when I got up, that is when I noticed -- I heard some commotion going on the whole time, but when I got up, that is when I noticed that Andina, which was Anthony Salley's girlfriend, had had my pistol the whole time pointed at Devan, or me, I don't know. But when I got up, she had threw the pistol on the ground. And I left Anthony Salley on the ground, so I --
Q Let me interrupt you for a moment.
A Yes, ma'am.
Q Did -- so you said you saw Andina with the gun. And how did you feel when you saw her with the gun? Did you --
A It kind of -- it kind of took me by shock because I'm thinking it was still on the ground. So when I seen her with it, I'm like, she could have shot me the whole time.
Q Okay. All right. So the fight ended and you got -- what did you do then?

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A I got up. And that is when I noticed Andina had the pistol. And she threw it on the ground right beside her. So I goes to pick the pistol up because -- well, let me tell you -- let me tell you like this. Now that they know my whereabouts, which was at Lauren Banks' house, I didn't want to go back to Lauren Banks' house because now they know where I'm at. And I just beat this man up, which was Anthony Salley. And my beef is with Richard. So who is to say that he won't call Richard and let him know where I'm at. So I goes to pick the pistol up.

Q Well, why didn't you just leave the pistol there on the ground?

A Because I just beat this man up, so why would I turn my back to him and leave for Andina to shoot me or to give the pistol to Amp where he can shoot me?

Q So you were afraid for your life at that point?

A Yes, ma'am, I was afraid for my life, that I would get shot, especially in my back.

Q Okay. So then you went and picked up the pistol?

A Yes, ma'am.

Q And what happened?

A Well, when I picked up the pistol -- when I picked

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up the pistol and I turned around and Anthony was walking towards me, and I left him on the ground, I thought he was still on the ground, so when I turned around and seen him walking towards me, it kind of scared me and I flinched. And I accidentally pulled the trigger. And then he was hit. I got scared and I ran.

Q You thought he was coming back after you?

A You talking about after I picked the pistol up?

Q Yes. When you realized he was no longer on the ground.

A I mean, I don't know what I thought at the time, but it scared me to turn around and see him right there.

Q Okay. And you have asthma?

A Yes, ma'am, I do.

Q Okay. Tell me how you were feeling right after the fight ended.

A I mean, I was tired. I was amped up. I couldn't breathe. I was out of breath. And I felt like -- and I felt like I wanted to leave that scenery because of what just happened, and then I had possession of this pistol and of weed, now that gave me more reason to want to leave because I wasn't trying to go to jail for no pistol charge or

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the marijuana charge.
Q Okay. So I know that you -- those things happened fast when this happened, but how far away do you think you were from Anthony when you shot him?
A Probably a couple of feet.
Q Okay. All right, so then you went to go run out of the subdivision?
A Yes, ma'am.
Q Okay. And where were you headed?
A I ain't know where I was headed. I just -- I just ran.
Q Okay. And then you -- what happened then?
A Well, I seen Demario's car, I believe his last name is Evans, which was one of my chauffeurs. I call him, he takes me where I need to go, then I let him smoke for free, I fill his tank up. So I seen his car, so I knew that he was at that house.
Q Okay. But before this incident, did you know that Demario was going to be there at Jarrod Crudup's house?
A No, ma'am. I don't even know Jarrod Crudup.
Q Okay. But as you were running away from the scene you saw Demario's car?
A Yes, ma'am.
Q You knew he was a friend and he could help you get

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out?
A Yes, ma'am. And I seen Devan walking in the house also as I was approaching.
Q Okay. And then eventually -- all right. And where did you end up at?
A After I seen the car?
Q Yes.
A I had walked in the house with them. I told them to hold up. And he asked me what had happened. I ain't said nothing. And I had walked in the house. I had walked in the house with them.

I had approached Demario. And Devan was already asking Demario for a ride, and he was telling him no.

I was like, Demario, I need you. I was like, please -- I was like, please take me away from here.

He was like, why?

I said, man, I just got in a fight and I'm trying to leave.

Q Okay. So you eventually ended up at another friend's house, is that correct?
A Yes, ma'am. In Demario's statement he told me -- he wrote that he dropped me off at the AM-PM, which was a gas station, but I believe that he was trying

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to help me out because he didn't drop me off at the gas station, he dropped me off at one of my friend's house on Hardscrabble right past the AM-PM.

Q Okay. So you are at the friend's house. And why didn't you call the police and tell them what had happened, that this was an accident?

A I mean, because I never shot nobody before, so being even though it was an accident, I still shot somebody. And I was afraid to go to jail.

And then -- and then when I did talk to my friends about turning myself in, they encouraged me not to.

Q What did they say?

A They was like, turn yourself in? Why would you do that? Hell, don't turn yourself in. So being that I was vulnerable at the time and didn't know what to do and being that these are my older home boys, I guess I just took heed to that and listened to them.

Q And what were you thinking about Richard at this time?

A I was thinking -- I was thinking like -- at the time I didn't know Anthony Salley -- I didn't know his -- I didn't know his stability, so --

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Q You didn't know whether Anthony was -- had passed away or not?
A Right. So I figured Amp would probably call Richard and tell him what happened, and now I have more issues on my hands. That is why I didn't want to go back to Lauren's house.
Q Okay. And why did you run to Atlanta?
A Really I wanted to get out of the environment I was in. And actually I called the warrant division and I told them I was going to turn myself in, but the reason why I didn't at the time is because I was supposed to go to court that next week for a trafficking marijuana charge, so most of that money that I had went to my lawyer, so I didn't really have no money but a couple of hundreds to my name.
Q And did you think a couple of hundred dollars would enable you to hire an attorney to represent you on a murder charge?
A No, ma'am.
Q All right. And what about clothes? Did you have a bag packed?
A When I left I only had the clothes on my back.
Q Okay. And you said you had a couple of hundred dollars?
A Yes, ma'am, about $400.

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Q Okay. And then in Atlanta is when you met Richard Johnson?
A Well, I was sent to Atlanta to be with Du-Wop. I don't -- I don't remember his real name. I think he got the same name as mine. But I went to go meet with Du-Wop, but when I got up with Du-Wop I was introduced to Richard, which was introduced to me as his cousin, so that is how I met Richard.
Q Okay. And you spent two weeks with Richard?
A Well --
Q Almost two weeks?
A The first -- the first week -- the first week that I was in A, which was Atlanta, I didn't see Richard. I was -- I was on the east side of Atlanta with somebody else that I knew by the -- well, somebody else that I knew. Du-Wop was telling me that he had to get some things in perspective before he come pick me up.
Q Okay. But at some point you and Richard were living in motels together?
A Motels, hotels, female houses.
Q Okay. So when you first met Richard, did you immediately tell him that you were wanted for murder?
A Well, I only had the clothes on my back and I

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didn't really have no money, so he was asking me questions. And then he was telling me, what about go to South Carolina. I told him, I can't go, I'm on -- on parole, I'm on a YOA parole, so I told him I couldn't go there.

Q So you didn't tell him about the murder at first?

A No, not at first I didn't.

Q All right. So eventually you told him -- what did you tell him?

A I mean --

Q Related to this shooting?

A I mean, like I told you before, I ain't never shot nobody, and it was on my conscience. And I just wanted to talk to somebody about it, you know. And being that he was the person I was with and I felt like I got a -- I had a friend, I told him.

Q And how old were you at that time?

A I was 19.

Q And you thought that Richard was someone you could trust?

A Yes, ma'am, I did.

Q All right. And did you tell him that you shot the person in front of his girlfriend?

A Yes, ma'am. And I inquired of him -- I told him that to inquire of him that it was a witness, and I

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also told him that being that it was a witness and even though I accidentally shot a man, I still shot a man, so I told him how I think that I missed my life up.

Q Okay. Did you ever brag to him about --

A No, ma'am, I never bragged about that.

Q All right. And, again, did you hate Anthony Salley?

A I didn't know Anthony to hate him.

Q And, again, you shot Anthony one time. Why didn't you continue to shoot him?

A Because, I mean, it was an accident that I shot him the first time. Why would I shoot him again intentionally?

Q So did you kill -- you can tell the jury, did you kill Anthony intentionally?

A I did not kill Anthony intentionally. I didn't mean to kill him. I didn't want to kill him. And I'm very sorry that -- I'm very sorry that I killed him. It be on my mind all the time. Like, you know, my mama -- my mama told me that his family go to church with her, so I been wanting to reach out to the family to apologize. I even wrote a letter I still have in my possession at the jail, but my family told me that it was best not to do that

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being that the situation that is going on because anything could be used against me. So I didn't take that route of giving them the letter.

But I do want to apologize to the family, that I apologize. It was an accident. And I also want to apologize to Lay Lay because we went to school together. We went to school together, so we kind of know about each other. And I know how that might feel.

Q Please answer any questions.

A Yes, ma'am.

THE COURT: Please answer any questions Ms. Campbell may have.

MS. CAMPBELL: May it please the Court?

CROSS-EXAMINATION

BY MS. CAMPBELL:

Q Let me get a few things straight. You just referred to Lay Lay. That would be Anthony's sister?

A Elasias.

Q Elasias?

A Right.

Q So you knew her, even though you are telling this jury today you didn't know her brother?

A I didn't even know that they were brothers and

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sisters at the time. I just -- every time I seen Lay Lay she was by herself or with Richard.

Q If you can back up.

THE COURT: Hold on one second. The microphone is -- and I don't know -- let's see if you back up and see how it sounds, okay?

THE WITNESS: Yes, ma'am.

THE COURT: All right. Let's try it again.

A Well, can you ask the question again, please?

Q You stated that you just -- and throughout your testimony you stated over and over you didn't know Anthony?

A I did not know Anthony. I knew of him. I knew that that was Richard's friend.

Q You knew of him. You knew where he lived?

A No, ma'am, I did not know where he lived until that morning of the incident.

Q Until that morning of the incident. And we will get back to that in a minute. But when you went over there that day after you armed yourself having gotten a ride to your house, you knew where he lived?

A I knew where he lived then, yes, ma'am.

Q Okay. And your claim is is that Lauren Banks is your girlfriend?

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A Yes, ma'am, she was.
Q Who was having your child?
A Um, really I had two females pregnant.
Q Okay. And neither one of those were Lauren Banks?
A No, ma'am.
Q And Lauren Banks isn't here today?
A I don't know where she is at. She is not here, though.
Q And Devan, he's a friend of yours?
A Yes, ma'am.
Q He looks up to you like a brother?
A And I look down at him like a little brother.
Q And you look out for him?
A Yes, ma'am.
Q And you try to take care of him?
A Yes, ma'am.
Q In fact, you were so concerned that day that your primary concern was getting him that cigar so that he didn't have to go to the trouble of trying -- somebody getting one illegally?
A Right.
Q And Demario, he was your friend?
A No. He just somebody that drove me around. And I also looked out for.
Q Your chauffeur?

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A Right. Like a favor for a favor.
Q So your -- you went to Blythewood High School?
A I did.
Q Did you graduate?
A No, ma'am.
Q Why didn't you graduate?
A Because in '06 when I caught that burglary second charge, in '07 I had pled guilty and I caught the YOA. I did shock. I came home May the 2nd or 3rd of '08 and I tried to enroll back in school, but they told me I couldn't because I was a threat, and if I did, I had to go to another district, probably District One.
Q And your testimony is that was based on your burglary charge, not on what you did at the school?
A That's what they told me.
Q Okay. But do you remember the things that happened at the school?
A I do.
Q That maybe they wouldn't let you back for?
A I remember a lot of things, but it wasn't from the riot.
Q It wasn't for the riot?
A No.
Q Then what was it for?

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A I don't know nothing about no riots.
Q Do you remember other things?
A I do.
Q What kind of things?
A Well --
Q When you said you couldn't go back because of the burglary, that wasn't true?
A Well, that was true from what the principal told me. '04 I went to LR. '05 -- '04 I went to LR and at Blythewood. '05, that is when I went to Blythewood. I got kicked out for engaging a sexual altercation with a female. And I went to Blythewood Academy.
Q So it is Blythewood Academy that you got kicked out of?
A No, I got kicked out of Blythewood High School and went to Blythewood Academy.
Q Okay. And your testimony is that Lauren Banks is one of your girlfriends?
A She was my girlfriend.
Q And your testimony is that there had been a prior -- or you knew Richard to be dangerous? Is that your testimony?
A Right.
Q And you knew Richard and Amp were together?

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A When?
Q On a prior occasion. You just testified in detail about an altercation that occurred that got so bad, that there was a car involved, you were in the car, then you had to pistol-whip somebody?
A Okay.
Q Is that right?
A All right.
Q And Amp was there?
A Amp was with him a couple of times when I seen Richard.
Q And things got really bad, that you had to pull out your pistol, which you happened to have with you on that occasion too, right?
A Are you referring to the event at the store?
Q You are the one that told me about the event. I never heard about it.
A I was just making sure that is what you were talking about so I don't lie.
Q The event at the store?
A Right.
Q That you had your gun. And at that point you were getting beaten up so badly that you had to pull out your pistol, and I think you said you actually pistol-whipped Richard?

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A No, I did not get beat up. He pulled off with me in the car.
Q Raymond actually fell out of the car, I think you said?
A Because when he pulled off.
Q Did Raymond get hurt?
A I don't know, I didn't ask him. He is a big boy, he can hold his own.
Q Did you get hurt?
A Me?
Q Yes, you?
A No, ma'am.
Q And this was a very terrifying moment because this is the reason you are so scared of Richard, right? That is what you just testified to.
A That is not the reason why I'm scared of Richard.
Q Why are you scared of Richard?
A I'm scared of Richard because he threatened to kill me.
Q He threatened to kill you?
A Even though we both gave each other verbal threats, he still threatened me.
Q Okay.
A Therefore my life is in danger.
Q Okay. Therefore your life is in danger. This is

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in the Fall before all this happens, right? That is what your testimony just was?

A '09. All '09.

Q And you threatened him back?

A I did.

Q Then y'all got in a physical altercation?

A At AM-PM, yes, ma'am.

Q At the gas station. Were there other people out there, people that could have been hurt when you pulled off and the car wrecking, and things like that?

A No. See, the AM-PM, it is not like your average store. It is like a hood store or an urban store. It is not really that big. Nobody was in the parking lot but us.

Q A hood store? An urban store?

A Right.

Q And you have been in this courtroom --

A A convenience store.

Q -- and heard all the testimony over the last two days?

A Okay.

Q I believe you even referred to Demario's statement. So you have read all the statements in this case, right?

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A I have.
Q Prior to today?
A I have.
Q When you are testifying today?
A I have.
Q And when this altercation that put you in fear of your life happened, your friend fell out of the car, you don't know if he was hurt or not, so at that point you called the police to tell them what a threat Richard was?
A Both of the things you just said was wrong. I never said that that altercation is why I was afraid of Richard, and I never said that I called the police to say he was a threat.
Q Your lawyer asked you about the altercation for a reason, right?
A Yes.
Q And you just testified two seconds ago that y'all made threats and you were in fear of your life from Richard.
A Because of the threats that he made to me.
Q Okay.
A About a life.
Q You called the police and told them that your life was in danger, you needed protection?

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A I never called the police.
Q Why not?
A Because, I mean, where I come from, what happens in society you leave in society.
Q And you were scared because you knew Richard carried a gun, right?
A Yes, ma'am.
Q But it seems like on every occasion you have referred to you are the one with the gun.
A Okay, I am, but he has a gun too.
Q And legally you can't carry a gun?
A But legally -- legally I can't carry a gun, but legally I can carry a gun in self-defense.
Q And you work for a living, right?
A Not in a corporate committee.
Q Not in the corporate community?
A Committee.
Q What do you do for a living?
A I sell weed.
Q Is that all you sell?
A That's all I sell.
Q And as part of your job duties, carrying a gun can be important?
A Yes. Yes, ma'am.
Q And that morning that this happened, as you have

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testified to, you were selling weed, I believe -- did you say -- and I might have -- I don't want to misquote you -- over at Lauren's house earlier?

A I wasn't selling weed at Lauren's house, but -- all right, when I met Devan at the gas station, I told him to meet me back at Lauren's house because I didn't want to sell at the gas station because it was hot. But as he approached me in Vineyards Crossing, I told him to take me to my house so I can get my marijuana, which I already had on me, but I wanted to go get the pistol in self-defense for Richard because he threatened my life.

Q Okay. And you don't remember telling them you needed to go get your tool?

A No, I don't remember telling them that.

Q They are wrong about that?

A No, not there. He is the only person that said that.

Q Because you reviewed all the statements?

A Right. You did too, ma'am.

Q And at that point you went to your house and you were riding in the back of the truck?

A I was.

Q And you had the marijuana to give to Devan, you just didn't want to do it -- you don't deal in

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public places, is that true?

A Well, sometimes dealing in a public place --

THE COURT: Back up just a little bit, okay?

THE WITNESS: Yes, ma'am.

A Sometimes dealing in a public place will be good because it is a lot going on so you are not the person that they are really looking at.

Q Why would Devan testify here that you had already given him the marijuana at the gas station?

A Well, in his statement he said he bought weed from two different people. From another person at the gas station. He never said he got it from me at the gas station.

Q And then you go and you get to your house and you get your gun?

A Yes, ma'am.

Q Which you had. And one reason you said that you were so scared when all this happened was you had never shot anybody before -- or shot at anybody before?

A Right.

Q Is that true?

A That's true.

MS. CAMPBELL: Your Honor, we have a matter of law.

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THE COURT: All right. Ladies and gentlemen of the jury, I'm going to send you all out for about five minutes.

(WHEREUPON, the jury retires to the jury room at 11:03 a.m.)

MS. CAMPBELL: Your Honor, out of an abundance of caution, I think we have opened the door now for me go into the prior shooting that he did on June 9th of 2009 where he pistol-whipped and shot at a young man named Corey Fulton who was in his home at the time. He then confessed to that pending charge.

THE COURT: But he hasn't been convicted of that, has he?

MS. CAMPBELL: No, ma'am. And I would not be able to get into it if he had not said the words, I have never shot at anybody.

MS. CLEARY: No, I'm sorry, she is mischaracterizing his testimony. He said he had never shot anyone.

THE WITNESS: Or shot at anyone.

THE COURT: Hold on.

MS. CLEARY: Well, you didn't say that. So he didn't say he had never shot at anyone.

THE COURT: Don't say anything else, okay?

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MS. CLEARY: Obviously he denies this event ever happened.

THE COURT: What I wrote down was that he said, I never shot anyone before. I can have her replay --

MS. CAMPBELL: I asked him specifically if he had ever shot anybody or shot at anybody, and he said no.

MS. CLEARY: No, she did not ask him -- I was looking --

THE COURT: All right, well, she -- okay. Well, we have the record here, so we can play it back to hear exactly what he said. It is going to probably take -- because Debbie has to listen to it. But those are pending charges?

MS. CAMPBELL: Yes, ma'am. And we would not be able to get into them but for the fact that he said he had never shot at anybody before. And I asked him -- I even followed up to make sure. I said, you said you had never shot at anybody, and he said no. And I said, is that the truth. And he said yes.

THE COURT: But he hasn't been convicted of it.

MS. CAMPBELL: Under -- once he opens the door

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to it, Your Honor, it is -- I'm not going under 609.

THE COURT: I understand under impeachment, but --

MS. CAMPBELL: He volunteered the information. If he never said the statement, I ran because I had never shot at anybody before or shot anybody before, we wouldn't be able to get into it. I agree.

MS. CLEARY: And I would for the record --

MS. CAMPBELL: Although there may be another way we can get into it too because he said he went over there to be peaceful with no intention of doing anything, things happened and it was accidental and that it was the victim that was the aggressor. So that would be another way to get into it, as well as the prior proof of final -- and he happened to have the same gun when he did this one.

MS. CLEARY: It would be our position that, first of all, anything about this unrelated incident would be probative of nothing and be clearly prejudicial; but also that he did not open the door to it and he has not said he went over there to be peaceful. He said he was going to give

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a friend a cigar.

In addition, we -- you know, the only thing that we know about this case is what the arrest warrant says. I don't -- I mean, he denies it. I don't know the facts of the case. I don't know -- I mean, I think if they wanted to be able to bring him up there, I think, or whoever this other guy is, they have to have a proffer of that. They haven't given me anything other than just basic arrest warrants.

MS. CAMPBELL: I can ask him about specific instances and limit it to that as far as to whether he admits or denies it, but there is a prior occasion where he shot at somebody.

MS. CLEARY: She can ask him and he can --

MS. CAMPBELL: I would agree we are limited to that. I don't know that I can bring in extrinsic evidence of it, but I have a right to ask him about it.

MS. CLEARY: But he was charged with assault and battery of a high and aggravated nature?

THE COURT: You can ask him was he charged with that. I'm not even ruling on it yet. I'm just thinking out loud. I don't know -- if he hasn't been convicted of it, I'm just not sure if

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you can ask him -- I mean, even with the conviction you can't get into the details.

MS. CAMPBELL: It would be a prior bad act at that point, Your Honor. It is not a conviction. We are not proceeding under that.

THE COURT: So you are basically saying that --

MS. CAMPBELL: It is used for impeachment.

THE COURT: -- you can ask him that and he can say, I was charged with it but it is not true.

MS. CAMPBELL: Yes.

THE COURT: I haven't been convicted of it.

MS. CAMPBELL: Yes. I can hand up the case and you can review it. Basically he went over to the kid's house, pistol-whipped him with a gun and then shot at the kid. He did not hit the kid with the bullet. And ultimately confessed to it, but said it was an accident.

MS. CLEARY: And I think she can ask him about it only if the record shows that she asked that he denied ever shooting at somebody. And I think --

THE COURT: Well, we are going to have to -- that is going to be the first thing we have to do is figure out what the record says. And Debbie can't look it up until we all be quiet because she

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has to continue to type what we say.

So the question that she is looking for -- well, I guess -- and you are saying that it was on cross that you asked that? Because on direct I wrote down what he said in anticipation of this. And I wrote down that, I never shot anyone before.

So we'll stop. She is going to probably need about five minutes or so to pull it back up to see. But you think it is on cross for sure?

All right, we will take about five minutes.

(WHEREUPON, a break was taken.)

THE COURT: She typed it up. You gave them a copy?

THE COURT REPORTER: I gave it to them.

THE COURT: All right. Yes, ma'am?

MS. CLEARY: You know, I take from this that she mischaracterized his testimony and said that he had said he had never shot at anybody before. I don't know that he actually understood that, but, in any case, she is obviously goading him. Not going by what was said on direct, but she was goading him. I don't think she should be allowed to ask him if he has ever shot at anybody because she is goading him so she can bring in this unrelated shooting that obviously he hasn't been

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convicted of, he denies, he hasn't been proven guilty of it. And so she shouldn't even be allowed to ask him if he had shot at anybody. And I think -- I just must not have heard it or I would have objected to that, because that was not what his testimony was. His testimony was that he had never shot anybody.

THE COURT: All right. Yes, ma'am?

MS. CAMPBELL: Your Honor, the facts of the case that we are attempting to elicit this information from is that he goes to Corey Fulton's home in the Blythewood area, that's when he pulled out a gun and starts to pistol-whip him. As the young man is trying to get away from him, he shoots once, then he is confronted by the mother, who he then explains to her that he didn't -- it was an accident that the gun went off.

Had he not brought this up first as the reason to try to explain why he was scared to say that he had never shot anyone before, alluding to the fact and basically stating as fact, I mean, that he had never been in the situation before was just simply an untruth and we have a right to impeach him on that.

MS. CLEARY: May I be heard? We carefully,

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you know, made sure that he never said he had never been involved in this sort of situation and that he had never shot anybody before. And that is what -- I mean, that is true. They don't have any evidence that he had ever shot anyone.

MS. CAMPBELL: We have proved that he dealt drugs and shot at people before.

MS. CLEARY: I mean, and he has not been convicted of these crimes. I mean, those are bare allegations at this point. He has not been convicted of it.

THE COURT: So let me ask you this. And I'm not ruling, I want to make sure. If I allow her to impeach him as to the, shot at anybody before, what do you intend on asking him?

MS. CAMPBELL: I would just ask him, do you know Corey Fulton and didn't you shoot him -- at him on June the 9th of 2009, and he can explain it whatever way he wants.

THE COURT: And if he says no, then what are you going to say?

MS. CAMPBELL: Then we may have reply witnesses, but that would be down the line. I can't --

THE COURT: You may have what now?

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MS. CAMPBELL: Reply witnesses.

THE COURT: Okay. But I'm saying for purposes of his testimony you can't get into the --

MS. CAMPBELL: I don't think I can get into all the substantive facts, the fact that he confessed to it, and all that stuff. I think I can just ask him if he knows Corey Fulton and on June the 9th of 2009 did you shoot at him.

MS. CLEARY: I believe she has to accept his answer and not bring in extrinsic evidence.

MS. CAMPBELL: We can argue that later on down the road.

THE COURT: She can -- but she can't get into it, is what you said are saying. What you are saying you are not going to get into it other than him saying no and keep going.

MS. CAMPBELL: Oh, yes. Or he may want to explain. I don't know. I mean, that is his right. And then, you know, at that point whether or not I can bring up anything on reply depends on where we go from there.

MS. CLEARY: But you are also putting me in a position where I should tell him to plead the Fifth. I mean, and not -- because he did not say he shot -- he never shot at anybody. He did not

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say that in direct. She twisted his words around and is now putting him in a position where he is going to have to talk about pending charges before there has ever been a trial or anything. I mean, and, you know, he is going to deny it because he always denied it. And she will have gotten what she's been trying to do since the very beginning, is bring in a completely unrelated charge by goading him.

MS. CAMPBELL: I'm not goading anyone, Your Honor. And it is not --

THE COURT: It is cross-examination. And, I mean, it says here: When all this happened -- and one reason you said that you were so scared when all this happened was you never shot anybody before -- shot at anybody before.

And I think you are probably right, that would have been the time to make an objection.

MS. CLEARY: I mean, I believe it was, you know, done so subtly, you know, as to trick him.

THE COURT: He said, right. And then she goes back again and says, is that true. And he said, that's true.

MS. CLEARY: But may I say something else?

THE COURT: Yes.

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MS. CLEARY: I also emphasize that she says: And one reason that you were so scared when all this happened was you never shot anybody before -- shot at anybody before.

He had never testified to that. She was trying to say that on direct he said shot -- shoot at -- when she asked him that.

THE COURT: Well, this is the problem I have, though, is she asked the question. I didn't get -- I mean, there is no objection. And I understand you said you just didn't catch it, but there is no objection, and so I can't -- if I was ruling as to your objection, I would have told her to rephrase -- you could have made that argument at that time that the question -- he never said that he didn't -- and I would have said, rephrase the question. But I didn't hear an objection.

Now the answer is out there. He said -- I don't know if the jurors heard it. I can only -- I mean, it is in the record, the answer is out there. He is saying that he has not shot at anybody before.

MS. CLEARY: But, I mean, I think the fact that it had to get -- the record shows that, you know, very subtle, but the insertion of the word

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"at" and that she should be allowed to just ask him if he had ever shot anyone before and not.

THE COURT: Can I see y'all one second?

(WHEREUPON, a bench conference was held.)

THE COURT: All right. I am going to -- I guess the best way to phrase this is, part of the problem, as I kind of explained, is the answer is -- the question was asked twice: Right? Is that true? Yes, that's true.

Then she says, we're going to -- can we send the jurors out, I have a matter of law. Then I send the jurors out.

And during the time that we're discussing it, Ms. Cleary may not have heard it and I may not have heard it, but then the Defendant said, no, I did say shot at anybody before or shot -- shot anybody before or shot at anybody before.

Of course, he is on the witness stand. His attorney didn't have an opportunity -- she -- after that I instructed him not to say anything else.

But I don't think that there was any misunderstanding with him regarding the question of whether or not it was a misunderstanding as to whether or not when his attorney heard. He clearly

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stated that -- what his answer was.

I am going to allow only testimony regarding, isn't it true, dada-dada-dada-da, 2009. And that is it. He can answer it yes or no, and then we can move on.

MS. CAMPBELL: Okay.

THE COURT: All right. You can bring them in.

(WHEREUPON, the jury came into open court at approximately 11:47 a.m.)

THE BAILIFF: The jury is present, Your Honor.

THE COURT: All right. You may continue.

MS. CAMPBELL: Thank you, your Honor.

CROSS-EXAMINATION CONTINUES

BY MS. CAMPBELL:

Q Mr. Hinson, before the break I asked you about had you ever shot at anybody before. Are you familiar with a young man named Corey Fulton?

A Yes, ma'am, I do.

Q And do you recall on June the 9th of 2009 when you went to a residence at [redacted] Barge Road and you shot a handgun at him?

A No, I did not shoot a handgun at him.

Q So you are denying that?

A I am denying that.

Q Your testimony here today has been that you didn't

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really know Anthony Salley?
A Right. I didn't know him.
Q Did you know his nickname?
A I knew him as Amp.
Q And you knew he hung out with Richard Thomas, right?
A Right.
Q And you had bad blood with Richard Thomas definitely?
A Right.
Q But your testimony here today is that you didn't really know who he was -- know him at all?
A I didn't know him at all.
Q And the only time had any dealings with him was on a prior occasion the Fall before that when he was involved in the fight that you have described to the jury?
A Anthony was not involved in that fight in the Fall.
Q Was he present for that fight in the Fall?
A He was not.
Q Okay. I misunderstood when I wrote that down. Was there an incident at a gas station where you said Richard, Amp and Lay Lay and another person were there in a white truck?
A Ma'am, I tell you, when Richard approached one of

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my girlfriends, which was Lauren Banks, her brother, when they approached him, he pulled a pistol on Kenneth Banks looking for my little friend.

Q And I'm sorry if I messed that it up.

A Right.

Q It was a different incident where he was present?

A Right.

Q And were you present when that happened?

A Me?

Q Yes, you.

A I was not present when that happened in Falls Mills.

Q But you were aware at the time -- and who actually pulled a gun on Kenny Banks that you are talking about?

A Richard did.

Q And Amp was present when that happened?

A I don't know, but when I called Richard and we had a verbal conversation, he told me to come to the gas station. And when I did, Amp was with him at the gas station.

Q Okay. And that is when you saw him?

A Right.

Q And pulling a gun on somebody is a serious offense?

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A I mean --
Q I mean, you were concerned for your friend Kenny?
A No. I was concerned for Derrick, who was the person they were looking for.
Q Okay. Who did he pull the gun on? I'm getting mixed up now.
A He pulled the gun on Kenny and asked him where was Derrick.
Q Asking for Derrick. So he is after one of your people?
A Right.
Q Is Derrick one of your guys?
A He's one of my friends.
Q One of your friends, okay. And Kenny is one of your friends?
A No. I just -- I just used to mess with his sister.
Q Okay. Kenny is not your friend. But you knew he had pulled a gun on Kenny, and this concerned you enough for you to make a phone call to Richard so that you would have a face-to-face confrontation?
A It didn't concern me that he pulled the pistol on Kenny. I don't know Kenny to care about him. It concerned me that he was looking for --
Q Derrick?
A -- my friend, which was Derrick.

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Q So you knew he was looking for your friend Derrick maybe to do something bad?
A Right.
Q So did you call the police then?
A I called Richard to ask what was going on.
Q Why didn't you call the police to protect your friend?
A Because, like I told you before, Ms. Campbell, what happens in society you leave it in society.
Q You have your own set of rules?
A I mean --
Q The law doesn't apply to you?
A I wouldn't say I have my own set of rules, I would just say that is my thought process.
Q The law doesn't apply to you?
A (No response.)
Q Are you -- do you want to answer?
A I have no answer to that.
Q Okay. And you didn't know Richland at all and you had no bad blood with him -- I mean, excuse me, I'm sorry -- Amp?
A I don't know Anthony at all, correct, but I knew who he was and I knew he hangs out with Richard.
Q So there was no reason Andina would think y'all had bad blood between each other?

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A We didn't have bad blood. He probably had tension against me because of me and Richard and being that is his friend, just like I engaged tension with Richard because of him and Derrick.

Q Well, you have had an opportunity to review all the statements in this case, haven't you?

A Yes.

Q And Lauren Banks, who is no longer around, we can't find her --

A All right.

Q Do you know why she would say that you referred to Amp as a pussy, you don't like him, you beat him up before?

A Me and Anthony never got into a fight. And I didn't say that. I said -- I asked did they -- I said the person hanging that was with Richard, I said that was my enemy.

Q But didn't know him but you had fought him before?

A I never fought him before.

Q Well, why would Lauren say that, do you know?

A Who knows? When something like that happens, you never know what is going on through a person's mind. She could be misinterpreting her words. Or the police probably could have, because she didn't write that statement, the police did.

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Q So the police put that in the statement just randomly?
A I mean, they could have.
Q They could have. You don't care for the police?
A I didn't say that.
Q Well, why would the police make up stuff about you?
A I didn't say that. I said they --
MS. CLEARY: Your Honor --
THE COURT: Hold on.
MS. CLEARY: I'm sorry. I'd like to object. She's asking him to speculate on what the police are doing and, I mean, I think she needs to move on after asking him about whether he thought --
THE COURT: All right. Sustained as to speculation.
MS. CLEARY: Thank you.
Q Do you of any reason why the police would make up something?
A I didn't say that they would make up something, I said they probably misinterpreted her words because, really, nobody wrote their own statement, the police typed it up as they were speaking.
Q And then she signed it at the bottom, right?
A Okay. But --
Q That is what it says.

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A Okay.
Q But you didn't know him? And you didn't have any bad blood with him?
A I didn't. And I never fought Anthony ever. I never had no physical contact with Anthony ever. I only had two conversations with him ever.
Q Let me ask you this. You said you were over at the Banks earlier that day?
A I had stayed the night.
Q And you had stayed overnight with Lauren?
A Friday night.
Q And she was one of girlfriends, right?
A That was the only girlfriend I had.
Q The only girlfriend, okay. And that next morning you got up -- and you didn't have your gun with you at that point, right?
A Right.
Q And then you ended up getting a phone call from Devan?
A No, I didn't get a phone call from him.
Q How did you end up at the gas station?
A Because, like I told you before, Ms. Campbell, I had missed calls so I had asked Lauren could I hold her car where I could go make them deliveries and transactions.

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Q So you were going to the store to make deliveries and transactions?
A I pulled -- I pulled into the store because the brakes was not working, I had to use the emergency brake, and that is when I seen Devan.
Q But Devan didn't call you before that?
A No, ma'am.
Q And at that point Devan wanted some weed, right?
A Yes, ma'am.
Q And he was like a little brother to you so you helped him out sometime?
A Yes, ma'am.
Q And at that point you didn't give any weed then, you told him you would have to give him weed later? Is that your story?
A No, I told him to come to Vineyards Crossing because I didn't want to sell weed at that store because that was hot.
Q Hot?
A Hot as in -- hot as in me not wanting to do it there because it was people out there to see what I was doing.
Q And then at some point he comes to Vineyards Crossing, right? And that is where he picked you up?

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A Right.
Q And at that point did you give him his marijuana?
A No, I told him that I had to go to the house and get it.
Q Get some marijuana?
A Right.
Q That's what you told him? You never told anybody you had to go get your tool?
A No, but I did go get my pistol, though, but I just told him to get marijuana.
Q Why did you need your pistol?
A Because, like I told --
Q You didn't know where Amp lived, did you?
A No.
Q You didn't know he was in the neighborhood?
A I knew he was in the neighborhood from when I left Lauren's house that morning, but I never knew he stayed there prior before that morning.
Q Okay. Well, let's back up, because you left that part out. How did you know he was in the neighborhood from that morning?
A Because when I came out the house that morning, me and Richard had a verbal altercation, which I already told you, that we threatened each other.
Q And that was that morning?

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A That was that morning.
Q Okay. So now there is a fight that morning that happened, and that is the reason you went and got your pistol?
A Ma'am, I said a verbal altercation, not no physical altercation.
Q Okay. And then what happened?
A Then we threatened each other. He threatened my life; I threatened his life back.
Q At that point, when he threatened your life, you were scared? Or you felt threatened?
A I felt threatened of what he would do to my life.
Q So you needed to go get your gun?
A Exactly.
Q You didn't call the police?
A I already answered that question.
Q Okay. And then at what point do you give Devan his marijuana? You didn't give it to him when you met up with him at Vineyards Crossing?
A After we went to my house and I got the pistol, on the way back to Lauren's house, that's when I gave it to him.
Q Well, why didn't you just give him his marijuana and let him go on his merry way? You had another car?

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A No, I did not.
Q Where was the red car you had been driving around?
A It was in the driveway because, like I told you, the brakes went out. I had to use the emergency brake just to stop.
Q And that is how you got it home?
A Yes.
Q Okay. And at that point you needed a ride to go get your gun?
A Right.
Q So you knew Richard was in the neighborhood, you knew he had made threats, you felt threatened from him, and he was in Vineyards Crossing?
A Right.
Q So you decide to go home -- and you stayed at home?
A No, I did not. I was going to go back to Lauren's house.
Q Because you weren't planning on doing anything with the pistol, that was just your version of self-defense?
A I wasn't planning on doing nothing with the pistol. I was -- I got the pistol in case he tried to take my life for self-defense towards Richard.
Q Towards Richard. So you knew when you went back to Vineyards Crossing that you may come into some

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conflict, but that wasn't going to back you off? You wouldn't just stay at home?

A When I came back to Vineyards Crossing, Richard wasn't even there no more.

Q So you go back and they drop you off in front of the Banks' house, is that right?

A Right.

Q And your testimony is you didn't know where Amp lived?

A Until that morning when I seen him in the front yard.

Q So at that point when you met up with Devan, you did know where Amp lived?

A Right. I knew -- I knew that he was there.

Q In that house?

A Right.

Q Two doors down?

A Right. Well, really, I thought it was next-door until --

Q And you knew Amp was associated with Richard?

A Right.

Q And instead of just going home and staying there because you perceived this threat -- you just said a threat to your life -- didn't call the police, didn't call for anything else, you just armed

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yourself and returned to where the threat was?
A I went back to Lauren's house, for one, all my belongings are there.
Q Really?
A Right.
Q And have you read Lauren's statement?
A Yes, I read it.
Q It doesn't say all your belongings were there?
A Was she asked that?
Q Then what happened? Then you go back and you are armed at this point. And you go into the Banks' house?
A Yes, ma'am.
Q Once they drop you off?
A Yes, ma'am.
Q So you get directly out of the truck. Did they drop you off in front of the Banks' house?
A I believe so, yes, ma'am.
Q So they knew which house you went into?
A Yes, ma'am.
Q So you went into that house. And they were outside when you did that?
A Yes, ma'am.
Q And then you go into the house. And how long did you stay in the house?

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A Well, I bust down two cigars, and by the time I did that, that is when I got the call.
Q Wait, wait, you are going to have to help me here. What does bust down two cigars mean?
A I opened up two -- see, when you smoke weed, you put it in a cigar. You take the guts out.
Q So you were making marijuana cigars, is that a fair characterization? Or were you smoking them?
A I was making -- we call it blunts.
Q A blunt. Okay. And you made two of those. And then what happened?
A I got a call from Devan saying that he wanted a cigar.
Q And at that point you went back out the front of the house?
A I told him -- I told him to call me when he came in Vineyards Crossing, and when he called me, that's when I went outside.
Q So there was more than one phone call?
A He called me saying he wanted a cigar.
Q Yes, I --
A And he called me again and said he was outside.
Q Okay. So there were two phone calls?
A Right.
Q And at that point you went out the front door and

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waited for him to come up to the front door?
A No. When I went out -- when I went in front of the front door, he was already parked in front of Anthony's house. Why --
Q Which you knew was Anthony's house? That's what you just said.
A I knew that Anthony was there, yes, I did.
Q So at this point you armed yourself, you know that your life is being threatened by Richard, who is friends of Amp, who is at a house two doors down, and you come out the front door and you are armed?
A Right.
Q So then did you wait for him to come down the street to you?
A Anthony was yelling at my little homie, which is my little friend. I didn't know what was going on.
Q Whoa, whoa, whoa. Anthony was now yelling at your friend?
A Yes.
Q Who was he yelling at?
A Devan.
Q Down at the driveway?
A Anthony was at the truck talking to Devan.
Q So Anthony is now out of the car at the truck talking to Devan in his own driveway, is that

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correct? And you are two doors down?
A Ma'am --
Q When you come out of the house --
A Devan -- Devan -- they was not parked in the driveway, they was parked on the street in front of the house.
Q The gray truck was?
A In front of the street -- in the street.
Q Where were Devan and Anthony having this conversation where Anthony is yelling at your friend?
A Right outside the truck.
Q So you go down there to protect him now?
A No, I go down there to give him the cigar.
Q But you have your gun. And you know Amp is associated with the person who has just threatened your life?
A Right. But that don't --
Q But you didn't go down there with any intent?
A No, because Richard was not even there. No, I don't even know Amp to have a problem with him.
Q Well, why did you go down there at all?
A Ma'am, because Devan called me back for a cigar. Therefore, if he never called me I would have never came outside. So when he called me for the cigar,

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why would I not go out there and give him a cigar?
Q Well, at the point that you see Amp yelling at him now, didn't you perceive there was going to be some problem, according to you?
A No.
Q So your testimony now is that you see him yelling. Could you hear what he is saying?
A No, ma'am, I couldn't, I was two doors down.
Q And was his manner aggressive?
A I can't recall.
Q Was he raising up a fist?
A No, ma'am.
Q Was he making any gestures?
A No, ma'am.
Q And so then you decided at that point that everything was going to be okay and you just needed to go two doors down where Devan happened to tell them to drop him off, not in front of your house -- the house where he dropped you?
A See, when I had came out the house that morning and seen Devan parked in front of the house, I didn't know why he parked in front of the house, but now come to find out he said he seen a light-skinned person in the car and he thought it was me. That's why he stopped in front of the house.

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Q Is that what you told Devan to say?
A No, ma'am. Devan said he wasn't listening to what I was saying, remember?
Q I remember. At that point, then, you go two doors down and confront Anthony Salley?
A I didn't confront nobody.
Q Well, at what point did you feel it was necessary to pull your gun out -- where did you have it?
A It was on my waistband.
Q In your waistband -- to pull your gun out and point it point-blank within arm's reach at Anthony Salley?
A Yes, ma'am, because when I was approaching Devan, Anthony Salley turned around and saw me and starting taking off his jacket and he ran towards me.
Q He ran towards you?
A Yes, ma'am.
Q Okay. And at that point are you thinking, oh, my gosh, this guy is a threat to me, I better back off, I need to get out of this? Because you didn't see any gun?
A I didn't see no gun, but I didn't even want to fight him.
Q You didn't even want to fight him?

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A I didn't want to fight him.
Q So at that point did you just pull the gun out to control him?
A No, I pulled the gun out to scare him away. I thought he was just going to leave the whole situation alone.
Q It was his house. You now say you knew that?
A I knew that he was there.
Q And at that point when you pulled the gun out, do you remember what you said?
A I didn't say nothing.
Q So the witnesses are wrong about what you said about wanting that situation to happen?
A I mean, I probably said something about, I'm not fighting you, but as far as --
Q No, that is not what you said.
A I didn't say -- I didn't say nothing verbally threatening or nothing.
Q You didn't say anything -- and I don't know the exact words, they can remember -- about how you wanted that to happen this way?
A To my knowledge nobody said that but Andina, and, no, ma'am, I didn't say that.
Q So Andina is not credible?
A I mean, that is her -- I'm not saying she -- I'm

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not saying she is not credible, I'm just saying she could have said anything.

Q Okay. Then the fight starts, right?

A Right.

Q But you admit, prior to Anthony Salley laying one hand on you, you had the gun out and you were pointing it at him?

A Yes, ma'am.

Q And how close was he, as close as you and me?

A Yes, ma'am, just like that.

Q How far?

A Like that right there.

Q Right there?

A (Nods affirmatively.)

Q And then he goes to punch you and the gun goes tumbling?

A No. He walked up on me and said, shoot me.

Q He walked up on you. And he said, shoot me?

A He walked up to the pistol and said, if you are going to shoot me, then shoot me.

Q And that is when he hit you?

A He said -- he walked up on the pistol. He said, if you are going to shoot me, then shoot me.

And I didn't say nothing. But I still have -- I do still have the pistol pointed at him.

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Q And that is the part I want to make sure we are right on. You still had the pistol pointed at him?
A Right.
Q And it was loaded?
A Right.
Q And it worked?
A I didn't know; I had never shot it before.

MS. CAMPBELL: Your Honor, we have another matter of law.

THE COURT: All right, ladies and gentlemen of the jury, I'm going to send you all out for hopefully another five minutes.

(WHEREUPON, the jury retires to the jury room at 12:03 p.m.)

MS. CAMPBELL: Your Honor, at this time, I was not going to go any further than that, but on the day that he shot Corey, he also had a .40-caliber pistol which matched the description of the one -- this one that he said he had never shot before.

MS. CLEARY: I don't know anything about it, but I know -- I mean, they can't say that it was the same pistol.

THE COURT: Yes. I mean, if there are any -- if there are matching serial numbers or anything to be able to say it is the same pistol.

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MS. CLEARY: There are a lot of .40 --

MS. CAMPBELL: Did he say he had never shot it before or he had never shot a gun before, I can't remember which.

THE COURT: He said he never shot that gun. You asked him did that gun work. And he said, I don't know, I never shot it before.

MS. CAMPBELL: Our contention would be we would then be able to ask him if this was the same gun he used on that day, where he shot it before.

THE COURT: He said -- he denied it earlier.

MS. CLEARY: He denied the shooting earlier.

THE COURT: He denied the question earlier about Corey whatever --

MS. CAMPBELL: I will just go back and clarify if he had ever shot that gun before. Okay.

THE COURT: All right. You can bring them back in.

(WHEREUPON, the jury came into open court at approximately 12:09 p.m.)

THE BAILIFF: The jurors are all present, Your Honor.

THE COURT: All right. Yes, ma'am, you may continue.

BY MS. CAMPBELL:

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Q For clarification, your testimony here today is that you had never shot that gun before?
A Right, I never shot that pistol before -- before that situation.
Q So you are down -- or y'all are fighting. Are you fighting standing up?
A Are you speaking about the day of the 16th?
Q Yes, back to where we were, on January 16th, on that fight.
A Yes, ma'am, we were fighting standing up and on the ground.
Q And on that day it is right there in the front yard of the Salley household?
A It could have been.
Q And at that point are y'all standing up, you go down, or what happened?
A Well, after he punched me I stumbled a little bit. He hit me again. That's when I dropped the pistol. So we get to fighting. And I'm getting the best of him. And I got -- and I got him on the ground.
Q You got him on the ground?
A And I got him on the ground.
Q And you are punching him?
A Right.
Q In the face?

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A Right.
Q In the chest?
A Right.
Q In the head?
A Everywhere.
Q As hard as you can?
A Right.
Q You are a pretty good fighter?
A I am.
Q Yes. And at that point you are getting the best of him, right?
A Right.
Q At some point you testified earlier that you look up and you see his girlfriend with the gun?
A When I finished fighting him and got up, that's when I noticed that she did have the pistol. And she threw it down.
Q And at that point where was Devan?
A Devan was to my right.
Q Okay. And did Devan go towards her with the gun? Do you remember that part?
A Um, I don't recall that because I was fighting, but I do remember it was some commotion going on, but I didn't know what was going on until I got up and seen Andina throw the pistol down.

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Q Okay. So you saw Andina with the pistol and then you saw her throw it down. Did you see Devan going towards her right before she threw the pistol to get it out of the way?
A I was in a fight, ma'am.
Q So at what point did you tell Devan, bust him?
A I never told Devan to bust him. And how could I tell Devan to bust him if Andina had the pistol?
Q Well, wasn't that why Devan was going towards Andina, to get the pistol?
A I don't know about that.
Q What does "bust him" mean?
A It means shoot him. But how could he shoot him with no pistol?
Q If you were telling someone to shoot him, that would show your intent?
A True. But I didn't tell him to shoot him. I wouldn't tell nobody to shoot somebody if they didn't have no pistol.
Q Ultimately Andina throws the gun down, right?
A Right.
Q Where is Anthony at this point?
A When I seen -- when I seen her throw the pistol down, that's when I was getting off Amp, so he was on the ground.

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Q Where was Devan?
A To my right.
Q And at what point did Devan run off?
A I believe he ran off when I went and got the pistol from off the ground.
Q Did he run off right after you told him to bust him?
A I never told him to bust him.
Q At that point when he ran off, you went and got the pistol off the ground?
A Right.
Q And what was your story about what happened then?
A After I picked the pistol up?
Q Yes.
A After I picked the pistol up, I left -- I left Anthony Salley on the ground, we was fighting. And after I picked the pistol up and turned around he was right there. And being that he was right there, it kind of scared me and I flinched. And then I accidentally fired the pistol. And I got scared and I ran.
Q And you flinched and you fired the pistol, so when you picked it up you put your finger on the trigger?
A I mean, that is how I always pick up a gun.

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Q And you are aware of gun safety, you always handle your gun that way?
A I mean, that is how I pick up the pistol, by the handle.
Q And it just happened that when you picked up the pistol and he came around -- I believe -- was he behind you? Because you didn't see him, right at first, right?
A He was -- he was behind me when I picked the pistol up. When I turned around and --
Q When you turned around he was in front of you?
A From like -- a little -- from me to you.
Q And at that point you just happened to have the pistol pointed at him?
A When I picked the pistol up and turned around to go put it on my waist -- back on my waistband before I can leave, that's -- that's when I seen him. And that is when I accidently flinched.
Q Let me get this straight. You picked the pistol up?
A Right.
Q And you are going to put it in your waistband?
A Right.
Q And you are turning around at the same time?
A Right.

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Q And somehow the pistol ended up pointed at him and shot and killed him?
A Right.
Q And at that point you ran?
A Yes, ma'am.
Q Did you know you shot him?
A I knew I shot him because he fell.
Q And, oh, my God, it is going through your head, oh, my God, I didn't mean to, I accidentally shot him. He is hurt, right?
A Right.
Q So then you run to a house and you just happen to see Demario's car parked in the driveway?
A Right.
Q And what is going through your mind at this point is, oh, my gosh, I accidentally shot someone?
A Yes. I was scared, so, I mean, I ran.
Q Scared. So you ran. And you ran to the house where the Crudups were?
A Right.
Q And at that point you run in and you tell them, oh, my God, call 9-1-1, I have accidentally shot somebody?
A No, I did not.
Q You still got the gun?

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A I don't.
Q What happened to the gun?
A When I was running I threw it.
Q You threw it?
A (Nods affirmatively.)
Q And this is a neighborhood?
A Yes, ma'am.
Q With small children?
A I was running through back yards.
Q You were running through back yards?
A Yes, ma'am.
Q And you accidently shot this poor person. You are the victim here?
A I mean, both of us could be symbolized as the victim.
Q Okay. You are one of the victims here. Why did you throw the gun away if it was just an accident?
A Because -- okay, say -- say I would have gone to jail that day. Not only I would have got that charge, I would have got a pistol charge too.
Q You have just shot and killed someone and you are worried about getting a pistol charge? That's your testimony to this jury?
A I was scared about going to jail period.
Q Did you tell your friends where you threw the gun

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so they could go get it to make sure nobody accidentally found it, caused harm to other people?

A Yes, I did.

Q Who did you tell?

A I told a couple of people.

Q Who?

A I told a couple of people. I told T.K.

Q And who is T.K.?

A One of my friends that I met.

Q Where did you meet -- I never heard of T.K.

A I mean, I have a lot of friends you have never heard of.

Q Yes, sir, I know. And at what point did you tell T.K., go back, get the gun and make sure that nobody in that neighborhood comes across it and somebody gets hurt?

A I just told him to go get the pistol.

Q When?

A When Demario dropped me off on Hardscrabble.

Q At T.K.'s house?

A No, it was somebody else house.

Q At some girl's house?

A No. One of my friends.

Q What friend?

A Kizzell.

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Q Kizzell?
A Yes, ma'am.
Q How do you know Kizzell?
A I met him a couple of years ago.
Q So did T.K. go back and get the gun?
A Either T.K. did or somebody -- somebody did that I told.
Q So you got the gun back?
A I never seen it after that day. I never seen him after that incident.
Q So as you run from the house to the house where you accidentally shot -- from the house where you accidentally shot someone to another house. You then walk in, and you don't say you just shot someone accidently, you don't tell anybody that, all you say is, oh, I have been in a fight?
A I mean, I didn't want to -- I didn't want to discourage everybody in the house by saying I accidentally shot somebody.
Q You didn't want to discourage them?
A I didn't want -- I didn't want to amp their emotions up as far as scaring them.
Q And at that point, the only thing you are asking for is a ride because you are getting out of there, right?

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A Yes, ma'am. I was scared, so I ran.
Q And then you ran to a house on Hardscrabble somewhere with Kizzell and T.K., right?
A Right.
Q And at that point -- first you were scared, you said. You thought things through. So at that point you do the right thing and call the police?
A The only time I called the police is when I called the warrant division and told them that I was about to come to turn myself in.
Q Which you didn't do?
A Because I didn't obtain money for my lawyer.
Q I'll get back to that in a minute. We're almost through. At that point you run to T.K.'s house and somehow miraculously you end up in Atlanta, Georgia. How did that happen?
A Well, a good friend of mine told me that he was going to send me to Charlotte at first. And I told him, all right. But then when the ride got there, he said I was going to go to Atlanta.
Q So you have friends that just can provide you rides to different cities?
A I mean, I have friends that know people all over.
Q Did you tell them why you had to go?
A Ma'am?

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Q Did you tell them why you had to leave town?
A Yes, ma'am, I did.
Q And are T.K. or Kizzell here today?
A No, ma'am.
Q Is the person who gave you the ride to Atlanta here today?
A No, ma'am. I don't know who that was.
Q When you got to Atlanta you meet up with Du-Wop?
A Yes, ma'am.
Q Did you remember, though, prior to going to Atlanta going to catch up with Devan again that day?
A I seen Devan again a couple of times after that incident.
Q On the same day, right?
A Yes, ma'am.
Q And why was it important for you to meet up with Devan that day and talk to him to make sure you talked to him?
A Because -- well, I had -- he was in Spring Valley Apartments. I called him and asked where he was at. So I went to Spring Valley Apartments.
Q Who took you there?
A A female that I know.
Q A female? What is her name?
A By the name of Quonesha.

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Q Quonesha.
A Quonesha.
Q When -- nevermind. So Quonesha takes you there. And at that point you want to make sure you get to see Devan face-to-face?
A Yes, ma'am.
Q And why is that so important for you to see Devan face-to-face?
A Because I want -- I told him to call the police and tell them that it was an accident, but I still didn't -- honestly, I didn't want to go to jail, so I didn't call myself.
Q Do you remember telling Devan y'all need to get your story straight?
A Yes. Yes, ma'am.
Q If it was an accident, there is no story to get straight, is there?
A I mean, it is all -- it is all a story because it is what happened. Just like a book, you call it a story.
Q No, there is the truth and then there is a story.
A No, you got the truth and you got a lie.
Q So you told Devan you needed to get your story straight. Did you tell him what to say if the police contacted him?

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A I told him to call the police. I ain't say what to do if the police contact him. He called the police while I was right there beside him.

Q That wasn't his testimony. But, okay, you called the police while you were beside him. And did you tell him what to say to the police and what not to say?

A Yes, ma'am -- no, I didn't tell him what not to say, but I told him what to say. But the police said he had to come in and give a verbal statement, so they got off the phone.

Q Did you tell him to go talk to the police about what had happened?

A I mean, I told him -- I told him -- they act like they didn't want to talk to him on the phone, so I just told him, don't worry about it, and I left. And later that day he called me and he said he had wanted to smoke weed. I told him to come to Hunters Green because that is where I was at, and I gave it to him for free.

Q So you just accidentally killed someone who is a victim that you admit in this case, and you are still dealing drugs that afternoon?

A See, what you are failing to realize, Ms. Campbell, is I didn't know that Anthony had died. I just

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thought that he was shot.
Q That's not bad enough?
A I mean, it is bad. Yes, it is bad.
Q So at what point did you get to Atlanta?
A I got to Atlanta -- I got to Atlanta like 12:00 o'clock in the morning, a.m.
Q And at that point you said you had three to four hundred dollars?
A Yes, ma'am.
Q Did you have your weed with you to sell?
A Yes, ma'am.
Q And at that point when you get to Atlanta, you meet up with Du-Wop?
A Yes, ma'am.
Q And somehow you mentioned you stayed somewhere just randomly for a week?
A Yes, ma'am.
Q Is that in hotels and motels too?
A No, the house that I stayed in for a week, I was in an apartment complex.
Q And who were you staying with there?
A Somebody by the name of N.O.
Q Who?
A N.O. He is from New Orleans so we call him N.O.
Q Is N.O. here today?

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A No, ma'am, he stay in Atlanta.
Q And then you meet up with Richard Johnson?
A Yes, ma'am. I met -- I met up with Du-Wop, and then I met Richard Johnson through Du-Wop.
Q And you told Richard Johnson about what happened to you as you became friends?
A Yes, ma'am.
Q At no point did you ever tell Richard Johnson it was an accident?
A I told him that -- I told him that I shot somebody and I might have messed my life up because it was a witness. I told him -- he asked me why I ran. I told him because I was scared.
Q So you told him you had messed your life up because there was a witness. And then you confided in Richard Johnson?
A What that mean, trusted him?
Q Yes?
A I did.
Q And you never thought he would betray you?
A I mean, I never thought about him betraying me or not.
Q And your testimony here today is this was an accident?
A Yes, ma'am, it was.

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Q Do you remember once you were arrested in Atlanta?
A Yes, ma'am.
Q And they extradited you back to South Carolina?
A Yes, ma'am.
Q And you met with Investigator Lindler and Investigator --
A Yes, ma'am.
Q -- Ellis?
A Yes, ma'am, I do.
Q And I think they advised you of your rights?
A Yes, ma'am.
Q And then they got you some crackers, I think, and a coke?
A Yes, ma'am.
Q And once they advised you of your rights, they didn't even ask you any questions because you said you --
A No, ma'am.
Q They didn't ask you any questions?
A No, ma'am.
Q But you started talking to them?
A I did.
Q And do you remember what you said to them?
A Yes, ma'am. I told them that I just wanted -- I just wanted to give my friend a cigar. And the

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person started -- he started a problem -- he started a problem with me. And then he hit me. And I dropped -- and I dropped the pistol.

Q Let me ask you this. Do you remember saying, I had problems with that guy earlier in the day?

A Speaking about Richard?

Q No, you were speaking about Amp.

A I mean, Amp was there with Richard.

Q Okay. He just came up and hit me. The tool hit the ground. Do you remember telling him that?

A Right.

Q Then you said, what was I supposed to do? I got a kid on the way. I didn't want to die.

A I mean, what was I --

Q Every time I saw him he always wanted to start something.

A I mean, every time I -- every time I seen him -- I could feel the tension, but because it was between me and Richard so I could feel the tension, just how it was always tension between me and Richard because of what he had going on with Derrick, one of my little friends, you know. And when -- I didn't even want to fight him. That is why I pulled the pistol to begin with. And then when the pistol fell, I mean, what was I supposed to do? I

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ain't got no choice but to fight now.
Q And do you remember telling him that this guy hit him in the face with a tool? The tool would be a gun, right?
A Right. But I didn't say he hit him in the face with the tool.
Q Do you remember saying, what was I supposed to do? I just picked it up. And then saying, he was always wanting to fight and shit? That's what you wanted to tell the police back in February 2nd before you read all the statements, right?
A I mean, I don't recall saying that, but I didn't write no written statement either.
Q No, you didn't.
A So, they could have -- they could have misconstrued my words also.
Q It is the police's fault again?
A I didn't say -- I didn't say it is their fault. I'm saying, you know, they could have misconceived(sic) my words.
Q You told them you had to do it, you never told them it was an accident?
A I never said I had to do it.
Q What was I supposed to do?
A The pistol fell. I didn't want to fight him.

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Q He always wanted to fight?
A I had no choice but to fight him.
MS. CAMPBELL: Beg the Court's indulgence.
(Pause.)
MS. CAMPBELL: Thank you. I have nothing further.
THE COURT: All right. Anything else, Ms. Cleary?
MS. CLEARY: Beg the Court's indulgence.
THE COURT: Yes, ma'am.
(Pause.)
MS. CLEARY: May it please the Court?
THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY MS. CLEARY:
Q Now, Jamaal, when Ms. Campbell was cross-examining you, she continually said, now you are testifying to this. Did you hear her say that?
A Yes, ma'am.
Q Okay. But do you confirm everything that you said on direct when we were talking?
A I confirmed everything I said --
Q You didn't change your story when you were on cross-examination?
A I never did.

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Q Okay. So let me ask you a couple of questions. You have never shot and injured a person?
A I ain't never shot nobody in my life before that day.
Q Okay. And so when you hit -- in the earlier incident in the Fall of 2009 when you hit Richard --
A Yes, ma'am.
Q -- with the pistol, so why didn't you call the police after that?
A I mean, I didn't call the police because -- I guess because that was my wrongdoing. So why would I call the police and say I just did this?
Q Okay. So you felt it was a mutual fight between you and Richard and why --

MS. CAMPBELL: Object, Your Honor, to the leading. If she can just let him answer the questions.

THE COURT: All right. Please rephrase the question. Thank you.

Q Let me move on. Now, you have testified on direct that you were not friends -- you were not very familiar with Amp, but you knew that Amp hung around with Richard?
A Right. I knew -- I knew -- I knew exactly who he

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was, but I didn't know him like that.
Q And you weren't -- you testified on direct that you were afraid of Richard?
A Yes. I was afraid of what he might do to me.
Q And before -- before Anthony had punched you in the face twice and engaged in an altercation, at that point you didn't have a fear of Amp, but you had a fear of Richard?
A Ma'am, when he -- when he hit me in my face, it is like I ain't know what to do because --
Q No, I mean -- I'm sorry. All right. Okay. So any fear that you had of Amp was by his association with Richard, prior to the actual fight?
A I mean, in the fight, I didn't want to engage into that altercation, that physical altercation, because he was bigger than me, so I ain't want him -- I ain't want to fight him period. That is why I pulled the gun thinking I was going to scare him and he was going to leave everything alone.
Q Okay. All right. Now, when you had dealings with Richard at the gas station.
A Yes, ma'am.
Q Did you shoot him?
A No, ma'am, I didn't.
Q Okay. Could you have shot him?

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A I could have.
Q You had a gun?
A Yes, ma'am.
Q All right. Now, you testified on direct that you knew that Amp lived there in that house or had been at that house after you had seen him earlier in the day, is that correct?
A Yes, ma'am.
Q You haven't changed your story about that?
A No, ma'am.
Q All right. Now, about Lauren, you read Lauren's statement. Did she ever say that you weren't invited --

MS. CAMPBELL: Objection, Your Honor. I don't think she can ask him to review her statement when he is testifying.

THE COURT: I'm sorry, I couldn't hear you.

MS. CLEARY: She asked him about Lauren's statement and what it said.

THE COURT: What did you ask him about?

MS. CAMPBELL: I asked him about what he told Lauren that was in her statement, but I didn't -- she can't then try to elicit -- may we approach?

(WHEREUPON, a bench conference was held in the presence of the jury but out of

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the hearing of the jury.)

THE COURT: All right. The objection is overruled.

Q You have read Lauren's statement, is that correct?

A Yes, ma'am, I did.

Q Okay. And then Ms. Campbell just showed it to you?

A Right.

Q Do you -- was there anywhere in that statement where she said you weren't invited to the house?

A No, ma'am.

Q And you were invited?

A Yes, ma'am. Actually, I wasn't going to go to her house. I had wanted to go to the club, you know what I'm saying, with my friend. But in order to do both of them, I lied to her and told her I was going to bond at my home boy's house, which is sitting right there.

Q Okay. All right. You -- did Lauren want you to come over to the house?

A Yes, ma'am.

Q Did Lauren ever ask you to leave?

A No, ma'am.

Q Did Kenneth ever ask you to leave?

A No, ma'am.

Q Okay. So, now when you go to the actual fight, you

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were heading towards the driveway and the sidewalk area?

A Right. Are you talking about when I was approaching Devan?

Q Right. To give Devan a cigar?

A Yes, ma'am.

Q Okay. So did you ever -- other than when you are fist-fighting on the ground -- and I know you probably don't know exactly where you were going at that point, but other than that, did you ever walk into their yard up towards the house?

A I didn't -- I didn't walk -- I didn't walk towards the yard till we started fighting. Like when he was talking to Devan, I didn't know what his intentions could have been. Because like I told y'all before, like me and him -- I only had one conversation with him before this incident ever occurred, so --

Q Okay. So did you walk up towards his house?

A I walked up towards the street where Devan was parked at.

Q Okay. All right. Now, when you were on the ground fist-fighting with him, did you try to get your gun back at any point?

A While I was fighting him?

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Q Right, while you were fighting?
A No, ma'am.
Q And then you got the best of him. Did you keep pommeling until he was unconscious?
A No, ma'am. I mean, it was to the point where he wasn't even fighting back, so --
Q So you could have killed him right then?
A If that is what I wanted to do, I could have.
Q Let me ask you something. Have you ever heard of -- before this trial, have you ever heard of an iliac vessel?
A No, ma'am. I just heard when I think a policeman was explaining that. So I still don't have a full understanding of what that is, so --
Q Okay. Did you -- based on watching TV and life experiences, if you were going to kill someone, where would you shoot them?
A If I wanted to kill them -- I mean, I would most likely shoot them in the head.
Q Okay. And how many times -- would you keep shooting?
A I mean, I don't know. I never been in that situation.
Q Okay. That's fair. All right. Now, you testified you had never been in that situation. Did you --

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did you know what to do after this happened?
A I ain't know what to do. Like everybody was directing my path for me. Like I was just like a -- I was like a broken vessel. Like that whole week after that happened I was sick, throwing up. I got asthma, so, you know --
Q And you testified on direct that you felt really bad about what had happened?
A Yes.
Q Taking this man's life?
A Yes. I felt bad. Like I still think about it to this day, you know. And like I told you, I even tried to contact the family and let them know that I apologize. I even wrote them a letter that I've still got.
MS. CAMPBELL: Objection, Your Honor. Outside the scope of redirect.
Q Did --
THE COURT: Hold on. You said it was outside the scope?
MS. CAMPBELL: Of redirect.
MS. CLEARY: I'll move on.
THE COURT: All right.
Q Okay. You -- after you were arrested you volunteered to talk to Investigator Lindler? You

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tried to talk to him?
A Yes, ma'am, I did.
Q And you -- but he didn't take a written statement?
A No, ma'am, I ain't write no written statement.
MS. CAMPBELL: Objection, Your Honor. We have another matter of law.
THE COURT: All right, let me see y'all.
(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.)
THE COURT: All right. Sustained.
MS. CAMPBELL: Thank you.
THE COURT: Please rephrase the question.
BY MS. CLEARY:
Q Okay. I'm going to ask you a question. I want you to listen to it and just really say yes or no in this case, okay?
A Yes, ma'am.
Q Did you -- when you were arrested in Atlanta, at some point did you have an attorney?
A No, ma'am.
Q Advising you?
A No, ma'am.
Q Okay. Did you sign a form --
A No, ma'am.

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THE COURT: Let her finish asking the question before you answer, okay?

MS. CLEARY: All right.

Q Is it possible that you signed a form saying that you wanted to be able to talk to an attorney before talking to the police?

A Oh, yes, ma'am, I did do that.

Q Okay. That is exactly -- I'm sorry. Okay. So that is why we don't have a written statement, the police couldn't question you, but you tried to talk to them anyway?

A Yes, ma'am.

Q Okay. And you told Investigator Lindler, you said that your little buddy just wanted a cigar?

A Yes, ma'am.

Q And that was who?

A Devan Bailey.

Q Okay. And you said, I have had problems with that guy earlier in the day. And who were you referring to?

A I was referring to --

Q Or did you say that -- I'm sorry, did you say that?

A I did have a problem with him earlier in that day.

Q Okay. But did you say to Lindler that you had problems earlier in the day?

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A Yes, ma'am.
Q Or possibly? I know that you may not remember exactly what you said.
A But I believe I did tell him that I had problems with him, though.
Q Okay. And did you say something similar to, I came out to give him a cigar and he was parked behind that guy?
A If -- he was parked behind him.
Q Okay. But answer my question. Do you remember, did you say that to the police?
A I don't recall. But he was parked on the street behind him, though.
Q Okay. That's fine. And did you say, he just came up and hit me?

MS. CAMPBELL: Objection, Your Honor, to leading. I think she can ask him what he said, but not lead him through it.

THE COURT: All right. Just rephrase the question.

MS. CLEARY: Okay.

Q Okay. On cross-examination Ms. Campbell asked you about, did you say the tool hit the ground, he then looked at me and said, what was I supposed to do, I got a kid on the way, every time I saw him he

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always wanted to start something.

When you were -- when you said, he always wanted to start something, who were you referring to? Or do you remember saying that?

A I don't recall saying that, but with Amp, every time I seen him I could feel the tension, like we never had -- we never spoke no words to each other, but I could feel the vibe. But with Richard it was always -- it was always a verbal -- always a verbal confront or physical confront, every time I seen Richard.

Q Okay. And did you tell the police anything about pictures?

A Yes, ma'am. I had -- I had a couple of pictures in my phone that they took from me when I was in Atlanta.

Q Okay. And what were the pictures of?

A Of my face.

Q And what did they show about your face?

A I had -- I had a bruise right here from when Anthony had punched me.

Q Okay. And to your knowledge did the police ever get those pictures?

A I don't know if they got the pictures in the phone, but when I got arrested -- when I told him, he did

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take pictures hisself of my face, though.
Q Okay. Why would you -- or who took the pictures of your face? Did you do it yourself or somebody else?
A I don't know which one, Lindler or the other one, but the one to my right.
Q No, no, I'm sorry, with the cell phone?
A Who took them? I took them.
Q Okay. And you turned your cell phone around and took the pictures like that?
A Yes, ma'am, in the mirror.
Q Okay. And so why did you take those pictures?
A I took the pictures because the female that I was talking to, I had -- I did tell her about it, and she asked me to send her a picture of my face because I told her my face had been beaten up bad.
Q Okay. Now, let me ask you about a couple of things that Ms. Campbell asked you about. Does the fact that you had several girlfriends, does that -- does that make you a cold-blooded murderer?
A No, it doesn't.
Q And what about the fact that you sell some marijuana? Does that make you a cold-blooded murderer?
A No.

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Q What about the fact that Demario drives you around sometimes? Does that make you a cold-blooded murderer?
A No, ma'am, it doesn't.
Q And what about the fact that you got into some trouble in high school and have a prior burglary? Does that make you a cold-blooded murderer?
A No, ma'am, it doesn't.
Q And did you want to kill Anthony that day?
A No, ma'am, I didn't want to kill him. I didn't even mean to shoot him, you know. Like -- like I said before, I think about it all the time, you know. And then I look at my mom. I see her pain. I look at them. I see their pain. I just -- I don't know, I wish this thing never happened.
Q Thank you.

MS. CAMPBELL: Just a couple, Your Honor.

THE COURT: Yes, ma'am.

RECROSS-EXAMINATION

BY MS. CAMPBELL:

Q She asked you about how to kill people. So your testimony here before this jury is if you had wanted to you could have killed him with your bare hands?
A I believe she asked me would I -- could I have took

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the pistol and killed him at the time.

Q She asked you could you have beaten him to death.

A I don't remember that.

Q When you had him down and he wasn't resisting.

A She asked me could I --

MS. CLEARY: Object.

THE COURT: Hold on. What is your objection?

MS. CLEARY: She is mischaracterizing the testimony. I asked why he didn't punch him until he was unconscious, not dead. I did not assert he could kill him with his bare hand.

THE COURT: All right.

MS. CAMPBELL: I can play --

THE COURT: Objection --

MS. CAMPBELL: If we play back the testimony, she asked him could he have killed him there.

MS. CLEARY: No, I --

THE COURT: I think she said, could you have picked the gun up and shot him while he was down. I think that is -- the objection is sustained. Please rephrase the question.

Q Is it easier to kill somebody with your fist or with a gun?

A I mean, I would say a gun.

Q Then she asked you about whether or not if you were

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going to kill somebody where the best place would be to shoot them.

A And I said, most likely the head.

Q And you are aware, because you are familiar with guns, that shooting somebody in the gut or in the body can kill them?

A I don't know, because my friend -- my friend just got shot in the stomach. He is still here. I mean, I never shot nobody before, you know. I mean, I don't know.

Q And that day you shot Anthony Salley?

A Unintentionally.

Q Thank you.

THE COURT: All right. Ladies and gentlemen of the jury, at this time -- this might be a good time -- is their lunch here?

THE CLERK: I'll check, Your Honor.

THE COURT: This may be a good time for y'all to have lunch.

I am going to send you all back into the jury room, and if your lunch is back there you can go ahead and eat your lunch. Remember you are not to discuss this case. And you cannot begin deliberating until we tell you to begin to deliberate. All right? Enjoy your lunch.

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(WHEREUPON, the jury retires to the jury room.)

THE COURT: He can step down. Where is the officer? He can step down now. I just had to get them out of here.

(The Defendant steps down.)

THE COURT: Do you have any other witnesses?

MS. CLEARY: No, we don't.

THE COURT: Are you resting?

MS. CLEARY: Yes. Do you want me to rest now?

THE COURT: Ma'am?

MS. CLEARY: Do you want me to rest now or do I need to wait?

THE COURT: You can wait. I just had to get him off the stand, and I couldn't do it with them sitting there.

So their lunch is probably back there, so I just went ahead and let them -- we can -- I'll let you formally rest on the record in front of them.

Anything on reply?

MS. CAMPBELL: We are talking about it, Your Honor. It would be very limited, if any.

THE COURT: All right. Do y'all want to go ahead and take lunch now?

MS. CAMPBELL: Yes, Your Honor.

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MS. CLEARY: Yes, Your Honor.

THE COURT: Ten till 1:00. Let's start back around -- I want to give y'all enough time to get something to eat. How much time do y'all need? An hour? 45 minutes? An hour? An hour? All right we'll start back in an hour, about ten till.

(Lunch recess.)

THE COURT: Let's see where we are. For planning purposes, are y'all going to call somebody? Are y'all going to put something up on rebuttal?

MS. CAMPBELL: No.

THE COURT: Okay. So we are going to --

MS. CAMPBELL: We would request a charge conference.

THE COURT: Okay. So I need to bring -- she can formally rest on the record. And then I am going to have to send them back out. They asked earlier if they could go out, but I don't know about --

MS. CAMPBELL: How long do you anticipate the charge conference taking?

THE COURT: Hopefully no more than 20 or 30 minutes.

THE COURT: How long do y'all anticipate?

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MS. CAMPBELL: We have got stringent objections to a majority of hers and the language in them being not correct. And I am just trying to --

THE COURT: I just don't know how we can -- I don't know about sending them back out, especially since we don't have any alternates.

We'll try to work through the charge conference as quickly as possible. I just -- maybe they can take them out to get a smoke break or something. What do you think? Is Jackie down there?

MS. CAMPBELL: Jackie is not here. Do you want me to go find Jackie?

THE COURT: Can y'all take them out to get a smoke break or some fresh air?

THE BAILIFF: Yes.

THE COURT: Do y'all have enough people working -- probably not -- to go with them, to go with the bailiff?

THE DEPUTY: I will have to check with my supervisor. We have a lot going on.

THE COURT: Yes, I know.

THE DEPUTY: They have second appearances going on upstairs.

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THE COURT: Oh, is that upstairs?

MS. CAMPBELL: I thought they finished second appearances.

SECOND DEPUTY: They finished.

THE DEPUTY: They finished?

SECOND DEPUTY: Yes.

THE COURT: Will you check and see if they can do that?

THE DEPUTY: Yes, ma'am.

THE COURT: He is going to check before I bring them in.

(Pause.)

(WHEREUPON, the jury came into open court at approximately 2:04 p.m.)

THE BAILIFF: The jury is present, Your Honor.

THE COURT: All right. Ladies and gentlemen of the jury, I hope that you had a good lunch. At this time I'm going to ask Ms. Cleary, on behalf of the Defendant, to call their next witness.

MS. CLEARY: Your Honor, the Defense rests.

THE COURT: All right. And does the State have anything in reply?

MS. CAMPBELL: No, ma'am.

THE COURT: All right. All right, ladies and gentlemen of the jury, the State has presented

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their case, the Defense has presented theirs, and they have rested, there is no reply.

So at this time there are some matters of law that I must take up with the parties outside of your presence. I have arranged for the bailiff and one of the officers to -- for those of you -- I don't know if any of you smoke, but for those of you who would love to have some fresh air -- to take you outside for a little -- for a break. It may take about 30 to 45 minutes. And then we'll have you back in.

All right. Thank you.

(WHEREUPON, the jury retires to the jury room at 2:06 p.m.)

THE COURT: All right. I have the requests to charge for both sides. I'll start with the State's requests to charge. And they are not numbered, but I will go in the order that they are in -- have been handed up to me. Do you have a copy of those, Ms. Cleary?

MS. CLEARY: Yes.

THE COURT: All right. Well, let's first -- I guess the easiest way to do this is, do you have any objections to their charge?

MS. CLEARY: Yes.

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THE COURT: All right. Which ones? The first -- well, let's go through the first one. The first one is already in my general charge about the different types of evidence.

I was just looking for you earlier, but I don't need you now.

THE CLERK: All right.

THE COURT: Number Two, any objection to the second one, which is the State v. Lowery?

MS. CLEARY: I don't have any objection to that being read, as long as it is read in conjunction with the law that says that even if you are in unlawful possession of a weapon you can still lawfully arm yourself in self-defense.

THE COURT: Well, the self-defense stuff is going to kind of be all -- it is the way we have it in here. It is all -- there is a -- I think you have a charge to that that says that, right?

MS. CAMPBELL: Your Honor, we will withdraw that charge.

THE COURT: You are going to withdraw it?

MS. CAMPBELL: Yes.

THE COURT: That one is withdrawn.

All right, and the third one is the reasonable doubt, proof beyond a reasonable doubt. I think

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that is the --

MS. CAMPBELL: It is in your charge already.

THE COURT: And then the fourth one, any objection?

MS. CLEARY: Yes. Okay, no, I don't have any objection. Sorry.

THE COURT: The next one?

MS. CLEARY: Yes, I have objection to that one. And this is from The State versus Mouzon. This was a killing someone in a car case. It is not relevant to the facts. There are other malice charges that are more appropriate. I don't -- I think that general malignant recklessness is not murder under our current law. Extreme recklessness, as long as it is combined with the language about, you know, social duty and fatally bent on mischief, but to just say that it signifies rather a general malignant recklessness, that is lowering the burden for murder considerably. That is almost an involuntary manslaughter.

And, I mean, in all the malice charges that I could find, that specific language was not included, and I don't think it is still good law, even though it has not technically been overturned.

THE COURT: I can tell you what is in the desk

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book. It might -- it says malice aforethought does not require that malice is there for any particular time before the act is committed, but malice must exist in the mind of the Defendant just before and at the time of the act is committed. That is what the desk book says. I don't know --

MS. CAMPBELL: I think this is a different -- I think this is the Mouzon charge that she has objected to.

THE COURT: Okay, I'm reading the wrong one. I'm sorry. Okay.

Yes, ma'am?

MS. CAMPBELL: This is still good law, Your Honor. It has been overturned a lot during the past 20 years. I think State versus Israel Wilds is the most recent case I can think of off the top of my head where this language was used. This is appropriate I think in conjunction with your normal malice charge, which at some point, Your Honor, I would like to see just what your general charge is. I don't know, the language may already be in your charge.

THE COURT: He is printing it right now. He is supposed to be making some changes. But --

MS. CAMPBELL: But this is a correct statement

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of the law. And, of course, this would be in conjunction with your other charge -- your regular charge on malice. And this may already be in your language. This is in some of the judges, it isn't in some of the other judges.

THE COURT: Malice may be -- I'm going to read to you what it says in here. Malice may be inferred by conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. A deadly weapon is any article which is likely to cause death or great bodily harm. And then it describes what a deadly weapon is.

MS. CAMPBELL: If I could actually pull the cases on this, I can show you that it is still good law. We would respectfully request that this be added to your malice charge. As I said before, some of the judges have this charge and some just don't.

MS. CLEARY: I mean, I think that this charge makes it look like it is indistinguishable from involuntary manslaughter, just a general recklessness. I agree that extreme recklessness --

MS. CAMPBELL: I understand her opinion, but this is good law. And this is the definition of

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malice from that case and its progeny.

THE COURT: I'll come back to that one.

MS. CLEARY: And also you had just mentioned about the inference of malice on the use of a deadly weapon. In State versus Belcher, the Supreme Court issued a new ruling.

MS. CAMPBELL: We have no problem striking that language if she wants to.

MS. CLEARY: I'm sorry, do you want the cite?

THE COURT: Yes, the date.

MS. CLEARY: October 12th, 2009. And in that case the Court specifically said that you cannot charge that there is an inference of malice from the use of a weapon where the Defendant has raised accident or self-defense.

MS. CAMPBELL: We have no problem striking that language, the use of deadly weapon language.

THE COURT: That was taken out of our desk book. That is why I asked what was the date.

All right. All right, I'll come back to that one. The next one?

MS. CLEARY: The next two I believe are about voluntary intoxication, and I do object to that because I think he testified that he and Lauren were maybe getting ready to smoke a blunt. I think

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that is to just confuse the jury and, you know, remind them that he smokes pot. I mean --

MS. CAMPBELL: I think they are abundantly clear that there is pot involved in this case.

THE COURT: Yes, but I don't think there is any testimony that he actually was intoxicated or he -- I mean, I think they said the victim smoked some marijuana, but I don't think there was any testimony that the Defendant --

MS. CAMPBELL: I thought he testified that --

MS. CLEARY: He and Lauren were getting ready --

THE COURT: He said they were rolling it up or getting -- but they didn't -- I think -- because you even asked him was he smoking, and he said, no, he was rolling the cigars up or something.

MS. CLEARY: And then he got a phone call and interrupted.

MS. CAMPBELL: No problem, Your Honor. If you don't want to do it, that's fine. It is just that there has been so much mention of drugs in this case, I don't want the jury to get confused. And they can get confused sometimes on whether or not that relieves them from responsibility. And in this case of course it does not.

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THE COURT: And she is not going to argue that either, I'm guessing.

MS. CLEARY: Certainly not.

THE COURT: But I don't think that there was anything that ever came in regarding -- and we can always check -- I don't recall anything about him actually smoking it. Selling it, rolling it, and whatever else, but he never said that he -- I don't think he ever said that he smoked any marijuana.

MS. CAMPBELL: I just think the inference would clearly be there, Your Honor, and then his actions are reckless.

THE COURT: All right. Well, I am not going to charge the last two. I will get you a decision on the fourth one.

MS. CAMPBELL: And, Your Honor, I didn't know if it would be appropriate if I could just look at your murder charge at some point. It doesn't have to be right now.

THE COURT: Okay. Well, do you have a copy of this she can have? We have to change it. It is a rough, rough draft, but you can take a look at what he has. And I can tell you that --

MS. CAMPBELL: Thank you.

THE COURT: He did this before we got into a

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whole lot.

Request to Charge Number 4, the one about ill-will towards individuals, you think it goes to involuntary manslaughter?

MS. CLEARY: Well, the Mouzon charge, which is, you know, not in the general malice charges that I could find, and that is from a car case where someone killed someone with a car, so -- and that is of course not used any more. And of course this case was decided when none of the lawyers or the judge could even sit on a jury in this state, 1957. So it is about 20 years old or 50 something years old. But it has a lower standard to -- for the jury to find malice. General malignant recklessness is not the current standard that is used.

MS. CAMPBELL: Respectfully, Your Honor, this is a correct statement of the law and is still good law and it has been quoted in recent cases, which I will be glad to get, I will just go back to the Mouzon case and refer to as the Mouzon charge.

THE COURT: Do you have cites for the recent case?

MS. CAMPBELL: Israel Wilds is one I can think of off the top of my head, and it has been charged

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in multiple cases that have gone up on appeal, but I can go check and see if it has ever been addressed.

MS. CLEARY: I cannot find it in more recent, so I'd like to see the cases. But I don't have my computer.

THE COURT: Israel Wilds?

MS. CAMPBELL: W-I-L-D-S. It is an actual ABIK case. I believe the language is similar. And this is off the top of my head, Your Honor. I would have to check.

THE COURT: Okay. No, he is just going to put the name in the computer and see if he can find it.

MS. CAMPBELL: No, that was a murder case too, I'm sorry. Let me think. I tried it. Israel Wilds. W-I-L-D-S. I think his name was Israel. It had extensive discussion of malice, if I'm recalling the correct case, Your Honor. Let me go see if I can pull it.

THE COURT: While they are doing that, go ahead and look at Ms. Cleary's requests to charge.

MS. CAMPBELL: I believe that is also in Black's Law Dictionary, Your Honor.

THE COURT: I'm sorry?

MS. CAMPBELL: The language that I was

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referring to the malice charge is also in the Black's Law Dictionary and it talks about the areas of malice.

THE COURT: All right.

MS. CAMPBELL: And State versus Gondolin, which is a 1996 case -- oh, excuse me, that is the wrong cite.

Your Honor, the cases I got was State versus Wilds, which 584 S.E.2d 138; State versus Elmore, 308 S.E.2d 781; State versus Johnson, which is 352 S.E.2d 480. And specifically quoted out of Black's Law Dictionary from 1999. So those would be the cases we rely on. And of course State versus Mouzon is still good law and has been charged. Your Honor, State versus Wilds is an exact quote from Mouzon.

THE COURT: Because I'm looking at Elmore.

MS. CAMPBELL: State versus Wilds. In its legal sense it does not necessarily import ill-will toward the individual injured, but signifies rather a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty fatally bent on mischief. And then it quotes Mouzon that we quoted earlier.

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In fact, we would re-submit this entire paragraph for a request to charge from Wilds.

THE COURT: Wilds, they are robbing a convenience store and the store owner or the cashier is coming after the robbers, and it appears that they -- somehow somebody jumps in a car to make them pay for gas. And it sounds like they -- the victims were in the car. They said the Defendant sped off and ran over the cashier and drug the cashier under the car about 300 feet.

I'm just trying to figure out how this case -- how that case is similar to this one.

MS. CAMPBELL: Actually it doesn't have to be similar, Your Honor. Malice would apply whatever it is, in any case. In this case he goes out there with a gun and acts recklessly, is our position. And it would apply in this case. That is the definition of malice. They don't just limit it to these facts in the Wilds case or any of the cases. Basically it says that this is the definition of malice. It doesn't say this is the definition of malice only if there is an automobile involved. So therefore it is the law and can be applied to any act that would be sufficient.

THE COURT: I know, but I'm just trying to

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figure out how it applies in this case, because this -- in this case, the -- are you saying that the Defendant -- and of course I know -- you aren't saying that the Defendant --

MS. CAMPBELL: You may not need those if you aren't charging self-defense and accident, which I'm assuming you are going to give the Defense those charges, but maybe I'm being -- jumping ahead.

THE COURT: Okay. And maybe we need to take this one up after I make a decision regarding that. But I'm just trying to get -- you are saying because he went there with malice aforethought --

MS. CAMPBELL: He goes there --

THE COURT: Regardless.

MS. CAMPBELL: Regardless. Then whatever culminates he is responsible under the law, as the law is defined, if they find that he -- because we don't have to prove -- and there is very specific language that I didn't submit -- that there has to be a specific intent to kill. I think that is -- well, I think she'll concede it is part of the law, we don't have to prove a specific intent to kill for murder to have malice.

THE COURT: All right.

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MS. CAMPBELL: So that would be --

THE COURT: Ms. Cleary? And it is -- I mean, I have looked the cases up since 1956. It is in the Wilds case. I didn't see it in the Elmore case, and I didn't look at -- but that was a 2003 case where the Court is citing --

MS. CLEARY: And I'm trying to think back to my research because I don't have it all in front of me, but I think maybe what I was thinking is I had not seen it used in a case that didn't involve a car, use of a vehicle.

THE COURT: Well, I think the issue is not so much the car, but the accident. And if he is saying that it was an accident, then I think that is why she is asking for it to be charged.

Now, she is saying if he is not -- if I don't charge accident, which --

MS. CLEARY: Well, I mean --

THE COURT: Okay, we'll come back to that.

MS. CAMPBELL: Thanks, Judge.

THE COURT: As to Number 1, as to the Defendant's Request to Charge Number 1, any objection to that? Any objection to the first one?

MS. CAMPBELL: I'm sorry, Your Honor, I've been chatting.

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THE COURT: Oh, that's okay. I'm guessing from -- are y'all -- well, guessing from your earlier comments that y'all are objecting to any charge on self-defense? Is that --

MS. CAMPBELL: Yes, ma'am. I think -- and we may need to do an analysis on where she thinks she has met the four prongs that it would make it -- I guess you have to base it on his testimony. And I just -- based on -- and correct me, because I think you have got better notes than I do about what he said, but he said that when he went out there that day that he had the gun because he was scared of another person that was supposedly in the neighborhood. He vacillated on whether or not he knew the Defendant got there. He then goes out the front door that -- and you -- I was doing cross-examination, I wasn't making notes what he ultimately said about whether or not he was afraid or not. And ultimately his own testimony is it was just an accident.

And I don't know in this case at what point that he arms himself, because in order to get an accident charge, he has got to have the four elements of self-defense, is my understanding of the law.

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THE COURT: Yes, ma'am, that is correct. And I think Ms. Cleary agrees with that. She stated that on yesterday.

MS. CAMPBELL: At what point does he meet the elements of the duty to retreat. And really three out of the four elements I don't know how he meets, the first one, the third one, and the last one. He goes there. He goes where the victim is. It happens on the victim's property. He says that he then walks towards him, but that he pulls out the gun. At that point he admits there has been no blows, there has been no gun. He admits that the victim wasn't armed. And at that point is when the altercation starts based on his provocation it is stated without fault at that point and that he hasn't had a duty to retreat if he perceives the threat. I don't know how she gets past those two or that a reasonable man would think the same thing he did.

And he went back and forth on whether or not he had fears or knew or whatever this victim, that his fears were of someone else that may have been associated with the victim, is my recollection of the testimony generally.

THE COURT: All right. Yes, ma'am? I guess,

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Ms. Cleary, if you could state, you know, under the four elements of self-defense what evidence has been presented to agree with that. That he was without fault, that he didn't bring on any difficulty I think is the first one.

MS. CLEARY: Okay.

MS. CAMPBELL: She is requesting accident and self-defense, correct?

THE COURT: She is.

MS. CLEARY: Okay.

MS. CAMPBELL: Your Honor, in order to keep the record clean, I'm not saying I am conceding to her version of what those are, but I don't think we would object to a self-defense and accident charge with the appropriate listing.

THE COURT: All right. And then there is one -- well, there is one that is a self-defense charge and accident charge that is in the bench book.

MS. CAMPBELL: And are you going into contemptuous language and mutual combat and all these subsections?

THE COURT: He just pulled the self-defense charge out of there.

MS. CAMPBELL: Can we use a general one so we

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can go through and eliminate the ones that don't apply?

THE COURT: All right. So she is not -- so you are not objecting to a self-defense and an accident charge, but you are asking that your Number 4 be charged also?

MS. CAMPBELL: Yes.

THE COURT: The one we just talked about?

MS. CLEARY: Okay.

MS. CAMPBELL: I think that is fair.

MS. CLEARY: Okay.

THE COURT: Any objection to her Number 4 being charged?

MS. CLEARY: I still object to her Number 4.

THE COURT: All right. Well, I will charge -- if we are going to charge self-defense and accident -- well, more so the accident than the self-defense -- then I will charge her Number 4.

MS. CAMPBELL: Your Honor, the only language I would -- and yours is just broken down into three parts rather than what I have seen in cases as four parts as far as self-defense.

THE COURT: Oh, is it --

MS. CAMPBELL: Number one, without fault; the Defendant was or believed himself to be in actual

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imminent danger. And if it is based on that danger, then a reasonable and prudent person of ordinary firmness and courage would have entertained the same belief. And there is a duty to retreat.

THE COURT: Okay, hold on one second.

MS. CAMPBELL: And I would just hand up, Your Honor, and I just got these, two -- one on accident and one on self-defense. I haven't looked, the elements may all be in yours. Did you give me -- does she have a copy, Ms. Cleary?

MS. CAMPBELL: No, ma'am. I'll give her this copy.

THE COURT: Oh, you only had one? Okay.

MS. CAMPBELL: I'll give her this one. I think she'll agree these are the elements.

(Pause.)

THE COURT: All right. Do you object to her request to charge, her accident request to charge?

MS. CAMPBELL: Which one?

THE COURT: Number 2 and 3. Page 2 and 3.

MS. CAMPBELL: Your Honor, I think -- yes, Your Honor, I object to some of the language. Some of it is incomplete.

THE COURT: All right, which one?

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MS. CAMPBELL: I think under State versus Brown, 205 S.C. 514, the second paragraph there is the right to arm himself versus the right --

THE COURT: Which one are you on now? I'm confused.

MS. CAMPBELL: I thought you were on Request Number 2. Oh, she has two Number 2's? Oh, no wonder. I'm on the wrong one, Judge. I apologize. How does it start?

THE COURT: Mine is the second page. It just has accident, State v. Chapman.

MS. CAMPBELL: Yes, ma'am, I'm on that one.

THE COURT: Now, which parts of that do you -- because I don't think -- what part are you objecting to?

MS. CAMPBELL: The part where it says, the Defendant's handling of a dangerous instrumentality or by the unlawful activity by the Defendant doesn't have to be caused by that, I believe he just needs to be engaged in unlawful activity at the time of the incident.

And then when it gets down to one, two and three, down where the Defendant acts unlawfully, it has got to be at the time of the incident.

And under the theory of the right to arm one's

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self, I think there needs to be some type of instruction that the Defendant must meet all the requirements of self-defense in order to have the right to arm himself, which I believe is one that was used earlier, Judge. And I don't know if that is in your charge.

THE COURT: On her next page she says, I charge you that a person can be acting lawfully even if he is in unlawful possession of a weapon if he was entitled to arm himself in self-defense at the time of the shooting.

MS. CAMPBELL: There is no evidence in this case that he armed himself in self-defense. His own testimony says he just armed himself.

MS. CLEARY: I think the case law is clear, certainly with Burris and McCaskill and maybe others, that you look at the time just before the shooting when he armed himself, so it is our assertion that certainly when he picked up the gun off the ground he was not obligated to leave it there and get shot in the back as he ran away.

And in Burris, obviously that person brought the gun with him. He had the gun and was --

MS. CAMPBELL: But in Burris I believe he was armed lawfully.

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MS. CLEARY: No, no, no.

THE COURT: Well, the one that is in the -- have you read the accident charge that comes out of the bench book? It just says that the Defendant has raised the defense of accident and acts may be excused on the ground of accident if it is shown that the act was unintentional, that the Defendant was acting lawfully, and that reasonable care was used by the Defendant in the handling of the weapon. For example, if a person is lawfully armed in self-defense and a gun accidentally discharged, the defense of accident would apply. The burden is on the State to prove beyond a reasonable doubt that the act was not an accident but was caused by the negligence or carelessness on the part of the Defendant in handling of the dangerous instrumentality or by unlawful activity by the Defendant.

I'm inclined to charge the one from the bench book.

MS. CLEARY: And I don't have any objection to that in terms of the accident, but in Burris the Court specifically says that, McCaskill stands for the proposition that a person can be acting lawfully even if he is in unlawful possession of a

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weapon if he was entitled to arm himself in self-defense at the time of the shooting. Thus, if the circumstances of this case show appellant was entitled to arm himself in self-defense when the gun went off, he would be entitled to a charge of accident.

THE COURT: All right. So you are saying you don't have a problem with me charging the one that is from the bench book, but you would also like the charge Number 2, which is I think Charge Number 3 -- Number 2 too -- Number 2 that is on Page 3?

MS. CLEARY: Yes. I'm sorry. Yes.

THE COURT: Any objection? I mean, it is what the law says. I think we looked it up yesterday and talked about it on yesterday.

MS. CAMPBELL: Beg the Court's indulgence.

(Pause.)

MS. CAMPBELL: I think from the Burris case, I think that they still must find there is no negligence or recklessness to find it was accident. If we just add that language, I have no problem.

THE COURT: You want me to add the language that --

MS. CAMPBELL: It must be shown that --

MS. CLEARY: That's in your --

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THE COURT: Yes, it is in there. It says the burden is on the State to prove beyond a reasonable doubt that the act was not an accident but was caused by the negligence or carelessness on the part of the Defendant in handling the dangerous instrumentality or by unlawful activity by the Defendant.

He can reprint it and e-mail it to y'all; however y'all want him to do it.

MS. CAMPBELL: The only other -- the example that you use in your charge that just happens to be eerily similar to this case, I would say if we can come up with some other example because it would be a comment on the facts.

For example, a person who lawfully arms himself in self-defense then the gun accidentally discharges.

THE COURT: Any other suggestions? I don't even have to give an example. I mean, I don't have to give an example.

MS. CAMPBELL: That's okay. I'll go with it.

THE COURT: Leave it in?

MS. CAMPBELL: (Nods affirmatively.)

THE COURT: All right. And as to her other charges, the next one is just a self-defense -- it

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appears to be self-defense. And I'm just going to charge the one from the bench book. Aaron is going to break it up into four different -- and we'll get that. Anything else on that?

MS. CAMPBELL: No.

THE COURT: All right. What about Number -- Request to Charge Number 4 about him not actually having -- if he reasonably believes --

MS. CAMPBELL: I believe that is part of your charge already, if I read it correctly. I think the language is already in there, to act on appearances.

THE COURT: Ms. Cleary, one that I have --

MS. CLEARY: Yes. I'm sorry, I'm trying to read.

THE COURT: All right. And then Number 6 -- I mean, Number 5. Any objection to that one?

MS. CAMPBELL: I think that is also included. That is the same language again, the right to act upon appearances.

MS. CLEARY: I'm not -- okay.

MS. CAMPBELL: We certainly don't want to tell the jury to view the situation from the Defendant's standpoint. No reasonable person. I believe this language is already included in your charge, Your

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Honor.

THE COURT: Any part of this not in there?

MS. CLEARY: Beg the Court's indulgence.

(Pause.)

THE COURT: Yes, ma'am?

MS. CLEARY: Your charge is sufficient.

THE COURT: Okay.

MS. CLEARY: Judge, I am just now looking at this.

THE COURT: I am going to give y'all a second.

MS. CLEARY: Okay.

THE COURT: What I'm going to do is, Aaron is going to redo it and then I'll give it back, since I will probably ask you all if you have a problem with me sending it back with the jury.

MS. CLEARY: Right. But I was wondering if there is going to be an opportunity for me to kind of regroup and make sure I don't saying anything in my closing.

THE COURT: Oh, yes. I'm going to give y'all -- he's going to do a clean copy once we finish, give it back to you all, I'll give you five or ten minutes to look through it, and then we'll do the closing arguments.

MS. CLEARY: Okay.

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THE COURT: All right. And as to -- because there still may be some stuff in the one that I have here that y'all may want to take out.

As to Request to Charge Number 6, prior difficulty, I think we already have that. That is in mine. But there has not been any testimony regarding the victim's violent reputation, so we'll take that out.

MS. CAMPBELL: No prior violence by the victim.

THE COURT: No prior violence by the victim. If I'm wrong, correct me. I'm just trying to move through them. I don't remember any testimony regarding that.

Threats by the victim. He said that the other guy threatened him, but I don't believe he said that the victim threatened him.

MS. CAMPBELL: He did not ever say that he was threatened by the victim.

THE COURT: Yes, he didn't say he was threatened by the victim.

Intoxication of the victim. I mean, everything says he had marijuana in him.

MS. CAMPBELL: But there is no indication he thought he was intoxicated.

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MS. CLEARY: I don't think that matters. I think if there is any evidence that he could have been intoxicated that is a reasonable charge.

MS. CAMPBELL: She doesn't want us to be able to charge voluntary intoxication of her Defendant, but she wants to bring in intoxication of -- the alleged intoxication, which he never said he was aware of.

MS. CLEARY: Well, that is true. But I don't think that there is anything that he has to have been aware of it.

THE COURT: Well, its says that intoxication -- that he would have had -- it says intoxication of the victim may be considered in deciding whether Mr. Hinson's fear of death or bodily harm was reasonable. Basically saying that if the Defendant -- I mean, if the victim was waving a gun around and was drunk or something like that, then he would say, you know, he is going to shoot me because he is drunk. But I don't think --

MS. CLEARY: Okay, I withdraw this.

THE COURT: All right. What about Number 7?

MS. CAMPBELL: And I gave away your charge on duty --

THE COURT: Duty to retreat.

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MS. CAMPBELL: -- to retreat. I believe that language is in duty to retreat.

THE COURT: I think -- it talks about -- it actually goes into a little bit more than yours does, Ms. Cleary, about him not having to use any calculation as to the degree or amount of force which may be needed.

MS. CLEARY: What page is that on?

THE COURT: It is on Page 10 of my charge. Actually it is pretty close to what you have, increased risk of harm. I think it was the same language. It is the same language.

MS. CLEARY: I see. I'm sorry.

THE COURT: And Number 8?

MS. CAMPBELL: That would be a comment on the facts.

THE COURT: The first part definitely is.

MS. CAMPBELL: And I'm not sure what words accompanied by hostile act.

THE COURT: Yes, ma'am? And I have that one also.

MS. CAMPBELL: I believe the only testimony in the record of any words were, shoot me. I don't know if those are hostile.

MS. CLEARY: Well, I think he said when he

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first came up to him that he was like --

MS. CAMPBELL: No, he didn't. I just don't know how the words, shoot me, would be hostile towards the Defendant.

MS. CLEARY: I believe the testimony was he said something like --

THE COURT: I'm going to charge it. I mean, the words -- if he told the victim, shoot me, go ahead and shoot me -- it may not be --

MS. CAMPBELL: But that is not the moment. Then -- but he even separates that from the moment of which he arms himself to do the shooting.

THE COURT: Well, it says, words accompanied by hostile acts may, depending on the circumstances, establish self-defense.

And there was testimony that the victim charged at him or something like that and --

MS. CAMPBELL: So you are going to charge words plus hostile acts equal self-defense?

THE COURT: I'm sorry?

MS. CLEARY: I'm sorry. That is not what I meant to ask you to charge.

THE COURT: Okay.

MS. CLEARY: I mean, the law says, State v. Harvey, that -- well, I suppose, yes, you would

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have to add in the other elements are met.

MS. CAMPBELL: I mean, words plus hostile acts may be a consideration in whether we have met all the elements of self-defense, but in every case it has got to go back to all four elements of self-defense.

THE COURT: Oh, yes, yes, but that is part of -- that comes under --

MS. CAMPBELL: Close in time with this statement because I think for you to say that words accompanied by hostile acts equal self-defense is really problematic for me. Because, I mean, no matter what, as to whether or not it meets any of the four prongs of self-defense, because they still have to meet all four prongs of the self-defense in order for it to be self-defense, and I'm sure that is in your charge. I don't have it in front of me.

THE COURT: Well, you know, the part that talks about words accompanied by hostile acts goes into the acts on appearances. It is --

MS. CAMPBELL: And the only thing I'm saying if you were going to use the terminology of words with hostile acts may be self-defense, that alone is not true because it only can be considered as to one prong on whether he acted on appearances. And

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I would just want --

THE COURT: Well, we just need to reword it.

MS. CAMPBELL: Reword it.

MS. CLEARY: And I think that is included in your charge on Page 9 in the middle. I mean, that is basically what -- the law that I was quoting.

THE COURT: She says, you may consider whether Mr. Hinson's belief of being attacked was a reasonable belief when the words were accompanied by a hostile act. You may consider. That is coming from your request to charge.

MS. CLEARY: I know. But I'm just saying I don't have any objection to this words accompanied by hostile acts charged on yours on Page 9.

THE COURT: But it needs to say, you may consider whether -- is that your -- your objection is it just needs to say, you may consider?

MS. CAMPBELL: You may consider and also that it doesn't equal self-defense. That one thing. Words of hostile acts. The way this language reads is that words plus hostile acts equal self-defense, that is not true. That is only the consideration as to one prong that she has to meet four of in considering whether or not there is self-defense. And that is my concern.

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MS. CLEARY: And that actual case says words accompanied by hostile acts may, depending on the circumstances, establish self-defense. I mean, that --

THE COURT: What I will charge is, you may consider whether Mr. Hinson's belief of being attacked was reasonable belief when there were words accompanied by hostile acts.

I took that one straight from your charge, Ms. Cleary.

MS. CAMPBELL: And you are going to put that in Prong 3.

THE COURT: It is under right to act on appearances.

MS. CAMPBELL: Okay. I just didn't want the language in there that that equals self-defense.

THE COURT: She has a malice.

MS. CAMPBELL: I like her malice. You can add that on too.

THE COURT: You want it?

MS. CAMPBELL: Yes, ma'am.

THE COURT: All right. Ms. Cleary, you still want it?

MS. CLEARY: I should be scared to. Yes. You know, not anticipating the general recklessness

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charge to go along with that.

MS. CAMPBELL: This can go along with it too, but our general recklessness charge. We have no problem doing both of them.

THE COURT: Well, they pretty much say the same thing, don't they?

MS. CAMPBELL: I like them.

THE COURT: This one says the same thing as yours.

MS. CAMPBELL: It is ironic that she objected to mine.

MS. CLEARY: Well, I object -- the only language that I object is general recklessness makes it sound like, you know, if I turn around and hit him I'm going to -- and kill him, then, you know, I'm a murderer. So that is the Mouzon language that I object to.

THE COURT: The only reason that one is I think applicable to this case is because of the accident charge, because I'm giving the accident charge, but I'll give both of them. I'll give yours, I'll give yours, and the general one.

And then involuntary manslaughter.

MS. CAMPBELL: States versus Willie Reese. The facts in that case, Your Honor, was the

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Defendant was the estranged husband of the victim in the case. He went over to her house in her front yard, he had already pulled out a gun. He said he just had it out and was waving it around and it went off accidentally.

In that case the judge refused to charge involuntary manslaughter based on the fact that that would be a pointing and presenting, which is the very least we have here.

The Court of Appeals reversed it on those grounds and they went up to the Supreme Court and they held that it was proper to not charge involuntarily manslaughter although they still overturned the case on a closing argument by a prosecutor.

MS. CLEARY: My turn?

THE COURT: Yes, ma'am.

MS. CLEARY: In that case there was no evidence of self-defense, so the Defendant, when he pointed and presented the firearm, he was just simply saying that it didn't accidentally discharge, she didn't do any -- there was nothing about self-defense, and that is what distinguishes it because it is a self-defense that makes it a lawful arming, so if we can prove self-defense,

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then pointing and presenting does not preclude an involuntary manslaughter charge. And that is specifically included in State versus Burris where he did get -- it was an accident and involuntary manslaughter. And that -- and those two are clearly not contradictory, but also, again, one is entitled -- one is entitled to arm themselves in self-defense.

So in this -- in State versus Burris that we're relying on, it says, to warrant the Court in eliminating the offense of manslaughter, it should very clearly appear that there is no evidence whatsoever.

So the pivotal issue was whether appellant was engaged in unlawful activity at the time of the killing. For the same reasons discussed above -- when they were talking about accident -- we find the evidence in the record supports appellant's claim was acting lawfully when the gun fired killing tenant.

And, again, this is a case where the guy was not allowed to -- I believe he was under age and was not allowed to possess a pistol.

The same -- it is on four corners with this case, with Jamaal's case.

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The Court went on to say, Goodson only specifically dealt with whether unlawful possession of a weapon would preclude an accident then it would be incongruous not to apply the same reasoning and context of involuntary manslaughter.

Oh --

THE COURT: Yes, ma'am, you can continue.

MS. CLEARY: In addition, the evidence, or at least our part of the evidence, is that pointing and presenting actually occurred before the fight. And the Court emphasizes that you look at the moments before the shooting, that there is a difference in arming one's self in self-defense and acting in self-defense.

And in this case he is alleging he did not point it, you know, when the shooting actually occurred, that he had picked it up and then accidentally shot it when he was turning towards -- when Amp came up on him. So that would be a distinction as well.

So I think clearly we would be entitled to it in any case under State versus Burris.

THE COURT: You are saying the difference between State versus Reese and this case is the fact that the Defendant was acting in self-defense

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and then thus lawfully acting?

MS. CLEARY: Yes. So the Defendant in Reese, since he was not claiming any kind of self-defense, he couldn't lawfully arm himself in self-defense. His was just straight up pointing and presenting without the allegation that he grabbed the gun and that it accidentally or recklessly fired.

THE COURT: Yes, ma'am?

MS. CAMPBELL: Your Honor, we would also quote State versus Chapman.

THE COURT: Is it Chapman or Chatman?

MS. CAMPBELL: Chap. In that case -- and I understand she's trying to -- well, Number One, we submit she hasn't met the elements of self-defense. And I understand we are charging that out of an abundance of caution. But, Number Two, there is nothing in this record to say he was acting lawfully at the time. Basically he, Number One, is involved in a pointing and presenting. Then he is involved in a fist-fight or an assault, which he, by his own testimony, he said he got the better of him and beat him. And, Number Two, at that point he says he then goes and arms himself and that it is just an accident.

But there is nothing lawful about any of the

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conduct that day. I don't know how she can get around that fact and the cases.

THE COURT: In State v. Chapman it says -- it talks about excusable or justifiable homicide, but it talks about due care was exercised in handling of a weapon which led to -- in this case the Court did say he was entitled to an involuntary manslaughter charge.

MS. CAMPBELL: State versus Smith, a 2011 case.

THE COURT: The cite?

MS. CAMPBELL: The cite is 706 S.E.2d 12.

MS. CLEARY: Your Honor, in that case the Defendant was engaged in a drug deal. And we don't have any evidence of that. And that is what made it an involuntary manslaughter.

THE COURT: I have the wrong cite. What is it, 706 --

MS. CAMPBELL: I can hand it up, Your Honor. I believe we are also quoting the Crosby case.

MS. CLEARY: And in that case they found they hadn't met the elements of self-defense.

MS. CAMPBELL: Your Honor, I think we are going out on a limb to give her the self-defense/accident she has requested. That

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doesn't mean she has met them by law.

THE COURT: All right. I have these cases. You cited State versus Burris and what was the other one, Ms. Cleary?

MS. CLEARY: Me?

THE COURT: Yes, ma'am? What was the other case you cited?

MS. CLEARY: State v. Burris and State v. Wright.

THE COURT: Do you have a cite for that one?

MS. CLEARY: Yes. 378 S.C. 641, 664 S.E.2d 465.

THE COURT: 465?

MS. CLEARY: Uh-huh. And also in Mekkler. M-E-K-K-L-E-R. Do you have that one?

THE COURT: No. I need a cite for that one, unless it is cited somewhere else.

MS. CLEARY: 379 S.C. 12, 664 S.E.2d 477.

MS. CAMPBELL: Judge, if I could be heard? We conceded as far as accident and self-defense. That does not mean we concede she has met the elements, that she should get either one of those charges. And if this is something that is going to be -- I mean, if she is going to get this involuntary manslaughter it is bootstrapping us because we have

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conceded that we are allowing that charge just because there has been so much talk about it. We would want to be reheard on whether or not self-defense and/or accident are even proper in this case.

THE COURT: Well, this case says they are not mutually exclusive, so I don't think I have to give involuntary manslaughter just because he gets self-defense.

MS. CLEARY: Right.

THE COURT: That is what State v. Mekkler, the case I was just reading, says.

MS. CLEARY: Well, yes, it says that you can have both or you cannot have both. But our position is that in that case the lady, Mekkler, was, you know -- I think she had a cocked weapon in that case. I mean, I think the law is clear. And obviously we've got to, you know, present our evidence of self-defense, but the law is clear if there is any evidence at all of self-defense, then he has to have the involuntary charge because then he is lawfully armed and possibly reckless.

MS. CAMPBELL: No, ma'am, that is incorrect.

MS. CLEARY: Well, I mean, the cases are, you know, particularly Burris, is very clear on it.

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MS. CAMPBELL: That was the fact that -- you don't get one and then get the other. Your Honor, we would want to be heard on whether or not she has met the elements to get even a self-defense or accident charge.

MS. CLEARY: Well, the case law does not say you either get one and not the other.

THE COURT: I'm sorry?

MS. CLEARY: The case law does not say you can have one and not the other. The case law simply says that they are not mutually exclusive, that you can have both. If there is any evidence to support either an accident or involuntary manslaughter, then the jury is charged both.

Burris says that, without me making any -- you know, I'm not twisting the words at all.

THE COURT: So, Ms. Cleary, your position is if I charge accident and self-defense, that I have to charge involuntary manslaughter?

MS. CLEARY: No, I am saying that because we presented evidence that would support our position on each of the elements that they want to be able to disprove it beyond a reasonable doubt the elements of self-defense at the time of the shooting that he lawfully armed himself in

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self-defense, not that he acted in self-defense, that that requires both the accident charge and involuntary manslaughter.

THE COURT: All right. Yes, ma'am?

MS. CAMPBELL: Your Honor, then we would like to be heard on self-defense and accident charge to be submitted to the jury. We do not feel like she has met the elements. We feel like even from his own testimony, which is the best thing he has got going for him, that he concedes that he just went over to pick up the gun. He didn't say he was acting in self-defense at that point. And then he makes into an accident.

And we would surely say that he has not met three out of at least four of the prongs. Even if you are giving him the one prong where he was acting reasonably, that he had the duty to retreat, he had many duties that he did not meet that day, and we would like to respectfully be heard on that if you are going to entertain the involuntary manslaughter.

THE COURT: What is your position if I charge those two that I have to give involuntary manslaughter?

MS. CAMPBELL: There is no case law that says

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those have to be charged or that they all run together. I don't know where she is getting that from. I believe you quoted the law correctly earlier, Your Honor, about it depends on the case, the facts of the case and what it is.

Our position is that just because we're conceding and don't object to her having an accident and a self-defense charge, there is nothing in this case that allows this to be an involuntary manslaughter.

THE COURT: All right. All right. I think I have heard enough. Aaron is going to bring back the -- he is going to bring back a draft of the jury charge and the verdict form.

Based on my reading of I guess the cases cited, I don't believe if I charge accident and self-defense, which y'all aren't claiming -- well, I guess you are claiming self-defense to get to the accident -- I don't -- in my reading of the case law, it doesn't state that I have to charge the involuntary manslaughter.

MS. CLEARY: Can I clarify my position on that, just real briefly? I am not saying that you have to charge it because you are charging accident and self-defense, but what I'm saying is that there

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is some evidence that this was an accidental killing and that -- the elements are: Killing of another without malice and unintentionally while acting lawfully with reckless disregard for safety. So there is certainly some evidence that he was not -- I mean, he was reckless with the gun. So -- because there is some evidence to support that charge, that is why I think you have to charge it, not because you are going to do accident and self-defense, but because it meets -- there is some evidence of each of these elements. That is my position.

THE COURT: Yes, ma'am?

MS. CAMPBELL: You don't really want to hear from me. I mean, she has to meet the elements of self-defense, Your Honor. Respectfully, she has not. In order for her to make it into this lawful activity, because by his own admission on the stand he was acting unlawfully that day, he had no right to carry a gun, he had no right to be taking the gun out there, he had no right to be dealing drugs or doing whatever else he was doing out there that day.

I find it somewhat ironic that she then incorporates it in like she has met the elements of

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self-defense under these facts.

And this case, with these facts, simply is not an involuntary manslaughter.

MS. CLEARY: Do you want me to argue self-defense?

THE COURT: No, they conceded to charge it. They are not saying it is self-defense, but they are agreeing to let the law be charged. I'm not going to charge on a lesser included of involuntary manslaughter. I think that the jury can decide if it is self-defense or if it was an accident, but I'm not going to get into the involuntary.

MS. CLEARY: And I just do want to make sure the record is clear that I strenuously object to that.

THE COURT: Oh, I think so.

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

THE COURT: We are going to take about ten minutes. Aaron is going to bring -- I'll have him bring the jury charge out, and then y'all take about five or ten minutes. So we will take about 15 minutes.

(WHEREUPON, a break was taken.)

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THE COURT: She said we were supposed to have a note coming out, but it never came out, as to, what in the world are they doing in there, is what the note is going to say. I am going to bring -- y'all have to bring your client back in. It is 20 till 4:00. I'm guessing it is going to take two hours to do -- two hours at least to do closing arguments, plus the charge on the law is going to probably put us close to 6:00 o'clock. So we'll -- I think we are just going to argue and charge in the morning with everybody fresh. So we'll start at 9:00. I am just going to bring the jurors back in and tell them that.

They went to get the Defendant.

(Pause.)

(WHEREUPON, the jury came into open court at approximately 3:45 p.m.)

THE BAILIFF: The jury is present, Your Honor.

THE COURT: Thank you, ladies and gentlemen of the jury, for your patience this afternoon. I assure you that we were in here hard at work and not -- and being good stewards and mindful of your time. And for that reason -- I considered doing closing arguments tonight and charge on the law, which means you all probably wouldn't get it until

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maybe after 6:00 o'clock. And I did not ask you all about staying late, so I don't want you to stay late. I'm going to bring you back in the morning at 9:00 o'clock in the morning. And at that time we will be prepared to go forward with the closing arguments and the charge on the law. It could take almost up to three hours just to do that. And it is almost 4:00 o'clock now.

So I am going to bring you all back in the morning at 9:00 o'clock. Remember that you are not to discuss this case with anyone, no independent research regarding the case. And if anyone tries to speak with you regarding the case, just let me know in the morning. I will have one of the deputies escort you to your car this afternoon.

All right. Thank you.

(WHEREUPON, the jury is excused for the day at 3:48 p.m.)

THE COURT: I think some of them wanted to stay, which is odd.

All right. We will -- Aaron should be back around here in a second with the jury charge.

Do you have one other matter?

MS. CLEARY: I just wanted to put one more thing about the involuntary manslaughter.

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I would just emphasize that giving us a choice of all or nothing and obviously we are anticipating the involuntary manslaughter charge, and I want to say that one of the things the involuntary manslaughter charge says, reckless disregard for the safety of others, you know, is one of the elements, and reckless disregard for safety of others means that you are not interested in the consequences of your acts or the rights and safety of others.

And she specifically asked him on cross-examination, why were you holding the gun by the pistol. She talked about him negligently holding it. And I'm afraid that not having this and combined with the Mouzon charge, if they find he is negligent, then he's going to be guilty of murder.

So that is why -- and, you know, I mean, as you know, it is always error not to charge when there are any facts to support it. And since, you know, I believe that there are facts in the record to support it, I just need to re-emphasize and ask for you to look at the cases tonight and maybe think about it a little bit harder, because it is essential -- I mean, it is an integral part of our

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defense. And it is going to kind of eviscerate it.

THE COURT: Thank you. Yes, ma'am?

MS. CAMPBELL: Respectfully, Your Honor, we ask that with the facts of this case involuntary manslaughter is not a proper charge. You are charging self-defense and accident, which is what she said in her opening statement this was.

And my understanding is that in any case, no matter what you are going to charge the jury, that in order to find guilty of murder, they must first find malice exists.

THE COURT: All right. He should have the jury charge here and the verdict form. I am going to stick with my original ruling and charge -- and not charge involuntary.

MS. CAMPBELL: Thank you, Your Honor. Your Honor, this is the redacted version of the 9-1-1 tape. Remember we had that one part on it that wasn't supposed to be on it? We can substitute this, with the Defense's permission, for the actual one we put in.

THE COURT: Yes, ma'am. And y'all have, if they ask for it, y'all have the laptop.

MS. CAMPBELL: Laptop. Feel free to review it to make sure that the one we use in court is clean

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to make sure that nothing improper goes back.

THE COURT: All right. And if we can start promptly, promptly at 9:00 o'clock.

MS. CAMPBELL: We will be here early.

THE COURT: Because I think they are ready to go. They are ready to get it over with. I don't know if they are ready to go, but they are definitely ready to get it over with.

MS. CAMPBELL: Your Honor, I will just substitute that in the same case it was in.

MS. CLEARY: Okay.

THE COURT: Let me go check on my law clerk.

(Pause.)

THE COURT: He didn't do the verdict form because he didn't know -- I guess I need, for the purposes of the record and making a decision, Ms. Cleary, what is the evidence that you are presenting that would lead to an involuntary manslaughter charge?

MS. CLEARY: Okay. The killing of another. We have that okay. Without malice. And unintentionally. And that has been basically our defense.

THE COURT REPORTER: I'm sorry, I didn't hear you.

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MS. CLEARY: Oh, I'm sorry. Without malice and unintentional, the second element. And then while acting lawfully, State versus Burris and State v. Wright and State versus Mekkler make it clear that if -- and obviously, you know, that something she is going to argue vigorously -- but if there is any evidence to support self-defense, then that is lawful arming of one's self. The law doesn't --

THE COURT: And she is saying by not conceding to the self-defense that -- by conceding to it that she is not conceding that involuntary manslaughter necessarily has to be charged. And -- but what evidence -- are you referring to him just saying he accidentally pulled the trigger? Is that the evidence that you are referring to?

MS. CLEARY: Well, I'm -- okay. Well, that -- I mean, that would be the unintentional element, that it has to be unintentional. Okay. So he says it was an accident. So that is the evidence of unintentional. But I thought what was kind of holding us up is while acting lawfully. And I think the case law is clear that, you know, just because you are a drug dealer does not mean that you can't ever pick up a gun and defend yourself.

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That is clear from various cases.

And then the fourth element, with reckless disregard for safety, examples are negligent handling of a loaded gun, handled a gun recklessly, in the Wright case, and if you admit it was intentional you can't get the charge. And of course we haven't admitted it was intentional. And also intentionally pulling the hammer back on a shotgun, it could still be involuntary manslaughter if the person unintentionally pulls the trigger.

And, you know, the fact that, I don't know, is selling weed or the other things that she said she thinks shows that he brought the danger of that situation upon himself, that does not mean that he could never arm himself in self-defense. The law doesn't say, you know, if you are a drug dealer and you are not allowed to possess a weapon. It is pretty clear that there are times when you can lawfully possess a weapon.

And case law speaks specifically to that in some detail, particularly in the Burris case and in the McCaskill case, about how there is a difference between one acting in self-defense and one arming one's self in self-defense. And that, you know, despite bad behavior that might have been going on,

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if at the moment of the arming one's self you are entitled to do so because you are not -- you don't have to leave yourself vulnerable to getting shot in the back, which is what his testimony was, that the reason he picked up the gun at that point was because it had already been pointed at him by Andina, he had been punched in the face a couple of times, so obviously he has got a reasonable fear at that point to think, I'm not -- I can't leave that gun and go run because I don't want to get shot in the back.

And he is entitled to do that, no matter what kind of bad character they have been able to bring up against him. You don't have to leave yourself to get shot in the back. And that is the whole basis of our self-defense claim.

THE COURT: So the cases you are relying on is Burris and McCaskill?

MS. CLEARY: And also Mekkler.

THE COURT: And Mekkler. All right. And the cases you are relying on are?

MS. CAMPBELL: The rest of the cases on voluntarily manslaughter: Reid, Chapman -- there is a whole progeny of them -- Crosby is one.

Your Honor, in addition to that, I would just

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point that the facts in the case that she keeps talking about, Burris, are very distinguishable from this one. In that case the appellant, who is ultimately charged, was attacked unprovoked by the two alleged victims in the case. They initiated the fight. They initiated the attack.

In this case at hand, the Defendant is the one that first drew on the victim. That is un -- I mean, by everyone's testimony. So that distinguishes it as far as lawfully, you know, arming himself at that point in this case.

Furthermore, his own testimony says that at the time he then went and de-armed himself because he had become unarmed in self-defense, if he wants to go self-defense, he goes and re-arms himself. And his own testimony said at that point he had beaten the victim so badly that he is no longer moving and that he is going to pick up the gun. And at that point he turns around and tries to make it into -- our position under the elements of the facts of this case, if you apply the self-defense element, under no theory of the defense can it reach self-defense, not the four prongs. And I can go through them again, but I have already put them on the record, I don't want to bore you. And even

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beyond that, by his own version of the chain of events that occurred and his own demonstration using me the accident quote/unquote could not happen the way he said it did. I simply think in this case with these unique facts and relying on the case law we have handed up that involuntary manslaughter is not appropriate.

THE COURT: Well, since I have the cases, I will take tonight and read over them for myself. And we'll get the verdict form. Right now I'm not inclined to do it, but I will read over all the cases. That's why I'm asking you which cases you want me to consider.

MS. CAMPBELL: And in this case, in Burris that she keeps talking about, that person armed himself after he had been attacked.

MS. CLEARY: Well, it is our --

MS. CAMPBELL: Can I finish? And then at that point the people leave and then they come back towards him, and that is when she shoots -- the gun goes off accidentally, according to the testimony.

MS. CLEARY: But it is our assertion that there is evidence in the record that Amp came up on him. One of their witnesses says Anthony stormed at Jamaal. And we admit that he pulled the gun.

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And his testimony was that he did that to scare him away, but then he was punched a couple of times anyway. So it is not --

THE COURT: But then he says he won the fight.

MS. CLEARY: Right.

THE COURT: And then he had the opportunity at that point to retreat?

MS. CAMPBELL: Retreat.

MS. CLEARY: Well, he doesn't have to leave the gun -- he did not say that he knocked the man unconscious. He said that he could tell the fight was over because he was not fighting back. Okay? Not that he was unconscious.

But what our point is is that he doesn't have to leave the gun there for either Andina, who had previously pointed it, or Amp to pick it up and shoot him in the back while he is running from the scene. That is what we're saying. The law does not require that.

THE COURT: All right. So I have written down all the cases, the names, and I'll take a look at those again, read them thoroughly, and I'll get y'all a verdict form in the morning.

MS. CAMPBELL: Thank you, Your Honor. Your Honor, the only other thing we would have, in your

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without-fault prong of self-defense, you have mutual combat. I don't know that that would apply.

THE COURT: That was already in it.

MS. CAMPBELL: It was in your standard form, but I don't think it applies in this case.

MS. CLEARY: I agree with her.

THE COURT: Okay. If y'all like we can -- do y'all want to take ten minutes to go through it and then I can come back and we'll -- I can come back and see what else is in there.

And the desk book has prior record of the Defendant limited for impeachment and prior -- and I think that is in there. And prior record of Defendant limited for Lyle. I think -- but that is not his record, but it just talks about bad acts under that one. But there is nothing else about prior bad acts in here.

And I guess what I am thinking about, Ms. Campbell, is the questions you asked about the pending charges?

MS. CAMPBELL: Oh, yes, ma'am.

THE COURT: Where it talks about --

MS. CLEARY: Oh, okay. Isn't there a charge about --

THE COURT: Well, there is a Lyle charge, but

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it talks about a conviction.

MS. CLEARY: But isn't there a charge that talks acts prior bad acts can't be used to show he was acting in conformity thereof? Can I -- do you know what I'm saying? That it can only be shown to prove the Lyle exceptions, not to show that he's a bad person. It can't be used as propensity evidence, I guess call it propensity evidence.

THE COURT: Were you using it for impeachment or for --

MS. CAMPBELL: I was using it for impeachment, limited to that.

THE COURT: Yes, it was for impeachment. Is that in there?

Okay. All right, we'll take about ten minutes for y'all to look and see if there is anything else that needs to be changed so that we can start at 9:00 in the morning.

All right, we'll take about ten minutes.

(WHEREUPON, a break was taken.)

MS. CAMPBELL: There is only one section of self-defense -- I'm sorry -- the mutual combat language. Mutual combat only applies if both people --

THE COURT: Oh, we are going to take that out.

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MS. CAMPBELL: Okay.

THE COURT: I think y'all both agreed to that.

MS. CAMPBELL: Right. And then, Your Honor, on the right to act on appearances.

THE COURT: Will you give me a page number?

MS. CAMPBELL: Fourteen.

THE COURT: Okay. Fourteen. Yes, ma'am?

MS. CAMPBELL: Under size and age, I don't know that that was an issue in this case. And I'm not quite sure I followed the language. It looks like something might have been left out or something. Actual need and duty to retreat. And then the next line says, for force and self-defense the amount of force needed. I think maybe that line just needs to be taken out.

THE COURT: Yes.

MS. CAMPBELL: Or I'm not sure that size and age are even appropriate in this case. I don't really care, but --

THE COURT: Ms. Cleary?

MS. CLEARY: With regard to size and age, I mean, I don't think it is all that important, but there is some evidence in the record that he testified that he was afraid of him because he was bigger.

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THE COURT: He said he was bigger than him.

MS. CAMPBELL: He also said that he beat him up and it wasn't a fight. But it is just that one line for force and self-defense that I think should just be deleted.

THE COURT: All right, we'll take that part out. It is probably an error. It should read, the relative size, age and weight of the Defendant and the victim, may be considered in deciding the apparent or actual need for force and self-defense and the amount of force needed.

So that part about duty to retreat needs to come out.

MS. CAMPBELL: Okay.

THE COURT: That's all you see?

MS. CAMPBELL: That is pretty much all I see right now, Your Honor.

THE COURT: Okay. Y'all can e-mail Aaron if there is something else. He normally works late.

MS. CLEARY: The only thing I have is on Page 9, there is a statement -- and, I mean, I think it is a statement about that malice can be formed, you know, right before the act, and then that charge -- you know, obviously it is not my favorite charge -- is then repeated again on Page 10, and I think that

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was probably just a mistake.

MS. CAMPBELL: That was my request to charge which you agreed to.

MS. CLEARY: Well, I just don't want the part about, that malice can be formed, can be conceived at the very moment the fatal blow was given. I don't want that charge twice.

THE COURT: You know, y'all both had one and y'all both agreed to just put both of each other's in there, and I think that is why it is in there twice.

MS. CLEARY: Oh, I know, but I --

THE COURT: Where is it?

MS. CLEARY: It is on Page 9 and 10.

THE COURT: About the fatal blow?

MS. CLEARY: No, that malice aforethought does not require that malice exist for any particular time before the act is committed, but malice must exist in the mind of the Defendant just before and at the time the act is committed.

Okay, so there is that, which is the -- you know, malice can be formed just before charge. And then on Page 10 you would be telling the jury again, malice does not need to exist for any appreciable amount of time before the admission of

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the act of killing occurs. Malice can be conceived at the very moment the fatal blow is given. And for obvious reasons, I don't want them to hear that twice. I don't see any need for it. And I think it was just kind of combining our two charges that that happened, or combining our charge with your charges.

THE COURT: I don't see it. Where is fatal blow on Page 9?

MS. CLEARY: I mean, they are worded differently, it is just they are the same charge about the time that, you know, that malice can be formed immediately before the act. One of them used the term fatal blow and one of them says, just before and at the time of the act is committed. And I'm not saying I care which of these charges is used.

THE COURT: Just one?

MS. CLEARY: Yes, just one.

THE COURT: Any response?

MS. CAMPBELL: Your Honor, I don't think it is any way -- it is not like you are going on and on about either one of them. It is just a different way of saying the same thing. And she did agree to let it in. Now she is objecting to it.

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THE COURT: I think that is part of the charge that was given by Ms. Campbell, is that right?

MS. CAMPBELL: There was charge that I handed up, yes, ma'am.

THE COURT: Yes, those were two separate ones, and I think that is one you agreed to.

MS. CLEARY: I mean, I didn't --

THE COURT: It was her request to charge. It was the --

MS. CLEARY: Right. But I didn't agree, I mean, for it to be charged twice. I understand that that is a correct statement of the law, but what I'm saying is I don't want it to be charged twice.

THE COURT: I don't understand why you are saying it is being charged twice because there is nothing on Page 9 that talks about malice may be conceived at the very moment the fatal blow was given.

MS. CLEARY: Okay. But let me -- the specific part I'm talking about on Page 9 says that, malice aforethought does not require that malice exist for any particular time before the act is committed, but malice must exist in the mind of the Defendant just before and at the time of the act is

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committed.

Okay, so that is basically saying that, you know, because obviously a lot of people think if it is murder that it has to be premeditated. So this clarifies for South Carolina jurors that malice can be formed immediately.

And then this -- the one on Page 10 says, malice need not exist for any appreciable period of time before the admission of the act or killing occurs. Malice may be conceived at the very moment the fatal blow was given. It is the same charge in substance.

THE COURT: Except for the last sentence.

MS. CLEARY: And, as I said, it is not that I object -- I don't object to that sentence if that is something they feel like they --

THE COURT: Well, I'll move that sentence behind, therefore, there must be a combination of previous evil intent and the act, and then malice may be conceived at the very moment -- well, maybe it needs to go before that. Malice aforethought does not require that malice exist for any particular time before the act is committed, but malice must exist in the mind of the Defendant just before and at the time of the act at the time the

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act is committed, malice may be conceived the very moment the fatal blow is given.

MS. CAMPBELL: That's good, Your Honor.

MS. CLEARY: So embody it all in one place.

THE COURT: Yes.

MS. CLEARY: Yes, that's fine. I just didn't want them thinking it was extra important because it is in two places.

THE COURT: And then go into, malice does not necessarily impart ill-will towards the individual.

MS. CAMPBELL: Thank you, Your Honor.

THE COURT: All right. Is that it?

MS. CLEARY: That's it, yes.

THE COURT: All right. So we will be ready to start at 9:00 sharp in the morning. If y'all have something that y'all need, I'll try to get here by quarter till or 8:30 if somebody needs anything, but I'd like to start at 9:00 if we can.

All right, 9:00 o'clock in the morning.

(WHEREUPON, court adjourned for the evening.)

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THE COURT: Just quickly, Aaron received a request, an additional request to charge.

MS. CAMPBELL: The line about in order for it

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to meet accident.

THE COURT: Okay. And I'm not sure if Ms. Cleary got it. He forwarded it on to you, but she may not have checked her e-mail in the process. So if you have a copy of it, can you give her a copy?

MS. CAMPBELL: I can go get it, Your Honor.

THE COURT: They want me to charge from State v. Chapman, if you find that the Defendant was not acting in self-defense then he was not acting lawfully at the time of the incident then he cannot claim the shooting was accidental.

MS. CAMPBELL: Judge, the only other thing I did notice last night late, because we took out all the language about the inference of malice from the use of a gun, and then so your inference, you talk about express malice in a whole paragraph and then you don't really -- in your charge you don't really talk about inferred malice. If you can just say malice can be inferred from the facts and circumstances surrounding the case. I think that would cover it. Just as a general, you know, just to say, because there is a long definition of express malice, lying in wait, and all that, but then there is only like one line about inferred malice. It would just be a general just to --

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THE COURT: We took out the part about the deadly weapon.

MS. CAMPBELL: And I think the additional language in general.

THE COURT: And what is the additional language?

MS. CAMPBELL: Just malice may be inferred from the facts and circumstances surrounding the case.

THE COURT: Ms. Cleary, any response regarding adding that, malice may be inferred from the facts and circumstances surrounding the case?

MS. CLEARY: No, I don't have any objection to that. But in terms of the additional accident, I think your accident charge covers it sufficiently and that would just be overemphasizing one part of accident.

THE COURT: Your objection again, I'm sorry, for the record?

MS. CLEARY: I believe that your accident charge covers the fact that he has to be acting lawfully.

MS. CAMPBELL: I agree.

MS. CLEARY: Their charge just serves to emphasize that part further when it says several

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times the Defendant must be acting lawfully in order for them to find it was an accident.

THE COURT: Anything else? You just think --

MS. CAMPBELL: The part about to be accident it has to meet the elements of self-defense.

THE COURT: To be accident?

MS. CAMPBELL: Yes.

THE COURT: Is that your -- because you are not arguing self-defense, you are arguing accident, but you are arguing that self-defense has to be -- you have to argue as to self-defense in order to get to the accident. Is that --

MS. CLEARY: Right. And the law says that there is a distinction between acting in self-defense and arming one's self in self-defense, and we're arguing that the armed himself in self-defense under State v. Burris where it talks about at the time of the shooting was it lawful to arm himself in self-defense. So I don't think that is an accurate statement based on Burris.

THE COURT: So if it said, if you find the Defendant did not arm himself in self-defense, then he was not acting lawfully at the time of the incident, then he cannot claim the shooting was accidental?

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MS. CLEARY: Well, I think you have to say, he did not arm himself at the time of the shooting, because the Burris case makes it very clear that that is the point that you have to look at, to not arm himself at the time of the shooting.

MS. CAMPBELL: Your Honor, I think we'll withdraw that. I apologize.

THE COURT: All right. And as to the -- just to make sure, since this accident and self-defense and all that is -- we talked in great detail about it, I just want to make sure I'm clear. And I know Ms. Cleary wanted to make sure she is clear on all my rulings. And then also the ruling as to involuntary manslaughter charge.

And our discussion yesterday regarding self-defense charges and accident charges would be, it is my understanding it would be included in my instructions to the jury. I did not rule as to the elements of self-defense or the elements of the accident because the State did not object to the instruction. For that reason they will be included in the jury instruction and it was not necessary for me to make a ruling as to whether each element of self-defense was proven with respect to the Defendant being lawfully armed. I just wanted to

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make sure that the record was clear as to that.

With that being said, I still need to make a ruling regarding the Defendant's involuntary manslaughter request to charge and also I guess you requested it be included as a lesser included offense on the jury charge since that was objected to by the State.

After careful review of the case law, I decided not to charge the involuntary manslaughter charge in this case. And I will just, for purposes of the record, involuntary manslaughter is the killing of another without malice and unintentionally while engaged in either an unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm or a lawful act with reckless disregard for the safety of others. And that is from State v. Reese.

I find that all the evidence in this case indicates the Defendant was acting unlawfully at the time of the killing, and that as a result he is precluded from any instruction as to involuntary manslaughter.

The evidence before the Court based on the Defendant's testimony was that he was engaged in the distribution or selling drugs in the community

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at the time of the incident, that he was unlawfully in possession of a firearm because he is not allowed to carry a firearm, first and foremost, because he is a felon.

All the testimony indicates that at the time of the shooting the Defendant was on the ground -- the victim was on the ground and was defeated, and that was the words of the Defendant, and also the witnesses, and that the victim was -- I believe the Defendant stated that he won the fight and that the victim, as far as he knows, that he had no reason to think at that time the victim was armed.

Ms. Cleary has indicated that their defense is not self-defense, but rather accident. My ruling is that at the time of the actual shooting the Defendant was unlawfully armed and at the time of the shooting clearly pointing and presenting a firearm or unlawfully possessing a firearm. Moreover, any claim that he was acting lawfully in self-defense is clearly negated by the Defendant's own testimony because he indicated that he was not aware that Anthony carried a weapon. He also indicated in his testimony that he won the altercation.

Without any testimony that the victim actually

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pointed a gun at the Defendant or the Defendant saw the victim with a gun during or around the time of the altercation clearly means that the Defendant would have not been justified in arming himself with a deadly weapon at the time the gun discharged, especially since the Defendant testified that he won the fight and that the victim was on the ground when he got up.

I believe in the Mekkler case the Defendant was -- the difference in that case is that the Defendant was arguably lawfully armed because there was testimony that the victim had a weapon at the time of the incident and was acting in a threatening manner.

This case was different because at the time of the shooting all the evidence indicates that that Defendant was armed -- that that victim was armed. In this case there is no evidence that the victim was armed.

In Burris, evidence showed that two men attacked the Defendant knocking him down and attempted to rob him. Burris drew a gun from his pocket and shot it twice into the ground causing both men to back away from him. While he was attempting to get off the ground, one of the

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attackers reappeared and came towards him and as he picked up the gun, the gun went off.

I think the facts in those cases are clearly different. This case, in relying on Reese, which states that in that case, the Court, the Supreme Court held that when the Defendant was waving the gun around that he was unlawfully pointing and presenting a firearm, which is a felony, which precluded an involuntary manslaughter charge.

So that will be my ruling. I have prepared a verdict form to that effect, and I will give you all a copy of that to take a look at before we get started.

MS. CLEARY: Your Honor, may I say one thing? I feel like if you are essentially saying as a matter of law that he hasn't proved -- that he hasn't met self-defense, I feel like since we didn't argue it in our charge conference that I need to go through and state on the record why we believe that he does meet the elements of self-defense.

MS. CAMPBELL: She has done that over and over.

THE COURT: I think you did. And I didn't rule on that. I didn't rule on that. That is why

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I'm going to charge it, because they didn't object and you offered it.

MS. CLEARY: Self-defense is the whole basis of the involuntary manslaughter.

THE COURT: Okay. Well, I am going to let you make your record. You can go ahead and make your record as to how -- but you need to go through each element and how he --

MS. CLEARY: Okay.

THE COURT: But my ruling is based on -- is not -- I am not ruling on the self-defense because y'all agreed to it.

MS. CLEARY: Right. And but --

THE COURT: Which kind of put me in a curious situation as to involuntary manslaughter.

MS. CLEARY: The first element, the Defendant was without difficulty -- without fault in bringing on the difficulty. The cases where this is applied has been like a case where somebody goes up and tries to rob somebody and then that person decides to defend themselves.

You know, of course you can't use self-defense in those circumstances, but the law does not require that you not be -- it doesn't require that he, you know, never goes into this neighborhood

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where he knows that somebody doesn't like him lived. It doesn't require that he stay holed up in Lauren's house or anything like that.

The -- and, you know, clearly he can be acting lawfully even though he is in unlawful possession of a firearm.

The fact that he is dealing drugs and that sort of thing does not mean that he has to leave himself open by -- and allow himself to be shot in the back if he were to just leave that gun on the ground. And acting lawfully doesn't mean that you are a model citizen.

His innocent act, according to his testimony, is he is just walking over there to give Devan a cigar. Devan supports that. Nobody else can refute that. That is not acting wrongfully.

He did not say he wanted to fight Amp. And I think that is what you said.

THE COURT: No, I didn't say that. I said he said he won the fight. He may not have said, I won it, but he said --

MS. CLEARY: Oh, won it. Won it. I'm sorry. I thought you said wanted it.

THE COURT: No, that he won.

MS. CLEARY: Exactly, yes. Now, you know,

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they characterize it as he storms over onto his property, but Jamaal's testimony is he was going over the street to give Devan a -- the cigar. He may have accidentally walked on the property, but that is not -- that doesn't mean he is acting unlawfully.

And then as far as, you know, if he had gone over there looking for a fight, which is what I thought -- if he had gone over there looking to fight, that would be unlawful, but that is not what any of the testimony says, except for Andina. Only Andina, not any of the other people that were there. And so there is some evidence, and that is the standard. I don't have to prove self-defense, I have to show some evidence of self-defense in order to get the involuntary manslaughter charge.

THE COURT: What about the duty to retreat?

MS. CLEARY: I was going to imminent danger.

THE COURT: I'm sorry. Oh, yes, go to imminent danger, threat to harm.

MS. CLEARY: Okay. He must show he is in actual imminent danger or actual belief of imminent danger. He does not have to show that Amp had a gun, obviously, but he testified that he was afraid of Amp because he knew that Amp was friends with

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Richard, a guy who bragged about killing people and had a teardrop tattoo and that he had bad blood with.

And then he testified that Amp storms up on him. He pulls out the gun to try to scare him off but he is not scared. That is scary. That is a reasonable fear that this guy is dangerous.

The prior encounter with Richard, knowing Richard is friends with Amp, the fact that Amp was angry and storming towards him, that Amp would not be scared away by the gun, and he didn't know whether Amp had a gun or not, that goes to whether he believed he was in imminent danger.

And then acting on appearances, he testified -- I mean, and I think all that sort of goes to the circumstances that he was in. And then I think you also have to look at the point that he picked up that gun the second time. The law does not require him to leave that gun on the ground and let Andina, who has already picked up the gun and shown it, she has pointed it and threatened people, or Amp, who has already shown he is not afraid of the gun, the law does not require him to leave that gun on the ground and run and get shot in the back. No matter how, you know, unsavory of a character he

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is, it is not open season on felons.

So at that point, when he picks up the gun off the ground, he clearly has a reason to fear for his life. He is just -- our point about him beating Amp is now Amp has a motive -- has a reason to want to kill him, not -- he doesn't have a reason to want to kill Amp, he has won the fight, but Amp has a reason to want to come up and kill him. So he better get that gun and get out of there or he is going to get shot in the back. And Andina's actions go to that as well.

As far as no other way to avoid, when he arms himself at that point, there was no other way to avoid it. I mean, he can run, but the law doesn't require that he leave the gun there, as I said.

And the law doesn't require that, you know, he has to avoid any potential bad situation that if he has bad blood with somebody he can't, you know, go to that neighborhood. That is just not what the law requires. That is not -- I mean, so I believe that he in this situation, at the time of the shooting particularly, that there was no way to avoid.

And so those are the elements of self-defense that we believe we presented some evidence to

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support. And that is why we're entitled to the involuntary manslaughter charge.

The Reese case does not apply because they are not trying to do self-defense. He was in unlawful possession pointing and presenting and could not possibly -- they didn't even claim self-defense. So it is self-defense that makes the possession, the illegal possession lawful. And that is what Burris makes clear. This guy Burris had no right to have a gun.

THE COURT: Okay.

MS. CLEARY: Thank you.

THE COURT: All right, thank you. Anything in response?

MS. CAMPBELL: No, ma'am.

THE COURT: All right. Let's bring them in. Have y'all had a chance to look at the verdict form? I'll probably take, depending on how long y'all are, I will probably take a break in between the charge conference -- I mean, before the charge. I'll take a break after y'all close and let them stretch or something.

MS. CAMPBELL: Okay.

THE COURT: And Aaron will get -- just one quick question. I just want to be clear on

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something.

On Page 15, the part about accident. Yesterday I think there was some objection to using that example from the State because it was so similar. For example, if a person is lawfully armed in self-defense and a gun accidentally discharged the defense of accident would apply.

I think at one point y'all said y'all objected, and then Aaron seemed to think that y'all said, no, that is okay. I thought we took it out. It is okay?

MS. CAMPBELL: (Nods affirmatively.)

THE COURT: All right. You can bring them in.

(WHEREUPON, the jury came into open court at approximately 9:34 a.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: All right, good morning, ladies and gentlemen of the jury.

At this time we will have closing arguments from the parties in this case. First you will hear from Ms. Campbell, on behalf of the State; then you will hear from Ms. Cleary, on behalf of the Defendant; and then you will hear final closing arguments from Ms. Simpson, on behalf of the State.

Thank you.

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MS. CAMPBELL: May it please the Court?

THE COURT: Yes, ma'am.

CLOSING STATEMENT

MS. CAMPBELL: Good morning.

THE JURY: Good morning.

MS. CAMPBELL: The first thing I want to do is take this opportunity to thank you on behalf of the State of South Carolina, on behalf of the citizens of Richland County, and most importantly on behalf of the Salley family, who have been here all week, for your service in this case.

I know when you showed up on Monday morning you didn't have any idea perhaps what type of case you were going to be on. And over the last several days you've had to listen to facts and circumstances and things that happen in our community that just, quite frankly, are somewhat appalling.

But I think as you have come to see it is very important that we have citizens such as yourself who are willing and able to come forward to listen to the evidence in this case and to make a determination as to what happened back on January the 16th of 2010. And then most importantly to apply the law as the judge will give

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it to you to the facts as you find them.

Now, I'm going to have an opportunity to talk to you a little bit, and I will talk mainly about the law of this case, and then you will hear from the Defense, and then you are going to hear from my co-counsel regarding the facts and what actually has been proven in this case.

If I misquote anything when I'm talking about the facts or the law, especially the law, you listen carefully because after you hear from us you are going to hear from the judge, and she is going to tell you what that law is. It is not intentional on my part, but if anything is different from what the judge tells you, you take what the judge tells you.

And in that same vein, as you are listening to arguments in this case, if either side mischaracterizes or misquotes the facts, you remember, because the roles in this courtroom are very well defined by law.

The role of the prosecution is to bring forth all the relevant -- required elements to this crime, the relevant evidence as far as the facts of this case and what happened just that day on January the 16th and the date he was apprehended.

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The Defense's role is very clear, defend the client.

The judge's role, as you have seen, as you have been sent out over and over, and I apologize, as you waited back there, is to determine what is admissible and what is not admissible as to the facts of this case. And then to charge you on what the law is.

But, ladies and gentlemen, the most important role in this courtroom is yours, because you must determine what the credible, believable evidence shows in this case. Each of you individually and then once you get back there collectively must determine what happened.

And you have heard all the evidence you can consider in this case. And what is the evidence? It is the physical evidence that is going to go back with you, and in this case most importantly, as it is in every other case, is the testimony, the answers.

When you are considering what is credible evidence in this case, it is the testimony. It is not the question. It is not conjecture, speculation, innuendo, a fishing expedition, or just plain wishful thinking. That is not evidence.

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It is the credible, believable witnesses that have come before you.

And in this case you have heard two very different versions of events of that day. One from the Defense, which they chose to put up. They don't have to. And one from the State.

And I also want to apologize. As things have developed in this case, we get caught up in the legal language. And there have been times when my questions have been inartful or clumsy, even sloppy. You have been sent out over and over. You have been forced to wait back there as we argue matters of law. Please don't hold that against the State, against the Salley family, against the citizens of this county. I know it has been a lot in this case.

Criminal cases are unique. As you have heard reference, Defendants have an absolute right to confront, as he should by the constitution, to confront each and every witness that comes before him.

You have heard references to statements, numerous statements taken from witnesses in this case. You have heard references to reports, autopsy report, reports from the ballistics

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experts, and things of that nature. Those are not admissible.

And the reason for that, ladies and gentlemen, is very simple, because he has a right to confront each witness against him, and so that you have a right to judge the credibility of each and every witness that comes before you.

There were no video tape depositions, there are no audio tape depositions. None of that is admissible in a criminal case. And the reason for that is very simple, because he has the right to confront them.

You have also heard reference to other people that may or may not have been there. The police officers that were involved, other people that are no longer available or people that were available that don't have anything different to say. It is called cumulative evidence. We can't put up people just to say the same thing over and over and over. That would be cumulative to prove a point. We can only put up those who have relevant evidence that can add as to your determination of the facts and the issues in this case.

Now, the burden of proof is on the State of South Carolina to prove this Defendant guilty

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beyond a reasonable doubt. That is the highest level of proof in any court, as it should be. Our constitution guarantees him that right, as it should.

Proof beyond a reasonable doubt. And ladies and gentlemen of the jury, in this case perhaps more than any other I have been involved with, that is a burden of proof we welcome, because the evidence in this case that this was a murder with malice is overwhelming. The Defendant's own testimony, even his attempts, convict him of murder.

Now, the judge is going to charge you, what does beyond a reasonable doubt -- what is proof beyond a reasonable doubt. And I'm going to talk a little bit about the law.

The simplest way to define it, the judge will tell you, is proof beyond a reasonable doubt. What is a reasonable doubt? The type of doubt that makes a reasonable person hesitate to act.

But the Courts have gone a bit further than that in defining truth beyond a reasonable doubt. It is a case called State versus Darby.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's

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

If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Evidence that leaves you firmly convinced. You don't have to overcome every possible doubt. The law recognizes there can be some doubts. It is just the amount of evidence that leaves you firmly convinced.

And I submit, ladies and gentlemen, after listening to the testimony in this case, there is no doubt.

Now, you have one indictment that is going to go back with you. And the judge is going to charge you on the law. And to be perhaps one of the most heinous crimes that we have in our state, the definition is probably the shortest.

What is the definition of murder? And listen

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carefully to the judge. In this case with these facts, there are no lesser included. You've heard of murder in the first degree, second degree, and things of that nature. In our state we don't have murder in the first degree, second degree, things of that nature. There are lesser includeds, but they don't apply here, only manslaughter charges.

Murder is defined in our code of law as this: It is the killing of any person with malice aforethought, either express or inferred.

And what does that mean? Malice is a condition of the mind. And I will go over how you can infer malice and the definitions of malice in a minute. And whether or not it is express or inferred is simply the manner in which it is shown.

The judge will charge you that in finding malice, which I am going to talk about in a minute, it can be shown by overt acts, which would be express malice, or it can be inferred from the conduct of the Defendant or the conduct of the Defendant leading up to what happened, from the facts and circumstances surrounding the case.

Now, what is express malice? Express malice is saying somebody lies in wait, to ambush someone. Express malice is if I walk up to another person,

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pull out the gun, point it at them, and say, I'm going to kill you, which is remarkably similar to what started this whole thing today, and then pull the trigger, whether it be at that moment or within minutes, that is express malice.

But the law recognizes that in most cases no one is going to walk up to another person and express hatred, ill-will or words towards another person. So therefore the law realizes in most cases that malice will be inferred. And malice can be inferred from the facts and circumstances surrounding the case.

Now, the definition of malice -- and the judge will give you many of them -- what is malice? And this will be some of the language. The judge may use slightly different language, but listen carefully to her.

What is malice? In its popular sense the term malice conveys the meaning of hatred, ill-will or hostility towards another. If you think of the word malicious, it comes from malice. Or if the Defendant was acting maliciously. And I submit, ladies and gentlemen, it doesn't get much more malicious than these acts on this day.

Malice does not necessarily impart ill-will

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towards the individual injured, but signifies a general malignment recklessness of the lives and safety of others. It may be inferred from the willful, deliberate, intentional doing of an unlawful act without just cause or excuse. That is malice.

Malice is a legal term implying wickedness, excluding a just cause or excuse. The term malice indicates a formed purpose and design to do a wrongful act. It doesn't mean that it is intentional when you walk out -- although I submit in this case, ladies and gentlemen, it was that -- that he had to have malice in his heart the moment he exited that door. He had to determine at that point that he wanted to kill him. And I'll talk about aforethought in a minute.

It is something which springs from wickedness, from depravity, from a heart devoid of social duty and fatally bent on mischief. Malice may be express or inferred.

And perhaps the one that to me this case reeks of malice, malice does not necessarily impart ill-will towards the individual injured, but signifies rather a general malignant recklessness of the lives and safety of others or a condition of

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mind which shows a heart regardless of social duty and fatally bent on mischief.

And I submit every one of his actions that day shows a heart regardless of social duty and fatally bent on mischief.

It is the doing of a wrongful act, it doesn't even have to be of any consequence, that led to the murder.

Now, malice aforethought, what does that mean? The judge will tell you that malice must exist in the mind of the Defendant just at the time of the killing, just before, and that at the time that the fatal blow was struck. So it is kind of a doing of that.

You will not hear the judge charge you that you must find premeditation. You will not even hear the judge charge you that motive is an element. We don't even have to prove motive, although we have in this case. The bad blood between the two, which is very easily described as the use of self-defense, shows the reason he was going out there armed and got the gun that day.

But we don't have to prove those. Listen carefully to the judge. She will not charge you that we have to prove motive or premeditation for

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it to be murder.

If I walk into a room and see a person there and have my gun on me and pull it out and decide then and there that I want to shoot that person, for whatever reason, we don't have to prove it, then that is malice as long as the intent accompanies the act.

The judge will tell you malice need not exist for any appreciable period time before the admission of the act of killing occurs. Malice may be conceived at the very moment the fatal blow is given.

And I submit, ladies and gentlemen, that day, after he had beaten Anthony Salley, he decided that he was going to make sure Anthony Salley knew he meant business. That is malice.

But to me what sums it up best perhaps between Devan Bailey's account, I could tell by his eyes and the way he was walking something was up. Then I saw him pull the pistol out.

Now, the judge is also going to charge you that the Defense has brought up that it is appropriate and she argued that he armed himself in self-defense, but that it was an accident. So it kind of a co-mingling of two classic defenses to

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murder in this case. Somewhat unique.

So the judge will also charge you that if you find that he acted in self-defense, then they aren't claiming he acted in self-defense, their defense is that it was an accident. But in order for him to have it be an accident, he must show that he meets the elements of self-defense. It is a little convoluted.

The judge will charge you what the elements are, and there are four separate elements, and they are vital to this case because in order for this -- him to even be able to claim accident, which I submit it is not either, but we will get to that one in a minute, he must have been acting in self-defense.

And, ladies and gentlemen, I submit in this country and this state and this county, arming yourself, going to a person's residence, pulling out a pistol as you walk up to them unarmed, no dispute, then getting into a fist-fight and then finishing him off doesn't come close to self-defense.

But let's talk about it. And the judge will instruct you on this. In order for the Defendant to have been acting in self-defense, he must meet

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not one of these elements, all four. Listen carefully to the judge. It is not just that he, you know, had some innate fear, he must meet all four elements.

And, ladies and gentlemen, I submit, he wasn't acting in self-defense, he was the aggressor. He was the instigator. He brought it on. And yet he gets up here and claims self-defense?

Remember, even he is like, oh, there is only one other witness, I have already told my home boy what to say.

So then does it become a swearing contest? It is offensive that he says he was acting in self-defense.

What is the first element of self-defense? That he is without fault at bringing on the difficulty. And I beg you, ladies and gentlemen, how was this Defendant not at fault? It was his beef. By the way, he is the one that is pistol-whipping everybody in the county. It was his gun that he had to go all the way home where he could stay all day long with that gun, that he chose to go get so that he could return to the neighborhood where he knew two doors down from whichever girl, whatever house. And this is

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without fault? It is ludicrous to say that he could even meet the first elements of this.

And it is undisputed by his own testimony. Who starts the altercation? Who is the primary aggressor? Is he embarrassed? Does he get mad because he knocks the gun out of his hand? Yes. And then he beats him up because he is a good fighter.

And at that point -- and I'll get to the next element -- at no point does he meet any of the elements of self-defense. What is the second element? That he was in or believed himself to be in actual imminent danger. He walked over there. He arms himself to go over there, where conveniently Devan Bailey, who he told what the story was supposed to be about the cigar, has blocked in Amp Salley. And there is no dispute. Why does Devan Bailey direct the other two guys in the car to block in that driveway? Is that reasonable? This was a set-up. He dropped him off, not next-door even, two doors down where there is a big red car in the driveway. Yet somehow Devan Bailey, who looks up to him like he is a brother, who would do anything for him, directs him to block in just who happens to be someone he has a

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beef with. Does that make sense? Self-defense?

If he was himself in actual imminent danger so at the moment he walks up and sees -- according to his own testimony -- Amp saying words to Devan Bailey. He is so scared, what does he do? He walks towards it, across two yards. He goes to Anthony Salley.

And throughout this whole thing there have been inferences about Amp Salley hanging out with bad people, all this stuff, classic defense, trash the victim, make the jury not care.

In this case on this day Anthony Salley wasn't involved in something else. And even by his own admission, he didn't run.

And even if he gets up here like he did and says he thought he was in imminent danger, even though he went over there, which makes no sense, then you must show that a reasonably prudent person of ordinary firmness and courage would entertain the same belief and would have struck the fatal blow in order to save his life.

So he has to act reasonably by the law. And, ladies and gentlemen, I submit, by his own testimony, he won the fight, it is over. And I will get to his accident claim in a minute.

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In determining, the judge will tell you, whether or not -- and it is a long charge on self-defense. And the reason for that is simple, ladies and gentlemen. Because there are multiple elements that must be met before it can be self-defense. So it is a long charge the judge is going to give you on self-defense, talking about possible ways it could be. And the reason for that is simple, because he has got to meet all the elements. We have to disprove.

You can use examples, words accompanied by hostile acts. The only words that even he can come up with, that this victim said to him was, shoot me.

Or prior difficulty? He admits there are no prior difficulties between him.

A difference in size and age? They are about the same age, they are about the same size. And let's get one thing straight, he made sure y'all knew he won the fight. It wasn't like Anthony Salley got the best of him. He is the one who wanted to make sure y'all knew he won that fight. He beat him so badly -- and, again, don't let me misquote -- that he wasn't even resisting any more. That is his testimony?

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So then now he is in fear of Andina Lee, who he sees throw the gun away when she had the opportunity to shoot anybody she wanted to? She throws it towards the fence. He has to admit that. So who was he in fear of? Anthony Salley is on the ground not moving. Self-defense?

And finally, especially when the victim is in his own home, it is called a duty to retreat. Now, the judge will tell you there is no duty to retreat if the danger of being killed or seriously injured would increase. That is true. However, the law recognizes that even if -- and I submit he hasn't met an element yet -- even if he had met these three elements, when he walks out and sees this person two doors down, the law recognizes you have a duty to do the right thing, to retreat. You can call the police. Although I understand the law does not apply to him, by his own admission. And that is not the way they take care of things. And let's get one think straight, he took care of things that day.

His own testimony, if you just believe -- if you want to believe everything he tells you, he doesn't meet the elements of self-defense, not Number One, Two, Three, or Four, by his own

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testimony. And I submit, ladies and gentlemen, which contradicts the other credible witnesses who don't have really much to gain or lose in this case, like Derrick Diamond. Devan Bailey did the best he could have done. But even Devan Bailey -- think about it -- even Devan Bailey, after he told him, bust him, run, he is not into that. Even his own 16-year-old friend that he supplies with marijuana in order to control him, wasn't into that. Because we know that, because that is his own testimony. His testimony, Devan's testimony, all the witness's testimony. He runs. And the moment he runs just happens to coincide with the moment that this man tells him to, bust him, shoot him. Self-defense?

But they don't run in self-defense. Self-defense is an intentional act. You intentionally shoot someone in self-defense. They are going a step further. Because he's the victim. As he told you, he is the victim in this case, one of them, as he said. And it was just an accident.

The law will tell you that in order for him to claim accident, he must have armed himself and been acting legally -- legally, by the law -- I know it doesn't apply to him, according to him, but it

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applies in this county and this state, the law.

The Defendant has raised the defense of accident and the act can be excused on the ground of accident because it shows the act was unintentional, that the Defendant was acting lawfully.

By his own admission he couldn't even carry a gun lawfully, much less point it at people, much less then beat people up, much less then go and re-arm himself, much less then shoot someone, which he claims to be accidental while he was putting the gun back in his waistband?

It has to be shown that the act was unintentional, that the Defendant was acting lawfully, and that reasonable care was used by the Defendant in handling the weapon.

The law recognizes in certain cases if a person is lawfully armed in self-defense and the gun accidentally discharged, the defense of accident could apply.

Number One, he wasn't acting in self-defense. He wasn't armed in self-defense. He was the aggressor. He was the instigator. He is the reason that Anthony Salley is dead, because of his actions, not anything that Anthony Salley did.

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Anthony Salley tried to save his life by getting the gun out of his hand. Anthony Salley acted in self-defense, ironically, when the gun was pointed in his face in his yard at his house.

The burden is on the State to prove it was not an accident, it was caused by the negligence or carelessness on the part of the Defendant in handling the dangerous instrumentality or by the unlawful activity of the Defendant. The burden is always on us.

And I submit, ladies and gentlemen, the Defendant admitted he was acting unlawfully. Number Two, the Defendant admitted he was careless, that he was familiar with guns, that he always picked them up with the trigger.

He doesn't meet -- even if you get into self-defense, which he doesn't meet, he certainly doesn't meet accident.

The judge will also charge you -- let me go over this a little bit more. Accident. Harm caused to another including death does not entail criminal responsibility if the act of harm was accidental but that without intent to harm without recklessness or negligence.

By his own admission he handled the gun

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recklessly or negligently, so that doesn't give him the right to then have accident as a defense.

The requirement that the killing was unintentional, that he was acting lawfully, and that due care was used in handling. Again, all three of those elements, if you can get past the fact that he armed himself in self-defense, which I submit, ladies and gentlemen, he doesn't even meet one of those criteria, and only at that point can you even get to whether or not it was accident, and even if you get to accident -- and the other thing the judge will not instruct you on, but you can consider by law is his actions afterwards. It is called flight evidence. You can infer guilt from the actions of the Defendant.

So he had accidently shot someone for which he is so upset that an hour later he is selling drugs. I guess he has got to make a living. But he runs from the scene, throws the gun. And why would he throw the gun? To make sure he doesn't get caught with it, because he has just murdered someone. Not accidentally. Murder.

He does his best to get the story straight. He goes and confronts Devan. He has got to talk to him face-to-face to get the story straight. If it

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is an accident, there is no story to get straight. Tell him what to say, by his own admission, which Devan gets partly right. And then has the wherewithal to leave town.

If it is an accident, why doesn't he tell anybody at the first house he runs to while it was fresh in his mind, while he is upset? He is scared, remember? Why doesn't he tell anybody, I just accidentally shot, oh, my God, I didn't mean to.

No. His words, he's got to get a ride because he's been in a fight. That is the first thing he says to anyone. And these are his friends. Not, oh my God, I just accidentally shot someone.

If it is an accident, why do you need to leave town? If it is an accident, why do you allude the police? If it is accident, why do you get rid of the gun? If it is an accident, why wouldn't you tell one of your friends? If it is an accident when you are in Atlanta, regardless of what your demeanor is, but you want to let him, your new buddy know that you are hanging with in the hotels and motels. And it is interesting too, he doesn't say it accidentally happened. I shot someone. There was a witness in front of his girl.

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There was no mention. Remember Richard Johnson's testimony? If it is an accident, why does he tell the police officers, who couldn't even question him by law, if he wants to get it out, it is just what I had to do. Not that it was an accident. It only became an accident this week.

Criminal intent. In every case the State must prove that there was criminal intent in the mind of the Defendant in or about the time all this happened.

Ladies and gentlemen, if this case with these facts with this Defendant doesn't show criminal intent, I don't know what does. The law recognizes that we can't take a person's brain and dissect it, open it up and look at it and determine to a medical degree of certainty what they were thinking at the time.

And just as with the inference of malice, as with criminal intent, you look at the facts and circumstances surrounding. Criminal intent is a mental state, a conscious wrongdoing. And he admits to a conscious wrongdoing. He admits to arming himself illegally that day. He admits to selling drugs illegally that day. He admits all kinds of wrongdoing that day as he is getting rides

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in and about.

It is up to you to determine what the Defendant intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness, or an indifference to duty or to consequences that is considered by law to be the equivalent of criminal intent.

I submit he intentionally shot him. But even with his own version that he came up with, it is murder, it is criminal intent, it is malice.

The judge is going to tell you there are two types of evidence you can consider when making a determination. They are called circumstantial evidence and direct evidence. It is not that one is better than the other. The judge will tell you you can consider them in the same manner. But in this case you have both direct evidence and circumstantial evidence.

Circumstantial evidence of guilt is what he did afterwards, what he did with the weapon, all those kind of things. That is called circumstantial evidence as to guilt.

Direct evidence is the eyewitness testimony in this case from witnesses at the scene. And I

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submit, ladies and gentlemen, think about Andina Lee that day. What does she have to gain or lose? She didn't say that Anthony didn't throw the first punch. If she was going to make up stuff, why wouldn't she say that? Why wouldn't she protect him more?

She said exactly what happened that day. She was put in a situation where a gun came out. She tried to do the right thing. And if you think it doesn't bother her every single day that she didn't throw that gun further? It does. Does that make her credible? It does. Even the Defendant, when I am questioning him, admitted she was credible.

Listen to the evidence. And the Defense will get up hear and say, oh, there were some inconsistencies. Yes, there were. And there better be some inconsistencies. Like when two people witness a car wreck, one is on this corner, one is over here, they see and/or hear different things depending on the angle, depending on where they were. When they come back to court a year later they may or may not remember the exact same details, but they remember which car ran the red light, they remember that maybe the car was brown or tan. And that is what makes all the witnesses

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in this case credible. This is real life. If they come in here and have the exact same words and the exact same script and the same way of describing things, then something is up. What makes this credible is all these people come from different areas and are independent. What do they have to gain or loose.

Circumstantial evidence is evidence or a chain of facts from which you can infer guilt. Direct evidence is the type of evidence that you get from your senses, eyewitness testimony, specifically what you hear, see, feel, taste, things of that nature.

The judge will tell you you don't give more weight to one than the other. In this case it is really good because you have the direct evidence that totally corroborates the circumstantial evidence, so you use both of them in conjunction in this case with these facts.

The judge will also tell you that in certain cases you have heard from witnesses who are qualified as an expert. And sometimes when a person comes before you and says they have specialized knowledge or training in a field, they are able to give you an opinion. Lay people such

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as me, I have no expertise. I couldn't get up there and give an opinion, but certain people because they are trained. Consider the experts the same way you did everything else.

The State has brought before you experts to help explain what they found at the scene, things of that nature, so that you will have a full picture as to what happened that day. And all the expert testimony corroborates the eyewitness testimony in the case.

The last thing I want to talk to y'all about is credibility. The judge will instruct you on credibility, believability.

In this case it boils down to -- well, actually it doesn't, because even if you believe the Defendant, he is guilty of murder under the law in this state, but, I submit, his story is different than what the other witnesses saw. His story does not corroborate. He chooses not to remember the things he said.

What is credible evidence? The judge will tell you, you can believe one witness against many, many against one. You can believe part of what a witness says, all of what a witness says, none of what a witness says. Totally up to you. You can

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believe that they may have some bias or prejudice, something to gain or lose. What was their demeanor like when they took the stand. All those things are things you consider.

And I submit, ladies and gentlemen, judge the witnesses, what do they have to gain or loose. Was their story corroborated or not? The Defense may get up here and say, well, one said he walked towards him. I believe Derrick Diamond's word was storm. Everybody says the gun was out at that point. He reacted. He did get the gun out. And then the fight ensued. Credibility.

All the State asks is that you hold Jamaal Hinson responsible for his choices and his decision. He is not the victim in this case. Anthony Salley was in his home in his driveway. He had the right to be there just like any other citizen in this county, regardless of what he was doing. He shouldn't have to then fight for his life like he did. And then he shouldn't be executed in his yard.

I ask you, ladies and gentlemen, the overwhelming evidence in this case shows that on that day Jamaal Hinson armed himself, went there with the intention whether it was to beat him up or

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just argue initially. Did he get mad when the gun came out of his hand? Did he get angry that he couldn't control it? At whatever point, the law in this case shows that he acted with malice. This case reeks of malice. Hold him responsible because to find him not guilty would mean he was the victim and that it was Anthony Salley's fault?

Thank you.

THE COURT: Thank you.

Yes, ma'am, Ms. Cleary?

MS. CLEARY: May it please the Court?

THE COURT: Yes, ma'am.

CLOSING STATEMENT

MS. CLEARY: Cold-blooded murder. That is what they promised they were going to show y'all on Tuesday when we had opening statements. Cold-blooded murder. They could have charged him with manslaughter or anything else. They have total discretion in deciding what to charge. But they decided to go for the all or nothing option. Cold-blooded murder. But where is the evidence of that?

Before I get started, I do want to thank you for your service. And we have appreciated how patient you have been sitting back there waiting on

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us, and we do appreciate that.

Another thing I need to do is clarify because a couple of the witnesses said she thought that Karen Elliott there was an attorney. She is my paralegal. And I should have introduced her in the very beginning. She is a most dedicated paralegal. As you can see, she has been furiously writing notes for me throughout the trial so that I would be able to get the exact words and not mischaracterize the evidence when I get up here.

But Jamaal doesn't have two lawyers. Jamaal doesn't have all this staff here. That is why the burden of proof in criminal cases is on the State because the State has unlimited resources. If they need to get some more money, the State gets to go raise taxes. If Jamaal needs more money for his defense, Ms. Hinson is going to have to go sell something. So that is why you are not --

MS. CAMPBELL: Objection, Your Honor. She is mischaracterizing that. She has -- I don't want to say it, but you know what I'm saying.

THE COURT: All right. I will overrule.

MS. CLEARY: But that is why the burden is on the State.

Now, also the State gets to talk last in this

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case. Normally the Defendant gets to talk last. If the Defendant testifies or puts up any evidence, then they get to talk last. So that means that I'm going to have to talk here for a long time because I have to get in everything. And when they get back up and talk, you are probably going to see me want to jump out of my seat because I want to say more, but I'm going to try very hard not to do that, not to object, because I'm going to trust that y'all can remember what the actual testimony was and not their exaggerations, like that my client pistol-whipped everyone in Richland County, that you are going to remember that is not in the evidence, and that you will ask the judge to let you rehear any of the testimony if you think you have any doubt as to what was said, because you have that right. You are going to be able to rehear it. So, yes, don't go on her word and don't go on my word.

The other reason that I'm going to have to -- or other reason that Jamaal wanted to testify and that we put up a case is that he insists he had to let y'all know how sorry he is for this and that he did not mean to do it and that he is not a cold-blooded murderer.

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Now, we knew if we put him up you were going to find out some pretty unsavory things about him. No doubt about it. He is not an angel. But we knew. He wanted you to understand that he is not a murderer. And Jamaal and his family and friends are so grateful for the way that you have listened so carefully and have been so obviously taking this case seriously because this is his life. This is very serious.

Now, I'm also going to apologize for relying on my notes. And the reason that I have to do that is because this is so important and I don't want to stand up here and make generalizations about what the evidence is. I want to be able to point out to you what was specifically said. And I will have to refer to my notes to do that.

The other thing is that I don't do this every day, I don't do this every week. I don't have any kind of memorized script to go by. And I'm way too old to memorize as much as what I've got to say to y'all today. So please don't hold it against Jamaal if I use my notes.

Now, try to remember what I point out to you because they are going to try to muddy the waters when they get back up here and they are going to

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try to get you to add two and two to get five. But I implore you not to let that happen and to use those rational thought processes and remember the facts that were presented here.

Now, again, on Tuesday they said this was cold-blooded murder, that this is so cold-blooded that he would kill someone in broad daylight and that he didn't hide because he didn't care.

Now, cold-blooded murder is prosecutor code for, we don't have any explanation for why he would kill a man who is already down that he had already beat in a fight, so he just must be so evil, so diabolical, so wicked that he would basically kill this man for no reason around with a bunch of witnesses around. Obviously, you know, easy to get caught, easy to be apprehended, but that he is just so evil he didn't care. But where is the evidence of that? That is psychopathy.

Now, remember on Tuesday I said that you could believe the State's witnesses and still find Jamaal not guilty. That is still true. And that is why you didn't see me brutalizing their witnesses. Because their witnesses don't show cold-blooded murder. This is what their witnesses said.

Now, let me go through very briefly some of

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the law, and I won't try to go over, you know, everything that she went over, but I want to point out a couple of things.

As I said earlier, killing -- murder is the killing of another with malice aforethought. And they have to prove that beyond a reasonable doubt. And we don't have to prove that he did not have malice. Please make sure that you remember that concept.

And the judge will instruct you that malice is a term implying wickedness, excluding just cause or excuse. Malice indicates a formed purpose and design to do a wrongful act under the circumstances that excludes any legal right to do so. It springs from wickedness, depravity, a heart void of social duty fatally bent on mischief.

And the judge will also tell you that malice signifies a general malignant recklessness of the life and safety of others or a condition of mind which shows a heart regardless of social duty and fatally bent on mischief.

Now, I bring up that charge because I implore you not to focus on isolated words in this charge. You know they have got to prove more than recklessness. Recklessness is when someone is

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driving down the interstate texting and they hit the person in front of them. So you know they have got to charge more than recklessness. Recklessness is dumping poison in a public stream. They have got to show much more than recklessness and don't let them think -- don't let them tell you otherwise, because you know -- you know recklessness is not murder.

They must show malignant -- malignant recklessness. We don't have a definition. You have to use your own common sense to figure out what the definition of malignant is, but I would say that malignant comes from the same word as malice. So that is nothing more than saying that you have to show recklessness with malice, which is all those things that I just talked about. Evilness.

Now, don't be fooled by the term bent on -- fatally bent on mischief, okay? Elves are mischievous. My 11-year-old daughter is mischievous. Okay? Being mischievous does not mean you have malice. They still have to prove there is wickedness.

The State makes a big deal of the fact that malice can be formed just before the killing. And

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they'll make a big deal -- they don't have to show premeditation because a lot of people do think that the State has to show, you know, that he planned to kill Anthony because that is what we think of as murder when we watch TV.

But malice is express or implied, right. A plan would be that express malice, which they don't have to show, but it sure does help to go towards showing malice, but they don't have any kind of plan. That is obvious.

In the opening statement they promised to show some kind of great conspiracy and just now saying to set up Anthony, some great conspiracy between he and Devan, their witness, between he and Devan to plan this, this was premeditated. There was no plan. And I'll talk more about that in a minute when I talk about their individual witnesses, but there is clearly no plan.

Now, let me go ahead and go through the important witnesses. Andina Lee, let me say first, deserves our sympathy, no doubt about it. I cannot -- obviously watching your boyfriend die would be the most horrific experience. And I don't think that she is a liar or a bad person or an evil person. I don't begrudge her for picking up that

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gun and pointing it or whatever because in that circumstance it seemed like a pretty smart thing to do. And she is the only witness to the actual shooting, right?

But where did she say at the time of the shooting that he acted in malice? She said it happened instantly after the fight. So even if you believe her testimony, you could still believe that he picked it up and accidentally discharged it. She said he shot Anthony. We admit that. But she can't testify that he had malice. She can't testify that he picked up the gun at that point and said, you are dead, or, this is what I want. No, that was earlier. At that point of the shooting, no, she can't say that. And she can't say what was in Jamaal's heart. And nothing she testified to contradicts our assertion that he did not mean for this to happen.

Now, remember she said that they were leaving, she was helping Anthony away, and they turned around to face Jamaal. But that doesn't make any sense because why would she be heading to the house and then without Jamaal saying anything to them, they turn around to face him.

She never said -- never said -- that he came

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up and said, hey, turn around, hey, I'm going to get you now. No, none of those words.

Now, she -- Andina testified that Devan parked the truck so that she couldn't get out. Okay? Now, that is her perception. Nobody testified that parking there was intentional, was intended to block them in. And I submit that even if they were blocked in this driveway, the position of the car up in the yard, if he wanted to get out of that driveway, he could drive out through the yard. Nobody was blocked in anywhere. You can look at their exhibits and see that. Nobody was blocked in.

Okay. Now, as I said, I am not even questioning the credibility of Andina. But there are certain parts of her story that don't quite add up. She is the only one who said that when Jamaal and Anthony first came into contact that Jamaal said, this is exactly what I want. Nobody else heard this. Nobody else heard that.

I submit that in an effort to show that malice, she decided that that was what was said. But she says that he said it loudly. Now, other witnesses, they heard different things that were said, but they didn't hear this great piece of

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evidence? No. Andina is the only one.

Another inconsistency is she first told the officers that she pointed the gun at the ground and she even demonstrated that for y'all. Okay. Then in her second statement she said, no, I pointed it at Devan and said, get the fuck back three times. She even remembers how many times she said it. Okay?

And the State tried to explain it too by saying -- and had the officer say this -- that she was distraught. Yes, I know she was distraught.

And so they said, it is natural to leave out part of your story under the circumstances, but pointing a gun at somebody is not something you forget.

I submit either consciously or not consciously, she is just trying to downplay her involvement and to downplay any act of aggression on the part of Anthony. To downplay and to make it look like this man who killed her boyfriend she wants to see punished severely, so she is going to say these things that don't add up, aren't consistent with the other witnesses in an effort to do that. That is her boyfriend.

And the point is, I'm not saying she is a liar

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or a bad person. At this point she has probably convinced herself that everything she said is true.

But I will also add too, she admitted that she'd been smoking marijuana that day in the car with Amp. And common sense tells you, that is going to distort your perception of events. She said she pushed Amp out of the way.

Now, if Jamaal was pointing the gun at his head and she pushed Amp out of the way, and Amp is a bigger guy and she is a little ole girl, so I'm not totally convinced -- I mean, that is not credible. But if she had pushed him away, he wouldn't get shot in the abdomen, the shot would have missed.

Now, who aims at the stomach then shoots someone one time in the stomach down here because you want to murder someone in cold blood. One time. That just doesn't make sense.

And she did testify that it was quick. All this happened quickly. Anthony was shot right after Jamaal got that gun back. And that is consistent with what we have said, which is that he got the gun, flinched when he saw Anthony come towards him, flinched and accidentally fired it. That is consistent.

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Now, Derrick Diamond, he doesn't know Jamaal. He testified he went to school with his sister. He sees Jamaal in the middle of the road in Vineyards Crossing. They pick him up. And Devan is telling Derrick and his friend where to go. And they take Jamaal to his house, which is very nearby, very nearby Vineyard Crossing, and Derrick says Jamaal says something about getting his tool. Maybe he did and maybe he didn't.

And I will get to that in a moment, but I will say now that the law does not say if you arm yourself you must be a cold-blooded murderer. Arming yourself does not prove that he had malice aforethought. Many people arm themself without ever intending to kill anyone. Many, many people in this country do that.

Now, Derrick did not say that Devan told him to go park here in the driveway to block Anthony in. Nobody ever said that. The only person who had that perception is Andina. The idea is that they were trapped in there, that is just pure-tee fiction.

Now, Devan told Derrick that he had to go back because he forgot something. The State wants to make it sound like the whole thing about getting

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the cigar was all made up afterwards, okay? But that is consistent. This statement of this boy who has nothing to do with these people, doesn't know Jamaal, is not his friend, he said Devan said he had to go back because he forgot something. He wanted a cigar. Nobody contradicted that.

Derrick, who was the State's witness, they called him, said Amp hit Jamaal. He agreed when I asked him did Amp storm up on Jamaal. He said Amp ran down the hill and then Jamaal pulled out a gun. Those are the exact words. Listen to the testimony again if you don't remember that. He said Derrick I mean, Derrick said Amp hit Jamaal so hard that his face started to swell.

Now, the only extremely dubious thing in Derrick's testimony was that he thinks Jamaal said, bust him to death.

Now, I believe -- I'm sorry. The evidence shows that he is mistaken about this. Because it is nonsensical. Derrick says Andina had the only gun there when Jamaal said bust him? There is no testimony Devan had a gun. There wasn't even a hint of that. How is he going to bust him? I submit that in the midst of a fight when they are both throwing punches and they are in different

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positions on the ground, that it wasn't Jamaal that said that, you can infer that it was Amp that said that. It makes more sense that he would say that to Andina, who has the gun. In any case, no one else heard that statement. So you can't rely on this just, bust him. Define malice? It doesn't make sense.

Now, Derrick said that, along those same lines, that Andina had the gun, is telling them to get off. She is the one who said if he moved again she would shoot him. Those were Derrick's exact words, if he moved again she would shoot him.

Think about that when you are thinking about all the circumstances and whether Jamaal had a right to act the way that he did.

Now, on redirect the State made sure that you knew that the windows were rolled up in the truck when Derrick was sitting there. And he is furthest from the fight in the car. He is in the passenger's side. So how would he even hear a bust him comment.

Now, Quinton Emerson, he did not know Jamaal or Devan or Anthony. He has no dog in this fight. So what did his testimony show us? He wasn't the getaway driver. Nobody had planned for him to be

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the getaway driver. Because who is going to use a stranger as your getaway driver? You don't do that because they would run off, just like Quinton did. You have got a plan to kill somebody and you use a couple of kids you don't know and think that they are going to stay there and wait for you while you shoot somebody in cold blood? That doesn't make any sense.

Now, Devan -- Quinton testified that Devan told him to pull in Anthony's yard. Jamaal didn't tell him to pull in Anthony's yard. There is no evidence that Jamaal told Devan to go block their car in. That is just made up. Okay? That is just the State trying to make you think that this was a diabolical plan to kill Amp. But Quinton never heard Jamaal say anything that would -- when he got there -- when the actual fight started, he never heard that statement that Andina said, even though Quinton is in the driver's side and is closest to the fight, hears some other things, but he never heard Jamaal come up and say, yes, this is what I want.

Quinton testified Amp and Andina went up to Devan. Not vice versa. Then Jamaal went up to Devan. Not Jamaal went to Amp. They try to make

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it sound like he went up into his yard, into his castle, which would be a whole new ballgame, but, no, he is coming up to Devan who is parked in the street. He is parked on the street. I'm not saying Jamaal didn't walk on Anthony's property when he went over there. I don't know what he did because nobody ever really bothered to show on the map exactly, you know, where everybody was during this, but the evidence shows he is just going up to talk to his friend, Devan, who had called him and asked him to come out to bring him a cigar, not that he is going up to Amp, as they characterize. Their witnesses. Their witnesses who say Anthony was the one who wanted to fight.

And Quinton of course testified that he saw Anthony hit Jamaal and saw them fight with fists and that Jamaal was on top winning the fight. And we'll talk about that in a minute. Then Quinton drove off. Drove off. He didn't see anything, didn't see the shooting, and he didn't -- he testified he did not know anyone was going to get shot that day.

Who is going to use this kid as your getaway driver? It is just crazy. It doesn't make sense. It is just not a plan. There is no plan. They

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didn't set him up. They didn't set Anthony up that day. But the State wants you to believe that Jamaal is so diabolical that he didn't even care whether he could get away, he didn't even care that there were a whole bunch people in the neighborhood at broad daylight.

Remember Deputy Chad Newman said when he arrived at the scene there were a bunch of people around? But Jamaal, they want you to believe, is so evil he doesn't care, he is willing to expose himself to being taken down by all these people, he doesn't mind shooting someone in broad daylight, like the guy who shot the congresswoman in Arizona in a crowd of people, crazy as a bedbug. Psychopath. But there is no evidence of that psychopathy in this young man. No evidence of that.

Now, Jarrod Crudup. I'm not -- who knows what the testimony is. The point of his testimony was, he already said Jamaal shot Amp. We admitted that, okay, so, you know, we didn't need his ID of Jamaal. He says Jamaal and Devan showed up out of breath saying that they had gotten into a fight. Sounds to me that is just evidence that Jamaal did want to get out of there. He wasn't so diabolical

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that he was just going to hang around. Jamaal said they got in a fight. So he was supposed to have come in and said, I just accidentally shot someone. And he didn't do that. He said he got in a fight.

Jamaal has never shot someone before. He doesn't know what to do after that happens. He doesn't have an instruction manual that says after you accidentally shoot someone you need to go immediately call 9-1-1 and report it, and do not go running to Atlanta. He doesn't know what to do. No instructions.

Jarrod did not testify that he came in bragging about he had just shot somebody, right? You didn't hear that? No evidence of that.

Now, Demario's car, according to the evidence, was out there by chance, by plan. There is no evidence that Jamaal had Demario park there so he could go escape from the subdivision. No evidence of that. Nobody testified that it was any plan for Demario to hang out at Jarrod's so he could provide the getaway car for the diabolical murderer.

Now, you know, Nicole Crudup didn't add anything to the story, but I would guess that the purpose of her testimony was so that the prosecutors could let you know that Anthony(sic) is

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so evil that he took his shirt off in front of a little girl and scared her. That was the point of that.

Now, Devan Bailey, their witness, they called him, he testified that Anthony, who he does not know, initiated things with Jamaal and started fighting. That is their witness. She says all the witnesses say that Jamaal started everything. That is not true. They are exaggerating, because they have to exaggerate because the facts are not on their side. They have to say my client pistol-whipped everyone in Richland County because the facts are not on their side.

And he testified that he asked Jamaal to come back so he could get a cigar. That is their witness. He testified he told Quinton to pull up to the house, which turned out to be Anthony's house. And he testified that he thought the guy in the car was Jamaal, both light-skinned black males. He didn't even know that that was the Salley's home, okay? So where is our diabolical plot? That is their witness. And he did testify that he got involved in the fight, but he backed off when he saw that Andina had a gun. He is not stupid. Okay? And he started to go toward her, but then he

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thought better of it, and he ran. He ran. This great co-conspirator ran. The State wants to believe that he is part of Jamaal's diabolical plan to block in Amp so he could kill him in cold blood. There is no evidence of that.

And they made a big deal about that Jamaal and Devan were close friends, they are home boys, okay? So Devan is going to lie for him. But, you know what? If Devan had gotten up here and lied and said something different from what he ultimately told the police, they would then have been able to impeach him with his statement.

They could have said, didn't you tell us before that Jamaal had told you to pull up and block in the driveway, block in the car? No, because Devan never said that. From the beginning he said Anthony initiated things. He was just bringing me a cigar. That is their witnesses. They put him up. And what he said showed this was not a plan and it was an accident.

Now, later that day Devan and Jamaal hooked back up. And according to the State they said they had to get their story straight. I believe Devan's testimony was they had to get their story together. Jamaal says he told him to tell the police that it

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was an accident. Let me repeat that. Again, let's listen if you want to listen to what he had to say. So there is no proof they were able to come up with any sort of grand plan, great cover-up after this supposedly planned event. But, again, Jamaal had never shot anyone before. He didn't know what to do.

And the State just says that Jamaal didn't bother telling anybody it was an accident. Yes, he did. He did. He met back up with his best friend, or good friend, and he told him it was an accident. Call 9-1-1 and tell them that it was an accident.

Now, Jamaal probably thought even if it is an accident, I can't own a gun. I'm a convicted felon, I can't own a gun. I'm going to go to jail for the rest of my life anyway. Okay? He doesn't know what the law is. He figured he was going to be charged with murder no matter what he said. And he was right about that. He was exactly right about that. That is why he didn't call the police and say, I just accidentally shot someone. Because we would still be here if he had.

Now, the State brought up that Devan said he could tell by his eyes, by Jamaal's eyes that something was up. I'm not sure how that works.

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Okay? But maybe what he saw in Jamaal's eyes was that fear that Jamaal felt because of Anthony storming up on him. That fear. Not evilness, fear. This 19-year-old kid was afraid. Somebody is coming up on you, a little bit older, coming up on you, storming up on you wanting to fight. You are going to be afraid. You are going to have a look in your eyes.

Now, notice throughout the witness's testimony the trick that the State uses to get you thinking that Jamaal is a bad person, okay? They got each witness to testify to identify him on that sheet of paper, even though we never contested identity, okay? They all identified him on this sheet of paper and they all said -- and wasn't he actually -- didn't he actually have dreads that day or twists and now he is clean-shaven? You know what that is? That is to make you think somebody that has got dreads they are a bad person, okay? That is what -- that is the purpose of that. Dreads, twists, saying it like it is something bad. And he is clean-shaven now. He is clean-shaven because it is hard to find a good dread man in the county jail where he has been for the last two years. That is why he is clean-shaven now. Not

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because I told him to go shave his head so he could look all pretty for y'all. That is why he is clean-shaven. But don't be fooled because dreads don't mean anything about a person other than that they got dreads.

Now, I want you to notice too how they kept referring to the killing as a murder without regard to the malice. Like the officers would say, we got information there was a murder. Okay? You understand there is a difference between killing and murder because murder requires malice aforethought, but at this point they hadn't even come up on Jamaal -- they hadn't even caught up with Jamaal, but they still decided before the sun went down on that day that this was murder. They didn't care whether there was any kind of excuse or explanation. And they just try to get you to think, murder, murder, murder, by constantly getting their witnesses to say it. Even when the witnesses would say the word killing or in hindsight they would, when they questioned them on it they would rephrase it to murder. That is a good trick. But y'all are too smart for that.

Now, the whole testimony about Atlanta. We had three witnesses, three witnesses to come in and

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tell us about how he ran to Atlanta and they caught him. But what did we learn? We learned that Jamaal didn't resist, this diabolical killer didn't try to fight the police. No, he went in. He knew his day was here. He knew he had been caught. He knew that was going to happen. You don't go to Atlanta. You go to another country.

You know, they are saying, don't forget you can infer guilt because he ran. Who is not going to run? I mean, you know, maybe Ward Cleaver might pick up a phone and say, call 9-1-1, and say, I accidentally killed somebody, but that is just not reality. This kid is 19 years old. He has just shot someone who he knows has a friend with a teardrop who brags about killing people. Yes, you are going to run because you know the police can't protect you from that. And then he also knows the police aren't going to believe him. And Jamaal doesn't know the law. He is a smart, smart kid, but he hasn't finished high school. He doesn't know that there could be some defense. At this point what he knows is that he's got to get a lawyer, a paid lawyer. So he goes to Atlanta to try to get some money because he knew he was going to have to have his day in court. He knew he

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couldn't hide forever. He can't even hide anywhere in the state.

Now, they want you to believe that he bragged. That is what they said in opening statement. He bragged to Richard Johnson that he had killed somebody. That he had murdered somebody. Okay?

We admit he killed a man. Killing is taking someone's life, okay? Not murder. Murder is killing with malice aforethought. So where is the evidence that he went and told this guy, yes, I murdered somebody?

First off, he doesn't even tell him that story. He tells him that he was running from probation. Then eventually, because they are spending all this time together in motels, hotels and Holiday Inns, as Richard Johnson testified to -- he must be old school like me -- he -- they spend all this time together. This 19-year-old kid who is throwing up -- he is throwing up -- he feels guilty. He should. He took a man's life. We're not denying that. He told this boy, who he had been spending all this time with, that he had killed somebody and that there were witnesses. He didn't tell him that to be bragging about it. There is no evidence of that. He told him that

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because he wanted him to know there were witnesses. Yes, he was going to be probably charged with murder. Don't be surprised if the feds show up. Yes, you are going to tell him. But that was their star witness. They brought him here all the way from Atlanta. Star witness. He confessed to murder to this guy. No, he didn't. He confessed to a killing. That is different. That is not murder.

Now, Jamaal testified that he told him that because he needed to get it off his chest. He is alone. He can't talk to anybody. He can't talk to any of his friends or family here. So Richard Johnson is there, and you tell him. And he ends up getting turned in. That doesn't make him a cold-blooded murderer. That is their star witness. But where is the proof of malice?

Now, the investigating officers, Sergeant Ellis and Investigator Lindler, with those witnesses the government got to explain how upset Andina was and how traumatized she was and naturally she was going to be upset so her statement won't be consistent. There are going to be some differences. Oftentimes witnesses we have to remind them because they remember additional

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facts. That is the purpose of that. And then also to show you, you know, how thorough their investigation is to go through every person who is completely irrelevant to who they interviewed. But that is all just to show you how thorough their investigation was.

The evidence shows that they decided that Andina's statement, disregarded what everybody else said, didn't care about whether Amp stormed up on him, or whatever, didn't care, this was murder, case closed. Okay? They are not going to try to dig deeper and find out anything about whether he might have acted in self-defense, they just don't care.

But in his testimony, Sergeant Ellis was able to verify Derrick Diamond told them in the beginning, okay, not just when he got up on the stand, okay, Derrick Diamond told them Amp stormed up on Jamaal.

Devan, from the beginning, told them, Amp initiated things. Sergeant Ellis was able to verify that Devan never heard anything about, bust him. But they didn't care. They got their case. They don't bother to get text messages because there is no evidence anybody was text messaging.

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Everybody knows these young people text message constantly. Wouldn't you want to get the text messages so maybe you could find that malice and that plan? Wouldn't that be good? Because we probably wouldn't be here if they had that. But they didn't care. They didn't care about getting it anyway to prepare the case. They are so confident that y'all are going to fall for their tricks and find him guilty that they don't even need that stuff.

Cold-blooded murder. Let's move on.

Now, the forensics and all of this evidence introduced, none of this shows you any malice. Okay? What does it tell you? One shot. One shot. Not what a normal person would consider to be a kill shot. If you want to kill someone, you don't shoot them here. No gunshot residue on Anthony's hand. Okay? We never said he fired a weapon. We never said he held a weapon during the fight. The gunshot residue doesn't tell you that Jamaal didn't have a good reason to think he might have had a gun. No gunshot residue doesn't tell you that man did not carry a gun. We know that doesn't show anything.

Now, the 9-1-1 tape. That is a business

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record kept in the ordinary course of business as they establish up there on the stand. So the State was able to introduce that. And I didn't object to any of the hearsay statements that were arguably hearsay because she was identifying Jamaal as the shooter. I didn't object to that because we already told you that Jamaal was the shooter. But I want to tell you right now, the whole purpose of introducing that 9-1-1 tape was so that we could all relive the horror of that day and listen to Andina crying. It was heart-wrenching. She was trying desperately to keep her boyfriend alive. That was the purpose of that. That is not probative of anything. The purpose of that -- the purpose of that is to get your sympathy, and that is it. And I guarantee that they are going to play it again when they get back up here just so they can get the tears going right before you go back and deliberate. But don't be fooled by those tricks. Y'all are smart people. Do not be fooled by those tricks.

Now, with the CSI folks, Investigator Beeler, Bouknight, Polis, and, you know, they are just here to show you how thorough they were and they document everything at the scene and meet their

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chains of custody. For the most part they didn't tell you anything you didn't already know, okay? There were earring backs found, all right? You know, they got the spent cartridge. You know, that is important. But it was found in a neighbor's driveway. It wasn't found on Anthony's property. It was found in the neighbor's driveway.

Okay, but then they want to say, well, that doesn't mean anything because metal can roll on concrete and it was raining out there, so that doesn't mean anything anyway, so, you know, don't make anything of that.

I mean, Jamaal had already told you that he shot and that he shot him by accident. And we're not really sure where everything else was because, I said before, nobody bothers to actually document where was Jamaal when he approached, where was Anthony. No, they just want to say, he is up in this yard, he is going after him, even though there is no evidence to support that.

All the evidence showed that it happened near that street. The sidewalk is the public area, okay? It was near there. It wasn't up by his house.

Now, Detective Lindler told you it would

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happen on the grassy knoll between the two houses. The grassy knoll. So I don't know what the purpose of that was except maybe they want you to think that he killed Jack Kennedy too.

Now, we did get to learn that Amp had marijuana in his jacket, THC in his blood. And you can do what you want with that fact. And I'm obviously not going to ask you to judge him harshly for smoking pot -- weed. We use to call it pot. But you can consider whether that made him paranoid, whether that made him act belligerent because he was paranoid. You can consider that. I don't know whether he was or not, but that is something you can consider.

And when they show us again all these items on a map, all these items on a map, okay, but it is not to scale, so that doesn't tell us anything anyway. It is easy enough to get an aerial photograph off the internet that has got the actual measurements and tells you where things actually are and then plot it, and then we have a map that maybe we can use. But they didn't bother to do that. They don't care. A cold-blooded murderer that is diabolical. Let's move on.

Now, Dr. Marcus told us that he determined

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that the cause of death was that perforation of the iliac vessel. And he explained that in your stomach there is a vessel connected to the heart. And if it gets hit essentially you bleed out and die.

Now, I never heard of the iliac vessel, so that was very informative testimony. And note that Jamaal didn't shoot him in the iliac vessel. He shot him in the abdomen and then it traveled there. But I guess the State wants you to infer that Jamaal knew that if he shot him here that that bullet was going to travel to the iliac vessel and kill him.

This is common sense. If you want to kill someone, you shoot them in the head or the heart. And Jamaal doesn't know that. I asked him about that. He doesn't know that because he is a killer and that he studied on it. Anybody who watches TV knows that. Everybody knows that. That is common sense. That doesn't make him a killer. No evidence Jamaal wanted to kill him. And if you want to kill somebody, are you going to shoot them once? No. Go ahead and unload on them, if you are so diabolical. Unload on them.

And finally Jamaal's testimony. And as I said

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before, Jamaal insisted he got to tell his side of the story. He knew that there were going to be some bad things that would be brought out, so we tried to be as straightforward with you as possible. Jamaal didn't want his mama and daddy to have to hear any of this stuff. That is their baby boy. But he said, no, I have got to talk. I have got to tell them my side of the story. He hadn't got to do that yet, the police don't want to hear it, okay? So he wants to tell his side of the story.

Jamaal said he didn't have any reason to kill Amp. He has got no reason to kill Amp. And it was an accident. And none of their witnesses refute that. They didn't bring in any witnesses in rebuttal to come up here and say what he said wasn't true. He wanted to testify -- he wanted you to see that this young man is not a psychopath. Yes, he sells marijuana. It sounds like that there is a big market out there so who can blame him. Now, I'm not going to make light of that because that is an illegal activity. We have laws against the distribution of marijuana. But he can be tried for that and convicted of that on some other day. You are not here to decide whether he is a

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marijuana dealer. There is a big difference between being a marijuana dealer and being a murderer.

Now, you know, they want to say, oh, he is still selling afterwards. I am not convinced that is what the testimony was. I think he was, you know, they are still smoking it and they are still sharing it. He's not so diabolical that he is not even worried about the fact that he killed someone so he is just going about his business because that is his job. There is just no evidence of that.

And this is not a case about a drug deal gone bad. This isn't two rival drug dealers having a dispute. So the whole fact that he is a drug dealer has got nothing to do with anything.

When Jamaal testified, there was nothing extraordinary about his testimony. He told you he was armed because he believed he had to be armed in the world in which he lived. He told you that it was against the law for him to own a gun. He told you that he had had bad blood with Richard, the man with the teardrop who bragged about killing people on his My Space page. It wasn't pretty when he testified. He told you -- he admitted to you that he had struck Richard with a gun twice. Richard

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wouldn't let him out of the truck. If he is so diabolical and he has got a gun, why didn't he just shoot Richard then? He didn't. He hit him with the back end, because he is not a murderer.

Now, again, who has the motive here to be angry and to want to harm somebody and to cause death or serious bodily injury? Not Jamaal. It is Richard and his crew that owed Jamaal a beef, okay? Not vice versa.

And notice how on cross-examination the State emphasized that Jamaal has two girls pregnant and he was also seeing Lauren. And that is just to make you think he is a bad guy. You know, he didn't deny it. But maybe they can bring fornication charges against him. Who cares. Being a player doesn't make you a murderer.

When the prosecutor examined Jamaal, Jamaal didn't waver from his story. There was no, aha, I got you moment, you said this, now you are saying this.

The State managed to get in that they have pending charges against him for shooting at someone. Okay? That is an allegation. It is not evidence. It has nothing to do with this crime, this alleged crime. He wasn't even charged with

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shooting someone, he was charged with shooting at. But he denied that charge. And he is innocent until proven guilty. So that is completely irrelevant. They want you to hear that because they are trying to get you to think he is a bad guy. He is a bad guy.

Now, I thought about objecting and asking the judge if I could please instruct my client to take the Fifth Amendment because as everybody knows, you do not have to talk about pending charges. But I didn't do that because I knew that Jamaal wanted to be straight-up with y'all. He didn't want to hide behind his right not to incriminate himself. He wanted to say, no. Yes, I know the State accused me of that, but I didn't do it. So I let it go. He wanted to be forthcoming with you all, and he was.

Now, again, there were a couple of times in this whole thing on January 16th where Jamaal had the chance to go ahead and shoot Anthony right then. When he approached him. When Jamaal pulled out the gun he said to scare him away. He could have just shot him right then. That diabolical murderer, he could have just shot him right then. He didn't do that. He let Amp know that he had the

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gun so that he would leave him alone. He pointed it at him. Maybe. But that was to scare him off.

But Anthony was fearless. He wasn't the least bit scared. Shoot me. Knocks the gun out of his hand like it was a toy. That is acting like he is going to kill him. So Jamaal's belief was reasonable.

Now, according to all the testimony they ended up in a fist-fight, okay? Mano y mano. Mutual fist-fight. Why would Jamaal fist-fight with him, win the fight, okay? And he fought before. He knows when the fight is over is when the other guy is not fighting back, okay? So the fight is over. You go. Unless you are some kind of psychopath. And then you turn around and shoot the person. But, no, when you have a fist-fight and you don't want to kill them, then you get up when they start resisting. You don't pommel him until he is dead.

So he knows the fight is over. Anthony is not dead, but the fight is over, right. That's it. But who is it then that would have the motive for wanting to kill Jamaal -- I mean, motive for killing? It would be Anthony, who has just been beaten up in front of his girlfriend. So he is the one that would have motive.

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And the reason that I emphasize and I did not hide the fact that he won the fight, we're not bragging, he's not bragging, I won the fight, he is trying to get y'all to see that you don't have a reason to shoot someone when you have won the fight. No reason. Until you believe that he shot him with no reason, then you've got to believe he is a psychopath. And there is no evidence of that.

The State wants you to believe that Jamaal thought it was a good idea to go into a suburban neighborhood in broad daylight where people are out there doing their thing, getting their mail, and murder somebody. It doesn't make sense. He is so diabolical he would murder someone and he doesn't even have a plan, he doesn't even have a plan to get away. Who is going to have these boys as your getaway drivers? You don't even know them. They are not going to help him. You don't have these kids as your getaway drivers. There is no evidence he needed getaway drivers. There is no evidence that he knew this was going to happen that day. No evidence.

The burden is always on the State to prove malice, okay? And clearly they haven't proved it beyond a reasonable doubt. They haven't proven it

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at all. And so based on that, the fact that there is no malice aforethought, you should find Jamaal not guilty. Because there is just no wickedness, no depravity. So without anything more, you should find him not guilty.

However, the judge is going to instruct you that you can consider whether this was an accident as well. But, remember, we don't have to prove that this was an accident, okay? If you decide that it wasn't an accident, that doesn't mean that he is guilty of murder. The State still has to prove malice aforethought.

So you may find that he doesn't fit some of these elements I'm going to go into, but that still doesn't mean that they have proven their case. So don't be confused and think that somehow we've got to prove accident or self-defense, because the judge will instruct you that is not the law.

In order for a killing to be accident, the shooter has to be lawfully armed and then the gun accidentally fires.

It is our assertion that he is lawfully armed, even though we have already told you he is not allowed to have a weapon, but you -- the law is clear that even if you are in unlawful possession

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of a gun, and you are one of these people in this country that are not allowed to own a gun, that that doesn't mean that you have to let people just shoot you. No, you can lawfully arm yourself in self-defense, okay?

So in order to lawfully arm yourself in self-defense at the time of the shooting you have to look at whether he was without fault in bringing on the difficulty.

Now, our evidence, which is corroborated by Devan and Quinton and Derrick, is that Jamaal went over there to give his friend a cigar. Not to get into a fight with Anthony.

Bringing on the difficulty does not mean that you have to show that you are always walking the straight and narrow. Okay? Bringing on the difficulty is like when you go up and rob somebody and they decide to defend themselves because they decide they are going to stop you from robbing them, you can't claim self-defense, okay, because you brought on that. But walking over to give somebody a cigar, even if they are under age, that is not bringing on the difficulty.

Walking over -- now, they mentioned just now that -- and they used the term, set-up, that

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somehow this was a whole set-up between Devan and Jamaal. And as I said earlier, there is just no evidence of that. Their witness. Jamaal is not walking towards Amp's house. He is not. He is walking towards the street where his friend is parked by accident, by chance, okay?

Again, we don't know exactly where everybody was because nobody bothered to document it. But walking over there, even if he knows that is Anthony's house, that is not being at fault in bringing on the difficulty. The law doesn't require them to stay at the girlfriend Lauren's house. The law doesn't require him to stay holed up in his own house and make sure he never gets in any type of trouble. That is not the law. The law doesn't say you can't walk on the public roads, stay out of that neighborhood, he has got no business there. No.

Now, if he walked over there with an aim to fight, if that was his aim, that is bringing on the difficulty. There is no evidence of that. Who is -- each of the witnesses said Amp stormed up on him. Amp initiated things. Only Andina, his girlfriend, says that he said, this is what I want. Nobody else heard that. And it is not credible.

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The law doesn't require that when he sees Anthony he has got to just hightail it out of there, he has got to run away. No. That is not the law. You don't have to run away when somebody storms up on you.

Now, the second element is that he must be in actual imminent danger of losing his life or actual belief of imminent danger. And if based on belief that it was a reasonable belief.

Jamaal testified he was afraid of Amp because he knew that Amp was friends with Richard, who he obviously had had problems with, and Richard is a guy who bragged about killing people and having a teardrop tattoo. He had bad blood with Richard. He knows that Amp is his best friend. Amp storms up on him. Amp initiated things.

So, yes, it is reasonable to think that Amp was going to cause him some serious bodily harm. Is that reasonable? Yes. Of course it is reasonable. The man came up to him, he pulled out his gun and the man is not the least bit discouraged, he knocks it out of his hand. He has the right to act on appearances. He didn't know whether Anthony had a gun or not. He pulled out that gun to scare him because he was in fear of his

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life.

You need to look at the moment prior to the shooting that he armed himself to see if that was reasonable. At that point he had been hit real real hard by all accounts in the face. At that point he had just engaged in a fight with him. At that point Andina had held a gun. So, yes, he is going to be afraid.

The law doesn't require that he leave that gun there for anybody to pick up and he goes running off and gets shot in the back. That is not what the law requires.

The law also requires that there must be no other way to avoid the danger. Now, clearly the point when he armed himself just before the shooting there would be no other way for him to escape without risking that Andina was going to pick up that gun or Anthony was going to pick up that gun and shoot him in the back. He was leaving. He wanted to get out of there. He knew there was going to be some payback for just winning this fight. He wanted to get out. But when he saw Amp was up coming towards him, on him, near him, he flinched and he shot him by accident.

I can't emphasize to you enough that just

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because you are a convicted felon doesn't mean that you can't protect yourself. The State would like you to believe that felons have to just let themselves be killed because they are not allowed to carry guns. But that is not the law. We don't have open season on felons here. That is some other country, that is not here.

Now, the law, it doesn't require -- it doesn't say he can't defend himself no matter how bad the guy is, no matter if he is a drug dealer or if he has gotten girls pregnant, okay? He has the right to arm himself in self-defense.

The State can't prove -- they have to prove each -- I mean, they have to prove that we haven't met these elements. They have to prove that beyond a reasonable doubt. We don't have to prove anything, okay? But, remember, if you decide that Jamaal could not lawfully arm himself because he was a convicted felon or whatever reason you want, okay, that still doesn't mean he is guilty of murder. You don't go back and say, well, it wasn't self-defense, it wasn't accident, so it is murder. No. That is not what you are going to be instructed. The State always has the burden to show that it was a killing with malice

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aforethought. And they have to show that not by asking you to guess, but they have to show that beyond a reasonable doubt.

And, again -- and I'm almost finished, I know you are glad for that -- the State gets to speak last. I can't say anything else. So I ask you, I beg you, remember the actual testimony, not the exaggerations, not one of the blanket statements that everybody said he started it. Listen to the actual testimony. Have it replayed. These are their witnesses. Listen to them again. They could have brought almost any witness in that they wanted. These are the witnesses they chose. This is their case. No malice. No wickedness. No evidence that this man is a cold-blooded murderer. And they had a total discretion as to what charges to bring. And they decide they didn't want to bring anything other than murder. It was all or nothing. They are going for total victory because they believe that you are going to believe their non-sensical theory that this man is a psychopath.

And we beg you, don't let them do that. Don't let them do that.

We ask that you return a verdict of not guilty on the sole charge, which is murder -- killing --

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killing with malice aforethought.

MS. SIMPSON: May we approach, Your Honor?

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

THE COURT: All right, ladies and gentlemen of the jury, we have been going for about two hours, so I am going to -- I'm not sure if you all need one, but a bathroom break. We'll take about five or ten minutes, maybe about ten minutes. And then we'll come back and you'll hear from the State once again, and then I will give you my closing charge.

Thank you.

(WHEREUPON, the jury retires to the jury room at 11:28 a.m.)

THE COURT: All right, we'll take about ten minutes.

(WHEREUPON, a break was taken.)

THE COURT: Are you ready to bring them in? All right, you can bring them in.

(WHEREUPON, the jury came into open court at approximately 11:47 a.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: Yes, ma'am?

MS. SIMPSON: Thank you. May it please the

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Court?

CLOSING STATEMENT

MS. SIMPSON: Make no mistake about it, members of the jury, the only person who could have come in this courtroom and testified that he was defending himself was the victim, Anthony Salley.

And contrary to what the Defense would have you believe, he is the only victim in this case.

Now, at the beginning I came before you and I told you that after you heard all the evidence when we came to the end of the trial it would come down to simply this, the bottom line, that Anthony Salley did not have to die. And that is still the case.

The Defendant armed himself earlier in the day, not because he was terrified of Anthony, because he was terrified of Richard Thomas. And this occurred at the Defendant's home -- excuse me -- the victim's home. It was not the Defendant's neighborhood. The Defendant(sic) was in his driveway with his girlfriend when a truck that he didn't know, he didn't recognize, came up, pulled up, and blocked his driveway with a car parked in it. It didn't pull up to the road. It wasn't in the street. It blocked the driveway. A

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car he didn't know with three people inside that he didn't recognize.

And he got out. And seconds later the Defendant, who he knows, they all know the same people, the Defendant, who doesn't like Anthony, who doesn't like his friends, comes walking out from a house two doors down, a neighbor's house, crosses two yards.

"Yes, you bitch ass, this is exactly what I want." And the Defendant pulls out the gun.

Anthony is unarmed. And the Defense would have you believe he is not afraid. He wasn't scared in that moment. That is why he punched the Defendant. Well, that was just plain unreasonable and goes against common sense.

Anthony was afraid. Unarmed. His two little brothers at home in the house. His girlfriend in the driveway. He didn't have anywhere to run. And the only chance he had was to knock that gun from the Defendant's hand, the gun that the Defendant brought to the fight that he started, that he set up, and the fight he eventually won.

Now, unfortunately we'll never know what was going on in Anthony's head because he is not here to tell us. Self-defense? Yes. But even though

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he was trying to defend himself, it was not enough, because the Defendant had other plans for Anthony on that day.

Members of the jury, I too want to thank you for your time, your attention, and your patience in this case, because this is an important case. It is important to the State, it is important to the Defense, and it is important to the victim's family in this case.

It is said that jury duty is the greatest service that any citizen can render its country during peacetime. And that is true. And in a few moments this case will be turned over to you to make a decision individually and collectively. So, on behalf of everyone, I thank you.

Now, earlier my co-counsel, Ms. Campbell, she got up here and she spoke with you about the law as it applies in this case and some of the evidence as it applies to the law in this case, and part of what we have proven, what we had to prove, because we did have the burden of this case. And it is as it should be.

And then the Defense got up here and told her version of the story. And now it is my turn to talk to you about the facts and the evidence in

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this case that we brought to prove the Defendant guilty.

Now, if I misquote or misstate the facts, it is not intentional. If anyone misquotes or misstates the facts, you remember them. And that is important, because you heard from a lot of witnesses in this case. You remember the facts. You remember the testimony.

Now, earlier in her opening statement the Defense said that we wanted you to find the Defendant guilty because he was arrested and charged with murder.

Well, that is simply not the case. We want you to find him guilty because of the evidence in this case. We are not saying he is a psychopath. You don't have to be a psychopath to commit murder. We are saying that the evidence brought before you proves that he did commit murder. His actions.

She also said that when a young person passes it is a tragic event, and that there is this need for revenge and retribution.

Well, the murder of Anthony Salley is tragic, but the Defendant doesn't sit there because of the State's need for revenge and retribution, he sits there because of what happened. And this case

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isn't about revenge or retribution on behalf of the State, this case is about justice. And the only person that day who wanted revenge or retribution was the Defendant.

I'm going to talk to you a little bit about the facts and the witnesses that you heard. I'm particularly going to talk about the Defense's theory and version in this case, because I submit to you that while it is not only unreasonable and unlikely, it is improbable. And while anything is possible, this is about as close to impossible as it gets.

You heard from a lot of witnesses. I am going to go into those into individual detail in a moment. But one of the things that the Defendant told you and Defense counsel told you is that he was afraid, so terrified, and he just happened upon Anthony that day in the neighborhood and he pulled out a gun. So afraid, so terrified. Poor him. Poor scared Jamaal.

Let's talk about that just so happened upon him.

Now, the Defendant told you he was talking to, dating, sleeping with, whatever Lauren Banks, who lived two doors down from Anthony Salley, the

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Salley family. And he also told you about Lay Lay, Anthony's sister. He was friends to her. Even apologized to her on the stand. He knew Anthony. He knew the family. He knew Anthony's friends. And you are telling me that when a best friend of his worst enemy, Richard Thomas, he didn't know that he lived two doors down from a girl he was seeing? Please.

And he told you, well, well, I saw him earlier that day. I didn't know he lived there before until that day.

Well, that is just not true. And it doesn't make sense. He knew Anthony and he knew Richard.

And that fear that we have talked so much about, that fear, he told you himself, wasn't necessarily afraid of Anthony. I didn't know him to have any beef with him. I was terrified -- terrified of Richard Thomas.

And he articulately told you, I submit, a well rehearsed statement, that I was so terrified of Richard Thomas that I went home and lawfully armed myself in self-defense. And I will get back to that in a moment.

He didn't just so happen across him. He wasn't terrified of Anthony. And that fear? He

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told you, yes, he and Richard got into it. He threatened my life and I threatened his. So afraid? So terrified?

If he was so afraid, so terrified that he got a ride back from the place he was, the Vineyards Crossing subdivision, got a ride to his house, which was close-by, just down the street, it wasn't in North Carolina or Virginia or anywhere else, and yet he told you on the stand, I came back because all my belongings were at that house. He didn't come back because his belongings were at that house. And he didn't go to his house to get his gun so he could just come back and hang out with his girl or because he was so terrified of Richard Thomas. He came back because he had a plan.

No matter what the Defense has stood up here and tried to tell you, tried to get you to think that the evidence showed, this was by all accounts a set-up, a plan.

And Richard Thomas -- I'm going to back up just a little bit. All these fights and all this fear? What I heard from the stand -- and I apologize, it was somewhat confusing which fight, who was in it, where it was, did it happen that day or did it happen three months ago. But during the

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course of all these fights, the Defendant was winning. I mean, he is the one pistol-whipping Richard Thomas. And Richard Thomas didn't even come up against him. He said, I was terrified of Richard Thomas because he had pulled a gun on my little buddy, Derrick Randolph, my friend. And Richard Thomas pulled a gun on Kenny Banks earlier that day looking for my little buddy, Derrick Randolph.

This was a plan. This was a set-up. What better way to get back at Richard Thomas, the person he had already beat up before, than to get his little buddy, his friend, Anthony Salley. Because he told you he didn't know Anthony that well. But he knew he hung out with Richard.

So what happened? Well, he gets a ride to his house to get his gun. Because he is scared? Now, remember too that the Defendant is a drug dealer. Self-proclaimed. A drug dealer. What is the nature of this business? It is risky business. It is illegal business. Drug dealing comes along with a risk that often requires somebody to carry a gun. And I submit to you, the Defendant often had a gun in his drug dealing. He didn't get a gun just because he was scared. He probably stayed over at

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Lauren Banks and forgot that gun and had this plan in place.

So he has Devan Bailey. Devan Bailey is going to become key in this case. And he is in contact with Devan Bailey, because he doesn't really know Quinton Emerson that well, doesn't know him at all. And Derrick Diamond, he doesn't know well. But he knows Devan. And Devan is with Quinton and Derrick that day. And when they get together, Devan is the one directing where they are going, what they are doing, and who they are picking up.

Now, he was at the Banks' house earlier in the day and he admitted, he told you, I saw Anthony earlier that day. And Andina testified that she had been with Anthony all morning and that she had even seen the Defendant at some point in that day.

The Defendant knew Anthony lived there. Don't let the Defense get up here and try to tell you that he didn't. He knew that he lived there. These people knew each other. He had a plan.

And so he got in contact with Devan Bailey. And Devan told you -- the Defendant told you Devan is like a little brother to him. And Devan told you, he is like a big brother to me. That is the Defendant's friend.

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I want to back up just a bit because as we get into all these witnesses, Defense counsel made a big deal about the State chose to put this witness up on the stand, the State brought you this witness. We don't pick our witnesses. The Defendant picked our witnesses. He's the one who involved the people that you heard on the stand. His choices. These are his friends.

So the Defendant calls Devan. And they go get his gun. And then he gets dropped back off at Lauren Banks' house.

Now, that red SUV is parked there. That red SUV that they have seen him in earlier that day. Now, here Devan tried to tell you and the Defense would have you believe that the Defendant got dropped off and as they go to pull out, going out to leave the subdivision, because I submit they had what they came for, the weed, that he was selling, they actually had the weed back at the gas station for Devan. The Defendant disputes that. But his own friend says, no, he gave me the weed at the gas station. So they had the weed. They were leaving.

And Devan says, oh, oh, I forgot a cigar. Turn around. I forgot a cigar.

Okay, well, the Defendant got up here and on

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that cigar said, well, I came out, I was giving him the cigar. My little buddy, he is under age, he can't buy it. Quinton and Derrick were old enough to buy it. Derrick had already bought cigarettes that day. That is a pretty lame excuse.

So Devan says, I got to get my cigar. And they just dropped him off in front of that house with the red SUV. And Quinton goes to pull around, and he is going to go pull back up to where they dropped the Defendant off, but Devan says, no, park here, stop here at a different house. And this house had a car in the driveway, a black car, with two people out there, a girl and a guy. Park here, not pull up out of the way, on the side of the street closer to where we just were, park here, blocking Anthony's driveway.

Quinton tells you that. Derrick tells you that. Andina tells you that. The only person who wants you to believe that he wasn't blocking that driveway is the Defendant. He was in the street. The car was in the street. It wasn't blocking the driveway. Because he doesn't want you to know it was blocking the driveway because that goes to that plan, that set-up. His little friend was in on it.

So they parked. And then what happened?

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Well -- and you will get the phone records too because you are going to have where the Defendant -- where Devan calls the Defendant at 2:20 in the morning -- or in the afternoon.

Now, the Defendant comes out of the Banks' house. And here is where his story gets a little bit different than the witnesses you heard and the testimony and evidence in this case.

So he comes out of the Banks' house. Devan Bailey, Quinton Emerson and Derrick Diamond are parked in front of Anthony's home. Anthony, that truck that he doesn't know with people he doesn't recognize blocking his driveway when there are other places to park, yes, he might be a little concerned. So he gets out of the car. And he might be walking towards them.

And there is no hill. You will see the pictures. There is no hill. But he is in his driveway. And seconds after the car is blocked, the Defendant comes walking two houses down, and he says, oh, I just -- I had to get Devan that cigar. I had to give Devan that cigar. I didn't know Anthony lived there. I knew he had been there earlier that day, but I didn't know he lived there. Please. He knew.

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And so he walks out. And what is the first thing he does? "Yes, you bitch ass, this is exactly what I want." And pulls a gun and points it at Anthony's head. Not his stomach at that time, not his leg, at his head.

But the Defendant is not afraid? The Defendant is not afraid? Unarmed? Please.

Devan gets out of the truck because this was a set-up. I submit Devan knew they were there to fight Anthony. Devan probably didn't know that Anthony would end up killing or that the Defendant would end up killing Anthony, but Devan knew they were there to fight. He was helping his friend out, his brother. And so Devan joins the fight. And by all accounts, the Defendant is winning. He is a good fighter.

Yes, I was on top of him. Yes, I was punching him with my fist as hard as I could. As hard as I could.

And Devan comes out. Andina picks up that gun that had fallen, because now the fight is not very fair, two people are beating up on her boyfriend. And she points the gun at Devan. Get back, or maybe waves it, just get back, get the fuck back. And all this is happening really fast. And as she

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is doing that, as she picks up the gun, the Defendant says, bust him.

You heard the testimony. Devan went towards Andina. I submit to you that the Defendant not only wanted him to bust him, he wanted him to get that gun and to shoot Anthony.

But Devan at this point says, whoa, this is too much. The gun is thrown. Devan runs off.

Now, if this very sympathetic Defendant, the victim in this case, was losing or having trouble or was terrified, why wouldn't his friend stick around?

Devan told you. And we'll get to that. So what happened? Well, the fight ends. We're going to talk about the details of that fight. And the Defendant shoots Anthony. And he runs away.

And where does he run? To Jarrod Crudup's house. One of his friends. And Demario Evans, one of his good friends, who wasn't here during this trial because he couldn't be found, was parked out front.

And it is kind of important to note that Demario had just arrived 20 minutes before the Defendant came into that house. Twenty minutes. The Defendant has Devan Bailey, Demario nearby.

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And Demario even tells Devan, I can't give you a ride, when Devan comes in the house. I submit to you, because he had to give the Defendant a ride.

Then the Defendant flees to Atlanta. He has got to raise money to get out of town, Texas or Maryland, because that plan to get back at Richard Thomas, hurt Anthony, who beat up his little buddy, he took it too far. And this is not self-defense or accident. This is murder. Cold-blooded murder. And Anthony didn't have to die.

Let's talk about some of the witnesses that you heard from today or throughout this week. One of the witnesses is Derrick Diamond. Derrick was friends with Quinton. And you knew Devan. And he didn't really know the Defendant that well. He just knew of him. And they are going about their day. And what did he hear the Defendant say? I gotta go get my tool.

And the Defendant, when he got on the stand, and I'm probably going to say this a couple of times throughout this trial and throughout my closing that, well, that is the only witness that says that. That is the only person that heard that. That is the only one -- well, her statement didn't say that. He's the only one. The Defendant

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knows the case very well. Had two years to think about it. And the fact that the witnesses are a little bit different in what they perceived and what they saw, that is what makes them credible. We focus on different things.

Derrick heard the Defendant say, I've got to go get my tool.

And who was directing where they were going and what they were doing? Devan, the Defendant's friend. On the phone with the Defendant throughout the day.

When the Defendant came up -- I want to back up because I believe Defense counsel said in her closing, there is no evidence to support that my client, the Defendant, poor Jamaal Hinson, started this fight. Everything supports that Anthony is the one who wanted to fight. Well, nothing supports that except for the Defendant's testimony.

What does Derrick say? He was arm's length away when he pulled out his gun and pointed it at that guy's face. Because Derrick didn't know Anthony either. What does he have to gain or lose? He pointed it at the guy's face. This is not disputed. Even the Defendant says, I pulled out the gun first. I pulled it out. He can't remember

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what he said.

He knows what the victim said, shoot me. That is what he wants you to believe he said. The Defendant was winning, all accounts. The Defendant was winning this fight.

Devan got out and punched the victim. Punched him. Not a elbow, as Devan tried to tell you, or, I was pitching myself away from the fight. Yes, he is minimizing his role, because even though the Defendant is his best friend, his brother, his mentor, his buddy, he does not want to be associated with a murder.

He heard the Defendant say, bust him, bust him.

And you have heard a lot about malice in this case because that is what we must prove. Defense counsel said, there is no malice because he didn't intentionally kill Anthony. Well, that is not the law in this state.

Malice can be inferred from the facts and circumstances in this case. You are allowed to look at the Defendant's actions before the incident, his actions during the incident, and his actions after the incident.

So what do we have at this point? We have him

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coming up saying, this is exactly what I want. Telling Devan, bust him. Pulling the gun first. Are these the actions of somebody who was terrified and afraid? I submit, he wasn't afraid of anybody. Because he got the upper hand all the time. He was winning these fights. And he was winning this one.

He heard the gunshot and never saw the victim with a gun. Remember that throughout this case. Never saw the victim with a gun.

And even the Defendant, if you believe his testimony, when he came out that door, he said he heard -- I believe he said he heard the victim yelling or talking loudly, he couldn't tell what they were saying, at Devan, Devan who was in that truck and got out of that truck, said he didn't know, that he didn't recognize, blocking his driveway. Yes, he might be talking to him, but even the Defendant told you, he wasn't aggressive. He didn't have his fist out. He wasn't swinging. He wasn't trying to start anything. But the Defendant walked up, and he is so terrified he pulled out his gun.

And who else did we hear from? Quinton Emerson. And this is key. The Defendant pulled out his pistol and racked it. And she asked him,

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well, why did he pull out his pistol and rack it? I guess to let him know he was ready to do what had to be done. This is not somebody who is scared. He is at Anthony's house on his property. Yes, this is what I want, pulled out a gun, racked the pistol, I'm ready. I'm ready to do not only what needs to be done, what I came here to do. He pointed the gun at the other guy's head. Head. Pulled off, because they didn't expect that this was going to happen, they thought they were all going to smoke a little weed, hang out. The Defendant sold weed. They bought the weed from him. That was the plan. But thanks to his actions, they got more than they bargained for.

And you also heard from Andina Lee. And Defense counsel really -- you know, she says, well, I'm not saying Andina is not credible. No, she can't say that because even the Defendant says Andina is credible. She is the one who heard it. She is standing there. She is outside with her boyfriend when the Defendant comes up. She heard what he said.

And as you consider her testimony in this case, the Defense counsel said, oh, well, she knew there needed to be malice in her heart and this is

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what she had to say because she wanted the Defendant to be punished, to pay for killing her boyfriend.

Andina is not a lawyer. That is lawyer talk. Malice. You might not have even heard malice before you got here today. But Andina wasn't thinking, oh, I need to punish the Defendant. And you listen to her. That 9-1-1 tape is in evidence. You know why it is in evidence? Because it is evidence. All of this is evidence for you to consider.

And she mentioned numerous times, well, you already knew this. Why did they have to put this up? You already knew it. Members of the jury, you didn't know. And that is why we're here, because he was presumed innocent when he walked through that door and is presumed innocent until we have proven beyond a reasonable doubt. That is why we put in that evidence. That is why we put up these witnesses.

So Andina -- and I figure they have to slam her because she is key. While all the witnesses are important, Andina is the one who is out there that day during the fight. So you remember what she said.

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Now, in her opening she said, this fight happened in the neighbor's yard, neighbor's yard. Why? Because they don't want it to be on Anthony's property. They don't want it to be there because that means the Defendant came on his property where Anthony is the one who could defend himself.

And the grassy area, and you'll have the pictures before you, and you see where those clothes were cut, where the towel was. It is right beside his driveway. Okay?

And she testified, yes, I picked it up. And I want to back up just a second. She also made a big deal about two statements. Two statements. Well, the first time the police interviewed Andina was the day she had seen her boyfriend shot. Okay? And when they interviewed her later, they had already talked to other witnesses in this case and wanted to follow up. Maybe they remember more. Follow-up. Now we have a little more information. Because contrary to what the Defense wants you to think, that they said, oh, everybody said Jamaal is the shooter, he is the murderer. No. They continue to investigate. And she said all of these relevant people that you heard about on the stand that they testified to, those were people -- they

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followed up the leads. They had to talk to everyone. They did their job.

So the fight ended. The trouble was gone. And I'm going to get to the specifics of the fight. But what did Andina tell you? The fight had ended. She was having to help Anthony up off the ground. She is a small little girl. You saw her. It wasn't easy. And Anthony was struggling. You have seen the pictures and will have them before you. Bruised and scratches. He was badly beaten.

The Defendant. Yes, I beat him. I hit him as hard as I could.

Well, she is trying to help him up. And the Defense wants to say that nobody ever said he pointed that gun at Anthony. Andina tells you he pointed the gun and shot. Pointed the gun and shot. No, they weren't lying on the ground, she was trying to get him up to go inside.

And the Defense made a big deal about turned around and why don't you remember this and that. It was happening so fast. And whose story is more credible? And what does she say after Anthony fell to the ground? Grabbed his stomach, I need water. What does she tell you on the stand? I never thought the Defendant would shoot him. I never

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thought the Defendant would shoot him.

She had thrown the gun, but not far enough. And she didn't carry a gun. It wasn't her gun at the scene. So she made a big deal about, well, why didn't you take it inside. Well, there were kids in the house. Or, you know, you didn't just hold it, or whatever happened. She threw that gun because she didn't want it. She wanted no part of it. And the fight was over. Or so they thought.

You also heard from Devan Bailey. Remember, credibility, Ms. Campbell told you, is huge in this case. Believability of witnesses. Devan Bailey is the Defendant's friend. He tried to help the Defendant as best he could. But even as best he could isn't enough.

He says, yes, the other guy initiated it. He ran. He initiated it. How many times did he not answer her question right away because he had to say to you, the other guy initiated it. That is part of that story that they were supposed to get straight.

So he said the Defendant gave him a ride to the gas station. Now, he already had the weed. He got the weed at the gas station. The Defendant said, no, I still had to give it to him. His own

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friend contradicts him. Forgot to get a cigar. We have talked about how believable that is. And didn't know that it was the victim's home. He might not have known, but the Defendant knew. The victim initiated it. I just happened to throw an elbow and hit him. The girl got the gun, get the fuck back. I ran. I didn't see anyone shoot the gun. Even though he was only three feet away.

And what happened after the Defendant ran or after Devan ran? The Defendant was calling him throughout the day because they had to get their stories straight. He had to meet him face-to-face. But even Devan couldn't get this story straight. And the only thing that needs to be straight is a lie, because facts are stubborn things and the truth doesn't change.

Why did he do it? Why is Devan distancing himself? Because as he came up I could tell by his eyes and the way he was walking something was up. Then I saw him pull the pistol out. Malice. Murder. It is too much for even him.

So what happened after he left? Who did he come in contact with? Well, you heard about Jarrod's house when he came over, and Nicole and Jarrod. And we didn't just put them up just

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because, okay? They are -- it is one of the last places the Defendant flees to before he goes to Atlanta.

And did you hear Jarrod or Nicole ever say he was beaten, bloody, or bruised? No. He was out of breath. I have just gotten into a fight. Come on, Demario, let's go. No bruises. He wasn't beaten because he was the winner of that fight.

She talked about Richard Johnson. Oh, Richard Johnson in Atlanta. This guy that the Defendant hooked up with, Richard Johnson, who she wants to try to say the Defendant told him, I messed up my life, I shot somebody accidentally. He didn't tell Richard Johnson that.

And, no, what did Richard Johnson tell you? He didn't tell you that he was bragging, but he also didn't say that he was crying or upset or seemed like his heart was heavy. He said, I really couldn't tell. He was just like, I shot someone. His girl saw. I shot someone. His girl saw. I murdered him.

Richard Johnson told you, I know Homie because he murdered someone, or because he committed this murder. She made a big deal about how he didn't say murder, didn't say murder, but he did. And he

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testified to it on that stand.

So they met Homie -- he met Homie. They spent two weeks together. And the Defendant told you he confided in him. He trusted him. Okay? But what the Defendant didn't expect is that Richard Johnson would get arrested and rat on him. He didn't expect that.

So he confided in him. He is from South Carolina. He killed somebody in front of somebody. A girl saw. It was four hours later, or however many, within hours, in Georgia. He buried the gun.

Now, he wouldn't know about the issues in South Carolina. He is in Atlanta. He is not making this up. And the Defendant doesn't say he is making it up.

Yes, I told him, but I told him I shot him, I was upset, my heart was heavy.

I submit to you he didn't tell him that. He is running with people that he hangs with. He sells weed. And he even told you he was selling on that day. He got his weed, took it with him to Atlanta. As he went down there they were hooked up to raise money. He didn't tell Richard Johnson because he messed up his life and felt bad about it. He needed Richard Johnson to know, yes, I shot

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someone. He's in Atlanta. I shot someone.

And why did Richard tell? Because we were fighting. The Defendant was with me when the fight broke out, but not when I got arrested. It is his fault.

And the Defendant might not have been found if Richard Johnson hadn't been arrested on that day. The Defendant confided in him, and he didn't think that he would get caught.

He wasn't planning to get out of the environment as he testified to on the stand. I went to Atlanta to get away from this environment. I testified -- or I confided in Richard Johnson because I was upset. He took the weed with him. He was there to do as he does. He wasn't getting away from anything except this murder.

Now, I am going to talk a little bit about the Defendant's testimony, because there was a lot. And the Defendant, it was somewhat confusing, contradictory, as I told you earlier, didn't know what fight he was in, who he was with. All we really gained from that is he won these fights. He was good at it. This is not a guy who is afraid. But what did he tell you? I'm terrified of Richard Thomas. That just isn't the case. Didn't know the

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victim. So terrified he went and got his gun in fear for his life and he armed himself because Richard threatened to kill me and I threatened to kill him.

What about this screams fear? What about the Defendant's actions scream fear? Terrified? Self-defense? Nothing, that is what.

So Richard -- let me back up. The Defendant earlier in that day had called Richard to come to the gas station, I think. We don't really know. But he had problems with Richard in that day. And I bring it up again because his problems were with Richard.

And they weren't with Richard because of himself, it was because of what he had done to his friend. And so he wants you to connect it to be, I'm terrified of Anthony too. Please. Do you know why he wants that? Because he has to. Because that is the only way he can possibly come close to this not being murder.

What did he tell you? On all these times, all these occasions, he is so terrified. Why not call the police? Well, I have my own set of rules. This is my thought process. What happens in society stays in society. That's why he didn't

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call the police. And we will get to why he really didn't call the police.

I want to talk about the logistics of the fight because this is important. And this is the point where we get to not only unreasonable, but improbable and impossible.

The Defendant was fighting with the victim. He wins. The fight is over. He is winning. The fight is over. Andina is trying to get Anthony up to go into the house. They are turning to go into the house.

The Defendant wants you to believe that he got up, he quit the fight, he ended the fight because he was already winning. Anthony wasn't resisting at all. And he went and got his gun and he picked up that gun and he was going to put it in his waistband. He was going to put it in his waistband.

And Ms. Campbell got up here on cross-examination just to make sure she was clear on how he was going to put it in his waistband. She did like this. He said, yes, that is how I was putting it in. And I turned around and I saw Anthony. I got startled and I pulled the trigger.

Impossible, members of the jury. If he had

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pulled the trigger startled, that gun would have shot either himself or into the ground. He was putting it in his waistband just like this. And how did he pick up that gun? He admitted this. I had my finger on the trigger. I had my finger on the trigger. He did have a finger on the trigger.

And he told you, if I wanted to kill someone or to kill him, I would shoot him in the head, or the heart, I believe the Defendant said.

Well, you know what? If Anthony is getting up off the ground -- because you look at the way that wound went in, his upper left abdomen. And it goes straight through. It travels this way. Anthony was trying to get up off the ground to go into his house.

If I wanted to shoot him, I would have shot him in the head or the heart. Well, he was aiming for his heart. I submit he was aiming to kill him.

And Ms. Cleary talked a whole lot about malice, coming over there to shoot him, and at what point this happened. The moment we have to prove he had malice in his heart is right before he took that shot. And at no point -- when this fight was over, he wasn't defending himself. And when he went to get that gun, he wasn't lawfully armed at

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that point. And this whole theory about accident? Impossible. By the Defendant's own testimony. There is no way it could happen that way. No way. Self-defense? Please. It just didn't happen in this case. And there was no accident, because what this is is murder.

She made a big deal about the police and the investigation and how they got him. They knew it was Jamaal. It is murder. They didn't investigate. They didn't try to find out about the initiation of the fight or who started it.

You know what? They did investigate. And do you know who they were looking for to talk to? The Defendant. But where was he? He was on the run. He was on the run. And his flight is evidence of his guilt.

But the Defense wants to blame everybody. The police misinterpreted that statement. Well, that witness didn't hear it. I'm not saying she is not wrong. Everybody else is to blame. Everybody else got it wrong. And the Defendant is the victim.

The Defendant is the victim? No. Absolutely not.

You know why he didn't call the police? There are several reasons. He told you -- and I want to

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make sure I get it right -- why did I run? Well, I was afraid the police would not believe me. Yes, he was afraid they wouldn't believe him because what he would be telling them wasn't true.

And then she also got up here, well, he had the gun on him and some weed -- or he told you, I had a gun and some weed. I didn't want to go to jail or get in trouble.

Okay, not going to jail for that weed or that gun is more important than explaining away the fact that you just shot someone? Someone that you sit here and claim it was an accident? Please.

What else did he tell you? He told you, you know, there was a point I did want to tell the police. I talked to my friends. But they talked me out of turning myself in. Here again, we're with somebody else was guiding his actions. He said, I was so vulnerable on the stand. He said, I was so vulnerable I had to heed the advice of my older homies. I was just so broken up.

And I believe he said -- and this goes more to his victimization -- I was a broken vessel. Poor me. Sick, throwing up, asthma.

He wasn't a broken vessel. And he wasn't shaken and beaten. He ran off. He ran from that

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fight that he started, that he won, that he set up. And then he was hightailing it out of there. He wasn't planning on coming back. And he wasn't planning on getting caught or found. He knew everybody knew he did it. So he just wasn't going to come back. But he couldn't account for the fact that Richard Johnson would get arrested and have a reason to want to tell on him.

What did he tell police when he had that chance? And, now, I remind you, she also made a big deal of the fact that investigators didn't even question him about what happened. They didn't want to hear his side of the story.

Well, he had invoked his right prior to that in Atlanta. And when that happens the police aren't allowed to question you. You have to start talking to them if you want to talk. So that is why they weren't asking him questions, because they couldn't.

And when he offered up his story, what did he say? Did he say, oh, it was an accident. I accidentally pulled the trigger as he startled me because I was so terrified when I turned around.

No, he said that is his little buddy, he just wanted a cigar. I have had problems with that guy

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earlier in the day. And I came out to give him, Devan, a cigar, and he was parked behind that guy. He just came up and hit me. The tool hit the ground. What was I supposed to do? I got a kid on the way. I didn't want to die. Every time I saw him he always wanted to start something.

Well, this also isn't Richard Thomas was my enemy and I just accidentally shot Anthony. There was nothing in there about accident or feeling sorry. What was I supposed to do?

I tell you what he was supposed to do. He wasn't supposed to arm himself and come over there and pull out a gun and start the fight, beat Anthony up to the point where he couldn't even get up on his own and then get up, go pick up the gun and shoot him. And he had to walk to get -- he had to walk to get that gun. Andina told you, he admitted it too, he saw her throw the gun. This was no accident.

And why didn't he tell the police? And I picked this to be one of the final quotes because I think it really sums up this Defendant and his actions on that day.

When asked about all those prior incidents, why didn't you call the police if you were so

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worried or if you were so upset, if you were so concerned about this accident or these other fights or your friends?

And when he said this, he was referring to another fight in which I believe -- like I said, I got confused, so if I'm mistaken, I'm sorry -- in which he pistol-whipped Richard Thomas.

And why didn't you call the police? Well, it was my wrongdoing, so why would I call the police? It was my wrongdoing, so why would I call the police?

And you know what? He didn't call the police. And contrary to what he would have you believe, he had no intention of calling the police. He was going to get out of town, leave South Carolina, leave Atlanta to go even farther, because he knew it was his wrongdoing. He knew that he was guilty of murder.

Ms. Campbell asked him on the stand, so the law doesn't apply here? What was his answer? He didn't have one. So the law doesn't apply to you? You know why he didn't answer? Because it does. The law does apply to him. And he is guilty of murder.

This case reeks of malice. Yes, this is

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exactly what I want. Bust him. I beat him up. I'm a good fighter. I get in fights all the time. I was in fights at school. Yes, I shot at somebody. Or, excuse me, Defense counsel made a big deal that he had not shot somebody before, that he had been charged with shooting at somebody, but that he denied it. And with respect to that gun, he said, well, I never shot that gun before.

Are these the actions of someone who is terrified and afraid? No. And this case is not self-defense for the Defendant and it is no accident.

And even she got up here and told you, I submit because she had to, that if you didn't find there was self-defense and you didn't find there was accident, that it still wasn't murder because there was no malice. Because she knows after her client's story, that gun and that waistband, in his waistband, finger on the trigger, turns around, Anthony startled him. I shoot. And I shot him on accident? No. Even that theory doesn't hold up, by his own testimony.

This was cold-blooded murder. And I hope when you go back in that jury room and you have all this evidence and all the testimony and everything that

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you heard, that you will consider the credibility of the witnesses in this case. Who has the most to gain or lose. Who has bias or prejudice. What did you hear. What was corroborated. Use your common sense and what you know about human nature when you decide this case.

And I'm going to ask that you find the verdict, the only verdict that speaks the truth, and that is that the Defendant, Jamaal Hinson, is guilty of murder. Guilty of murder of Anthony Salley, who was at his home and his property, Anthony Salley, who did not have to die.

Thank you.

(WHEREUPON, the following jury charge occurred at 12:42 p.m.)

JURY CHARGE

THE COURT: All right, ladies and gentlemen of the jury, you have heard all of the evidence, the arguments of the parties, and now it is my responsibility to charge you as to the law.

I remind you that, during this trial, you and I have certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case, and I also have the duty to rule on the admissibility of the evidence offered

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during this trial.

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

I have the additional duty to charge you the law applicable to this case. As the presiding judge, I am the sole judge of the law of this case, and it is your duty as jurors to accept and apply the law as I now state it to you.

If you already have any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon this idea because you are sworn to accept the law and apply the law exactly as I state it to you.

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

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trial jury about the facts in a case. Since you, the jury, are the sole judge of the facts in this case, you are not to infer from what I have said during the progress of this trial and ruling upon the admissibility of evidence or otherwise or anything that I say now during the course of this instruction to you, that I have any opinion about the facts in this case.

The law does not allow me to have an opinion about the facts in this case. This is a matter solely for you, the jury, to determine.

As jurors, it is your duty to determine the effect, value, weight, and truth of the evidence presented during this trial.

There are two types of evidence which are generally presented during a trial: Direct evidence and circumstantial evidence.

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

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main

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fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than that of direct evidence.

You should weigh all of the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the Defendant beyond a reasonable doubt, you must find the Defendant not guilty.

Necessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth.

In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same

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witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether any witness has exhibited to you any inference, bias, prejudice, or other motive in this case. You may also consider the appearance and the manner of the witness while on the witness stand.

There has been evidence presented that witnesses have made prior statements which are not consistent with the witnesses' present testimony. You may view the evidence to decide whether to believe the witness. You may also use the evidence of the earlier contradictory statements to determine the truth of those statements. It is up to you to decide whether to believe the earlier statement or the testimony given at trial.

If a witness is shown to have knowingly testified untruthfully concerning any material matter, you may consider this in determining whether to trust the witness' testimony as to other matters. You may reject all testimony of that witness or give all or part of the testimony the weight you think it deserves.

You have heard evidence that the Defendant was convicted of a crime and/or committed a bad act not

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the subject of a conviction other than the one for which the Defendant is now on trial. This evidence may be considered by you, if you conclude it is true, only in deciding whether the Defendant's testimony is believable, and for no other purpose. You must not consider the Defendant's prior record as any evidence of the Defendant's guilt of the charge we are trying today.

The Rules of Evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exemption to this rule exists for witnesses we call expert witnesses. A witness who, by education and experience, has become expert in some art, science, profession, or calling may state an opinion as to relevant and material matters, in which the witness claims to be an expert, and may also state the reasons for the opinion.

You should consider any expert opinion received in evidence in this case and, like any other evidence, give it the weight you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience, or if you conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence,

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you may disregard the opinion entirely.

An expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert.

Further, you are not required to accept an expert's opinion, even though it is not contradicted.

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

Remember, you are the sole judges of the facts in the case and of the believability of any and all of the witnesses.

The indictment. Mr. Hinson has been indicted, as I previously read the indictment to you, on the charge of murder. The indictment charges the Defendant with murder.

I remind you that the fact that the Defendant was arrested, charged and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor does it create any presumption or inference of guilt.

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This document is simply the formal written instrument which contains the charge made against the Defendant. It is the formal document by which this case is brought into this court.

The Defendant has pled not guilty to this indictment, and that plea puts the burden on the State to prove the Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent.

I charge you that it is an important rule of the law that the Defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

This presumption of innocence does not end when you begin your deliberations, but it accompanies the Defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of righteousness placed about the shoulders of the

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Defendant, which remains with the Defendant until it has been stripped from the Defendant by evidence satisfying you, the jurors, of the Defendant's guilt beyond a reasonable doubt.

The presumption of innocence is not mere legal theory. It is not just a legal phrase. It is a substantial right to which every Defendant is entitled unless you, the jury, are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

What is reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act.

The State has the burden of proving the Defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told that it is only necessary to prove that a fact is more likely true than not true, such as by the greater weight or preponderance of the evidence. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. There are very few things in this world

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that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you must find the Defendant guilty.

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

The Defendant is charged with murder. The State must prove beyond a reasonable doubt that the Defendant killed another person with malice aforethought.

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

Malice is hatred, ill-will, or hostility towards another person. It is the intentional

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doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law would infer an evil intent.

Malice aforethought does not require that malice exist for any particular time before the act is committed, but malice must exist in the mind of the Defendant just before and at the time of the act at the time the act is committed. Malice may be conceived at the very moment the fatal blow is given. Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be express or inferred. These terms, "express" and "inferred," do not mean different kinds of malice, but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proved. Express malice is shown when a person speaks words which express hatred or ill-will for another or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person or any other act of preparation going to show that the deed was within the Defendant's mind would be express malice.

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Malice may be inferred from conduct showing a total disregard for human life. Malice may be inferred from the facts and circumstances surrounding the case.

Malice does not necessarily impart ill-will towards the individual injured, but signifies rather a general malignant recklessness of the lives and safety of others, or a condition of mind which shows a heart regardless of social duty and fatally bent on mischief.

In order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence.

Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation.

There is no way to prove intent to a mathematical certainty. There is no way medical science can dissect a person's brain and determine what the person had in mind. So the law says that criminal intent may be inferred from the circumstances shown to have existed.

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This is how you make a determination of whether or not the element requiring intent was present. It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case.

Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the Defendant intended to do based on the circumstances shown to have existed.

Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness, or any indifference to duty or to consequences that is considered by the law to be the equivalent of criminal intent.

The Defendant has raised the defense of self-defense. Self-defense is a complete defense and, if it is established, you must find the Defendant not guilty.

The State has the burden of disproving self-defense beyond a reasonable doubt. If you have a reasonable doubt of the Defendant's guilt after considering all of the evidence, including

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

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

The following elements are required to establish self-defense.

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

Self-defense is not available to a person who uses language which is so contemptuous that a reasonable person would expect it to bring on a physical encounter, and which did actually contribute to the physical encounter.

The second element of self-defense is that the Defendant was actually in imminent danger of death or serious bodily injury or that the Defendant actually believed he was in imminent danger of

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death or serious bodily injury.

If the Defendant was actually in imminent danger, it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury.

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

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

Thirdly, the Defendant does not have to show that he was actually in danger. It is enough if the Defendant believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief.

The Defendant has the right to act on appearances, even though the Defendant's beliefs

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may have been mistaken. It is for you to decide whether the Defendant's fear of immediate danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation.

You may consider whether the Defendant's belief of being attacked was a reasonable belief when there were words accompanied by hostile acts.

Evidence of prior difficulty between the Defendant and the victim may be considered in deciding whether a threat existed, whether the Defendant had a reason to believe a threat existed, and how serious that threat was.

The relative sizes, ages and weights of the Defendant and the victim may be considered in deciding the appearance or actual need for force in self-defense and the amount of force needed.

The final element of self-defense is that the Defendant had no other probable way of avoiding the danger of death or serious bodily injury than to act as the Defendant did in this particular instance.

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

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A person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily harm. Therefore, in self-defense, the Defendant has the right to use the force needed to avoid death or serious bodily harm.

The force used in self-defense does not have to be limited to the degree or amount of force used by the victim. The Defendant has the right to use so much force as appeared to be necessary for the complete self-protection, and which a person of ordinary reason and firmness would have believed to be needed to prevent death or serious bodily harm.

If the Defendant is justified in defending himself or others, then the Defendant is also justified in continuing to defend himself until it is apparent that the danger of death or serious bodily injury has completely ended.

The Defendant has raised the defense of accident. An act may be excused on the ground of accident if it is shown that the act was unintentional, that the Defendant was acting lawfully, and that reasonable care was used by the Defendant in the handling of the weapon.

For example, if a person is lawfully armed in

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self-defense, and the gun accidentally discharges, the defense of accident would apply. The burden is on the State to prove beyond a reasonable doubt that act was not an accident but was caused by the negligence or carelessness on the part of the Defendant in the handling of a dangerous instrumentality or by unlawful activity by the Defendant.

I charge you that a person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting.

Thus, if the circumstances of this case showed the Defendant armed himself in self-defense when the gun went off accidentally, you would find him not guilty of murder.

The law requires that a jury verdict be unanimous, which means that all jurors must agree. The only two forms of the verdict are guilty or not guilty.

Mr. Foreman, once the jury reaches a verdict of not guilty or guilty, circle the verdict on the face of the verdict form and sign under the verdict to signify that what you have circled is the verdict of all the jurors. Then notify us that you

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have reached a verdict by knocking on the door.

The State and the Defendant are entitled to the individual opinion of each juror on the issues of facts in this case. It is the duty of each of you to consider and weigh all the evidence in the case and, from such evidence to determine, if you can, the question of the guilt or innocence of the Defendant.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case from that which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense, consider the evidence in a case for only those purposes for which it has been admitted, and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the accused be proved guilty beyond a reasonable doubt, say so. If not so proved guilty, say so.

Your verdict in this case will be one of two forms. If, from the evidence and the law, you find that the Defendant is not guilty, you will circle "not guilty" on the verdict form that I will give

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you. And the foreman will sign his name.

If, on the other hand, you find that the Defendant is guilty, based upon the evidence and the law which you have heard, you will circle "guilty" on the verdict form and the foreman will sign his name.

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

I have a verdict form here for you. I am also going to send a copy of my jury charge back into the jury room with you so that you will have it. I will give you a copy of these instructions in written form. During your deliberations you may refer to the instructions to guide your decision-making. You must consider the instructions as a whole and not follow some and ignore others. Please return the instructions to the Court at the time your verdict is rendered.

I have in my hand the verdict form which reads: The State of South Carolina, the County of Richland, The State of South Carolina versus Jamaal Hinson, in the Court of General Sessions of the Fifth Judicial Circuit, Indictment Number 2010-GS-40-829.

It states: Verdict form. Please circle the

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appropriate verdict below and follow the accompanying instructions carefully.

Indictment 2010-GS-40-829, question one, the only question: As to the charge of murder, we, the jury, unanimously find the Defendant: The first one says "guilty"; the second box says "not guilty." I had to put one before the other. Please do not take that I am suggesting one over the other because I had to put one before I had to put the other.

You will sign it, Mr. Foreman, and date it and knock on the door.

At this time I am going to send you back into the jury room. I may have to bring you back, so you are not to begin deliberating until you receive the verdict form, the jury charges, and all of the evidence.

Once you receive the verdict form, the jury charge, and all of the evidence, you may begin your deliberations at that time. Until that time you are not to discuss the case, not with your fellow jurors, and of course it would be improper for you to form an opinion or a decision in your mind at this time until you are told to begin your deliberations.

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Your lunch may be back there also, but before we eat, before you start eating, let me just make sure I don't have to bring you all back in here.

All right. Thank you.

(WHEREUPON, the jury retires to the jury room at 1:08 p.m.)

THE COURT: Any exceptions or objections to the jury charge?

MS. CAMPBELL: No, Your Honor.

MS. CLEARY: No, other than my previous ones, which I hope you won't make me reargue.

THE COURT: And they have been noted for the record, your earlier objections, and I'm not sure if Ms. Campbell had any earlier objections, but any earlier objections are noted and preserved for the record.

All right. If you all want to get with Debbie and make sure we have everything to go back, we'll go ahead and let them deliberate. And I don't have a problem with them eating while they deliberate. I don't know if y'all have a problem.

(WHEREUPON, the jury began deliberations at 1:16 p.m.)

THE COURT: They sent a note saying they have a verdict. I will go ahead and we'll bring them in

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in a second, but before they come in, I want to let everyone know that is in the audience that if, for whatever reason, you cannot control your emotions, I am going to give you an opportunity to leave at this time. And there will be no outbursts, no yelling or screaming. And if you feel that you won't be able to control your emotions, I am going to ask that you leave out of the courtroom at this time.

Once the jurors come back with a verdict, I will -- once they come back with a verdict we will dismiss them first. No one is to leave the courtroom before they leave the courtroom. And then I will dismiss you all after they leave out of the courtroom.

All right. Anything else before I bring them in?

You can bring them in.

(WHEREUPON, the jury came into open court at approximately 4:34 p.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: All right. Mr. Foreman, it is my understanding that the jury has reached a verdict, is that correct?

THE FOREMAN: That's correct.

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THE COURT: All right. And will you pass it up to the bailiff?

(Court views verdict.)

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

VERDICT

THE CLERK: Indictment Number 2010-GS-40-829. The State of South Carolina versus Jamaal Hinson. It is an indictment for murder.

As to charge of murder, we, the jury, unanimously find the Defendant guilty.

This is signed, Foreperson, Juror Number 284.

Mr. Foreman, is this your verdict and the verdict of the entire jury?

THE FOREMAN: Yes, it is.

THE COURT: All right. Anything else before I release the jury? Ms. Campbell?

MS. CAMPBELL: No, ma'am.

THE CLERK: Ms. Cleary?

MS. CLEARY: No.

THE CLERK: All right. Ladies and gentlemen of the jury, I would like to thank you all for your service on the jury this week. I know it has been a very, very long week, and I appreciate you all being patient and attentive during the course of

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this trial.

I am sure that Judge Lee probably told you earlier this week that now that you have served you will not have to serve in this court for the next three years. I can't promise that you will not have to serve in magistrate court or federal court, but in this courthouse you will not have to serve for the next three years.

Once again, thank you all. I believe the clerk has some paperwork to give you and one of the deputies will be walking you all to your car.

All right. Thank you.

Oh, and I also meant to tell you, the lawyers may call you. It will probably be next week if they call. If you wish to talk to them regarding this case, you can. If you do not wish to talk to them just tell them you do not wish to talk to them and you will not have to discuss it.

All right. Thank you.

(WHEREUPON, the jury was excused.)

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

MS. CAMPBELL: The only other thing the State would have as far as a complete -- I think you heard his prior record, or at least the impeachable

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offenses. He did have pending in our office at the time a PWID I believe marijuana and the assault charge, which was referred to as well.

Your Honor, I think the victim's family would like to address the Court at the appropriate time whenever you feel it would be appropriate.

THE COURT: All right. And I guess I need, Ms. Cleary, do you have any motions?

MS. CLEARY: Oh, yes. I would just like to renew my motions for directed verdict and all the other motions previously made in the trial.

THE COURT: All right. I think you did a good job of preserving them earlier, your other motions.

As to the motion for -- you said directed verdict and a new trial?

MS. CLEARY: Yes.

THE COURT: You wanted to go into your motion for a new trial?

MS. CLEARY: My motion would just be based on the other objections that I made during the trial. Do you want me to go into all those?

THE COURT: It is up to you.

MS. CLEARY: I think and hope the record is preserved.

THE COURT: You are going to rely on your

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arguments?

MS. CLEARY: Yes.

THE COURT: Thank you. The motion for directed verdict and motion for new trial would be denied. Thank you.

Yes, ma'am?

MS. CAMPBELL: Is it time for the victims to address the Court?

THE COURT: Yes, ma'am, I will be glad to hear from her.

MS. CAMPBELL: This is the victim's mother, Your Honor. She also has handed up some photographs of the victim she wanted me to show you so you can know that he was a real person. I don't know if you think that is appropriate or not.

THE CLERK: Any objection? Do you want to see them?

MS. CLEARY: I have no -- without objection.

THE COURT: Yes, ma'am, I'll be glad to hear from you.

VICTIM'S MOTHER: Your Honor, on [redacted], we were blessed to have a beautiful baby boy, and we named him Anthony.

Anthony is the oldest out of seven children out of our seven children. Anthony was a joy to

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our entire family. He was a likeable and loving young man.

Anthony had a job interview and he called on the 15th about a little after noon to tell us he got the job. And we congratulated him.

We was all happy for Anthony because he said, mama, all I want is a job so I can take care of my son.

We were out of town at the time on business. We proceeded to head back home to Columbia. About an hour into our ride home from Atlanta, my next oldest son, who was Joshua, he was home at the time, called and said Anthony had just got shot. And Joshua was hysterical.

The first thing I asked is was Anthony all right. My son said Anthony said he felt like he was going to die.

I did not know where the person that shot Anthony was because we could not figure out who in the world would want to shoot Amp, especially when he knew he wasn't -- we thought -- we moved to what we thought was a very good neighborhood. Everybody was calling my husband's cell phone. My family went to the hospital. I thought everything was fine until everything got quiet and the cell phone

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calls ended.

I called my sister-in-law and asked her was Anthony fine, and she told me the chaplain was there. They were trying to keep him calm while we drove to the hospital, which seemed like years. It just seems like it took us years to get there.

Then the cell phone rings. It was Andina. And she told my daughter Anthony was gone. We lost it. My husband was driving. And a few minutes -- he lost it, and we almost lost our lives because my husband went into a state of shock and started crying, and it was like he forgot he was driving. I start screaming and screaming and he regained his composure.

On this day our whole life changed. I had to view my son's body so it could be released for viewing for the family and friends, and it was hard. I just wanted to pick him up and take Anthony home. Looking at his picture on the screen as you walk into the funeral home was awful.

Anthony was such a humble and beautiful young man that my children's school, Sandlapper, the teachers took turns bringing things to our house. They knew Anthony from picking up the children from school.

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After everything calmed down, I went into a deep depression. I was in school at the time finishing up my nursing when this happened. After the death I withdrew from school. I could not get out of bed. I did not know I could cry so many tears. I was in a state of mind for -- I was in a state of mind for about two months. My husband was being strong for the family. I had to be hospitalized twice for grieving and coping. Then I started outpatient at Baptist Hospital. It helped, but I wanted Anthony to walk through the door. I started counseling for my children. By deciding to go back to school about four months after Anthony's death, after Anthony passed, I decided I wanted to make a difference. I enrolled in criminal justice. I decided I wanted to finish -- I wanted to make a difference. I decided when I finished I wanted to be a victim's advocate because of the trauma in my life and I want to work with young folks that don't -- that do not have direction in life.

Your Honor, I ask you give Jamaal Hinson life in prison for taking my son's life. For every day my son can't breathe or talk to his siblings or taking my grandson's father from him that he would never get to know, and Anthony loved his son with

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all his heart, and he would never get to raise his son and be a father to him and see him grow up.

Anthony's life was taken when his son was six months old. His first words was Da Da. And it hurt me to my heart to know he would never get to know or spend quality time with his daddy.

This affected our whole family. What hurt the most is this little boy who now will grow up without a father that stepped up to the plate to take care of him, they did not have to go to child support. Anthony did his duty.

I thought after this happened Anthony -- I thought after this happened to Anthony in our yard in our neighborhood our neighbors would not like our family.

Anthony got a job on the 15th and was supposed to start the following Monday.

I feel this young man has had a chance to make a change. Instead he wanted to be in and out of jail until he took my son's life.

I would forgive him. I forgive him. I forgive him the day he killed my son. But he must pay the price for what he did. I do not want to see another mother and family heart to be broken if he gets out of jail.

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I will not -- I decided that when I changed my course from nursing to criminal justice, I'm not going to jail with Jamaal. Life in prison is what I ask for. With life in prison his family can visit him, and we have to go to our son's gravesite.

And that is all I have to say, Your Honor.

THE CLERK: All right. Thank, you ma'am.

Yes, sir, anything?

VICTIM'S FATHER: I have nothing, Your Honor.

MS. CAMPBELL: Is that all from the family? I believe that is all from the family.

Thank you, Your Honor.

THE COURT: Anything you want to say?

MS. CAMPBELL: No, Your Honor. I think the facts and circumstances in this case speak for themselves.

THE COURT: Yes, ma'am, Ms. Cleary?

MS. CLEARY: Yes, Your Honor. May the Defendant be heard on his behalf on the issue of sentencing?

THE COURT: Yes, I will be glad to hear from him.

MS. CLEARY: And also his mother and father?

THE COURT: Yes, I will be glad to hear from

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them.

THE DEFENDANT: Your Honor, first and foremost, I want to apologize to the victim's family. I mean, like I know I got some things that I need to work on in life, you know, but I was a child, I thought I was a child, you know. But I've changed, you know. And I ain't the same person. I have elevated in a way that I should have when I was -- but I guess life was moving too fast for me, or I was moving too fast for life.

I mean, even though it with was true indeed an accident, I still took their son's life. And that haunts me every night, you know.

I know like throughout the process my lawyer and my family say, don't talk to nobody about it, but it is like I really couldn't help it because it was on my mind, you know.

But I am really and truly sorry. And I got a family too. And my family is grieving too. They lost their son too, you know. I ain't -- I ain't been able to hug my mom just as long.

But I apologize. I apologize. And if I could go back in time I wouldn't even have gone over there that day. I mean, like I said, I know I ain't the best person, but everybody make mistakes.

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And I just happened to make the biggest mistake of my life, and I'm going to have to pay the price for it.

But, Your Honor, I just ask you please don't give me life. Please. I mean, whatever you give me, even though it was an accident, I did do that. I did commit that crime. So if you was to give me life, I can't do nothing but accept that, you know. But I just ask you to have mercy on me. Please don't give me life. I would like to have a family myself. I mean, I feel like I'm at a dead end right now. And I don't know -- really know which way to turn. All I got to do is turn around. Just like she said, like she believe I had a chance to change. And she is right. I just -- I ain't really had no direction. Like growing up -- growing up, like I ain't never really had like everybody else had. So I would always try to look for somebody to look up to. And being that the environment that I was living in, I guess I looked up to the wrong person. And it is like I guess that took over my life in a drastic measure. Not by choice, but by force.

I mean, like -- again, I apologize. And I'm really sorry about that, you know. And every day

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that I been locked up I hit my knees every single night, every single night, not for myself, but for my family and Anthony's family. You know, I pray -- I pray that they can really truly forgive me, because I'm having a hard time forgiving myself. But, you know, I messed up.

And, again, Your Honor, I just ask that you please don't give me life, Your Honor. Please.

THE CLERK: Thank you. I'll be glad to hear from his parents. There should be a microphone over there.

DEFENDANT'S FATHER: Your Honor, may it please the Court? As Jamaal's father and to the family, we all know that this is a time where families are grieving. End of life happens. But the God that we say that we are supposed to serve or know about, honor and render to, we ask for mercy.

My son, who I truly love, he is a very good young man. He went through -- had a little time like everybody go through life, everybody in here ain't perfect, they done did some things in their life but they are caught up.

We was there for him, but always the choice that you make. We always preach that to my children. We always trained -- I tried to train

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our children up the way the child should go when he is getting old. He done depart from it.

Salleys, on your part, we pray for y'all every night. We know what you are going through. When we find forgiveness when we ask for forgiveness from my family and being the head priest of my household to your family. And we hope and pray that we don't have to go through this with emotional behavior saying that, I don't want no part to do with your family.

Like I say, it is a sad moment for both families. And we just pray to God that justice will have leniency as well as mercy on my son.

And I am here to say, and I will say it in my heart, my son is not a cold-hearted murderer. I will say again, I'm sorry for y'all's loss. Grandma Salley, I see you at church, I see y'all at church. I am going to continue praising the Lord, uplift him, and I will speak to you at church, whether you speak back or not. But I still go out to you and your family. And I do forgive you for not trying to forgive my son, but I do forgive you in my heart. And my family also.

Thank you.

MS. CLEARY: His mother.

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DEFENDANT'S MOTHER: Your Honor, may it please the Court? To the attorneys, to the Salley family. I too express my condolences. I'm sorry this whole event happened. My son Jamaal, I adopted him. We both adopted him at a very young age. And he has been a joy to us also.

And like my husband said, there is -- I haven't seen a perfect child yet. Children do get into things. But I want the Court to know that I will continue to forever love my son because he is my son. He is the son that God gave me. Faults or no faults, he is still my son. I love him. I will always love him. And I ask the Court for leniency for my child.

We have a very special relationship. And, again, I ask the Court leniency for my child. And I would also love to hug my child at this time, but if you say no, I understand.

THE COURT: Yes, ma'am, Ms. Cleary.

MS. CLEARY: I would just like to say that I have gotten to know Jamaal and his family over the last couple of years, and I think you already know how I feel about him because of everything I said in my closing statement came from the heart. This man is not the person that the State made him out

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to be. So I just beg for your mercy.

THE COURT: All right, thank you.

Anything else from the State?

MS. CAMPBELL: No, ma'am.

THE COURT: All right. To the Salley family, I extend my condolences to you and your family for your loss. And I'm not going to give any long remarks, but I think it is always unfortunate when a young person loses their life. And maybe more so I guess to the other young people that are in the audience.

Something Jamaal said yesterday was that when he shot Anthony he had no idea that he was going to die because somebody else had gotten shot in the stomach and they got up and they were able to walk again. It is not a video game. It is not TV. It is not a movie. It is real. Guns are real. And guns kill people. And you all need to understand that, if you have not understood that from being here today.

With that being said, as to Indictment 2010-GS-40-829, sir, I am going to sentence you to the State Department of Corrections for 40 years. I'm sure your attorney will be able to explain to you the amount of time that you'll have to serve.

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I'm not sure -- I don't even know, I don't recall how old you are, but you -- between you and Mr. Salley, you are getting the better end of the deal on this, sir, because you, even confined, you get to live your life. He unfortunately will not be able to do that.

I wish both families good luck. And we will be done.

Thank you.

MS. CAMPBELL: Thank you.

(WHEREUPON, the proceedings were concluded.)

(END OF TRANSCRIPT)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 14th through 18th days of November, 2011.

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

July 9, 2012

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

Court of General Sessions

DeAndrea G. Benjamin, Circuit Court Judge

C/A No. 2010-GS-40-0829

The State of South Carolina, ... Respondent,

v.

Jamaal Hinson,..... Appellant.

INITIAL BRIEF OF APPELLANT

NELSON MULLINS RILEY & SCARBOROUGH LLP
Reid T. Sherard, SC Bar No. 72536
E-Mail Address: reid.sherard@nelsonmullins.com
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

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SC Court of Appeals

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE, DIVISION OF APPELLATE DEFENSE
Robert M. Dudek
E-mail: rdudek@sccid.sc.gov
1330 Lady Street, Suite 401
Columbia, SC 29201
(803) 734-1343

Attorneys for Appellant

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STATEMENT OF ISSUES ON APPEAL

1. Did The Trial Court Err By Dismissing A Juror When It Is Uncontested The Juror Did Not Intentionally Conceal His Limited Knowledge Of The General Identity Of An After-The-Fact Witness, And Even If The Juror Had Intentionally Failed To Reveal The Knowledge It Was Of Such Limited Value It Would Not Have Supported A Challenge For Cause Nor Been A Material Factor In The Use Of The State's Preemptory Challenges?

2. Did The Trial Court Err By Refusing To Charge The Elements Of Involuntary Manslaughter To The Jury When Evidence Exists That The Appellant Lawfully Armed Himself In Self-defense In The Event Deadly Force Was Necessary And That He Did Not Intentionally Fire The Single Shot?

STATEMENT OF THE CASE

This appeal arises from multiple errors of law committed by the trial court in the prosecution and conviction of Jamaal Hinson.

The Richland County Grand Jury indicted Mr. Hinson on April 14, 2010 on a single count indictment of murder. (R. p. __; Indictment). The Solicitor called Mr. Hinson's case to trial before Judge DeAndrea G. Benjamin on November 14, 2011. (R. p. ___; Tr. p. 1).

Eleanor Duffy Cleary represented Mr. Hinson. (R. p. ____; Tr. p. 1). Senior Assistant Solicitor K. Luck Campbell and Assistant Solicitor Nicole M. Simpson served as prosecutors. (R. p. ___; Tr. p. 1). The State called twenty-one witnesses in support of its case. Mr. Hinson testified, and he was the only witness testifying for the defense. At the close of the State's case, the trial court orally denied Mr. Hinson's motion for directed verdict. (R. p. ____; Tr. pp. 576-578).

Over Mr. Hinson's objection, Judge Benjamin only instructed the jury on the elements of murder, self-defense, and accident. (R. p. ___; Tr. pp. 745-824).

On November 18, 2011, the jury returned a verdict of guilty on the sole count in the indictment - murder. (R. p. ___; Tr. pp. 959-961). After the verdict, Mr. Hinson renewed his motion for directed verdict, and also moved for a new trial. (R. p. ____; Tr. p. 963, l. 7 - p. 964, l. 2). Again, the trial court denied the motions orally. (R. p. ___; Tr. p. 964, ll. 3-5).

Judge Benjamin sentenced Mr. Hinson to forty years imprisonment for murder. (R. p. ____; Tr. p. 975, ll. 21-23; sentence sheet). This appeal followed.

STATEMENT OF THE FACTS

On January 15, 2010, Jamaal Hinson stayed the night at his girlfriend Lauren Banks' house in the Vineyard Crossing subdivision in Blythewood, South Carolina. (R. p. ___; Tr. p. 644, ll. 2-8; p. 661, l. 24 - p. 662, l. 1). The next morning, Mr. Hinson borrowed Ms. Banks' vehicle so he could deliver marijuana to purchasers. (R. p. ___; Tr. p. 644, ll. 14-24). Before Mr. Hinson left, he saw Richard Thomas and Anthony Salley on the same street as Ms. Banks' house. (R. p. ____; Tr. p. 645, ll. 11-14). Mr. Thomas and Mr. Hinson were adversaries - "they didn't like each other at all" - with multiple verbal and physical incidents between them over the preceding year. (R. p. ___; Tr. p. 640, ll. 13-17; p. 685, ll. 8-10). Mr. Hinson did not know Mr. Salley, but knew of him as being a friend of Mr. Thomas. (R. p. ___; Tr. p. 640, l. 24 - p. 641, l. 1; p. 661, ll. 10-14). Mr. Salley's girlfriend Andina Lee acknowledged Mr. Salley did not like Mr. Hinson. (R. p. ____; Tr. p. 150, ll. 17-22). When they saw each other, both Mr. Thomas and Mr. Salley exchanged threats with Mr. Hinson that morning. (R. p. ___; Tr. p. 645, ll. 11-19). Mr. Thomas was known to carry a pistol. (R. p. ___; Tr. p. 646, ll. 8-16; p. 669, ll. 5-7).

While Mr. Hinson was out making deliveries, the brakes failed on his vehicle and he stopped at a gas station to investigate. (R. p. ___; Tr. p. 644, ll. 21-24). At the gas station, he encountered Devan Bailey, who asked Mr. Hinson for a quantity of marijuana. (R. p. ___; Tr. p. 472, ll. 13-22; p. 644, l. 24 - p. 645, l. 1). Mr. Hinson returned to Ms. Banks' house to drop off the malfunctioning vehicle, and waited for Mr. Bailey to pick him up. (R. p. ____; Tr. p. 645, ll. 1-6 and 20-25).

Mr. Bailey arrived in a pickup truck driven by Quinton Emerson, in which Derrick Diamond was also a passenger. (R. p. ___; Tr. p. 474, l. 1). The three men picked

up Mr. Hinson and took him to his house to get his pistol, since Mr. Hinson was scared of what Mr. Thomas might do if they came across him. (R. p. ____; Tr. p. 475, ll. 22-25; p. 646, ll. 1-9; p. 669, ll. 5-7; p. 694, ll. 10-14; p. 695, ll. 21-23). Mr. Hinson wanted to be in a position to defend himself due to Mr. Thomas likely being armed. (R. p. ___; Tr. p. 646, ll. 8-16).

After retrieving his pistol, Mr. Hinson rode with the three men in the pickup back to Ms. Banks' house, where he went inside to spend time with her. (R. p. ___; Tr. p. 120, ll. 16-18; p. 478, ll. 10-15; p. 646, ll. 21-24). After dropping Mr. Hinson off, the three men in the pickup truck left but Mr. Bailey soon realized he had forgotten to get a cigar to use to smoke the marijuana. (R. p. ___; Tr. p. 215, ll. 5-10; p. 477, ll. 15-16). Mr. Bailey phoned Mr. Hinson seeking a cigar and Mr. Hinson told him to return to the neighborhood, call him upon arriving, and Mr. Hinson would give him a cigar. (R. p. ___; Tr. p. 478, ll. 16-21; p. 646, l. 25 - p. 647, l. 11; p. 698, ll. 1-24). The group in the pickup truck returned to the street in question in the Vineyard Crossing subdivision. Mr. Bailey directed the group where to stop on the street, which was a couple of houses up from Ms. Banks' house because Mr. Bailey thought Mr. Hinson was sitting in a small black car parked in a nearby driveway. (R. p. ____; Tr. p. 478, l. 22 - p. 479, l. 17). In actuality, the black male smoking marijuana in that car was Anthony Salley. (R. p. _____; Tr. p. 141, ll. 21-22).

After receiving the second phone call from Mr. Bailey, Mr. Hinson came out of Ms. Banks' house and saw the pickup parked in front of the house with the small black car in the driveway. (R. p. ___; Tr. p. 647, ll. 11-13; p. 698, l. 23 - p. 699, l. 4). Mr. Bailey and Mr. Salley were standing in the driveway with the small black car, talking, along with Mr. Salley's girlfriend. (R. p. ___; Tr. p. 217, ll. 1-3; p. 648, ll. 1-3). Mr. Hinson began

walking from Ms. Banks' house to the house where Mr. Bailey was so that he could give him the cigar; as soon as Mr. Salley saw Mr. Hinson, Mr. Salley removed his jacket and rushed at Mr. Hinson in a threatening manner. (R. p. ____; Tr. p. 180, ll. 24-25; p. 648, ll. 4-6; p. 700, ll. 13-14; p. 702, ll. 13-16). Mr. Hinson was at the bottom of an incline, and Mr. Salley ran down from the top of the hill towards him. (R. p. ___; Tr. p. 186, ll. 22-26). Mr. Salley was a larger man than Mr. Hinson. (R. p. ___; Tr. p. 727, ll. 14-17). Afraid, Mr. Hinson drew his pistol to scare the advancing Mr. Salley, but Mr. Salley was unfazed, moving closer to the pistol and demanding Mr. Hinson shoot him. (R. p. ____; Tr. p. 648, ll. 7-11 and 21-25; p. 704, ll. 17-20). Mr. Salley was not afraid. (R. p. ___; Tr. p. 232, ll. 12-15).

Mr. Hinson stood frozen. (R. p. ___; Tr. p. 649, ll. 3-4). Sensing advantage, Mr. Salley knocked the gun from Mr. Hinson's hand and then struck Mr. Hinson twice in the face. (R. p. ____; Tr. p. 124, ll. 17-19; p. 143, ll. 9-22; p. 181, ll. 15-21; p. 649, ll. 4-7). Mr. Salley's blows landed with terrific force, and Mr. Hinson's face instantly started to swell. (R. p. ___; Tr. p. 197, l. 20 – p. 198, l. 2).

The two men began fist-fighting, both swinging and punching, which later progressed to them fighting while on the ground. (R. p. ___; Tr. p. 181, l. 21 – p. 182, l. 2; p. 219, ll. 20-24; p. 649, ll. 7-10). While Mr. Hinson and Mr. Salley were fighting, the pistol was lying on the ground where it had fallen after being knocked out of Mr. Hinson's hand. (R. p. ____; Tr. p. 219, ll. 17-21). Thus, neither man had a weapon. (R. p. ___; Tr. p. 125, ll. 10-12). Mr. Bailey was standing beside the fight. (R. p. ____; Tr. p. 182, ll. 15-17). The fight moved towards Mr. Bailey, and he threw an elbow to push the men away from him, causing Mr. Salley to stumble. (R. p. ___; Tr. p. 482, ll. 2-15).

Mr. Hinson made no effort to get the pistol during the fight. (R. p. ____; Tr. p. 730, l. 22 - p. 731, l. 2). In fact, the pistol was not close to where the men were fighting. (R. p. ____; Tr. p. 145, ll. 4-20). Mr. Salley's girlfriend Andina Lee went over to where the gun was lying on the ground and picked up the pistol. (R. p. ___; Tr. p. 125, ll. 21-22; p. 127, ll. 10-11; p. 145, ll. 21-23; p. 478, ll. 17-19). She pointed the gun at Devan Bailey, demanding the fight stop. (R. p. ___; Tr. p. 125, ll. 21-24; p. 182, ll. 6-8). Her intent in grabbing the gun was "just really to scare [Mr. Hinson] . . ." (R.p. ____; Tr. p. 127, ll. 15-16). She gave it her best effort, yelling "get the fuck back" three times and telling Mr. Bailey if he moved she was going to shoot him. (R. p. ____; Tr. p. 147, l. 17 - p. 148, l. 11; p. 183, ll. 14-22). Scared, Mr. Bailey retreated by running up the street. (R. p. ___; Tr. p. 483, ll. 21-24; p. 484, ll. 7-8; p. 485, ll. 7-8).

Mr. Salley eventually stopped fighting back, though he remained conscious. (R. p. ___; Tr. p. 649, ll. 20-25; p. 731, ll. 3-6). Mr. Hinson voluntarily stopped fighting. (R. p. ____; Tr. p. 708, ll. 10-12). As Mr. Hinson got up off the ground, he saw Ms. Lee pointing the pistol but then throw it back on the ground. (R. p. ____; Tr. p. 650, ll. 7-14). Mr. Hinson was shocked that Ms. Lee had the pistol, realizing that she could have shot him at any point during the fist-fight. (R. p. ____; Tr. p. 650, ll. 20-23).

After the fight, Mr. Salley was up off the ground and moving. (R. p. ____; Tr. p. 129, ll. 14-19). The pistol remained on the ground just steps away. (R. p. ____; Tr. p. 130, ll. 12-16). Mr. Hinson picked up the pistol, knowing that if he bypassed the opportunity to retrieve it and instead left it on the ground Ms. Lee could pick it up for a second time and shoot him as he returned to Ms. Banks' house. (R. p. ____; Tr. p. 651, ll. 5-18). Mr. Hinson

was afraid of this scenario, particularly of being shot in the back as he retreated. (R. p. ___; Tr. p. 651, ll. 19-21).

Mr. Hinson realized he needed to remove himself from the situation. (R. p. ____; Tr. p. 651, l. 25; p. 652, l. 20 - p. 653, l. 1). As he turned to leave, Mr. Salley was moving and facing Mr. Hinson, and just a couple of steps separated them. (R. p. 160, l. 22 - p. 161, l. 10; Tr. p. 653, ll. 3-5). In being so positioned, Mr. Salley startled Mr. Hinson. (R. p. ___; Tr. p. 652, ll. 1-6). Mr. Hinson was holding the pistol by the trigger (as he always does when he handles a firearm) and was moving the gun from his hand to his waistband. (R. p. ____; Tr. p. 710, ll. 22-25; p. 711, ll. 13-18). When Mr. Salley scared Mr. Hinson by being up and moving just a couple of feet away, Mr. Hinson flinched and accidentally pulled the trigger; the gun fired once and the bullet struck Mr. Salley. (R. p. ____; Tr. p. 652, ll. 4-6; p. 653, ll. 3-5). Mr. Hinson did not continue firing because "it was an accident that [Mr. Hinson] shot him the first time." (R. p. ____; Tr. p. 659, ll. 10-14).

ARGUMENT I

Standard Of Review

Impartiality of the juror is addressed to the discretion of the trial judge. *State v. Johnson*, 248 S.C. 153, 163-64, 149 S.E.2d 348, 353 (1966) (quotation omitted).

The Trial Court Erred By Dismissing A Juror When It Is Uncontested The Juror Did Not Intentionally Conceal His Limited Knowledge Of The General Identity Of An After-The-Fact Witness, And Even If The Juror Had Intentionally Failed To Reveal The Knowledge It Was Of Such Limited Value It Would Not Have Supported A Challenge For Cause Nor Been A Material Factor In The Use Of The State's Preemptory Challenges.

On the morning of November 14, 2011, Judge Benjamin began the trial process by first resolving voir dire requests from the lawyers. After bringing the venire into the courtroom, the judge read aloud and individually the name of all anticipated witnesses, including the name "Jarrod Crudup." (R. p. ___; Tr. pp. 23-27). Those witnesses present in the courtroom stood when the judge announced their respective names; Mr. Crudup was not present in the courtroom when his name was called. (R. p. ___; Tr. p. 25, l. 8). Judge Benjamin then asked the following questions of the venire:

- "[I]s there anyone related by blood or marriage or has a close personal or social relationship with any of the witnesses that I have called?" (R. p. __; Tr. p. 27, ll. 20-25).

- "Does any member of the jury panel know of any reason whatsoever why he or she should not serve as a juror in this case with particular emphasis being placed on your ability to be fair and impartial to both the State and the Defendant? If so, please stand." (R. p. ___; Tr. p. 31, ll. 2-7).

Having no reason to respond, Juror 226[1] remained silent in response to these two questions, and he was ultimately placed on the jury panel.

[1] Juror 226 is Guy Rodgers, a single male employed by Richland School District One as a painter. (R. p. ___; Tr. p. 49, ll. 1-12). For ease of reference this brief will refer to him as "Juror 226."

Late in the afternoon on the second day of trial, the State called Jarrod Crudup as a witness regarding Mr. Hinson's actions after he left the scene of the shooting. (R. p. ___; Tr. p. 235-248). Mr. Crudup testified that he "knew of" Mr. Hinson through friends and actually knew Mr. Salley from the neighborhood. (R. p. ___; Tr. p. 237, ll. 12-15). The assistant solicitor asked Mr. Crudup what he had been doing when he saw Mr. Hinson on the day of the incident, and he responded "I had just got home from basketball practice." (R. p. ___; Tr. p. 238, ll. 4-6). Mr. Crudup went on to testify that Mr. Hinson and Devan Bailey came into his house - uninvited - about 2:30 p.m. that afternoon saying they had been in a fight. (R. p. ____; Tr. p. 238, l. 18 - p. 239, l. 24; p. 244, ll. 17-21). Shortly after arriving at Mr. Crudup's house, Mr. Hinson left. (R. p. ___; Tr. p. 240, ll. 4-8).

Mr. Crudup did not witness the fight between Mr. Salley and Mr. Hinson and never saw a gun or heard a gunshot, but nevertheless told law enforcement the extent of his knowledge when he was interviewed. (R. p. ____; Tr. p. 241, l. 22 - p. 242, l. 1; p. 244, ll. 4-23). Mr. Crudup chose photos of Mr. Hinson and Mr. Bailey in a law enforcement photo array as being reflective of the individuals who had come into his house on the day of the incident, and further identified Mr. Hinson sitting at counsel table at trial. (R. p. ____; Tr. p. 244, ll. 24 - p. 247, l. 22). Mr. Hinson's counsel did not ask Mr. Crudup a single question on cross-examination, as the defense consistently acknowledged Mr. Hinson's actions after the single gunshot including going to Mr. Crudup's house and ultimately leaving the state. (R. p. ____; Tr. p. 247, l. 24 - p. 248, l. 1).

The next morning, on the third day of the trial and before the jury was in the courtroom, the first sentence of the transcript of the proceedings reflects Judge Benjamin stating on the record "Juror 226 wants to talk to me. I have no idea why . . . " (R. p. ___;

Tr. p. 359, ll. 19-21). Judge Benjamin and her law clerk stepped into the hallway to speak with Juror 226, leaving counsel in the courtroom. (R. p. _____; Tr. p. 359, l. 22 – p. 360, l. 5). Upon returning to the courtroom, Judge Benjamin initially stated "I'm going to bring in Juror 226 and let him explain it to you all," (R. p. ____; Tr. p. 360, ll. 6-7), but immediately upon bringing the juror into the courtroom Judge Benjamin herself announced:

> He has informed me that he does not recognize the name. He did not recognize the name of the - - some of the witnesses because he doesn't know them, but he wanted to let us know that he works - - he plays basketball at North Springs and Killian, and he has seen them there before. He wanted to know if that was a problem.

(R. p. ____; Tr. p. 360, ll. 8-17).

After she made this announcement, the judge asked Juror 226 if her summary reflected what he had told her in the hallway and he agreed with a simple "yes, ma'am." (R. p. ____; Tr. p. 360, ll. 18-20).

Thereafter, Judge Benjamin and the juror had the following exchange in the presence of counsel:

> The Court: And the fact that you have seen some of the people before, you don't know their name, but you have seen them at the gym, would that affect your ability to be fair and impartial in this trial?
>
> Juror 226: No, ma'am.

(R. p. _____; Tr. p. 360, l. 21 – p. 361, l. 1).

The senior assistant solicitor inquired "which witnesses?", leading to the following exchange where the juror was finally given the opportunity to speak for himself in open court:

> The Court: Which witnesses?
>
> Juror 226: The one with the - -

The Court: He doesn't know their names.

Juror 226: The one with the dreads.

The Court: Any of the other ones? Anybody else?

Juror 226: *No. That's the only one I know, the one that came up.* I played with *him* not too long ago at the gym.

The Court: Okay. All right. And the fact that you played with him at the gym, does that affect your ability to be fair and impartial?

Juror 226: No. *I don't even know him.*

(R. p. __; Tr. p. 361, ll. 2-18) (emphases added).

At no point did Judge Benjamin challenge the juror's statements in the open court inquiry before all counsel as being less than what he told her in the hallway after voluntarily bringing the matter to her attention in the first instance. At no point did Judge Benjamin question the juror about his knowledge other than as stated above, and at no point did she offer either counsel the ability to question the juror.

After having been twice asked whether he could continue to be fair and impartial and answering both times in the affirmative without hesitation, (R. p. _____; Tr. p. 360, l. 21 - p. 361, l. 18), the juror then left the courtroom.

Immediately, the prosecution pounced with an argument that ultimately led to the juror's dismissal. Ms. Campbell stated:

> Your Honor, we do have a concern. And I understand he didn't mean to do that or anything, but that would have been one of the witnesses that is friends with the Defendant. Apparently, he has some type of at least social - - or some type of communication with him playing basketball. It is not his fault or anything like that, but we would be concerned that he does have affiliation with the Defendant in this case or someone closely affiliated with the Defendant, and that would be a grave concern to us.

(R. p. ___; Tr. p. 361, l. 23 - p. 362, l. 8).

A close review of the transcript shows that the State misrepresented the juror's statements – he never indicated even communicating with Mr. Crudup, much less a social relationship with him. In fact, the only person in the courtroom who even identified Mr. Crudup as the witness the juror recognized was Ms. Campbell – Juror 226 never used the witness's name because Juror 226 did not know the witness's name. (R. p. ___; Tr. p. 362, ll. 10-14).

After hearing the argument of Mr. Hinson's counsel that the juror's revelation did not rise to the level of disqualification, (R. p. ___; Tr. p. 362, l. 15 – p. 363, l. 5), Ms. Campbell continued on:

> The information, if we had it, we would have used - - opted to use a strike on him. We did have enough . . . It is of grave concern to the State, and we just feel like had we had this information - - and we're not blaming the juror - - of course it would have been a consideration of use of strikes, and it would have been a neutral reason for us to strike him.

(R. p. ____; Tr. p. 363, ll. 6-18).

The defense again protested, stating "[h]e certainly couldn't be struck for cause because he played basketball with somebody" but the judge responded "[y]es, but if [Ms. Campbell] had known it she said she would have struck him." (R. p. ___; Tr. p. 365, ll. 11-14). Emboldened by the judge's approval of her hindsight argument of how she would have used her strikes differently,[2] the State closed the deal by impugning the juror with a veiled reference to the juror possibly being affiliated with an organized street gang and claiming the juror should be dismissed "in fairness to everyone." (R. p. ____; Tr. p. 365, ll. 15-23).

[2] Ms. Campbell later vacillated in her hindsight position, stating "of course *it would have been a consideration* of use of strikes . . ." and "if we had that information and knew, *it would have been a consideration* on our strikes." (R. p. ___; Tr. p. 363, ll. 15-16) (emphases added).

After a break, Judge Benjamin returned to the bench and announced she was removing the juror "in an abundance of caution," which "standard" she referenced twice in announcing her decision. (R. p. ___; Tr. p. 366, ll. 6-18).

Defense counsel again repeated her objection that the juror did not know any witness and had said he could be fair and impartial. (R. p. ___; Tr. p. 366, l. 19 - p. 367, l. 10). The State responded by stating "[h]e said he knew witnesses, then he changed it to one witness." (R. p. ___; Tr. p. 367, ll. 16-17). In actuality, a close review of the transcript shows that while the juror agreed with the judge's summary of the hallway exchange, he never specifically stated he knew of multiple witnesses.

After alerting the lawyers to the ruling dismissing the juror, Judge Benjamin brought Juror 226 back into the courtroom (still without the jury present) to announce her ruling to him:

> The Court: I appreciate you being honest and bringing it to our attention. And everybody understands that you didn't intentionally do this, that you just did not put the names with the faces. And that happens all the time.
>
> Juror 226: Yes, ma'am. I mean, they are kids, and I don't socialize with them kids. I mean, I play ball, but I don't have one-on-one conversation with them.

(R. p. ___; Tr. p. 369, 4-11).

To recap, the judge herself acknowledged both the juror's honesty in affirmatively bringing the matter forward and the unintentional nature of the concealment, and the State three times acknowledged the juror's lack of complicity. However, the judge removed the juror "in an abundance of caution" based on the State's fantastical claim of "this

person is affiliated or is in contact with friends of [Mr. Hinson]."[3] (R. p. ___; Tr. p. 364, ll. 6-7). Binding and recent appellant precedent confirms Judge Benjamin made a reversible error of law.

In *State v. Woods*, the Supreme Court confirmed that the removal of a juror after the swearing of the jury is not a matter to be undertaken lightly:

> When a juror conceals information inquired into during voir dire, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the preemptory challenges. Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn.

345 S.C. 583, 587-88, 550 S.E.2d 282, 284 (2001) (citations omitted). Thus, the Supreme Court announced a two part test for removal: (1) the juror must have intentionally concealed the revealed information and (2) the intentionally-concealed information would have either (a) supported a challenge for cause or (b) been a material factor in the use of the preemptory challenges.

> Intentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances.

Id. at 588, 284.

[3] Mr. Crudup did not testify he was friends with Mr. Hinson – in response to the question "Do you know [Mr. Hinson]?" he responded "I know of him." (R. p. ___; Tr. p. 237, ll. 12-15). At best, the State can show (due to the juror's own admission) that Juror 226 played basketball with someone who merely knew of Mr. Hinson and who testified on behalf of the prosecution including both out of court and in court identifications of Mr. Hinson.

Typically, "whether a juror's failure to respond is intentional is a fact intensive determination which must be made on a case by case basis." *Id.* There was no case-specific, fact-intensive, determination here because it is uncontested the juror did not intentionally conceal the information; both Judge Benjamin and the State repeatedly and affirmatively acknowledged there was no intentional concealment:

- Ms. Campbell: "And I understand he didn't mean to do that or anything." (R. p. ___; Tr. p. 361, ll. 24-25).
- Ms. Campbell: "It is not his fault or anything like that . . . " (R. p. ___; Tr. p. 362, ll. 4-5).
- Ms. Campbell: "we just feel like had we had this information - - and we're not blaming the juror . . . " (R. p. ___; Tr. p. 363; ll. 13-15).
- The Court: "I appreciate you being honest and bringing it to our attention. And everybody understands that you didn't intentionally do this, that you just did not put the names with the faces. And that happens all the time." (R. p. ___; Tr. p. 369, ll. 3-7).

Pursuant to *Woods* it was improper to draw any inference that Juror 226 was not impartial and thus subject to removal. Judge Benjamin compounded this mistake by ignoring the juror's repeated statements that he could be fair and impartial.

Almost one year to the day after deciding *Woods*, the Supreme Court had the opportunity to put the test in place. In *State v. Stone*, 350 S.C. 442, 567 S.E.2d 244 (2002), the prosecution called the defendant's aunt as a witness. A juror recognized the aunt once the aunt took the witness stand, although the juror had not recognized the aunt's name when it was announced at the beginning of voir dire. The juror stated she "had lived down the street from [the aunt] five or six years earlier, and they were casual acquaintances only. [The juror] indicated her acquaintance would not affect her ability to be fair and impartial." *Id.* at 448,

247. Nevertheless, the trial court removed the juror and replaced her with an alternate, and an undivided Supreme Court found the removal was in error:

> It is patent here that [the juror's] failure to disclose her acquaintance with [the aunt] was innocent. Moreover, we find her scant acquaintance would neither have supported a challenge for cause nor would it have been a material factor in the state's exercise of its preemptory challenge. [The juror] clearly indicated her former acquaintance with a witness whose name she did not even know, would not have affected her in any way. Accordingly, we hold the trial court abused its discretion in removing her.

Id. at 448-449, 247-248.

The facts of *Stone* are strikingly similar to the plight of Juror 226, in that (1) both jurors did not recognize the name of a witness during voir dire because of the lack of personal knowledge of the identity of the respective witness; (2) both jurors recognized the respective witness only once the witness took the stand; (3) both jurors affirmatively brought their recognition of the respective witness to the trial court's attention; and (4) both jurors indicated they could continue to be fair and impartial after their respective revelations.

In fact, the instant case is even more egregious as Juror 226 was not even a casual acquaintance/neighbor of Mr. Crudup, but rather played recreational basketball at the same location as Mr. Crudup – "I mean, they are kids, and I don't socialize with them kids. I mean, I play ball, but I don't have one-on-one conversation with them." (R. p. ___; Tr. p. 369, 4-11).

This Court recently relied on the two part *Woods* test in *State v. Burgess*, 391 S.C. 15, 703 S.E.2d 512 (2010). In that homicide case, immediately after jury selection, a juror let the trial court know that he "recognized a lady in the audience," which lady turned out to be the wife of one of the decedents and the sister of a man the juror supervised at work. *Id.* at 17-18, 513. The trial judge asked the juror if he could still be a fair and impartial juror,

and the juror answered in the affirmative on two separate occasions in rapid succession. *Id.* at 18, 514. The judge refused a defense request to remove the juror.

In affirming the trial judge's refusal to remove the juror, this Court stated "[f]irst, the fact that a juror has some relationship with the victim does not automatically require the trial judge to remove the juror." *Id.* In the instant case, any "relationship" was not with the victim but with an after-the-fact witness, and "[t]here is no rule of the common law, nor is there a statute, disqualifying a juror on account of his relationship to a witness, either by affinity or consanguinity, within any degree." *State v. Hilton*, 69 S.E. 1077, 1078 (1910).

This Court further noted "the juror did not conceal any information requested during voir dire" and the judge acted within his discretion. *Burgess*, 391 S.C. at 18-19, 703 S.E.2d at 514. The Court then analyzed *Stone*, where the Supreme Court "held the removal of the juror was error because neither of the criteria listed in *Woods* existed." *Id.* at 19, 514.

In its analysis, this Court noted the Supreme Court stated both that "it is patent here that the juror's failure to disclose her acquaintance with the witness was innocent," and continued on to say "her scant acquaintance would neither have supported a challenge for cause nor would it have been a material factor in the state's exercise of its preemptory challenges." *Id.* (citing *Stone*, 350 S.C. at 448, 567 S.E.2d at 247-248). Importantly, this Court confirmed *Stone* as being an "and" test, stating "*either* of those findings [in *Stone*] would have *independently rendered* the trial judge's removal of the Stone juror erroneous." *Id.* (emphases added).

This Court concluded its analysis with language that mandates reversal in the instant case:

> When a party contends a juror should be removed for failure to disclose information during voir dire, *Stone* requires the trial judge to consider the two criteria from *Woods*. If the judge finds both of the *Woods* criteria exist, the judge must remove the juror. However, if *either* of the criteria is absent, the judge *may not* remove the juror on that basis. Here, we need only look to the absence of the first criterion to affirm.

Id. at 19-20, 514 (emphases added).

In *Burgess*, as in *Stone*, the juror's failure to disclose was innocent and thus removal of the juror, if it had occurred, "would have been error." *Id.* at 20, 514.

In contrast to *Woods* and *Stone*, where the prosecution sought the removal of the juror, in *Burgess* the defense sought the removal. In all three of these recent cases, however, both the Supreme Court and this Court have made it plain that removal of a juror is only proper under two separate and distinct showings which do not apply in the instant case as explicitly acknowledged by both the State and the trial court. Accordingly, the conviction should be reversed and the matter remanded for a new trial.

ARGUMENT II

Standard Of Review

The facts on appeal must be viewed in the light most favorable to the appellant. *State v. Burriss*, 334 S.C. 256, 258, 513 S.E.2d 104, 105 (1999). "If there is any evidence warranting a charge on involuntary manslaughter, then the charge must be given." *State v. Reese*, 370 S.C. 31, 36, 633 S.E.2d 898, 900 (2006); *see State v. Crosby*, 355 S.C. 47, 51, 584 S.E.2d 110, 112 (2003) ("[a] trial court should refuse to charge the lesser-included offense only where there is no evidence the [appellant] committed the lesser rather than the greater offense"). This tenet of law is true even when the evidence provided by appellant himself is conflicting. *State v. Knoten*, 347 S.C. 296, 555 S.E.2d 391 (2001).

The Trial Court Erred By Refusing To Charge The Elements Of Involuntary Manslaughter To The Jury When Evidence Exists That The Appellant Lawfully Armed Himself In Self-Defense In Case Deadly Force Was Necessary And That He Did Not Intentionally Fire The Single Shot.

After the conclusion of the evidence, the defense sought for the judge to charge the jury with instructions including the elements on involuntary manslaughter. (R. p. ___; Tr. p. 778, l. 23 – p. 790, l. 16; p. 792, l. 24 – p. 794, l. 15; p. 795, l. 16 – p. 798, l. 19; p. 801, ll. 4-19). This crime is defined as:

(1) The unintentional killing of another,

(2) Without malice,

(3) While engaged in *either*

(a) an unlawful activity not naturally tending to cause death or great bodily harm

or

(b) a lawful activity with reckless disregard for the safety of others.

State v. Mekler, 379 S.C. 12, 15, 664 S.E.2d 477, 478 (2008). For more than forty years, South Carolina appellate courts have recognized that the negligent handling of a loaded firearm will support a charge of involuntary manslaughter. *See State v. White*, 253 S.C. 475, 171 S.E.2d, 712 (1969).

The key issue in the instant case is whether Mr. Hinson was engaging in a lawful activity when the gun went off. At trial he consistently argued he lawfully armed himself in self-defense and the gun went off accidentally. (R. p. ____; p. 646, ll. 1-16; p. 652, ll. 1-6; p. 653, ll. 3-5; p. 669, ll. 5-7; p. 694, ll. 10-14; p. 695, ll. 21-23; p. 710, ll. 22-25; p. 711, ll. 13-18).

The law on involuntary manslaughter in the context of engaging in a lawful activity has developed in several cases over the past twenty or so years beginning with *State v. McCaskill*, 300 S.C. 256, 387 S.E.2d 268 (1990).

In *McCaskill*, the appellant maintained her right to possess the firearm in self-defense was separate and distinct from the issue of whether she was entitled to use the gun in self-defense, arguing "she was lawfully entitled to arm herself in self-defense in case deadly force was necessary, but that the lethal charge was fired accidentally." *Id.* at 258, 269. The Supreme Court agreed, stating "[w]here a defendant claims that he armed himself in self-defense, while also claiming that the actual shooting was accidental, this combination of events can 'place the shooting in the context of self-defense.'" *Id.* at 258, 269 (quotation omitted). "[A] homicide is excused when caused by the discharge of a gun . . . where the accused is *lawfully* acting in self-defense and the victim meets death by accident, through the unintentional discharge of a gun or the like . . . " *Id.* at 259, 270 (emphasis in original) (quotation omitted). "Because the defense of accident is not applicable unless the defendant was acting *lawfully*, it