

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Lexington County

Sep 24 2020

Eugene C. Griffith, Jr., Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

NICHOLAS BENJAMIN CHHITH-BERRY,

APPELLANT

APPELLATE CASE NO. 2019-000352

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT #1 (9-1-1 CALL), STATE’S EXHIBIT #2 (FAMILY TREE DIAGRAM), STATE’S EXHIBIT #3 (PHOTOGRAPH), STATE’S EXHIBIT #5 (IN-CAR VIDEO), STATE’S EXHIBITS #6-25 (PHOTOGRPAHS), STATE’S EXHIBIT #26 (PAPER BAG WITH SHIRTS), STATE’S EXHIBIT #27 (PISTOL MAGAZINE), STATE’S EXHIBIT #28 (BULLETS), STATE’S EXHIBIT #29 (SCREWDRIVER), STATE’S EXHIBIT #30 (PISTOL), STATE’S EXHIBIT #31 (BOX), STATE’S EXHIBIT #32 (KNIFE), STATE’S EXHIBIT #33 (SWABS), STATE’S EXHIBIT #34 (SEROLOGY SAMPLE), STATE’S EXHIBIT #35 (JAIL CALLS), STATE’S EXHIBIT #36 (ONE JAIL CALL), STATE’S EXHIBIT #37 (REDACTED JAIL CALL), STATE’S EXHIBIT #39 (BOX WITH RAZORS FOR DNA), STATE’S EXHIBIT #40 (DNA BLOOD STANDARDS), STATE’S EXHIBIT #41 (SIX SWABS), STATE’S EXHIBIT #42 (CUTTINGS FROM SHIRTS), STATE’S EXHIBIT #43 (REDACTED INTERVIEW PART 1), STATE’S EXHIBIT #44 (REDACTED INTERVIEW PART 2), STATE’S EXHIBITS #45-52 (PHOTOGRPAHS), STATE’S EXHIBIT #53 (CELL PHONE), STATE’S EXHIBIT #56 (DIAGRAM), STATE’S EXHIBITS #57-60 (PHOTOGRAPHS), COURT’S EXHIBIT #1 (RECORDED INTERVIEW—2 CDS)

1 numbered and there are several wounds that are not
2 numbered in that photo. What is the difference of why the
3 wounds were designated? And there's a description down
4 below.

5 A. The ones that are numbered are ones that went into
6 the body far enough to hit something that could each be
7 considered potentially fatal or fatal. This one up by the
8 right shoulder went in and cut some blood vessels around,
9 it went all the way in towards the collar bone, the
10 clavicle, and cut some vessels near there.

11 Q. What would be -- what would the effect of that wound
12 be it?

13 A. Well, I guess it would be potentially fatal, but it
14 didn't cause a lot of bleeding.

15 Q. The wound identified as Number 22.

16 A. 22 is the wound that went in to the left chest and
17 went into the lower lobe of the left lung and caused a lot
18 of hemorrhage.

19 Q. What was the effect of that?

20 A. That could be fatal -- would be fatal by itself.

21 Q. So approximately how deep would that knife blade have
22 had to gone in to cause the injury that you saw?

23 A. It's hard to say. One or two inches.

24 Q. What amount of force would be required to make that
25 kind of injury? What would a knife blade have to go

1 through to pierce inside to cause the damage you're
2 describing?

3 A. It would have to go through muscle and tough skin.

4 Q. Can you give the jury anything that would be an
5 example of the -- what amount of force would be required
6 or an object that would be required?

7 A. Just significant force.

8 Q. Number 23, what can you tell the jury about that
9 wound?

10 A. That one went in and slightly from left to right and
11 it went in and hit the right kidney.

12 Q. What was the effect of that?

13 A. It just caused a little bit of bleeding. It wasn't
14 bad.

15 Q. Now are 20 -- 22 or 23, are those -- if I use the
16 word "contributory", what does that mean? Did they
17 contribute to?

18 A. Altogether, yes, they contributed to bleeding out.

19 Q. Now all the other injuries on here from the shoulders
20 below starting with Number 7 and going down, we've
21 discussed 20 on the back of the right arm area, we've
22 discussed 22 and 23. There are 19 -- I think 19. If my
23 count's wrong, it's close. All the other injuries depicted
24 on here, what are those?

25 A. They're just -- they just go in through the skin and

1 muscle and don't go into the chest cavity to cut -- to cut
2 into any organ.

3 Q. Looking at the overhead, which is State's 59, of the
4 ones that are depicted up there, are you able to determine
5 the direction as far as the single -- the blade edge versus
6 the blunt edge on any of those?

7 A. Not with all of them, but most of them that I can
8 tell the blunt edge is on the left side and the sharp edge
9 is towards the right.

10 Q. So the blunt edge is on the left side on most of them
11 that you can determine and the sharp edge is on the right?

12 A. Correct.

13 Q. And for the ones -- did you find any going the other
14 way or are you just not able to tell?

15 A. I couldn't tell.

16 Q. The last ones, Doctor, are 1, 2, 4 and 5. Looking at
17 the overhead projection at State's Number 60, what can you
18 tell us about those injuries?

19 A. Number 1 goes -- is through the scalp and hits the
20 bone of the skull. Number 2 goes in and it goes right
21 underneath the occipital bone, the lower part of the head
22 -- of the skull where there's a little bit of a separation
23 between where the spine starts and where the skull ends.
24 It went through there and it went right into a part of the
25 brain called the pons. That's potentially fatal.

1 Q. And what would there be -- what, if any, effect on
2 motor control or potential paralysis would come from that
3 blow?

4 A. It could cause unconsciousness within multiple
5 seconds.

6 Q. Moving on down, Doctor, Number 4, what can you say
7 about that?

8 A. Number 4 just goes down slightly -- the midline is
9 right here. It goes from back to front and slightly
10 towards the middle of the body. Number 5 does the same
11 thing, but Number 5 actually goes into the spinal canal,
12 but does not -- does not hit the spinal cord.

13 Q. Numbers 2, 4 and 5, what kind of force would be
14 necessary to cause those injuries?

15 A. Again, it's significant. It's hard to put that in
16 words.

17 Q. You can have a seat, Doctor.

18 A. (Witness complies.)

19 Q. Doctor, can you tell the jury what the difference is
20 between a lacerating injury and a penetrating injury?

21 A. First, a laceration refers to a blunt force injury,
22 like if you're hit by a baseball bat. An incised wound
23 is caused by a sharp instrument. An incised wound is
24 superficial. A stab wound, the definition is the wound is
25 longer than it is wide, so.

1 Q. So for a stab, it's deeper than it is wide?

2 A. Correct.

3 Q. Doctor, do you have an opinion as to the cause of
4 Mr. Galloway's death?

5 A. Yes.

6 Q. What is that opinion?

7 A. It's exsanguination, which means to bleed out due
8 to incised wounds of blood vessels and the lung due to
9 multiple stab wounds to the back.

10 Q. And what effect, if any, did the stab wound to the
11 front arm or to the head have contributed to Mr. Galloway's
12 death?

13 A. The one in the brain could have caused some
14 unconsciousness within seconds.

15 MR. GRAHAM: Thank you, Dr. Ross. Please answer any
16 questions Mr. Floyd has for you.

17 CROSS-EXAMINATION

18 BY MR. FLOYD:

19 Q. Good afternoon, Dr. Ross.

20 A. Good afternoon.

21 Q. Dr. Ross, could you tell whether or not the same
22 individual inflicted each one of those wounds?

23 A. No, I could not.

24 Q. It could have been multiple people inflicting those
25 wounds; is that correct?

1 A. Yes.

2 Q. Now many of those wounds were -- well, I don't want
3 to use the term "superficial", but many of those wounds
4 were not fatal wounds?

5 A. Correct.

6 Q. How many of these wounds would you consider to be
7 potentially fatal?

8 A. Three in the back and one in the head, a total of
9 four.

10 Q. Four. So there would be twenty something, twenty-one
11 or so, that would not be fatal; is that correct?

12 A. Correct.

13 Q. And of those four that you think may be fatal, can
14 you say with certainty which, if any, of them were fatal?

15 A. Well, for sure the one that went into the left lung.
16 When you cut into a lung, lung tissue doesn't stop bleeding
17 unless you surgically go in and stop it, clamp off the lung
18 tissue.

19 Q. Okay. So basically one wound -- whoever inflicted
20 the one wound to the back would be a fatal wound; is that
21 correct?

22 A. Yes.

23 Q. And the rest would not be?

24 A. The one that went through vessels in the right
25 shoulder was potentially fatal, could have kept bleeding.

1 Q. But did it?

2 A. Well, I mean, he bled out from other wounds.

3 Q. Okay. Now did you -- you didn't investigate anybody
4 else's wounds, did you, in connection with this incident?

5 A. No, I did not.

6 Q. Okay. So you don't know what kind of wounds they
7 might have had from what other type of weapons might have
8 been used?

9 A. No. No.

10 MR. FLOYD: Thank you, Dr. Ross. I have no further
11 questions for you.

12 THE COURT: Anything further, Mr. Graham?

13 MR. GRAHAM: No questions. Thank you, Dr. Ross.

14 THE COURT: Thank you, Dr. Ross.

15 (Witness excused.)

16 MR. GRAHAM: Your Honor, that's the State's last
17 witness in its case in chief and the State rests.

18 THE COURT: Very well.

19 All right, folks. What Mr. Graham has told me is
20 they've presented all of the witnesses they intend to in
21 the case in chief. Tomorrow morning Mr. Floyd will decide
22 whether the defense will present any evidence for your
23 consideration and we'll start with that first thing in the
24 morning.

25 Can you-all be here by 9:15? Okay. Be here then.

1 I'll be here at 9:00 and we can hear our motions. So
2 you-all are free to go for the evening. You can't discuss
3 the case. Remember don't talk about it to anybody, not
4 even your dog or your cat, okay?

5 All right. We'll see you in the morning.

6 (Whereupon, the jury was excused for the evening at
7 5:06 PM.)

8 THE COURT: All right. We're gonna take up
9 Mr. Floyd's motions at 9:00 in the morning so I can make
10 Ms. Bowers' retirement thing because -- we're off the
11 record now.

12 (Off the record discussion.)

13 THE COURT: So anyway, I'll see you-all at 9:00 and
14 we'll hear those motions and we'll start with the jury at
15 9:15.

16 Is that fair for you, Mr. Floyd?

17 MR. FLOYD: That's fine, Your Honor.

18 THE COURT: Okay.

19 (Whereupon, the proceedings were concluded for
20 December 14, 2016, at 5:06 PM.)

21 (Whereupon, the following proceedings were held on
22 December 15, 2016, beginning at 9:00 AM.)

23 BAILIFF: All rise. The Honorable Eugene C. Griffith,
24 Jr., presiding.

25 THE COURT: All right. Are we ready to hear the

1 motions?

2 MR. FLOYD: We're ready, Your Honor. Yes, sir.

3 THE COURT: Okay.

4 MR. FLOYD: Your Honor, at this time the defense
5 would move for a directed verdict of acquittal. The basis
6 for our motion is that, first of all, it's our position
7 that the State has produced no evidence in support of the
8 required malice to justify a conviction for murder. And
9 even if you take the evidence as a whole in the light most
10 favorable to the State, they have failed to establish the
11 element of malice and, therefore, the charge of murder
12 should be dismissed.

13 Furthermore, Your Honor, we feel that the charge
14 should be dismissed pursuant the requirements of Section
15 16-11-440(C) and that pursuant to that section it meets
16 all of the requirements of that statute in that he
17 was lawfully on the premises. The evidence clearly
18 establishes that he was acting in defense of his brother.
19 The evidence clearly establishes that the victim in this
20 case, Mr. Galloway, was a dangerous, violent individual,
21 that he had a reasonable fear of imminent harm of serious
22 injury or death to his brother or himself and that he
23 struck the fatal blow with that imminent danger in his
24 mind.

25 For all those reasons we feel that it should be

1 dismissed. And also we would renew our motion for a grant
2 of immunity pursuant to 16-11-440(C) in addition to it
3 being a reason for a dismissal of the charge.

4 We also renew our motion to dismiss the case because
5 of destruction of evidence in that an individual who felt
6 like he was the brother of the victim then killed his
7 brother, Adam Berry, who would be our key witness to
8 establish the defense of others and because we have been
9 denied the opportunity to bring that evidence in the case
10 in his defense, the actions of Michael Sulier to kill Adam
11 Berry, has deprived him of his right to a fair trial and
12 that justifies dismissal of the charges.

13 We also renew our motion to dismiss because of the
14 violation of the sequestration of evidence rule in that
15 the mother of the victim, Kathy Polk, conveyed evidence to
16 a potential witness in the case of what she heard in the
17 courtroom, so we renew our motion on that.

18 We renew our motion to suppress the telephone calls
19 from the jail. As we stated in that motion, of course,
20 that they have no option except to use that system to talk
21 to their family by phone. The system does not inform them
22 that the calls will be used against them in a court of law
23 and for them to capture those messages would be a violation
24 of the South Carolina constitutionally guaranteed right of
25 invasion of privacy and, therefore, we renew our motion to

1 suppress those telephone calls. And this evidence was
2 damaging to the Defendant and would justify a mistrial if
3 that evidence was wrongfully admitted.

4 We also renew our motion concerning the admission
5 into evidence of the telephone records of Mr. Berry's cell
6 phone. It's our position as stated in our earlier motion
7 that the seizure of the telephone was unlawful and that
8 it was made without the benefit of a search warrant and
9 accordingly since those -- that evidence was wrongfully
10 admitted, it would justify the granting of a mistrial in
11 the case.

12 We renew our motion to suppress the statements of the
13 Defendant that were recorded and that it's our position
14 that, number one, his consumption of alcohol and Xanax
15 rendered the statements incompetent and, furthermore,
16 there was no renewal of the Miranda warnings from the first
17 statement to the second statement and during the second
18 statement he was sound asleep and once they woke him up he
19 was too groggy to speak and that they should have once more
20 advised him of his Miranda rights at that time.

21 For all these reasons we move that the charges be
22 dismissed or that a mistrial be granted.

23 Thank you, Your Honor.

24 And, Your Honor, we renew any and all other motions
25 made on an evidentiary basis during the trial.

1 THE COURT: All right. Considering the motions in
2 the order you presented them, and I believe there were --
3 I wrote down eight, the first one regarding malice, and
4 I'm understanding that since the defense has presented or
5 requested that a hearing on the immunity under 16-11-440
6 that they're presenting some sort of defense towards
7 self-defense or aid in the defense of others that the use
8 of a weapon would not be an inference of malice, but under
9 the case of hang on -- Laurens County -- the inference of
10 malice from use of a weapon is not done, but it's the
11 totality of the circumstances and the -- all the behavior,
12 comments, words, threats, prior dealings, all of those
13 circumstances together can provide either express malice,
14 which I believe was testified to by one of the witnesses,
15 as well as inferred malice.

16 State versus Belcher is what I'm trying to think of.
17 That's the case on the malice with the weapon. I was
18 drawing a blank on that case. So for that reason I think
19 in the light most favorable to the State, all the evidence
20 considered, that the malice issue would be an issue for
21 the jury, so for that reason I will not grant a directed
22 verdict on that issue.

23 Having already considered the immunity under
24 16-11-440(C), evidence goes both ways. I mean, there's --
25 it's a factual question. The State has presented plenty

1 of testimony for which a verdict could be found and there
2 is evidence to support presenting it to the jury under
3 just a factual question, so for that reason I will not
4 grant immunity under 440(C).

5 The State was not involved regarding the issue of
6 destruction of evidence in the death of Adam Berry. Mike
7 Sulier is convicted of murder by way of plea regarding
8 the death of the older Mr. Berry. Certainly there is no
9 evidence, no question whatsoever, that the State was
10 involved in that in any fashion to remove him as a
11 potential witness and so the fact that Mr. Adam Berry is
12 not here is a fact for the jury to consider, but not a
13 fact that the State was involved in, so the State would --
14 I mean, the Court would deny a mistrial on that basis.

15 Regarding the sequestration order, I think that the
16 Court in its consideration of the mother's testimony, the
17 mother to one of the witnesses -- the mother to the victim,
18 is that she did express communication, it was very brief.
19 It appeared to the Court based upon her questioning and
20 cross-examination that she did not provide any direct
21 factual issues to any of the other witnesses that testified
22 and so for that reason I believe the cross-examination of
23 her is sufficient to get by that issue and so I do not
24 believe that there -- there are other remedies, which this
25 Court employed that would alleviate the need to grant a

1 mistrial on that issue, and I think we've done exactly
2 that.

3 Regarding the admission of the telephone calls, there
4 was a warning given by the provider of the jail phone
5 service, and it does not say that there's -- comments or
6 conversations will be recorded and will be used in court,
7 but they do say they're gonna be recorded and I think
8 that's warning aplenty there would be no expectation of
9 privacy in a jail, you lose rights when you're in jail.
10 And it tells you that the calls will be recorded. The
11 constitutional protection of privacy would then be waived
12 by the person employing that. Even though they have no
13 other alternative, everyone's warned they'll be recorded,
14 and for that reason I'm gonna deny the request for a
15 mistrial.

16 The telephone that was seized, and the data which
17 was extracted from it, there were two search warrants
18 and the second of which was utilized to extract the data.
19 It appeared to be properly signed before a magistrate
20 requesting the data, the data was extracted from the cell
21 phone, it was then used to -- placed in a computer program
22 called Cellebrite, I believe, that then analyzed and
23 organized the data that was on the cell phone that was
24 seized at the time of his arrest and was taken into
25 custody, and those records, I believe, and data therefrom

1 that cell phone was properly admitted by the Court, and so
2 will decline to grant a mistrial.

3 Regarding the statements, we had a full Jackson v.
4 Denno hearing on his lengthy interview by the police, as
5 well as the second interview by police, and the Court
6 redacted several things including his references to prior
7 convictions and prior bad acts, as well as the portion of
8 the second interview which he appeared to the Court to be
9 sleepy and a little bit groggy, that was redacted also,
10 and the Court finds that the voluntariness of Miranda was
11 properly given -- sufficiently given where he understood
12 that his comments and interview with the police was in
13 regard to the incident with Jamie Galloway and I don't
14 believe during the initial part of the interview that the
15 Defendant knew that Mr. Galloway had passed, but that was
16 provided to him and he understood waived -- voluntarily
17 waived his rights and spoke to the police and gave both
18 those statements in a voluntarily way. Notwithstanding
19 he had ingested some alcohol and drugs that day, he
20 understood what was going on in the Court's opinion and
21 those protections were properly met by the State and so
22 the Court would also deny a motion for a mistrial on that
23 basis.

24 And, for the record, I think I've addressed all of
25 the motions you made, Mr. Floyd.

1 MR. FLOYD: Thank you, Your Honor.

2 THE COURT: Okay. Anything from the State?

3 MR. GRAHAM: Just to add, Your Honor, on the
4 sequestration issue, that played into the factor of why
5 we did not call Kayla Bass because that was actually a
6 conversation that occurred between the two of them. The
7 only contact between Tonya Griffin and Kathy Polk was one
8 text one way and one to the other that had nothing to do
9 with the facts of the case.

10 THE COURT: All right. And that also would be a
11 consideration. I note -- I didn't note that on the record,
12 but the fact that she was not called that that would not
13 prejudice the defense if there was any communication there.
14 Notwithstanding the defense can call her as a witness. I
15 don't know if they will or won't. It doesn't matter.

16 MR. FLOYD: And that's the problem. She's tainted
17 now, Judge, so we can't call her either. We can't take
18 the chance on how she's been tainted by the communication.

19 THE COURT: Which one was she? What's her name?

20 MR. GRAHAM: She was the other person there and if
21 Mr. Floyd wants to call her and do it in-camera and cross
22 her and decide whether he wants to use her, he can do
23 that, Your Honor. We'd be glad to let that happen.

24 THE COURT: Well, the Court will allow that to happen
25 if that's something we need to do. I don't mind doing

1 that.

2 All right. Anything else before we bring the jury
3 in?

4 MR. GRAHAM: Several things from the State.

5 THE COURT: Okay.

6 MR. GRAHAM: If we're planning on calling Mr. Sulier,
7 I'd like to be heard before that. If he's planning on
8 calling anybody from the East Room, I'd like to be heard
9 before that because I don't believe that any of those
10 are --

11 THE COURT: All right. The second person from what
12 now?

13 MR. GRAHAM: I'm sorry, Your Honor?

14 THE COURT: You said Sulier. I got him.

15 MR. GRAHAM: The other ones are -- three of the
16 people on his witness list, I believe, are people who are
17 witnesses of the incident that occurred at the East Room
18 approximately four months before that went into the
19 attempted murder charges that Mr. Galloway was currently
20 out on bond on, and I believe he wants to go into the facts
21 of those cases with those witnesses, which I don't believe
22 the law allows, and so I would like -- if evidence needs
23 to be proffered or legal arguments need to be made, I want
24 to do that before the jury is called in on any of those
25 issues.

1 THE COURT: Okay. Mr. Floyd, what's your -- let's
2 deal with Mr. Sulier. Is he here again?

3 MR. FLOYD: They told me they were bringing him here.

4 THE DEPUTY: He's here, Your Honor.

5 THE COURT: Excellent. I'm certain he'll be eager to
6 come in the courtroom.

7 MR. FLOYD: And, Judge, we do have another witness
8 from the incident. I think that's -- it's already come
9 out. I mean, they've already testified -- the State's
10 witnesses have already testified about the fact that he
11 was out on bond for murder from an incident that occurred
12 in March and we've been through all of this already and
13 I think we're entitled by both reputation and by acts of
14 -- evidence of specific acts of violence under the
15 appropriate through rules to bring that out and so we have
16 someone here from that incident that was shot by him.

17 THE COURT: The young girl testified to some of it,
18 that she was aware of the charges and she was there in the
19 parking lot, but the particular facts of what was happening
20 inside she was not aware of, she wasn't inside where it
21 occurred is what I remember.

22 What else do we need to -- what else is there? I
23 mean, what --

24 MR. FLOYD: Well, we have the witness who was shot
25 by him, by Mr. Sulier -- I mean, by Mr. Galloway.

1 THE COURT: All right, Mr. Graham. What about that?
2 That's a little different.

3 MR. GRAHAM: State versus McCray, State versus Mekler,
4 State versus Day, the basic rule of law, Your Honor, is in
5 a murder prosecution of one pleading self-defense against
6 an attack by the deceased, evidence of other specific
7 incidents of violence on the part of the deceased are not
8 admissible unless they were directed against the defendant,
9 which this is not, or if directed against others who were
10 so closely connected to the point in time or occasion of
11 this homicide as to reasonably indicate the state of mind
12 of the deceased at the time of the homicide or to produce
13 reasonable apprehension of great bodily harm.

14 He testified in the statements that we put in that
15 he was aware that he was out on bond for attempted murder.
16 That's in. There's no evidence that he knows about
17 anything specific. In fact, in the pre-trial hearings he
18 said he just knows that Jamie carries a gun and Jamie
19 shoots people.

20 THE COURT: And he had a monitor on.

21 MR. GRAHAM: That's what he said his knowledge was.

22 THE COURT: And he had a monitor on.

23 MR. GRAHAM: So to go into the facts of what happened
24 somewhere else, it isn't admissible under any of those
25 cases. I mean, it's just not. He had to have knowledge

1 of the specific facts before you can go in and they had to
2 be relevant. In State versus Day, it talks about they
3 allowed a witness to get up and testify about the victim
4 having a shotgun to her head for eighteen hours because he
5 was paranoid about her deceiving him, and that was the
6 defense in the case; that the defendant was saying that
7 he was afraid the victim thought she was deceiving him.
8 There's no correlation here.

9 There's no correlation here. I mean, there's nothing
10 like that. He has to have the knowledge of the specifics
11 and he doesn't or it has to be related. The evidence is
12 in that he was out on bond on an attempted murder charge.
13 I mean, he's not on trial. The Defendant's on trial. I
14 don't understand how far we get to go down that road.
15 Calling a witness from an event that occurred four months
16 before that there wasn't even a conviction. 404, which is
17 where 404 and 405 stem from, he's got to prove it by clear
18 and convincing evidence anyway. There's not a conviction
19 in that case. There's other witnesses who are gonna come
20 up and say it didn't happen the way that this happened,
21 the way that he's gonna claim that it happened. It's just
22 not -- it's not relevant, it's prejudicial and it's
23 inappropriate.

24 I can pass up any of these cases if Your Honor wants
25 to look at them.

1 MR. FLOYD: Your Honor, we were trying to get into
2 this evidence earlier during this trial and the solicitor
3 objected because he said we needed witnesses who actually
4 saw the event and, of course, now he's going the other way
5 and saying well, we can't use it at all. Your Honor, the
6 404(b) definitely says that by -- proving character traits
7 may be made by reputation or by specific instances of that
8 type of personal conduct, and that's what we've got. This
9 will be a case where someone who did nothing to justify
10 getting shot was shot by Jamie Galloway and it happened
11 several months before this incident in question and
12 everybody knew about it and so now we want to put out what
13 that specific instance of conduct was that led to his
14 reputation as being a violent individual.

15 THE COURT: Let me see that first case you quoted
16 because -- Mr. Graham.

17 MR. GRAHAM: Your Honor, in addition, for the record
18 I'd point out -- as I said, it wasn't a conviction.
19 There's a witness that the State has under subpoena that
20 we can get here in approximately ninety minutes who's
21 gonna say that Mr. Galloway was being beaten and while in
22 the process of being beaten he pulled a gun and shot
23 defending himself.

24 THE COURT: I mean, I don't want to try two cases to
25 just to get one done. I don't want to do that.

1 All right. This incident with the attempted murder
2 charges, what timeframe did they arise? I know the
3 incident where they had the altercation on Mother's Day,
4 that was within ten days or so of the actual incident
5 here, a lot closer in time. When was the attempted murder
6 incident? When did it take place?

7 MR. FLOYD: January the 9th of 2014, Your Honor.

8 THE COURT: So four or five months.

9 All right. Here's what I think we ought to do. This
10 witness, the one about the East Room -- is that's what
11 it's called, the East Room? Is that like a place?

12 MR. FLOYD: It's a bar.

13 THE COURT: Let's proffer that testimony for the
14 record and let me hear it. The witness is here?

15 MR. FLOYD: Yes, sir. He's in the -- outside.

16 THE COURT: I want to step off and go to the restroom.
17 My -- you don't have to put this on the record, Stacy.

18 (Discussion off the record.)

19 (Recess taken at 9:26 AM.)

20 (Back on the record at 9:28 AM.)

21 BAILIFF: All rise. Court is now in order.

22 THE COURT: All right. Be seated, please. I'm
23 sorry.

24 Let's let the jury know that we're taking something
25 up that kind of came up and if they want to stretch their

1 legs, they can. I don't want to hold them hostage.

2 MR. FLOYD: Your Honor, we call Orville Edwards.

3 (Whereupon, Orville Edwards was duly sworn by the
4 Clerk of Court.)

5 THE CLERK: Once you're seated, state your full name;
6 spelling your last, please.

7 THE WITNESS: My name's Orville Edwards.

8 O-R-V-I-L-L-E E-D-W-A-R-D-S.

9 ORVILLE EDWARDS,

10 having been duly sworn, testified as follows:

11 EXAMINATION (In-Camera)

12 BY MR. FLOYD:

13 Q. And, Mr. Edwards, where were you working back in
14 January of 2014?

15 A. The East Room.

16 Q. And what was your position there?

17 A. I'm a bartender.

18 Q. And I'm gonna refer you to January the 9th of 2014.

19 Did you have an occasion to have any interaction with a
20 man by the name of Jamie Galloway?

21 A. Just once.

22 Q. Okay. Did you know him before then?

23 A. No, I did not.

24 Q. Can you tell the Court how you got involved with him?

25 A. Well, I had never met him before that night and we

1 were hanging out at my place of business that night and a
2 young lady come in the door crying, saying her boyfriend
3 was beating her up out in the parking lot, so me and two
4 other gentlemen went outside and told Mr. Galloway -- said
5 you can either leave or we can call -- call the police. I
6 said you're not coming in here, you've got to get off the
7 property, so he left. He -- he stood around for a minute
8 or so, but then he finally left and we went about our
9 business.

10 Q. Did he return?

11 A. He did. He did.

12 Q. And then what happened then?

13 A. Well, unbeknownst to us at the time, he had left to
14 go retrieve a firearm.

15 MR. GRAHAM: Objection. Speculation.

16 THE COURT: Okay.

17 A. He came back, we went back outside said all right,
18 now -- you know, we told you to leave once, it's time to
19 go, and as we were in the parking lot approaching him,
20 somebody hollered he's got a gun. I don't know who it
21 was, my back was turned to the crowd, so whenever he --
22 whenever somebody said he's got a gun, that's when we
23 grabbed him and tried to wrestle him to the ground to get
24 the gun away from him and he shot me in the leg. He stood
25 up and shot my friend Jake in the chest and popped off a

1 few more rounds into the crowd as he backed up to his car
2 and got in and sped away.

3 MR. FLOYD: Thank you, Mr. Edwards. Answer any
4 questions that the prosecutor may have for you.

5 THE WITNESS: Sure.

6 EXAMINATION (In-Camera)

7 BY MR. EARGLE:

8 Q. Mr. Edwards, there at the East Room you said that the
9 person you learned was Jamie Galloway showed up, you-all
10 went outside, you told him to leave?

11 A. That's correct.

12 Q. And he left?

13 A. That's correct.

14 Q. He came back?

15 A. That's correct.

16 Q. And once he came back, what did you do?

17 A. We walked outside and asked him to leave again.

18 Q. Who is "we"?

19 A. It was me and Jake Hill and I can't recall the other
20 guy's name.

21 Q. So it was three of you-all?

22 A. Uh-huh.

23 Q. And when you walked back outside, where was
24 Mr. Galloway specifically?

25 A. Standing beside his vehicle.

1 Q. And in relation to the door you walked out of the
2 East Room, what was the distance between that door and
3 his vehicle?

4 A. I mean, I don't know the exact feet, but it's -- it
5 was in one of the first parking spaces.

6 Q. More than ten feet, fifteen feet?

7 A. Yeah, I'd say so.

8 Q. At what point in time did you learn he had a gun?

9 A. While we were standing there, the three of us were
10 standing there talking to him, standing there facing him.

11 Q. Did you see the gun?

12 A. I did not see the gun.

13 Q. Did you ask him if he had a gun?

14 A. Yes.

15 Q. What did you do -- how did he answer you?

16 A. Well, he didn't have time to answer me. Whenever
17 after he was -- after their -- after the comment was made
18 he's got a gun, the other gentleman, I can't remember his
19 name, you know, grabbed him and then I grabbed him trying
20 to get the gun away from him.

21 Q. Did you have a gun on you?

22 A. No, I did not.

23 Q. To your knowledge, did the other two guys have a gun?

24 A. To my knowledge, no.

25 Q. Why would you grab a guy that has a gun?

1 A. Well, with my military background and everything,
2 I just -- it just pops into my head that as soon as
3 something like that happens, I'm -- because thinking about
4 the safety of everybody else, so my thought was to get him
5 down and hold him until the cops got there.

6 Q. So you-all bull rushed him?

7 A. No, I wouldn't say bull rushed him.

8 Q. You walked up to him knowing he had a gun?

9 A. We were already up to him by the time he -- by the
10 time we knew he had a gun.

11 Q. So you were on top of him?

12 A. We were standing besides him, yeah.

13 Q. How many times did you-all hit Jamie Galloway?

14 A. I have no idea. I don't recall.

15 Q. Five times?

16 A. I don't recall.

17 Q. You don't recall?

18 A. No.

19 Q. Did you hit him?

20 A. Yeah. I mean, I believe -- I believe I did. I
21 mean, that night was such a blur, so.

22 Q. Where did you hit him?

23 A. I don't recall.

24 Q. Did Jake hit him?

25 A. I don't know.

1 Q. You just said you-all hit him.

2 A. I said I hit him. I said I don't -- I don't know how
3 many times anybody else hit him.

4 Q. Was Jamie Galloway on the ground?

5 A. Not when he shot me, no.

6 Q. Not when he shot you, but did you-all get on top of
7 him, knock him to the ground and punch him?

8 A. No, I did not.

9 Q. You didn't?

10 A. No.

11 Q. The question is, was Jamie Galloway knocked to the
12 ground?

13 A. I don't know. Once I got shot, I backed off and
14 headed back towards my vehicle to check my wound.

15 Q. I believe you stated under questioning from Mr. Floyd
16 that once he got up, he fired his gun.

17 A. Well, yeah, once he --

18 Q. Once he got up would lend one to think that he was
19 knocked down. Was he down when you-all walked out?

20 A. No, he was not down when we walked out.

21 Q. Then when you said he got up, he must have been down.
22 Would you agree with that?

23 A. Well, when he came -- when he came to -- whenever he
24 got free or whatever.

25 Q. When he got free?

1 A. Yeah.

2 Q. Who was holding him?

3 A. Well, it was a big scuffle. So, I mean, we were all
4 -- it was a big brawl. Once I got shot, I moved over to
5 my vehicle.

6 Q. Did you have authority to go out there and hold him?

7 A. No, not by -- no, I didn't have -- I didn't have
8 authority other than just, you know ...

9 Q. Did you call Richland County Sheriff's Department?

10 A. No, I did not.

11 Q. You got a guy in your parking lot -- or in the parking
12 lot that fronts your business with a gun and you decide
13 along with other individuals to go out there and confront
14 him, correct?

15 A. Correct.

16 Q. You-all rushed him?

17 A. No, we didn't rush him. We walked up calmly to him.

18 Q. You walked up calmly to him?

19 A. Uh-huh.

20 Q. Did you ask him if he had a gun?

21 A. No, I didn't ask him if he had a gun.

22 Q. Did you hear anyone else say or ask him if he had a
23 gun?

24 A. Yes.

25 Q. Did you hear that -- his response?

1 A. No.

2 Q. So to your knowledge, he may not have had a gun; is
3 that true?

4 A. He -- he may not have.

5 THE COURT: That's not a fair question.

6 MR. EARGLE: Sir?

7 THE COURT: He had a gun at some point.

8 MR. EARGLE: In his mind --

9 THE COURT: I mean, it's not fair to characterize
10 whether there was a gun or not. This is why --

11 MR. EARGLE: Judge, I understand, but I'm trying to
12 get his state of mind at the time they decide to go --

13 THE COURT: And that's not relevant. I don't need
14 that to make a determination here.

15 MR. EARGLE: Okay, Judge. Yes, sir.

16 THE COURT: Mr. Floyd, I'm concerned that this will
17 confuse the jury, exactly what we're getting into, and
18 under these two cases, and I've read it, is so close to
19 the point in time or occasion to reasonably indicate the
20 state of mind of the deceased. There's testimony already
21 present that Mr. Galloway had two counts of attempted
22 murder on him and was wearing an ankle monitor. There was
23 testimony that he had a propensity to not be one to fight
24 with. There's testimony that there was an incident in
25 front of the car at the mother-in-law's house on Mother's

1 Day before this incident. I don't want to get into more
2 specific facts of that conduct because of my concern of
3 confusing the jury over the factual issue because this is
4 getting into trying a second case and Mr. Berry's case is
5 Mr. Berry's case. I think that the witness testimony
6 thus far has provided ample opportunity for you to argue
7 that Mr. Galloway didn't enjoy a sparkling reputation and
8 perhaps was otherwise -- I'm not sure how far otherwise,
9 the timing, the five months, four months, whatever the
10 difference is in this East Room incident, I think are too
11 far removed to be allowed under the tenets of State versus
12 Day as I read it. That was a murder prosecution where they
13 were alleging self-defense, and that cite is 341 SC 410.
14 That was a 2000 case from the Supreme Court that was
15 followed by some others.

16 I'm concerned about this and so that's why I think --
17 I don't mind and won't restrict you from calling a witness
18 saying he had pending charges. That doesn't prejudice the
19 State if it gets said again. The specific facts of this
20 East Room incident I believe are too far removed in time,
21 so I don't like those and I don't believe they would be
22 proper under the caselaw that have been presented. Unless
23 you've got something different, I think the space in time,
24 separate people, a whole different set of circumstances,
25 I don't believe they're allowed under State versus Day.

1 MR. FLOYD: Thank you. Please note our exception
2 to your ruling, Your Honor. We think it's certainly
3 admissible under Rule 405(b) and demonstrates to the jury
4 a specific act of violence which we think is instrumental
5 to our defense in the case.

6 THE COURT: Okay. All right. I understand.

7 You can step down.

8 (Witness excused.)

9 THE COURT: All right. What about Mr. Sulier?

10 MR. FLOYD: That would be our next witness, Your
11 Honor.

12 MR. GRAHAM: Can I be heard on that, Your Honor?

13 THE COURT: Yes, you may.

14 MR. GRAHAM: My understanding from Mr. Floyd's
15 argument is that he will say that the exception for
16 allowing the statement in would be under 804(3), which
17 is a statement against interest. The clear reading of
18 the rule says that it is not admissible unless
19 corroborating circumstances indicate the trustworthiness
20 of the statement, and I would pass up to the Court State
21 versus Fuller, 523 S.E.2d 168, State versus McDonald,
22 343 South Carolina, 319, State versus Kinlock, 338 South
23 Carolina 385, 2000. I believe all of those are South
24 Carolina Supreme Court cases. It says that the statement
25 has to be corroborated. We've got a guy convicted of

1 murder who testified that he wrote himself in the letter
2 that there were pieces or parts of that were not true, so
3 he's already implicated himself and admitted lying. He
4 also stated he wrote that letter for the purpose of trying
5 to get his sentence reduced down from a life sentence to
6 hopefully get a forty year sentence. A single statement
7 that partially implicates a co-defendant as a principal
8 on the stabbing as an effort to excuse Nick Berry is
9 inadmissible, Your Honor.

10 THE COURT: All right. Mr. Floyd, let me hear you
11 on that issue.

12 MR. FLOYD: Thank you, Your Honor.

13 It's definitely a statement against interest.
14 Mr. Sulier's admitted that he wrote the statement and,
15 therefore, it would be admissible. It's definitely a
16 statement against interest because it's a statement by
17 the witness that he committed an assault, a criminal
18 act, and that would certainly be the prime example of
19 a statement against interest and, therefore, would be
20 admissible.

21 THE COURT: Can I see the statement or do I have it?

22 MR. FLOYD: I believe it's in evidence as Court's
23 Exhibit, Your Honor.

24 THE COURT: Is it Court's Exhibit like 2 or 3?
25 Because it was early.

1 THE COURT REPORTER: It's 2, but --

2 MR. FLOYD: This is a copy.

3 MR. GRAHAM: For clarification, whose interest is
4 he saying the statement's against? Is it against Adam's
5 interest or is it against Mike Sulier's interest?

6 MR. FLOYD: It's against Adam's interest. It's the
7 bottom of Page 3, Judge, and it begins -- it's really the
8 last sentence. It's three lines up. It begins after he
9 admitted.

10 THE COURT: All right. Do you want to admit this
11 entire statement that Mr. Sulier wrote?

12 MR. FLOYD: Yes, sir. Specifically, that portion
13 there concerning Nick and Adam.

14 THE COURT: All right. So that portion at the very
15 bottom where he and Adam were talking after they've taken
16 marijuana and are cooking meth at the camper and he asked
17 more questions, that's where you're talking about, that
18 portion of the statement at the very bottom of that
19 page 3?

20 MR. FLOYD: Yes, Your Honor. I wasn't gonna try to
21 get the rest of the statement in, just that portion.

22 THE COURT: All right. Mr. Graham, you think that
23 shouldn't come in because it's not an exception under
24 this rule?

25 MR. GRAHAM: I mean, I understand the argument that

1 it comes in that -- his argument that 804(3) is applicable,
2 it's a statement against interest by Adam admitting his
3 culpability. That's the argument. The problem is, is the
4 rule itself and the cases requires that the statement has
5 to be corroborated.

6 THE COURT: All right. How is not all of the
7 testimony that's been presented to the jury thus far not
8 corroborating this? Because Adam was there, he was in a
9 scuffle with Jamie and brother came over and who did what.
10 I mean --

11 MR. GRAHAM: No, what he wants in is that Adam Berry
12 said that he stabbed -- that Adam Berry stabbed Jamie
13 Galloway. That statement is not corroborated anywhere
14 else and that's what the rules require.

15 MR. FLOYD: No, Your Honor, that's not --

16 THE COURT: No, what I'm saying is factually the
17 whole presentation is who or both Berry brothers stabbed
18 Galloway I thought. I thought that was your factual
19 question anyway for this jury to answer. Certainly
20 there's a lot of facts out there, medical testimony and
21 whatnot, that there's twenty-five stab wounds in
22 Mr. Galloway's body.

23 MR. GRAHAM: There is no testimony anywhere that
24 Adam Berry stabbed him except for this one hearsay
25 exception statement he's trying to get in from a

1 convicted killer who's also an admitted liar. That
2 statement has to be corroborated and it's not. He didn't
3 tell it -- in those cases, if you'll read the case, Your
4 Honor, the one they let in, they had three different
5 people who said that the person said the same thing.
6 Nobody else has come forward and said Adam Berry admitted
7 doing it. In fact, the jail call that we didn't play,
8 that Your Honor heard, has Adam Berry on saying why did
9 you stab that man at all, which by implication says he
10 didn't stab. So his own words that are recorded are much
11 more accurate than the words of a killer saying he didn't
12 do anything and it's not right.

13 MR. FLOYD: Your Honor, I disagree with Mr. Graham.
14 Rule 804(b)(3) talks about a statement against interest.
15 It only requires corroboration if the statement exculpates
16 the accused. This statement doesn't. It says that Adam
17 and Nick stabbed him, so it doesn't exculpate the accused,
18 so there's no corroboration required.

19 MR. GRAHAM: Let's see. That's not what the rules
20 say. The rules say a statement tending to expose the
21 declarant to criminal liability in an effort to exculpate
22 the accused, and it is. He's -- his whole argument is
23 that he stabbed him one time in the back and it's not a
24 fatal blow. That's why. I mean, that's what he's gonna
25 say in closing if this statement comes in, but it's not

1 corroborated. It has to be corroborated and it's not
2 corroborated and it's not appropriate. I mean, we have
3 -- you heard that jail call where Adam Berry said why did
4 you stab that man. There are other jail calls that we can
5 play.

6 THE COURT: No, I haven't heard that jail call.

7 MR. GRAHAM: You have not heard the redacted part?
8 I thought you had heard the whole jail call.

9 THE COURT: No, I didn't -- I haven't heard any
10 of the jail calls except for the part that was played
11 that you-all redacted. You-all told me there was a
12 conversation between the brothers.

13 MR. GRAHAM: You are right, Your Honor, and I
14 apologize.

15 THE COURT: She then handed the phone over, the
16 mother, so the brother could talk to Adam and I haven't
17 heard that part. It was represented to me there was a
18 secondary conversation.

19 MR. GRAHAM: It's been marked for identification.
20 If Your Honor wants to hear it, we can, but what it
21 basically says was Adam Berry comes on and says you did
22 not need to stab that man.

23 MR. FLOYD: Well, that's the whole problem, Judge.
24 We don't have Adam Berry here to question.

25 MR. GRAHAM: That's why he wouldn't -- that's why

1 he didn't want me to get that in for that very reason and
2 now he's flipping it around and saying --

3 THE COURT: Well, here's my thinking. If I let this
4 in, the jail call comes in. I mean, it's -- that's kind
5 of where I'm sitting -- I'm sitting on there, is I think
6 this letter meets the exception to the hearsay rule. By
7 implication also the jail call of Adam talking to his
8 brother likewise.

9 MR. FLOYD: That would be a statement against
10 interest, Your Honor. There would be no exception to
11 allow that in under the rules.

12 THE COURT: I can't fathom how it would be fair to
13 let one in and not the other. Either both of them are
14 out or both of them are in.

15 MR. GRAHAM: There's also another statement, another
16 phone call, that's been provided between Nick and Adam
17 where Nick says it's all on me, so if -- I mean, if he
18 wants to do that, we're gonna start putting in all kinds
19 of calls between Nick and Adam because then it's only
20 fair. Ours are way more accurate than a convicted killer.

21 THE COURT: All right. I think you-all are gonna
22 confuse the jury, but I think it -- I think it comes in,
23 the portion of when they rode to Gaston and had the
24 conversation. That part can come in through Mr. Sulier
25 as an exception under 804(b)(3). Yeah, (b)(3). But,

1 likewise, that would -- the State didn't try to introduce
2 the jail call when the phone was handed over, they
3 redacted it before that issue came before me, so I don't
4 think I ever really ruled on that. I indicated that was
5 my leaning, so I don't think I said that can't come in.
6 You-all backed away before you tried to introduce it. So
7 that's kind of my thinking. You-all decide what you-all
8 want to do.

9 MR. FLOYD: So, Your Honor, it is your ruling that I
10 can get it in, but if I get it in, then you will allow the
11 State to introduce the --

12 THE COURT: Yes, sir.

13 MR. FLOYD: -- the testimony?

14 THE COURT: If they choose to. I'm not gonna ask
15 them to. I'm not gonna try their case, but if they
16 attempt to get the phone call in, it's a recorded
17 conversation. I think it comes in because the mother
18 was a party to the conversation.

19 MR. FLOYD: Well, Your Honor, I don't see how that's
20 an exception to the hearsay rule. I don't see how that
21 would come under any one of the exceptions.

22 THE COURT: Well, I've been wrong before, but that's
23 my -- that's what I'd like to do.

24 MR. FLOYD: Thank you, Your Honor. If I could speak
25 to my client.

1 THE COURT: Yes, sir.

2 MR. FLOYD: Thank you, Your Honor.

3 (Discussion between the Defendant and his counsel.)

4 MR. FLOYD: We are gonna introduce the statement,
5 Your Honor. At least that portion of it.

6 THE COURT: Okay. We need to redact it before
7 bringing the jury in.

8 MR. GRAHAM: I guess I'm -- how is the statement
9 relevant? He's gonna have a -- he's gonna call Mr. Sulier
10 and he's gonna ask him questions specifically about that
11 statement. Once he says that, the written doesn't come
12 in.

13 MR. FLOYD: Well, Your Honor, I mean, I'm just trying
14 to introduce this portion of the statement. I guess if he
15 denies it, then I'll have to use the statement. If he
16 denies it.

17 THE COURT: I agree with you. He can testify about
18 writing the statement and the contents thereof and if he
19 denies it, then that's how the statement could come in.
20 His testimony would be you made a statement to and thus
21 and forth, yes. Wouldn't it?

22 MR. GRAHAM: Wouldn't that be a prior consistent
23 statement?

24 THE COURT: Well, if he denies it, it will be a prior
25 inconsistent statement. If he agrees with it, then it

1 stays out. I mean, he just testifies to it, doesn't he?

2 MR. FLOYD: Yeah, I wasn't gonna try to put the
3 written statement in if he just goes ahead and -- I want
4 to introduce this portion of the statement --

5 THE COURT: Through his testimony?

6 MR. FLOYD: -- through his testimony.

7 THE COURT: Right.

8 MR. GRAHAM: Okay. Is that all, just that --

9 THE COURT: The bottom --

10 MR. GRAHAM: -- part about what Adam said right
11 before he killed him?

12 THE COURT: Yeah. That's what I understand he wants
13 to introduce, that bottom -- the conversation at Gaston
14 while they were smoking marijuana and cooking meth, and
15 that's up to you-all on that, but Adam told me, that's
16 what I understand, at the bottom of page 3.

17 MR. GRAHAM: Can we take a -- we're ready to go, but
18 can we take a quick break?

19 THE COURT: Yeah, I think that's a good idea.

20 (Recess taken at 10:02 AM.)

21 (Back on the record at 10:09 AM.)

22 BAILIFF: Court come to order. All rise.

23 THE COURT: Be seated.

24 All right. Are we ready for the jury now?

25 MR. FLOYD: The defense is ready, Your Honor.

1 THE COURT: All right. Bring them in.

2 (Whereupon, the jury returns to the courtroom at
3 10:11 AM.)

4 THE COURT: I'm sorry we were delayed getting
5 you-all in here. I had some issues I had to take up
6 hopefully to make things move efficiently, so we're
7 ready to go.

8 All right. Mr. Floyd, it's your opportunity to
9 call any witnesses you choose.

10 MR. FLOYD: Thank you, Your Honor.

11 We call Mr. Michael Sulier.

12 THE COURT: All right. Just so you-all know,
13 Mr. Sulier is in the Department of Corrections, so there
14 will be a security officer in here by him.

15 MR. GRAHAM: And, Your Honor, for the record,
16 the State would object under 804(3) that the proper
17 requirements have not been met for this testimony to be
18 admissible or relevant.

19 THE COURT: And your objection is noted on the record
20 and protected.

21 (Whereupon, Michael Sulier was duly sworn by the
22 Clerk of Court.)

23 THE CLERK: Once you're seated, state your name;
24 spelling your last, please.

25 THE WITNESS: Michael Sulier, S-U-L-I-E-R.

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MICHAEL SULIER,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FLOYD:

Q. Mr. Sulier, did you know Jamie Galloway?

A. Yes, I did.

Q. How did you know him?

A. That's my best friend and my brother.

Q. And how long have you known him?

A. I see that you've not done anything else to seek the truth again, Wayne Floyd. I answered all these questions Monday. Do I get to use a lifeline and phone a friend or poll the audience on this?

Q. How long have you known him?

A. I've know him for over fifteen years.

Q. Thank you. Now when he was killed, where were you at that time?

A. Turbeville Correctional Institution, so what do I have to be here for? I was not there when this man committed a crime, so why am I here? Once again, Wayne Floyd, you've got me up here playing your sick and twisted game in front of this man's family and my family. You know what I'm saying? I had nothing to do with this man's crime. My crime is separate from this man's crime, okay? I took blame for my crime. I got a life sentence, so why am I

1 here, Wayne Floyd? You're playing a sick and twisted
2 game, bro. That's crazy. Why do you have me here?

3 Q. Mr. Sulier --

4 A. I have no more answers for any of your questions.

5 THE COURT: All right. Look, he's asking you a very
6 simple question.

7 THE WITNESS: And I have no more's answers for him,
8 Your Honor. He's asking me questions that pertain nothing
9 to this man's -- to this man's case.

10 THE COURT: That's not for you to determine, okay?

11 THE WITNESS: Well, what you gonna do? Are you gonna
12 give me a contempt of court? I've got a life sentence,
13 bro.

14 THE COURT: Don't disrespect me. I'm trying to
15 explain things to you.

16 THE WITNESS: You-all have got me up here playing
17 games. I came up here Monday and answered this man's
18 questions.

19 THE COURT: No, no, no. Look here. This isn't a
20 game. This is a trial. Mr. Floyd's got a few questions
21 to ask you, he's advocating for his client, and how he
22 chooses to do that is not for you to determine.

23 THE WITNESS: Why -- why is -- okay. Well, let me
24 ask you a question. Why is this man bringing me up here
25 to testify for this man's defense when he murdered my

1 brother in front of my kid --

2 THE COURT: All right.

3 THE WITNESS: -- in front of my brother's kid.

4 THE COURT: I just want you to answer his questions
5 as simply as you can.

6 THE WITNESS: The prosecution did not even subpoena
7 me to this trial. This man, the -- Nick -- Nick Berry's
8 attorney subpoenaed me up.

9 THE COURT: You've made that clear. I just want you
10 to answer his questions and I'll get you get back doing
11 your life sentence, all right?

12 All right, Mr. Floyd.

13 BY MR. FLOYD:

14 Q. Mr. Sulier, once you got out of Turbeville, did you
15 have an occasion to get up with Adam Berry?

16 A. No. I made it very clear I had no intent of going
17 to that hotel. I did not know he was at that hotel. My
18 cousin lived and worked at that hotel. That's how I ran
19 across Adam Berry. I did not even approach him first.
20 If you go back and look at the video from that hotel, it
21 shows me walking my cousin's dogs around the hotel and him
22 calling me over there to talk to him, okay? I've already
23 answered all these. I'm not answering these over and over
24 and over.

25 Q. Did you eventually get in the car with him that day?

1 A. I mean, is that a million dollar question? I've
2 already admitted guilt to killing him, so, yes, I got in
3 the car with him.

4 Q. And then did you kill him?

5 A. Wow. What did I just -- what did I just say?

6 Q. Did you kill him?

7 A. What did I just say? What am I serving a life
8 sentence for?

9 Q. Okay. Did you write a letter to the solicitor's
10 office?

11 A. Does it have my signature on the bottom of it? Is it
12 notarized?

13 Q. Yes, it is.

14 A. Okay.

15 Q. I'm gonna ask you just about one sentence in it --
16 two sentences, okay? If you'd like, I'll pass it up to
17 you with the portions highlighted that I'm gonna ask you
18 about. I'm just gonna ask you to read that portion of the
19 statement, okay?

20 A. After he admitting to stabbing Jamie along with Nick
21 Berry, we got into a big, heated and very hostile argument.
22 I snapped.

23 Okay. That's -- that's already been said, recorded.
24 I wrote this, okay? All that's been stated. We know that
25 I killed Adam Berry, okay? That has nothing to do with

1 what this man did a year before his brother died. It has
2 nothing to do with this trial at all. My case is over
3 and done with. I'm serving my time for what I did. I
4 admitted guilt for what I did. I took what I had to do.

5 Q. I understand, Mr. Sulier. I'm just asking you to
6 finish the highlighted portion.

7 A. And just -- just -- just to make it very clear before
8 you even try to bring my family into this, my family does
9 not agree with what I did. My family had no -- no
10 anything, no -- no persuasion or anything on what I -- on
11 what decisions I made, okay? I'll just make that very
12 clear before you try to bring my -- insinuate my family in
13 anything. My family has nothing to do with what I did and
14 I manned up for what I did.

15 Q. So did you -- did you just testify that Adam and
16 admitted to stabbing Jamie along with Nick?

17 A. Yes, along with Nick.

18 MR. FLOYD: Thank you. I have no further questions,
19 Mr. Sulier.

20 CROSS-EXAMINATION

21 BY MR. GRAHAM:

22 Q. What else -- I know you don't want to be here, I know
23 you don't want to talk about this, but this information
24 Mr. Floyd's got out of you now we need to talk about, okay?

25 A. (Nods head.)

1 Q. What else did Adam tell you -- what did Adam tell you
2 about what happened when your friend Jamie was killed?

3 A. Adam stated that once it become in a -- a fistfight,
4 my brother got -- got the best of him. My brother was on
5 top of him, beating him, when Nick came up, stabbed Jamie
6 from behind, okay? Jamie fell over and Adam stated that
7 he got up once he -- once Jamie fell over, kicked -- Adam
8 kicked Jamie in the face multiple times and then began
9 helping Nick stab Jamie.

10 Q. Did Adam ever say that he stabbed or did he say he got
11 his licks in?

12 A. No, he -- he said that he kicked him in the face and
13 participated in the stabbing.

14 Q. Did he say how many times he stabbed him?

15 A. He never said that, but he did show me a scar on his
16 hand where he was stabbed by Nick during the process of
17 everything going on.

18 Q. Did he say how many times Nick stabbed him?

19 A. No, he -- I mean, none of that was ever discussed. I
20 told him to shut up, I don't want to hear no more of it.

21 Q. Did he say that Jamie was defenseless after Nick
22 stabbed him?

23 A. Yeah. I mean, he said that Jamie was motionless.
24 Jamie fell over. During the process of him getting beat,
25 he realized Jamie was not tussling no more, so he got up

1 and kicked Jamie in the face and participated in the
2 stabbing.

3 Q. When Adam told you this -- you wrote a letter. That
4 letter that you wrote that that quote was in that Mr. Floyd
5 asked you about, that letter had lies in it, correct?

6 A. Yes, it did have lies in it pertaining to -- because
7 I -- I don't want to involve -- I didn't want to involve
8 anybody else in my case and I didn't want nobody else to
9 get in trouble, so whenever I took the blame I made sure
10 to cover up tracks for everybody else.

11 Q. Okay. The letter was written at the time you were
12 facing the murder charge for Adam. You hadn't plead guilty
13 yet, right?

14 A. No, the letter was written about two and a half,
15 three weeks, somewhere in that vicinity, before I took my
16 plea.

17 Q. And you wrote that letter in an attempt to get a
18 lower sentence and than you were afraid you were gonna get,
19 correct?

20 A. Yes, because I was -- I was told that if I admitted
21 guilt and took blame for my responsibility that there was
22 a possibility of me getting a forty-year cap and I just
23 wanted the opportunity to go home. I understand that,
24 you know what I'm saying, I shouldn't have took the man's
25 life, but under -- under the heat of passion, under the

1 circumstances that were in the situation, it happened. I
2 can't prevent it. I admitted guilt for what I did and I
3 just wanted a chance to go home even if it was for forty
4 years.

5 Q. You would agree with me by saying that Adam told
6 you -- not just that he was there, but by Adam telling you
7 that he was part of the stabbing, it makes what you did
8 look more justified, doesn't it?

9 A. I mean, what can you -- what can you say justifies a
10 murder besides somebody trying to take your life, you know
11 what I'm saying? He didn't threaten my life. No, he
12 didn't. That's why I took guilt for what I did. Just what
13 he said made me snap emotionally and I just couldn't take
14 it no more. I done lost too many of my friends and lost
15 too many of my family members.

16 Q. So your testimony here today is, is that you -- why
17 did you meet up with Adam that day?

18 A. I -- like I -- like I said, you-all can -- you-all
19 can go subpoena -- you-all can subpoena whatever you-all
20 want to subpoena, watch the videotape. I had no intention
21 of going to -- I did not even know Adam was at that hotel.
22 My cousin and his girlfriend worked and lived at that
23 hotel. I was walking my dog -- I was walking my cousin's
24 dogs around the parking lot whenever Adam come out smoking
25 a cigarette and called me over there.

1 Q. Why did you-all start talking? Did you know who he
2 was?

3 A. Yeah, I know who he was. I've known the man for
4 years.

5 Q. Did he know who you were and that you were friends
6 with Jamie Galloway?

7 A. There's no way that he couldn't have. He knew who I
8 was. I mean, me and Jamie shares the same child, you know
9 what I'm saying? Our child has the same mother.

10 Q. Did you ever ask him questions about what happened or
11 did he just start to talk about it?

12 A. No, he asked me -- he -- he started the whole
13 conversation. He asked me why I had my ankle monitor on
14 and then he went into -- and I told him about my charges
15 and all that, when I came home from prison and all that,
16 then he went into spilling about what his charges were and
17 all that.

18 Q. Let me interrupt you for a second then. What -- what
19 are all your charges that you told him about?

20 A. I -- the reason I had the ankle monitor on, the GPS
21 ankle monitor, was because I had accidentally shot my wife
22 in the leg. I was unloading a pistol and it went off and
23 a bullet had grazed her in her leg, so I was on -- I had a
24 CDV for that. I was in prison for violation of probation
25 for a grand larceny over 5,000 for stealing street signs

1 when I was seventeen years old, you know what I'm saying?

2 Q. Did you tell Adam any other crimes of violence that
3 you had been involved in?

4 A. No.

5 Q. Just --

6 A. I mean, there's --

7 Q. Go ahead. I'm sorry.

8 A. No. I mean, what else would I tell him that I was
9 involved in?

10 Q. I didn't know. I mean, you said you told him that
11 you had shot your wife.

12 A. I told him I -- I told him the reason why I was on my
13 GPS ankle monitor.

14 Q. Okay.

15 A. If I intentionally went to go kill -- ride off and
16 kill that man, I would not have rode with a GPS ankle
17 monitor on my leg period.

18 Q. Did you know that the monitor wasn't working at the
19 time?

20 A. No, I did not.

21 Q. You didn't know that? So after you told him about
22 your criminal history and you told him that you had shot
23 your wife -- did you tell him it was by accident?

24 A. Yeah.

25 Q. Okay. How -- how big and tall are you?

1 A. I'm six-two, 220 pounds.

2 Q. Okay. How about Adam; do you remember? Was he
3 shorter, smaller?

4 A. He was probably five-eight, 150 pounds.

5 Q. Okay. And you said you didn't ask him about Jamie's
6 crime -- I mean, Jamie getting killed, right?

7 A. No.

8 Q. He just started talking about it?

9 A. He started talking about it voluntarily.

10 Q. Because you told him you didn't want to talk about it?

11 A. I told him to shut up. I don't want to hear about it.

12 Q. And you turned the radio up, I think, to drown the
13 sound out?

14 A. Right.

15 Q. He's driving or you're driving?

16 A. He's driving.

17 Q. Okay. Why didn't you get out of the car if you didn't
18 want to hear about it?

19 A. We were going -- we were going down the road.

20 Q. Okay.

21 A. When we parked is when I got out and shot him.

22 Q. So a man who is smaller than you, not as big as you,
23 who you just told that you shot somebody, then brags about
24 killing your brother; is that correct?

25 A. Yeah. I mean, I don't -- I don't know if he knew the

1 relationship between me and Jamie, but, I mean, all of
2 that's relevant, you know what I'm saying? He shouldn't be
3 going around bragging about a crime anyway, especially not
4 a brutal stabbing, a brutal murder, regardless of what the
5 relationship is period.

6 Q. Let me ask you some questions regarding the case
7 against you. You had a gun on you at the time, correct?
8 You didn't have to go get one?

9 A. Correct.

10 Q. Why did you have one on me?

11 A. I always carry a gun on me. I've always carried one.
12 I've sold dope all my life. There's plenty of things in
13 the street that go wrong every day. I carry one for
14 protection.

15 Q. Prior to killing Adam and prior to that conversation,
16 did you send out photos of Adam's car with a text message
17 saying I've got Adam?

18 A. No, I never said I got Adam. I sent a picture. Yes,
19 I did send a picture of his car saying that I -- I've
20 seen him. Yes, I did send that, but, I mean, all that's
21 irrelevant to whether or not this man's guilty of killing
22 my brother.

23 Q. Now it goes to -- it goes to -- it goes to the
24 statement that you're saying about that Adam told you.
25 That's what it goes to. Did you tell your cousin, Zach

1 Culley, earlier in the day prior to killing Adam that you
2 were gonna kill Adam?

3 A. No, I did not. Like I stated Monday, there were many
4 people that wrote many statements and said a lot of bogus
5 stuff against me because they were scared and they were
6 under pressure from the police, including Kathy Polk,
7 which is Jamie's mother.

8 Q. Did you tell Jessica Spillman that you intended to
9 kill him?

10 A. No.

11 Q. Did you tell your girlfriend, Mariah Erickson, that
12 you were gonna take Adam out to the country and kill him?

13 A. I did not. I mean, you can look at all her
14 statements. She stated that she was with me the night --
15 she stated that I was in her car with Zachary Culley and
16 Adam the night of Adam's murder. All of that is bogus.
17 She even -- she even -- she went and rewrote her statement
18 saying more bogus stuff and passed a lie detector test
19 saying she wasn't around during all that. She just lied
20 because she wanted to be part of something.

21 Q. So you did not tell Zach Culley -- or you didn't show
22 Zach or Jessica the gun in the hotel earlier in the day and
23 said if I kill one, I kill two referring to Adam and his
24 girlfriend?

25 A. No, sir. His girlfriend is still alive; is she not?

1 Q. Do you deny -- well, you went and had Adam buy you
2 lunch at McDonald's, correct?

3 A. Adam and his girlfriend were going to McDonald's and
4 I'd asked him before they even left could I get a ride to
5 Gaston to go get some money later on that night and they
6 said yes, they had other things to do, so -- but they were
7 going to McDonald's right now, so I asked if they would
8 bring me back something to eat before they went on their
9 errands, so they went to McDonald's and got me something
10 to eat.

11 Q. Do you deny then telling Jessica after Adam left to
12 go to McDonald's that Adam just brought his killer's lunch?

13 A. Yes, I deny that.

14 Q. Do you deny making a Facebook post several weeks ago
15 regarding your accomplice, Mark Hodges, stating that Mark
16 had given you the gun and Mark had told you where to take
17 Adam to kill him?

18 A. Do what now?

19 Q. A Facebook post that you put out several weeks ago
20 about Mark Hodges because you were upset because his case
21 had not been handled yet where you said Mark gave you the
22 gun and --

23 A. Yeah, I did get the gun from Mark. Yes, I did.

24 Q. And that Mark also told you where to take Adam to kill
25 him?

1 A. No.

2 Q. And do you deny that you sent a photo of the car to
3 Kathy Polk saying you killed Adam?

4 A. I never -- I stated that -- yes, I did send a photo
5 of the car to her saying that I had eyes on Adam and I had
6 called her right after that, asked her if she wanted me to
7 beat him up or whatever she wanted me to do, she told me to
8 leave him alone, and I laughed and hung up the phone and
9 said okay.

10 Q. All right. So that was before you had your
11 conversation with Adam?

12 A. Yes, that was before I even had a conversation with
13 Adam.

14 Q. All right. Do you deny telling her that you had a
15 bullet for Adam?

16 A. Yes, I deny that. I never said that one time. I
17 asked her pointblank what she wanted me to do; if she
18 wanted me to beat him up or what. She told me to leave
19 him alone. She said leave him alone.

20 Q. And she told you to leave him alone, didn't she?

21 A. She stated leave him alone and I laughed and hung up
22 the phone. But all that -- all them questions you just
23 asked me pertains to my case. I took what I did for my
24 case and I got a life sentence. Now everything that you
25 asked me pertains to nothing to do with what this man did

1 a year ago -- a year before his brother was killed.

2 Q. Let me show you a printout of the Facebook post and
3 I'll ask you if you recognize that, Mr. Sulier? Is that
4 the post that you sent out a few weeks ago?

5 A. Yeah, I posted that.

6 MR. GRAHAM: Your Honor, the State would offer this
7 into evidence.

8 MR. FLOYD: I don't have any objection to that,
9 Your Honor.

10 THE COURT: All right. It will be marked and
11 admitted without objection.

12 (State's Exhibit Number 61, a Facebook post, was
13 marked and admitted into evidence.)

14 BY MR. GRAHAM:

15 Q. If you wouldn't mind reading that for me. Just
16 starting here and stopping there.

17 A. Start where? Where do you want me to start?

18 Q. At the top and then stop at the bottom where the
19 yellow's at.

20 A. Karma ain't done shit to me, bitch. LOL. I'll do my
21 life sentence with a smile on my face. Karma will get all
22 y'all that's faking on me. You know maybe I should have
23 told the truth about the whole situation and what part
24 everybody played, on how Mark gave me the gun and told me
25 where to go to kill him, but what about all the boosting

1 up of my head that I got from you and Kathy. Since the
2 day I stepped out of prison you and Kathy -- and that's it.

3 Q. So you did post out there that Mark told you where to
4 go to kill him?

5 A. Yeah. I mean, I -- I put that out there, yeah.

6 Q. Okay. But you deny that you planned to kill him
7 before you saw him that day?

8 A. Yeah. I -- listen. When I was in -- when I was in
9 prison, I told multiple people that when I came home that
10 they were gonna die because I'm tired of losing my family
11 with angry words. If I really and truly went to go kill
12 this man, I would not have gone with a GPS monitor on my
13 leg.

14 Q. Do you deny telling Tommy Embree that you had a gun on
15 Adam and that even at gunpoint Adam denied that he had any
16 part in Jamie's murder?

17 A. Yes, I deny that. William Embree has jumped on
18 multiple people's murder cases trying to get out of his --
19 out of his time for his murder case.

20 Q. Do you deny -- do you deny that you told Joshua Cody
21 Young a similar story?

22 A. Yes, I deny the same. I deny all of that. They were
23 all in the same pod together. They're all in cahoots with
24 trying to get their time reduced. Josh Cody Young was
25 given a fifty thousand dollar bond on a murder charge for

1 writing a statement against me. How did that work?

2 Q. Haven't you told people that you killed -- it didn't
3 matter whether Adam was involved or not, Adam was there?

4 A. No, I never told that.

5 Q. In the letter that you wrote that Mr. Floyd's
6 referring to, that was written for you to try to get a
7 lesser sentence, correct?

8 A. Yes.

9 MR. GRAHAM: Thank you.

10 THE WITNESS: I love you-all.

11 THE COURT: Hold up.

12 Mr. Floyd, anything else?

13 THE WITNESS: I really have nothing else to answer.

14 THE COURT: That's not your decision.

15 THE WITNESS: It is my decision. You can't make me
16 talk. You can't add time to a life sentence.

17 THE COURT: Don't threaten me.

18 THE WITNESS: You can't add time to a life sentence,
19 homeboy.

20 MR. FLOYD: No further questions, Your Honor.

21 THE COURT: All right. Drive safe.

22 (Witness excused.)

23 THE COURT: All right, Mr. Floyd.

24 MR. FLOYD: Your Honor, may we approach the bench a
25 moment?

1 THE COURT: You may.

2 (Proceedings held at the bench; not reported.)

3 THE COURT: All right. Ms. Cagle, I want you-all to
4 take a brief break and I'll have you right back in here.
5 I've got one more thing I've got to deal with and I'll
6 have you-all back in here. We're getting close to the end.

7 (Whereupon, the jury retires to the jury room at
8 10:35 AM.)

9 MR. FLOYD: Your Honor, it's my understanding he will
10 be testifying.

11 THE COURT: Okay. All right. As soon as he gets
12 some water, I'm gonna ask him a few questions.

13 (Pause in proceedings.)

14 THE COURT: All right. Mr. Berry, I've got a couple
15 of questions to ask you while I'm standing here by my
16 court reporter. This is for the purpose to make certain
17 that you understand that you've got two charges here;
18 one's murder and one's possession of weapon during the
19 commission of that crime. You do not have to prove
20 anything. You do not have to testify. The State is not
21 allowed to comment at all in the presence of the jury if
22 you choose to say nothing and you remain silent. That's
23 your constitutional right.

24 I've watched you speak with your lawyer. The State
25 rested yesterday and so I -- let me ask you this. Did you

1 talk with your lawyer yesterday about whether or not you
2 were going to testify today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And so you were able to -- stand up so
5 I can hear you because Ms. Johnson has got to take this
6 down. And so you were able to talk with him and counsel
7 with him and then sleep on it last night?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now have you had enough time to speak
10 with your lawyer this morning about whether or not you
11 want to waive your right to testify and, in fact, take
12 the witness stand? Have you done that this morning?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And have you been allowed to speak with
15 your mother and your family about that same issue?

16 THE DEFENDANT: I haven't really exactly talked to
17 them, but I'm pretty sure that ...

18 THE COURT: Well, you're nineteen now, correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay.

21 THE DEFENDANT: I'll be twenty next week.

22 THE COURT: Twenty next week. Are you comfortable
23 that you've had enough opportunity to speak with Mr. Floyd
24 about making that decision to decide to testify or not
25 testify?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now if you -- I didn't finish telling
3 you this. If you were to decide to not testify, I feel
4 confident Mr. Floyd's told you this but I'm gonna tell you
5 also, if you kept silent, during the closing summaries --
6 after that I give instructions to the jury and I say the
7 State has the burden of proof, their proof is beyond a
8 reasonable doubt and the Defendant is presumed innocent.
9 Mr. Berry has elected to not testify. You, as a group of
10 jurors, may not discuss at all in the jury room that he
11 chose to enforce -- or exercise his right to remain
12 silent. You may not discuss it in any manner and hold him
13 exercising his right to remain silent against him in any
14 way. That's part of my instruction. Do you understand
15 that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Now if you testify, you're
18 just gonna be part of the witnesses on the stand and
19 believability and the State's burden of proof and the
20 State's gonna be allowed an opportunity to cross-examine
21 you. You understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Understanding all those factors, do you
24 still want to testify?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you've had enough time to discuss
2 this with your lawyer?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Very well.

5 All right. I think we've made a good record on that.

6 MR. EARGLE: Judge, just for your information, the
7 Defendant does have from 3-31 of 2014 a conviction for
8 shoplifting, value 2,000 or less, and also from that
9 same date, 3-31 of 2014, a conviction for giving false
10 information to law enforcement.

11 THE COURT: Okay. I believe under the rules those
12 two convictions would be allowed as potential impeachment
13 offenses.

14 MR. EARGLE: Yes, sir, Your Honor.

15 THE COURT: Is that consistent with what your
16 understanding of his record is, Mr. Floyd?

17 MR. FLOYD: Yes, Your Honor. Of course, we would
18 object to them being allowed to question him about those
19 offenses. Certainly they're below the one year threshold
20 and we would suggest that those are not the type of
21 offenses that would go with fraud or dishonesty that
22 would justify impeachment.

23 THE COURT: All right. I understand your argument.
24 I think they involve dishonesty. That's just a finding
25 of the Court, but I appreciate your argument. Shoplifting

1 and false information is dishonesty.

2 All right. Anything else? Are you ready to go? Do
3 you-all need a minute for a break before I bring the jury
4 back in?

5 Okay. Go ahead. We'll take five minutes.

6 MR. FLOYD: Your Honor, one matter. I don't know
7 whether to wait for Mr. Eargle to get back. Is it okay
8 if we take this up now?

9 MR. GRAHAM: (Nods head.)

10 MR. FLOYD: Mr. Berry informed me that he never went
11 to court on those charges. He's never been to court on
12 them.

13 MR. GRAHAM: They both reflect -- one says pled
14 guilty, jail time served, for the false information. The
15 other one -- we have a certified true copy of the other
16 one. It says guilty, bench trial.

17 MR. FLOYD: When were they? When was he found guilty?

18 MR. GRAHAM: Disposition date was 3-31-14.

19 MR. FLOYD: He was in jail on these charges.

20 MR. GRAHAM: No, this was May 19, 2014. This is --

21 THE COURT: This would be the last day of March.

22 MR. GRAHAM: These were in March. Yes, Your Honor.

23 MR. FLOYD: Thank you, Your Honor.

24 THE COURT: All right. I'm gonna step out real quick.

25 (Recess taken at 10:44 AM.)

1 (Back on the record at 10:48 AM.)

2 BAILIFF: All rise. Court will now come to order.

3 THE COURT: You-all be seated.

4 All right. Are we ready?

5 MR. FLOYD: Your Honor, one last argument. As to
6 the offenses for impeachment purposes, we would move that
7 they should not be allowed, Your Honor, because it's our
8 understanding and our position that they're much more
9 prejudicial than probative and should not be allowed.

10 THE COURT: I understand. Under the 403 analysis,
11 I'm gonna allow it. Certainly any evidence you don't want
12 is prejudicial to some extent, but under the rules as I
13 understand it I believe it's allowed. That's proper for
14 cross-examination, the prior record.

15 All right. Bring in the jury.

16 (Whereupon, the jury returns to the courtroom at
17 10:49 AM.)

18 THE COURT: All right. We're ready to continue,
19 Mr. Floyd.

20 MR. FLOYD: Thank you, Your Honor.

21 The defense calls Nick Berry.

22 THE COURT: All right. Mr. Berry, come forward and
23 be placed under oath.

24 (Whereupon, Nicholas Chhith-Berry was duly sworn by
25 the Clerk of Court.)

1 THE CLERK: Once you're seated, state your full name;
2 spelling your last.

3 THE WITNESS: My name is Nicholas Berry or Nicholas
4 Chhith-Berry. Nicholas, N-I-C-H-O-L-A-S. C-H-H-I-T-H
5 hyphen B-E-R-R-Y.

6 NICHOLAS CHHITH-BERRY,
7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FLOYD:

10 Q. Nick, how old are you right now?

11 A. I am nineteen. I'll be twenty next week.

12 Q. Back in May of 2014 when this incident occurred, how
13 old were you then?

14 A. I was seventeen years old.

15 Q. Seventeen?

16 A. Yes, sir.

17 Q. And how far had you gone in school?

18 A. Well, I made it to ninth grade, but I kind of dropped
19 out during ninth grade.

20 Q. And, Nick, how much did you weigh back then?

21 A. Probably about 110 to 115 pounds.

22 Q. How tall were you?

23 A. Around five-three, five-four.

24 Q. Now you weigh more than that now, don't you?

25 A. Oh, yes, sir.

1 Q. How much -- how much weight have you put on since this
2 happened?

3 A. About thirty-five, forty pounds.

4 Q. And how did you do that?

5 A. I constantly worked out and ate protein and continued
6 to pursue, you know, a healthy body.

7 Q. Where have you been living?

8 A. I've been incarcerated since the incident happened.

9 Q. Not a lot to do there except work out?

10 A. Yes, sir.

11 Q. Now, Nick, did you have an older brother?

12 A. Yes, sir.

13 Q. What was his name?

14 A. Adam Berry.

15 Q. How much older than you was Adam?

16 A. Adam was about four years older than me.

17 Q. And tell -- tell the jury about your relationship with
18 Adam. What you thought about Adam.

19 A. Well, me and my brother was, you know, very close.

20 He was like my father figure, you know. I kind of grew up

21 with him, you know, always being around. My father wasn't

22 really around. I mean, he was always out of town working,

23 so that's why my brother was always there with me. Him --

24 he was my -- he was like my role model. I looked up to

25 him. There wasn't many days I went without him. He was

1 just ...

2 Q. Would you do anything for him?

3 A. Yes, I would. I just -- yes.

4 Q. Okay. Now Adam -- in March of 2014 before this
5 incident occurred, did you get convicted of shoplifting?

6 A. Yes, sir.

7 Q. And false information to police?

8 A. Yes, sir.

9 Q. And that's in magistrate's court? In the little
10 court, in magistrate's court?

11 A. Yes, sir.

12 Q. Were you working back in -- during this time?

13 A. At that time I was not working.

14 Q. And do you recall this day --

15 A. Yes, sir.

16 Q. -- in May that this incident occurred?

17 A. Wait, you said May? Are you talking about the
18 shoplifting or --

19 Q. No, no. I'm talking about -- well, let's back up a
20 minute. When did you meet Jamie Galloway?

21 A. I met him the same time in May that I met Kayla Bass
22 and Kaysha. It was approximately four weeks or a month --
23 you know, about a month before, you know, everything
24 happened.

25 Q. Was there an occasion before all this happened where

1 Jamie Galloway struck you?

2 A. Yes, sir.

3 Q. Would you tell the jury about that particular
4 incident?

5 A. All right. Well, me, my brother and Kayla and my
6 brother's kid, Junior, we were in the truck. We went to
7 go to -- now I know it's Jamie Galloway's mother, I
8 believe, Ms. Kathy. It was her house. Well, she --
9 Ms. Kathy called Kayla and -- well, that's what Kayla later
10 on said, but we ended up going over there, and Jamie, he
11 was there.

12 Q. Did you know Jamie at that point?

13 A. At that point, I -- not really. I only -- that was
14 the first time I'd seen him.

15 Q. Okay. Tell the jury what happened.

16 A. Well, we -- he was confronting my brother, you know,
17 at his truck. They was, you know, arguing and, well, Jamie
18 was kind of yelling at my brother and spit in his face and
19 my brother's kid was in the seat behind him, so at that
20 point I didn't want the -- you know, the incident to pursue
21 onto a fight, you know. We was just trying to have a good
22 day and, you know, hang out, you know, just trying to have
23 a good day without any incidents or anything because who
24 wants to have a fight and all that stuff. So I got out of
25 the car and I got in between Jamie and my brother's door

1 and I told him put -- don't be disrespecting my brother
2 and at that point whenever I went to go point -- you know,
3 look and point at my brother, he struck me on this side
4 of my face and my eye. You know, he pursued -- you know,
5 continued to strike me. At that point, I fell to the
6 ground and that's when he kicked me. He kept -- you know,
7 he continued to kick me and that -- I was, you know, quite
8 scared.

9 Q. How big is Jamie?

10 A. He's quite big. He was probably -- at that point he
11 was probably like double my size.

12 Q. So were you afraid of him?

13 A. Yes, sir.

14 Q. All right. So he knocked you to the ground and then
15 what happened?

16 A. Well, I pulled a knife out and, you know, went towards
17 him, told him to back up, man, stop, man, back up, and he
18 backed up and said whoa, whoa, whoa, whoa, and I was like
19 -- and at that point he was far enough for me to go back
20 around the front of the truck, you know, in the vision of
21 Kayla and my brother because I wanted to keep, you know,
22 contact, you know, face -- you know, eye contact and make
23 sure he wasn't gonna come back and try to hit me so I can
24 get back into the truck, and that's really what I recall
25 about that incident.

1 Q. Did you strike him with the knife at all?

2 A. No, sir.

3 Q. You just used it to back him off?

4 A. Yes, sir.

5 Q. So is that all that happened in that particular
6 incident?

7 A. Yes, sir.

8 Q. Now when was the next time that you saw him?

9 A. The next time I seen him was the night the -- the
10 incident happened for me being tried for.

11 Q. All right. Let's talk about that incident. When did
12 you go over to Kaysha's house?

13 A. That day we -- sometime around 4:00 or 5:00 we picked
14 -- we picked Kaysha up from her mother's house, so it might
15 have been close -- it might have been dawn around the time
16 we arrived at her house.

17 Q. It might have been when?

18 A. About dawn when we arrived at her house.

19 Q. Now dawn is first thing in the morning.

20 A. Oh, my -- my bad.

21 Q. Would it have been dawn?

22 A. Not first thing in the morning. I'm sorry.

23 Q. So what time in the afternoon would you estimate?

24 A. We arrived at her house probably approximately 5:30,
25 6:00.

1 Q. And who went there?

2 A. It was me -- me, Kaysha, her son, Kayla, and Adam.

3 Q. And who was driving?

4 A. My brother.

5 Q. Where were you seated?

6 A. I was seated -- for some reason I was seated in the --
7 behind Kaysha. We would -- I believe there was another car
8 seat with another kid, I can't recall, but for some reason
9 I was in the back behind Kaysha and we rode like that.

10 Q. When you got there, what did you-all do?

11 A. We unloaded the kids, put them inside and Kaysha and
12 Kayla decided -- you know, they asked if we wanted some
13 drinks, you know, but I told them no because I didn't want
14 anybody to know I was drinking. At that point, you know,
15 we was just hanging out. We was just, you know, hanging
16 out at the house really.

17 Q. Did you know Jamie Galloway was gonna come that night?

18 A. No, sir.

19 Q. So you weren't expecting him at all?

20 A. No, sir.

21 Q. All right. Where were you when he showed up?

22 A. At the time he showed up, I believe I was on the
23 front porch.

24 Q. And what happened then?

25 A. I seen the headlights coming into the driveway and I

1 -- at that point I thought it was Shayla Davis and --
2 Shayla Davis and Jamie Galloway because I seen Jamie
3 Galloway come out of the car, so I -- I thought it was
4 him and Shayla. That's why I said that -- you know,
5 that's why I said that in my recording, but I went into
6 the house and I told Kayla, I was like Jamie's here, and
7 she was like what, for what, and I was like I don't know,
8 I was -- that's what I was trying to figure out, why is he
9 here, and Kaysha was like I don't know why he's here, and
10 she went out on the front porch to meet Jamie.

11 Q. And what happened then?

12 A. They were having a conversation. There was -- I don't
13 know. I don't recall the conversation they was having. It
14 seemed like a heated conversation. Kayla came out of the
15 house and was -- got in between them for some reason and
16 then, you know, an argument pursued with Kayla and Jamie.

17 Q. Then what happened?

18 A. They -- okay. I remember about the argument now. It
19 was Katie Leavitt that ended up being inside of the car
20 that drived Jamie over. They was asking me why -- who was
21 in the car and they was calling -- they was screaming at
22 the person in the car, screaming, you know, obscenities.
23 I don't really exactly know what they were saying, but at
24 that point Katie stepped out of the vehicle and screamed
25 something back and that's when I believe it was Kayla Bass

1 ran down. Yeah, it was Kayla Bass first that ran down
2 there to, you know, fight Katie.

3 Q. So did the girls get into a tussle?

4 A. Yes, sir.

5 Q. Were you involved in that tussle at all?

6 A. I was involved with pulling Kaysha off of them,
7 pulling Kaysha off of Katie and my brother pulled Kayla
8 off of Katie.

9 Q. After that tussle, what happened next?

10 A. After that, the -- some -- Jamie was down there, you
11 know. We was all in the driveway. At this point when
12 Jamie was down there, Katie left in her vehicle. She took
13 off and Jamie was like, you know, look what happened to my
14 ride, you know, why did you guys have to fight her or beat
15 her up. He then said something about hitting his girl. I
16 didn't know who he referred to as his girl was and the fact
17 is that neither one of -- me or my brother would, you know,
18 hit any girl to begin with, so we -- we was wondering why
19 he was, you know, stating that. Then he began an argument
20 with -- I believe the argument started with my brother or
21 Kayla, I can't quite remember at that point, but anyway an
22 argument, you know, happened.

23 During this argument he threw his hat and he removed
24 his shirt and threw it on the ground and he said I'm not
25 here to fight, but I'll go to jail tonight, and that's when

1 he struck my brother, you know, hit him in his face, and he
2 continued to strike my brother and blood started coming out
3 of his face.

4 Q. Where were they at that point?

5 A. They was -- at that point we was at the top of the
6 -- I believe it was at the top of the driveway near the
7 walkway.

8 Q. Now is your brother bigger than you? Was he bigger
9 than you?

10 A. Yeah, he's -- yeah, he's bigger than me.

11 Q. Was he as big as Jamie?

12 A. Not as big as Jamie.

13 Q. Do you have any idea what your brother weighed? Do
14 you know how much your brother weighed?

15 A. He maybe weighed ten, twenty pounds more than me.

16 Q. Okay. So he was a small guy, too, compared to Jamie?

17 A. Yes, sir.

18 Q. All right. So Jamie hits him in the face?

19 A. (Nods head.)

20 Q. You see blood?

21 A. (Nods head.)

22 Q. Tell us what happened next.

23 A. I seen the blood coming from my brother's face and
24 my brother was, you know, backing up, you know. At this
25 point my brother was backing up, you know, I believe he

1 was trying to get away from Jamie, but Jamie pursued to --

2 MR. GRAHAM: Objection. Speculation.

3 THE COURT: Rephrase your question.

4 BY MR. FLOYD:

5 Q. Just say what you observed.

6 A. I seen my brother backing up, you know, trying to get
7 away from Jamie. Now at this point, you know, Jamie's
8 still trying to fight my brother and striking him, so
9 somehow they managed to get on top of the porch and get
10 into the corner. Now at that point I seen my brother on
11 the ground on his back with Jamie on top of him, you know,
12 hitting him, hitting him, and I seen a lot of blood coming
13 from my brother. At that point that's whenever I got
14 scared and just stabbed Jamie and then I just -- at that
15 point it was more of a blackout because it was just a very,
16 you know, intense situation. I mean, I --

17 Q. Tell the jury what you remember.

18 A. I remember seeing my brother getting hit, you know.
19 I don't know how many times he was hitting him, but he was
20 mounted on my brother and pounding his face, you know, I
21 was scared he was gonna kill my brother, so, you know, I
22 stabbed him. I stabbed him, you know, like one time. I
23 stabbed him and then that's when things kind of -- I
24 couldn't really remember anything further during that
25 altercation.

1 Q. So that's the last thing you remember is when you
2 stabbed him one time?

3 A. Yes, sir.

4 Q. Where did the knife come from?

5 A. I had the knife. At that point I had cargo shorts
6 on. I had it in my bottom right pocket.

7 Q. And did you carry a knife -- a knife with you often?

8 A. Yes, sir.

9 Q. A pocket knife as you call it?

10 A. Yes, sir.

11 Q. Now you admit you -- you stabbed him one time?

12 A. Yes, sir.

13 Q. Why did you stab him?

14 A. I was scared he was gonna beat my brother to death
15 because he was quite a big guy.

16 Q. What did you know about Jamie Galloway?

17 A. Well, I know that he's attempted to -- you know, I
18 just knew he had attempted murder charges and that he shot
19 two people.

20 Q. And was he bigger than you?

21 A. He was bigger than me, yes, sir.

22 Q. Were you afraid of him?

23 A. Yes, sir.

24 Q. In fact, the time that he hit you earlier, how afraid
25 were you at that point? What did you do at that point?

1 A. It sounds kind of crazy, but I kind of like pissed
2 myself because I was kind of scared of the guy at that
3 point whenever I was backing up, going back into the right
4 back passenger side of the truck.

5 Q. So you were so afraid you urinated on yourself?

6 A. Yes, sir.

7 Q. Now on this night in question, okay --

8 A. Yes, sir.

9 Q. -- out at Kaysha's place, had you consumed any
10 alcohol?

11 A. At that point I had no alcohol in my system.

12 Q. Had you consumed any alcohol before that that day,
13 earlier that day?

14 A. No, sir.

15 Q. You didn't have any alcohol?

16 A. No, sir.

17 Q. Did you have any Xanax?

18 A. At that point, no. We went and got the Xanax after
19 we left that place.

20 Q. When you left there, where did you go? You went to
21 the hospital, didn't you?

22 A. Well, not exactly. We --

23 Q. Do you remember that night?

24 A. I don't really remember much about that day between
25 the altercation with me and Jamie.

1 Q. Do you remember whether before Jamie came over there
2 had you consumed any alcohol?

3 A. I mean, I don't recall -- you know, to my memory I
4 don't remember drinking any alcohol or anything at that
5 point. I -- I mean, I could have, but I don't quite
6 remember it.

7 Q. Were you in shock after this happened?

8 A. Yes, sir.

9 Q. And you just don't remember much of it?

10 A. Yes, sir.

11 Q. Now we've heard some statements they took from you at
12 the hospital. Were those statements true? Were the things
13 you said in those statements true?

14 A. I don't quite -- I mean, at that -- when I was giving
15 those statements, I don't quite remember, you know, being
16 there or saying anything, but, I mean, certain parts, you
17 know, was factual.

18 Q. What was factual?

19 A. I mean, my brother was being beat up real bad and I
20 stabbed him one time.

21 Q. Okay. So you remember that?

22 A. Yes, sir.

23 Q. After that point, you don't have any memory -- or you
24 have no memory of it?

25 A. Not of the incident, no, sir.

1 Q. Adam, what kind of injuries did you suffer? I mean,
2 Nick, what kind of injuries did you suffer?

3 A. On the night of May 19th?

4 Q. (Nods head.)

5 A. I had -- my hand got cut right here all the way
6 across and I had another, you know, injury right here at
7 the bottom of the base of my pinky and still to this day
8 I can't move the end of my pinky. I believe a tendon was
9 cut in my pinky that night.

10 Q. I want to show you State's Exhibit 49. Does that
11 reflect --

12 A. Yes, sir.

13 Q. -- one of your injuries?

14 A. Yes.

15 Q. That's to your right hand?

16 A. Yes, sir. That's my right hand.

17 Q. Okay. And State's Exhibit 50, is that your left hand?
18 No, wait a minute.

19 A. That's my right hand.

20 Q. That's your right hand. Well, both of these are your
21 right hand, aren't they?

22 A. Yes, sir.

23 Q. Just one's on the top and one's on the bottom?

24 A. It goes across all the way from here to here.

25 Q. Do you recognize this picture?

1 A. Yes, sir.

2 Q. Is that you in the hospital bed that night?

3 A. Yes, sir.

4 Q. So that accurately reflects your size at that time?

5 A. Yes, sir.

6 Q. So, Nick, do you admit that you stabbed Jamie Galloway
7 at least one time?

8 A. Yes, sir.

9 Q. And why did you stab him?

10 A. Because I was scared he was gonna beat my brother to
11 death.

12 Q. Did you intend to kill him?

13 A. That was not the intention, no, sir.

14 Q. Now I know that he struck you a week or so before
15 this.

16 A. Yeah.

17 Q. Were you planning to revenge him or kill him or
18 anything like that?

19 A. No, sir. I was trying to stay away from him. I
20 didn't want to be around him and I was quite scared to be
21 anywhere around him.

22 Q. Now, Nick, I'm gonna ask you a question and I'm gonna
23 ask you to look at the jury. Nicholas Chhith-Berry, on
24 that night in May of 2014 did you intend to kill Jamie
25 Galloway?

1 A. That night on May 19th, no, I did not intend to kill
2 Jamie Galloway. My intentions was to get Jamie off of my
3 brother so he would stop beating my brother. To my -- it
4 looked like an excessive amount of blood coming out of his
5 face and it was -- I've never been in a situation quite
6 like that. I never really seen my brother get in a fight
7 before.

8 MR. FLOYD: Thank you, Nick. Answer any questions
9 the solicitor has for you.

10 CROSS-EXAMINATION

11 BY MR. GRAHAM:

12 Q. Mr. Berry, let's start on May 11, 2014, at Kathy
13 Polk's house. Do you know what I'm referring to?

14 A. Yes, sir.

15 Q. Your story is that -- well, I think -- let's see.
16 Jamie came out and Jamie was upset because you, Adam and
17 Kayla were over there to pick up **J.G.** and you-all
18 were high and drunk, correct?

19 A. At that point, I don't believe we was high or drunk.

20 Q. Didn't Jamie Galloway confront Adam and Kayla about
21 taking his son, **J.G.** around with them while they
22 were high; yes or no?

23 A. I don't recall the argument, sir.

24 Q. So you don't know why Jamie was arguing with Adam?

25 A. No, sir. I just know it did seem like he was pretty

1 heated and he spit in my brother's face.

2 Q. He was what? He spit on his face?

3 A. He spit in his face, yes, sir.

4 Q. Your brother didn't get out of the car, did he?

5 A. No, sir.

6 Q. You jumped out of the car?

7 A. Yes, sir.

8 Q. Did Jamie try to pull Adam out of the car?

9 A. No, sir.

10 Q. Did Jamie say Adam, get out of the car so I can beat
11 you?

12 A. No, sir.

13 Q. The fact is you jumped out because your brother had
14 been disrespected, right?

15 A. Well, I was trying to prevent an altercation from
16 happening.

17 Q. But there wasn't an altercation. Adam wasn't that
18 upset. He wasn't gonna get out of the car and fight, was
19 he?

20 A. I mean, the kids were there. I didn't know whether
21 or not Jamie would pull my brother out or not. I was
22 trying to prevent an incident from happening.

23 Q. All right. So -- so you were trying to calm Jamie
24 down?

25 A. I was trying to, you know, calm the whole situation

1 down, yes, sir.

2 Q. All right. So by trying to calm Jamie down, that's
3 why you jumped out of the car, got in Jamie's face and
4 said don't disrespect my brother? That's a way to diffuse
5 that situation?

6 A. So I got in between Jamie Galloway and the truck and
7 I told him don't disrespect my brother.

8 Q. And how does that diffuse the situation?

9 A. Well, I mean, that doesn't quite diffuse the
10 situation, but it -- at that point I was explaining that
11 the kids was -- I was gonna explain at that point that the
12 kid was in the car because, I mean, the back windows are
13 tinted in that car, but I'm pretty sure you could still see
14 through there. So I was explaining don't disrespect my
15 brother and that's when he struck me, whenever I looked
16 over to see my brother.

17 Q. You would agree with me stepping out and saying hey,
18 guys, let's all calm down, that's diffusing the situation,
19 correct? Would you agree with that?

20 A. Yes, sir.

21 Q. Stepping out and saying don't disrespect my brother
22 is a way to escalate the situation, isn't it?

23 A. Well, at that point it wasn't the idea.

24 Q. I think you testified earlier that you worshipped
25 your brother and you would do anything for him, right?

1 A. Yes, sir.

2 Q. And if he was disrespected, you would stand up for
3 him and that's what you thought happened on Mother's Day,
4 2014, at Kathy Polk's house, correct?

5 A. I mean, I don't know. I mean, not exactly standing
6 up for him, but trying to prevent the incident from
7 happening.

8 Q. And Jamie punched you how many times?

9 A. I mean, I have no idea, but I know he punched and I
10 had a bruise on the side of the face and my eye and I fell
11 to the ground and he was kicking me and --

12 Q. So did he punch you one time and you fell down to the
13 ground?

14 A. I mean, I don't -- I don't know how many strikes it
15 was, but I know Adam blackeye'd me and it was swollen on
16 the side of my face.

17 Q. So it could have been one?

18 A. One? I don't believe one punch hit me in two
19 different areas.

20 Q. And it's your story that you went down to the ground
21 and he kicked you?

22 A. Yes, sir.

23 Q. Where did he kick you at?

24 A. He kicked me in my chest and abdomen area.

25 Q. How many times did he kick you?

1 A. That I can't count either, sir.

2 Q. More than five?

3 A. I -- I don't know. I can't count the incident, sir.

4 Q. Well, was it one?

5 A. I --

6 Q. I know, but you've got to have some idea. Was it one
7 or was it more than one?

8 A. I mean, it was more than one, yes.

9 Q. Okay. Was it more than three?

10 A. I -- I mean, I don't know. It just happened really
11 fast. I didn't try to count it out.

12 Q. And you got up and you pulled a knife and you went
13 toward Jamie, correct?

14 A. Yes, sir.

15 Q. Because why?

16 A. Because he struck me and I was trying to back him up
17 so I could get around inside the truck. I didn't want to
18 go behind the truck and around because if he would have
19 ran towards me or got on me behind the truck, Kayla nor my
20 brother would have seen that and wouldn't -- you know, at
21 that time I didn't -- I didn't think about the situation
22 like they -- they wouldn't see him run towards me if I
23 were to go behind the truck and go back around, but I
24 went --

25 Q. So how many -- how many steps with the knife in your

1 hand did you take toward Jamie Galloway?

2 A. That I cannot count, sir.

3 Q. From me to you or closer?

4 A. Much closer.

5 Q. And his mom got between you and told you to put the
6 knife away?

7 A. I don't recall seeing her between us.

8 Q. Did she tell you to put the knife away?

9 A. I mean, I don't recall anybody telling me to put the
10 knife away. I don't recall seeing her.

11 Q. Do you remember going by Kathy Polk's house later
12 that week with Kayla to drop off **J.G.**

13 A. The only time I met Kayla's mother we --

14 Q. No, I'm talking about Kathy Polk. Did you go by
15 Kathy Polk's house again --

16 A. Who is --

17 Q. -- with Kayla later that same week?

18 A. I mean, I don't recall the -- I don't recall going
19 back to the area.

20 Q. Do you admit or deny that you told Kathy Polk you
21 don't have to worry about Jamie, I got him?

22 MR. FLOYD: Your Honor, I object. He's already
23 answered he doesn't recall going back there.

24 THE COURT: If he remembers, he can answer, but if
25 he answered --

1 BY MR. GRAHAM:

2 Q. Do you admit or deny that you told Kathy Polk you
3 don't have to worry about Jamie, I've got him?

4 A. I mean, I don't recall going back to her house.

5 Q. Did you ever make that statement to her; yes or no?

6 A. I don't recall going to her house, so apparently I
7 didn't.

8 Q. After you left Kathy Polk's house on May 11, 2014,
9 you, Kayla and Adam went to Tonya Griffin's house, correct?
10 You do remember that?

11 A. I do. That's Kayla's mother, right?

12 Q. Kayla's mother.

13 A. Yes, sir.

14 Q. And it's your testimony that you'd been beat up, you
15 had several injuries to the head and you had several
16 injuries to the stomach. That story's related to Tonya
17 Griffin, Kayla's mother, and Kayla's mother says call the
18 police, correct?

19 A. I don't recall her telling any of this. When --
20 the only time I met Ms. Griffin was she was in a heated
21 argument with her husband or the boyfriend at the time.
22 She called Kayla and told her to come pick her up because
23 her husband wouldn't take her somewhere or some -- I
24 don't really under -- know what they was -- why she
25 really was telling us to come pick her up. We arrived

1 at Ms. Griffin's house and upon our arrival there was a
2 Lexington County police deputy riding behind us and pulled
3 in right behind us at the area and around that time it was
4 probably about, you know, the -- it was close to the sun
5 going down. She was -- Kayla's mother came out of the
6 house and was crying and stuff and told the deputy what
7 was going on. But, anyway, the deputy ended up putting
8 Ms. -- I mean, her boyfriend or the husband at the time
9 in handcuffs.

10 Q. Let me interrupt for a second. My question was
11 May 11, 2014, Mother's Day, after you left Kathy Polk's
12 house did you go to Tonya Griffin's house; and is that a
13 yes or a no?

14 A. Yes, sir.

15 Q. And the story of what happened to you was related to
16 Ms. Griffin, correct?

17 A. What story are you referring to?

18 Q. When you're talking about Jamie beating you up and
19 attacking you, punching you in the head and kicking you
20 while you were down, that story was related to Tonya
21 Griffin; correct?

22 A. I don't recall ever telling her anything. This is
23 why I'm trying to tell you about the only incidence I seen
24 her.

25 Q. Did you hear Kayla tell her anything?

1 A. The only time Kayla was speaking to her was telling
2 her why do you keep going back to that place if he keeps
3 hitting you.

4 Q. So you deny that Tonya Griffith when related what
5 happened to you was advising you and Kayla to call the
6 police on Jamie Galloway; yes or no?

7 A. I mean, I don't recall any statements being told to
8 me like that.

9 Q. Do you admit or deny that you told Tonya Griffin and
10 everybody there that Jamie didn't need cops because you
11 were gonna handle it and Jamie wasn't gonna be breathing
12 anymore?

13 A. I deny that statement.

14 Q. And at that time Kayla was dating Adam, correct?

15 A. Yes, sir.

16 Q. Did Ms. Griffin like Adam?

17 A. I don't know. We -- I only met her that one time
18 when I was trying to tell you the incident where she was
19 in an altercation with her husband or boyfriend at the
20 time and --

21 Q. Well, let's talk about --

22 A. -- she wanted to go wherever she wanted to go.

23 Q. So you didn't tell either one of those women any
24 threats about Jamie Galloway, right?

25 A. I don't recall, sir.

1 Q. You don't recall? That means you could have said
2 them?

3 A. I didn't say that, sir. I don't recall ever arriving
4 at Kathy's house a second time and --

5 Q. Your testimony is that you never threatened Jamie
6 Galloway to either Tonya Griffin or Kathy Polk; is that
7 correct?

8 A. Yes, sir.

9 Q. State's Number 53. That is your phone, correct?

10 A. Yes, sir.

11 Q. That was on you that night?

12 A. What night are you referring to?

13 Q. May 19, 2014, when you killed Jamie Galloway, that
14 was on you, correct?

15 A. The phone was on me that night, yes, sir.

16 Q. And it went with you to the hospital and then when
17 you got arrested the police kept your phone, correct?

18 A. I mean, I don't remember. I don't remember, you
19 know, being -- I don't remember anything being taken off
20 me or anything, but ...

21 Q. That's your phone?

22 A. Yeah.

23 Q. You have a Facebook account and you Facebook'd several
24 people, correct?

25 A. Yes, sir.

1 Q. And that was something you did all the time. What
2 time did you say that you got to Kaysha's house that night?

3 A. It was probably around 5:30, 6:00.

4 Q. If you look at State's Number 55, this is an
5 extraction from your phone. The first one, I'm gonna read
6 it right here. It says hell, nah, I'm chillin' with
7 females right now, but you got .22 rounds, correct?

8 A. Yes, sir.

9 Q. Okay. The date was on 5-19-2014. The time was what?

10 A. 6:37.

11 Q. So you were over at Kaysha's house, correct?

12 A. Yes, sir.

13 Q. You were at Kaysha's house looking for .22 rounds?

14 A. Yes, sir.

15 Q. And you -- looking at State's Number 23, do you
16 recognize that?

17 A. Yes, sir.

18 Q. That's the .22 gun that you had at Kaysha's house
19 that night, correct?

20 A. Yes, sir.

21 Q. That's your gun?

22 A. It was in my bag, yes, sir.

23 Q. The next one says -- the same date, 5:35, you've got
24 .22 rounds. I tell you what, you read your part and I'll
25 read the other. So on 5-19-2014, you start a conversation

1 with Justin Moore at 5:35, which you're over at Kaysha's,
2 right? Is that right, 5:30?

3 A. Between 5:30 and 6:00.

4 MR. FLOYD: Your Honor, I object. Whether or not
5 -- I guess he could ask him whether or not that was his
6 conversation, but Facebook means -- doesn't mean you're
7 the one doing it. It just means there's --

8 THE COURT: I'll sustain it and you can ask your
9 next question.

10 BY MR. GRAHAM:

11 Q. Do you admit that these conversations on here are
12 conversations that you had with your friends?

13 A. I mean --

14 Q. Yes or no?

15 A. I don't -- I don't remember having a conversation
16 with -- about anything like that with anybody.

17 Q. So is that a no or I just don't remember again?

18 A. No.

19 Q. So do you admit or deny that you sent out one and
20 talking about .22 rounds, not him, I'm talking about Jamie
21 Galloway?

22 A. I don't recall, you know, sending a message like that.
23 I don't -- may I read the --

24 Q. Sure. You would agree with me that that conversation
25 right there is talking about .22 rounds to get Jamie

1 Galloway, correct?

2 A. It's not to get Jamie Galloway.

3 Q. Well, first of all, did you write this or not or don't
4 remember?

5 A. I remember -- I remember talking to -- because my
6 brother was texting at first, he was talking about -- he
7 was telling me -- asking me if I knew anybody with .22
8 bullets and I said no and he was like let me use your phone
9 because me -- my brother also wanted to shoot the gun, so
10 we was going to go try it out in the woods. Now --

11 Q. Let me stop you for a second. So your brother was the
12 one looking for .22 rounds, not you?

13 A. I mean --

14 Q. Yes or no?

15 A. I've asked here, you know, but -- I've asked, you
16 know, a few people. Now my brother was talking, you know,
17 messaging Justin at that time, I believe, and I received
18 my phone back and he's saying this, so I go back and see
19 what was said and then -- then that's whenever I said this
20 right here, me and him, I'm talking about Jamie Galloway.

21 Q. All right. So if I go back up here where it says
22 damn, I'm trying just to front em so I can get something
23 solved and pay em after shit happen, you know, you're
24 saying that's your brother, not you?

25 A. I mean --

1 Q. Yes or no? Or don't remember?

2 A. I really don't remember any Facebook conversation.

3 Q. It's very convenient, isn't it?

4 A. What?

5 MR. FLOYD: Objection, Your Honor. That's an
6 improper comment.

7 MR. GRAHAM: That's a question.

8 THE COURT: Rephrase the question.

9 BY MR. GRAHAM:

10 Q. Isn't it very convenient that you don't remember
11 anything?

12 A. I mean, that was -- that was probably some three
13 years ago. I can't really remember much about anything.
14 I mean, I was intoxicated the majority of that day.

15 Q. Jamie OGT-savages Leroy, who is that to you?

16 A. That is one of my homeboys. One of my friends.

17 Q. A friend that you considered a brother, I think; is
18 that correct?

19 A. I mean, not exactly a brother, but I grew up around
20 him, yes, sir.

21 Q. May 11, 2014, 4:07 PM, there's a text that says aye,
22 bro, need a burner ASAP, isn't there?

23 A. Yes.

24 Q. A burner is a throwaway gun, correct?

25 A. No, sir.

1 Q. What is it?

2 A. That is a -- it's a very cheap cell phone. It's like
3 a prepaid cell phone you can buy at Wal-Mart for like
4 thirty or forty dollars.

5 Q. Did you send that or did your brother send it or do
6 you know who sent that?

7 A. That was -- yeah, that was me.

8 Q. You?

9 A. Yes, sir.

10 Q. Okay. That was at 4:07 PM on May 11, 2014, so that
11 would have been right after Jamie Galloway hit you,
12 correct?

13 A. Yes, sir.

14 Q. May 19, 2014, to the same person. There are
15 conversations about .22 rounds and the last one says oh,
16 we are, but I want them bullets, got something to handle.
17 Who sent that text, you or your brother?

18 A. I mean, I don't quite remember, but ...

19 Q. Did your brother have anything he needed to handle
20 with bullets?

21 A. I -- probably not. I don't believe so.

22 Q. You can't think of anything he needed to handle with
23 bullets?

24 A. No. I mean, I had the .22 rifle and we earlier that
25 day was trying to shoot it.

1 Q. Shooting it is not the same thing as something to
2 handle; would you agree with me on that?

3 A. I mean, I don't know, but later -- earlier that day
4 we was trying to shoot the gun.

5 Q. So on the 11th you were -- I'm sorry, I must have
6 missed it. On the 11th, on Mother's Day, you were
7 intoxicated and that's why you're having trouble
8 remembering what you said on those days; is that what you
9 testified to right now?

10 A. I mean, I just don't ...

11 Q. Is that what you testified to; yes or no?

12 A. I wasn't really -- I don't recall inducing anything.

13 Q. Because earlier you testified with Mr. Floyd that
14 you weren't intoxicated and now it's my thought that maybe
15 you just said you were and that's why you can't remember
16 anything.

17 So something to handle, is that your text or your
18 brother's? The .22 rounds; you or him?

19 A. I mean, I don't really recall making the statement,
20 but ...

21 Q. And you don't know of anything that you brother
22 needed bullets to handle, correct?

23 A. No, sir.

24 Q. The truth is you wanted bullets for this .22 to
25 handle Jamie Galloway, isn't it?

1 A. That's not the idea, sir.

2 Q. So you have no explanation for all of these looking
3 for .22 and talking about Jamie Galloway and something to
4 handle, do you, because you don't remember who sent them
5 or what they meant; is that correct?

6 A. Yes, sir.

7 Q. Let's talk about the police arriving on the scene.
8 Do you remember the police showing up on the scene?

9 A. The rest of that night after the incident happened it
10 was quite a blur. I can't -- I can't really recall what
11 happened, but it was quite obvious I was -- the police
12 arrived and I was incarcerated.

13 Q. Your testimony is that you stabbed Jamie Galloway at
14 least once, correct?

15 A. Yes, sir.

16 Q. That's what you said on direct.

17 A. Yes, sir.

18 Q. Earlier this week you said you only stabbed him one
19 time; is that correct?

20 A. I --

21 Q. Yes or no?

22 A. -- don't recall. I mean, at that time I was probably
23 referring to -- answering the question as -- you asked me
24 -- I believe I didn't quite understand your question at
25 that time.

1 Q. I think that was your attorney's question. Earlier
2 this week didn't you just testify over and over and over
3 again that you only stabbed him one time; yes or no?

4 A. I mean, I stated that I stabbed him one time.

5 Q. But now you're saying you stabbed him at least one
6 time?

7 A. I mean, I guess at that point I didn't understand his
8 question, but what I mean --

9 Q. So how many times did you stab him?

10 A. At least one time.

11 Q. Did you stab him twenty-five times?

12 A. I can't recall to the incident after the initial one
13 stab.

14 Q. All right. So even though you testified different
15 earlier in the week, and we'll get to that, too, but you
16 could have stabbed him twenty-five times. You can't say
17 you didn't, can you?

18 A. I mean, I was --

19 Q. That's a yes or no question. You can explain --

20 MR. FLOYD: Your Honor, he doesn't have to badger
21 the witness. He's a young man.

22 THE COURT: This is the rule. When you're asked a
23 question, answer with a yes or no, then you can have an
24 opportunity to explain. So we'll give him an opportunity
25 to explain.

1 BY MR. GRAHAM:

2 Q. You can't say that you didn't stab him twenty-five
3 times, can you?

4 A. I mean, I don't recall nothing after the first initial
5 stab, so.

6 MR. GRAHAM: Judge, would you direct him to answer
7 my questions yes or no, please.

8 THE COURT: You can answer -- however he asks the
9 question, do you remember this or do you remember that or
10 whatever his question was, you can say yes or no, but let
11 me explain or something along those lines.

12 THE WITNESS: Well, can you rephrase the question
13 for me, please.

14 BY MR. GRAHAM:

15 Q. You cannot say one way or the other whether you
16 stabbed Jamie Galloway twenty-five times, can you?

17 A. No, sir.

18 Q. You're not here to say that your brother, Adam,
19 stabbed him at all, are you?

20 A. I mean, I don't know what transpired after the first
21 initial stab.

22 Q. So the answer is no, correct?

23 A. I mean, I guess so.

24 Q. When the first police officer came up -- well, let's
25 talk about that. So after whatever happened happened and

1 you were leaving, did you know that Jamie was dead?

2 A. I mean, I don't recall anything after the first
3 initial stab, sir.

4 Q. Then what's the next thing you remember?

5 A. Being incarcerated.

6 Q. At the detention center?

7 A. (Nods head.)

8 Q. That's a yes?

9 A. I mean, I remember -- I remember getting in jail,
10 waking up the next morning and going to bond court to
11 which my bond was denied.

12 Q. So on Monday when we had a hearing and you testified
13 that Adam was down on the ground on the corner of the porch
14 and Jamie was on top of him and that you went over and
15 stabbed Jamie and that Jamie rolled over and Adam came
16 around and both of you were free to leave and Jamie was
17 there, that was a lie earlier this week when you said that
18 or was it true?

19 A. I mean, I just --

20 Q. Is that yes or no?

21 A. That was just an assumption to what because -- I mean,
22 I only remember the initial first stab, so.

23 Q. You don't even now remember the first stab?

24 A. No, I said that's because I only remember the first
25 initial stab. I just made an assumption that's how my

1 brother managed to get out.

2 Q. All right. So when you testified on Monday, what I
3 just said is what you said, you're now saying you don't
4 remember that and you lied when you were under oath,
5 correct?

6 A. I -- I mean, it was an assumption. I ...

7 Q. You do admit that you said that though, correct?

8 A. Yes, sir.

9 Q. Under oath you said that?

10 A. Yes, sir.

11 Q. And that's what you said happened, correct?

12 A. Now, no.

13 Q. That's what you said on Monday about what happened?

14 A. Yes, sir.

15 Q. That you stabbed one time, that your brother came
16 around and Jamie was trapped in the corner and that you-all
17 punched and hit Jamie but there was nothing stopping you
18 from leaving. That is what you testified to on Monday,
19 correct?

20 MR. FLOYD: Your Honor, I object. If Mr. Graham
21 wants to be a witness, then he should take the stand,
22 but I don't think he can testify in front of the jury.

23 THE COURT: It's a rather lengthy question. I'm
24 gonna allow it, but I'm gonna allow Mr. Graham to
25 compartmentalize -- break it down a little bit.

1 MR. GRAHAM: Thank you, Your Honor.

2 BY MR. GRAHAM:

3 Q. You remember testifying on Monday?

4 A. Yes, sir.

5 Q. You remember testifying under oath that your brother
6 was down on the ground and that Jamie was on top of him?

7 A. Yes, sir.

8 Q. You remember testifying that you took a knife and you
9 stabbed Jamie at that time?

10 A. I stabbed him the initial one time.

11 Q. Then you testified that Jamie fell off, correct? Yes
12 or no?

13 A. I said that, but I don't -- I don't really remember
14 Monday, but I could have said that, yes, sir.

15 Q. You did say it, but now you don't remember that; is
16 that your testimony now?

17 A. I believe I said it, yes, sir.

18 Q. Did you also testify under oath that after that
19 happened your brother got up and that you and he were
20 where you could go off the porch and that Jamie was now
21 in the corner? You did testify to that, too, didn't you?
22 I'm not asking you if it's true. I'm asking if that's
23 what you said on Monday.

24 A. I'm -- I'm trying to remember if I said that, but I
25 mean, I'm pretty sure I said that if you're saying I said

1 it.

2 Q. You do believe that that's what you said on Monday?

3 MR. FLOYD: Your Honor, I think what he's saying
4 is --

5 MR. GRAHAM: I can't hear him.

6 MR. FLOYD: He's believing Mr. Graham -- whatever
7 Mr. Graham says because he doesn't remember.

8 THE COURT: Right. You know, for everybody, he's
9 being very soft spoken and Mr. Graham is having trouble
10 hearing him. I don't think he's trying to badger him
11 because he's made me repeat comments to him during this
12 trial, so an adjustment of the microphone may help us,
13 but I don't think there was any -- Mr. Graham asked the
14 question, he couldn't quite hear the answer. The current
15 question is the brothers are around, not in the corner,
16 and your next question?

17 MR. GRAHAM: Thank you, Your Honor.

18 BY MR. GRAHAM:

19 Q. My question was, on Monday didn't you testify under
20 oath that after you stabbed the first time Jamie fell over,
21 your brother was no longer trapped in the corner and you
22 and he were free to leave? Isn't that what you testified
23 on Monday; yes or no?

24 A. I don't recall adding in the part free to leave, but
25 that -- the rest of what I said, yes.

1 Q. So Jamie was down on the ground and you and he were
2 on -- not trapped in the corner?

3 A. I mean --

4 Q. You did testify to that?

5 A. On Monday, yes.

6 Q. Okay. But now you're saying you don't remember that?

7 A. It was just I was -- I'm assuming because somehow my
8 brother managed to get out.

9 Q. Right now do you remember that's the way it happened
10 or you don't know?

11 A. Right now I really don't recall anything after the
12 first initial stab.

13 Q. So when you said things like that on Monday under
14 oath, you lied and made things up?

15 THE COURT: He's already answered that question. He
16 said he was assuming that, but he didn't -- he's -- you've
17 asked him that question three times.

18 BY MR. GRAHAM:

19 Q. The first -- did you call -- you had a phone. Did
20 you call an ambulance, did you call the police during the
21 incident on May 19th, 2014?

22 A. No, sir.

23 Q. If you were so afraid of Jamie Galloway when he first
24 showed up, why didn't you leave?

25 A. I didn't have any way to leave not knowing where I

1 was gonna go.

2 Q. You could have walked away, couldn't you?

3 A. I could have and got lost.

4 Q. You could have taken -- did you go to Adam and say
5 Adam, we need to get out of here?

6 A. Excuse me?

7 Q. Did you go to your brother Adam when you knew Jamie
8 was coming and say let's go?

9 A. No, sir.

10 Q. Do you admit or deny that a female said prior to
11 Jamie Galloway showing up Jamie's on his way to see his
12 son?

13 A. No females ever stated that to me. I never -- I
14 mean, I never knew Jamie Galloway was gonna come over.

15 Q. When Jamie showed up, did you go to your brother and
16 say let's get out of here?

17 A. No, sir.

18 Q. But you were terrified or scared or afraid of Jamie
19 Galloway, correct?

20 A. Yes, sir.

21 Q. And you chose to stay?

22 A. Yes, sir.

23 Q. You chose to stay so you could carry out your threats,
24 didn't you?

25 A. I never had any intentions to kill Jamie Galloway.

1 Q. So you deny that you stayed to carry out your threats
2 that Jamie wouldn't be breathing anymore?

3 A. I don't recall making that statement, but I never had
4 an intention to kill anybody.

5 Q. When Allen Gleaton, the Pine Ridge officer who showed
6 up first, do you admit or deny that you came out of the
7 car, didn't follow commands and said go ahead and shoot me?

8 A. I don't recall anything after the first initial stab,
9 sir.

10 Q. So were you drinking alcohol that night?

11 A. Yes, sir.

12 Q. How much did you have?

13 A. Quite a bit. Probably four, five shots and some of
14 -- a drink or two.

15 Q. And how much Xanax? Did you take any Xanax?

16 A. Yes, sir. I took one bar and a half.

17 Q. And were you smoking marijuana?

18 A. It's possible I could have, yes, sir.

19 Q. Do you remember your encounter with EMS on the scene
20 and being evasive and lying to them about questions about
21 your name and your age and other things like that?

22 A. I don't remember anything after the incident, sir.

23 Q. Do you remember them asking you what happened to the
24 cuts on your hands?

25 A. No, sir.

1 Q. Do you admit or deny that the first time you told them
2 you didn't remember what happened?

3 A. I don't remember having any conversations or anything.
4 I don't remember anything after the first initial stab,
5 sir.

6 Q. Do you admit or deny that you subsequently told them
7 that it happened so fast you don't know what happened?

8 MR. FLOYD: Your Honor, I object. He's harassing
9 him. He says he doesn't remember from the stabbing until
10 he wakes up in the jail, so why keep asking him the same
11 questions?

12 THE COURT: I understand your objection. I'm gonna
13 allow Mr. Graham to ask the question.

14 BY MR. GRAHAM:

15 Q. You don't remember that either?

16 A. Remember what, sir?

17 Q. That you told them it happened so fast I don't know
18 what happened?

19 A. I don't remember making any statements or anything,
20 sir.

21 Q. You don't remember telling Chris Hall that Jamie
22 Galloway was whaling on you and your brother with a knife
23 and that's how your fingers got stabbed?

24 A. I don't remember, sir.

25 Q. You've heard all the -- you've heard the recorded

1 statements of your interviews, correct?

2 A. Yes, sir. That's --

3 Q. And there's four or five different stories on there
4 you would agree, wouldn't you?

5 A. Yes, sir.

6 Q. And you don't remember making any of those stories,
7 do you?

8 A. No, sir.

9 Q. Did you file a police report about Jamie attacking
10 you on May 11, 2014?

11 A. No, sir.

12 Q. But you were severely injured, correct?

13 A. I mean, I wouldn't exactly say severely injured. I
14 just -- I had a black eye and marks on my face.

15 Q. You were injured enough you felt like you had to pull
16 a knife, correct?

17 A. That -- I was pretty scared, yeah.

18 Q. But you weren't scared enough to call the police and
19 file a report?

20 A. Well, I know if you get an assault charge, you -- you
21 don't stay in jail for long. If I were to pursue calling
22 any cops or anything and press charges on him, it could,
23 you know, have made him want to beat me up again.

24 Q. Let's talk about the injuries you had from May 19,
25 2014. Well, let me ask another question. This screwdriver

1 didn't have anything to do with what happened that night,
2 did it?

3 A. I mean, that -- I don't know, sir. I only recall,
4 you know, stabbing him one time.

5 Q. When you stabbed Jamie one time, you have not
6 testified to anything prior to that, what you do remember,
7 about the screwdriver being involved, correct?

8 A. I don't know if the screwdriver was involved or not,
9 sir.

10 Q. That's not my question. My question is have you said
11 anything about anybody using a screwdriver before you
12 stabbed Jamie and blacked out?

13 A. No, sir.

14 Q. So Jamie didn't attack you or your brother with a
15 screwdriver that you saw and remember?

16 A. I just -- I don't -- I don't remember if, you know,
17 the screwdriver was used. I don't know if -- all I
18 remember is he was on top of my brother and I stabbed him
19 that initial one time.

20 Q. It's a simple question. Did you see this in Jamie
21 Galloway's hand being used against you or your brother?

22 THE COURT: He's already answered that he didn't
23 remember, I believe.

24 MR. GRAHAM: No, the didn't remember he's talking
25 about something happened after he blacked out. My question

1 is from what he does -- in the story line that he's been
2 telling at that time --

3 THE COURT: So before.

4 MR. GRAHAM: -- before he stabs Jamie Galloway and
5 blacks out.

6 THE COURT: All right. Phrase it that way.

7 BY MR. GRAHAM:

8 Q. Before you stab Jamie Galloway and black out and
9 don't know what happens, you are not here today testifying
10 that this screwdriver was used in any way, are you?

11 A. I couldn't see Jamie's hands at that point.

12 Q. Okay. But you haven't testified about it?

13 A. No, sir.

14 Q. The .380 pistol, you don't know anything about the
15 .380 pistol being used before you stabbed Jamie Galloway,
16 correct?

17 A. No, sir.

18 Q. State's 32 is your knife, correct? Do you recognize
19 it?

20 A. Yes, sir.

21 Q. That's the knife you stabbed Jamie Galloway with?

22 A. Yes, sir.

23 Q. It came out of your pocket?

24 A. Yes, sir.

25 Q. Isn't it true that you brought a weapon to a

1 fistfight?

2 A. I mean, my brother was getting beat. I didn't know
3 what to do.

4 Q. What was going on with your brother?

5 A. When?

6 Q. Your brother got hit in the face --

7 A. He was getting --

8 Q. -- they wrestled and Jamie was holding him down. What
9 was going on so bad that you had to take out a knife and
10 stab Jamie Galloway?

11 A. Because he was on top of my brother and I thought my
12 brother was gonna get beat to death. I mean --

13 Q. The only injuries you had -- Jamie Galloway didn't hit
14 you, did he?

15 A. Not that night. No, sir.

16 Q. Not that night. The only injuries you had were cuts
17 on your hands. State's 50 and 51, the cuts on your pinkies
18 on your left and right hand, correct?

19 A. Yes, sir.

20 Q. Do you know how you got either one of those?

21 A. No, sir.

22 Q. Jamie Galloway didn't attack you with a knife that
23 you remember, did he?

24 A. No, sir.

25 Q. Because he didn't have any weapons that you remember.

1 Would you agree with me that it's possible that while you
2 were holding that knife and you stabbed Jamie Galloway at
3 least once that your hand slipped and you cut yourself?

4 A. Yes, sir.

5 Q. Would you agree with me that the -- maybe it was twice
6 that the same thing happened?

7 A. Yeah, it's a possibility. I mean, I don't recall
8 anything after the first initial stab.

9 Q. Your brother didn't have any injuries on his pinky
10 like that, did he?

11 A. No, sir.

12 Q. In fact, his injury on his hands in State's 47 is a
13 laceration on the top of his right wrist, correct?

14 A. Yes, sir.

15 Q. Is that where you cut your own brother when you were
16 stabbing Jamie Galloway?

17 A. I don't recall anything after the first initial stab.

18 Q. What did Jamie do after you stabbed him?

19 A. I don't know.

20 Q. Literally you don't know. He was -- he was over your
21 brother, you stabbed him and that's the last thing you
22 remember?

23 A. He was beating my brother. He was on top and beating
24 my brother and that's when I stabbed him initially one
25 time.

1 Q. And then you don't have any memory after that moment
2 until bond court the next day?

3 A. Yes, sir.

4 Q. The injuries on your brother, your brother got punched
5 in the mouth. You saw that, right?

6 A. (Nods head.)

7 Q. In fact, I think he lost a tooth. Did you know that
8 that night?

9 A. I mean, all I know is there was blood coming from my
10 brother's face. It was more blood than I'd seen before,
11 so I just didn't know what ...

12 Q. State's 45. That's a picture of your brother at the
13 hospital?

14 A. Yes, sir.

15 Q. The only injury you saw, correct me if I'm wrong, is
16 Jamie Galloway punching your brother in the face; is that
17 right?

18 A. Can you say that question for me once again, please?

19 Q. You saw your brother get punched by Jamie Galloway in
20 the face out in the yard, right?

21 A. I seen him hit my brother in the face, yes.

22 Q. All right. That's the only hit you saw Jamie Galloway
23 give your brother or were there others?

24 A. There was more than that.

25 Q. How many were there?

1 A. I cannot count, sir.

2 Q. Where did the fight start?

3 A. It started near the top of the driveway near the
4 walkway.

5 Q. Who threw the first punch?

6 A. Jamie.

7 Q. Who threw the second punch?

8 A. I don't know. That's when my brother fell. I mean,
9 after he got hit, he fell and he got back up. He was --
10 Jamie pursued going to him. He was just backing up.

11 Q. Did your brother ever hit Jamie?

12 A. It's a possibility, but I don't really -- I don't
13 know because, you know ...

14 Q. So how many times did Jamie hit your brother?

15 A. I don't know. I didn't count.

16 Q. More than two?

17 A. I mean, it's got to be more than two, yeah.

18 Q. More than ten?

19 A. I mean, I don't know. It might not have been that
20 many. It could have been that many.

21 Q. You do or don't know whether your brother hit Jamie?

22 A. I don't really know. That's just ...

23 Q. Was it a fight or was it a beating? How do you
24 describe what happened between Jamie and your brother?

25 A. I mean, it was more of a beating. I mean, it was --

1 I never really seen my brother fight the man. I just seen
2 him backing up. I mean ...

3 Q. So you don't know whether it was a beating or a
4 fight?

5 A. My brother was getting beat, so I guess you would
6 consider that a beating.

7 Q. Well, he had blood on him. I understand he had blood
8 on him, but I'm trying to understand because the jury needs
9 to understand why you stabbed him.

10 A. Because he was on top of my brother beating him.

11 Q. So how many times did you see him strike your brother
12 when he had your brother down on the ground?

13 A. I mean, I didn't see the actual hands striking him,
14 but he -- I seen elbows going back and forth while he was
15 on top of my brother.

16 Q. So while Jamie Galloway was on top of your brother,
17 you didn't see any blows, you just saw Jamie's arms moving?

18 A. Like how somebody would when they strike.

19 Q. So you can't say then that Jamie Galloway wasn't just
20 holding your brother down to try to stop a fight, can you?
21 Yes or no?

22 A. I mean, I don't why my -- why he would hold my brother
23 down when my brother was trying to back away from him. My
24 brother ended up in the corner.

25 Q. State's Number 60 -- well, let's start here.

1 State's 56, do you recognize that? You heard the
2 pathologist testify to it yesterday?

3 A. Yes, sir.

4 Q. Which one is yours? Which one are you claiming
5 responsibility for?

6 A. I mean, when he was on top of my brother, I mean, I
7 stabbed him one time in the back. I mean, I don't really
8 recall anything else after that.

9 Q. Well, State's 57, the one in the arm, you don't
10 remember doing that one, correct?

11 A. I don't remember.

12 Q. State's 58, the one on the side of the right head
13 under the ear, you don't remember doing that one, do you?

14 A. No, sir.

15 Q. State's 60, the two to the back of the head and the
16 two to the neck, are any of those yours?

17 A. I mean, that's -- that may have been the back.

18 Q. State's 59, showing the back, do you recognize any of
19 those as being the one that you did that you remember?

20 A. No, sir. I just know that I stabbed him in the upper
21 back one time, the initial one time.

22 Q. And you don't know what happened after that?

23 A. No, sir.

24 Q. And you have no memory of all the different stories
25 that all these people said; is that correct?

1 A. What stories are you referring to?

2 Q. Well, what the police say you said, what EMS said you
3 said, what your own voice said, all the different stories
4 that you gave, you don't remember any of that?

5 A. No, sir.

6 Q. Isn't it true that you wanted to kill Jamie Galloway?

7 A. No, sir.

8 Q. Isn't it true that you knew he was coming to Kaysha's
9 house to see his son and you stayed?

10 A. I didn't know Jamie Galloway was coming over.

11 Q. Isn't it true that all that day and before you were
12 looking for a throwaway gun, you found a .22 pistol and you
13 were looking for bullets to take care of Jamie Galloway?

14 A. I wasn't trying to use a gun to kill anybody, sir.

15 Q. Isn't it true that when your brother and Jamie got
16 into a fight, not a beating, but a fight, your brother was
17 losing and he was being disrespected and you took out your
18 knife and you stabbed Jamie Galloway to kill him? Isn't
19 that the truth?

20 A. I didn't stab Jamie Galloway to kill him and --

21 Q. But he's dead, isn't he?

22 A. Unfortunately, he's dead, yes.

23 MR. GRAHAM: That's all, Your Honor.

24 THE COURT: Anything else, Mr. Floyd?

25 MR. FLOYD: No further questions, Your Honor. Thank

1 you.

2 THE COURT: All right. You can step down, young man.

3 (Witness excused.)

4 MR. FLOYD: Your Honor, the defense rests.

5 THE COURT: Very well.

6 All right. Would a lunch break until 1:30 be
7 appropriate? Does that sound good, Ms. Cagle?

8 FOREPERSON: Uh-huh.

9 THE COURT: All right. You-all are free to go to
10 lunch until 1:30 and then be back in the jury room. You
11 can't discuss the case and I'll let you know what we've
12 got to do before we get to the end.

13 (Whereupon, the jury was excused for lunch at
14 12:14 PM.)

15 THE COURT: All right. Are you gonna call any
16 rebuttal or are you gonna think about it?

17 MR. GRAHAM: We do need to talk about it, Your Honor.

18 THE COURT: Okay.

19 MR. GRAHAM: If we do -- if we do, it will be very
20 -- it would be short.

21 THE COURT: All right. We've been working on the
22 jury charges up here, so if there's anything that needs
23 to be considered over lunch, let me know. I've a pretty
24 good idea of what I'm gonna charge.

25 MR. FLOYD: I've already given them my proposals and

1 I'll give those to you.

2 THE COURT: Okay.

3 All right. We'll stand at ease until 1:30.

4 (Whereupon, a luncheon recess was taken at 12:15 PM.)

5 (Back on the record at 1:37 PM.)

6 BAILIFF: All rise. Court will now come to order.

7 THE COURT: Okay. Be seated.

8 All right. What are you-all gonna do?

9 MR. GRAHAM: We've got nothing, Your Honor.

10 THE COURT: Okay. We're ready to -- do you-all
11 want me to read my caption like I did last time? For
12 Mr. Floyd's benefit, I'll tell him.

13 Mr. Floyd, what I did -- what I normally do on my
14 jury instructions, I have an outline of the topics I'm
15 gonna hit, and Mr. Graham's appeared in front of me enough
16 that he's seen it, the gist of it's this, and you-all can
17 comment if this is what you want or don't want. But, of
18 course, the preliminary, the Court's the instructor of the
19 law, burden of proof, the jury's the finder of facts and
20 credibility, expert testimony, weighing evidence,
21 circumstantial evidence and direct evidence, reasonable
22 doubt. And I charge it both ways; reasonable doubt is the
23 kind of doubt that causes a reasonable man to hesitate to
24 act and firmly convinced. I say both. Criminal intent.
25 I've got murder. I've not heard you-all mention voluntary.

1 MR. FLOYD: Yes, Your Honor. We would request that.
2 We had a -- one of our charges was on that.

3 THE COURT: All right. Is there any objection to
4 voluntary? Because I thought --

5 MR. GRAHAM: I don't -- if you say that it's there.
6 I didn't hear it. I don't think there's legal provocation
7 about seeing his brother get into a fight.

8 THE COURT: I'm kind of inclined to charge it, but I
9 can see the argument both ways. Possession of a weapon.
10 Prior record of witnesses. Prior record of Defendant.
11 Voluntary intoxication. Self-defense and defense of
12 others. Do you want me to charge that together? This
13 is my first one on defense of others. Charge them in
14 combination?

15 MR. FLOYD: I think so. I know a lot of those
16 charges that are used say -- tell them the defense is
17 available and it's like -- I mean, defense of others is a
18 defense and then they say as in self-defense and then kind
19 of give the elements of self-defense.

20 THE COURT: So I'll go with the elements of
21 self-defense and those must be shown in defense of others.

22 MR. GRAHAM: Somehow, and I don't know what the
23 language is, but I believe doesn't it have to reflect that
24 he goes in the shoes of the other person? So if in this
25 case Adam wasn't able to claim self-defense or the elements

1 aren't there for Adam, that's where he's at.

2 THE COURT: Okay.

3 MR. FLOYD: Your Honor, we had a proposal.

4 THE COURT: And I've got kind of a brief note on
5 redactions and note-taking. I don't have the hand of one,
6 but that would be appropriate, too. I don't have any
7 problem giving that one also.

8 Those are kind of the general highlights. Is that
9 pretty close to what you-all asked for?

10 MR. FLOYD: Yes, Your Honor. We did have eight
11 others we requested.

12 THE COURT: All right. The one on the destruction
13 of evidence, there were two requests to charge,
14 Defendant's Request to Charge 1 and 2, both of those
15 were similar to me, the destruction of evidence, and I'm
16 not inclined to do that. I understand the argument, but
17 I can't tie the death of the brother to the State. I
18 don't see any connection there other than they prosecuted
19 both cases.

20 Number 3, is that not kind of in self-defense?

21 MR. FLOYD: Well, it is, but I think the --
22 16-11-440(C) is a little bit -- a little different than
23 the regular self-defense and it just has those elements,
24 and that's a quote out of that particular subsection.

25 THE COURT: And I put that charge in the -- the

1 Cook-Out -- we put that in the Cook-Out instructions. I
2 don't think it was the same subsection, but we did that.

3 MR. GRAHAM: My guess is you're gonna include it
4 and, for the record, I'll object to it. I don't think
5 it's appropriate. I think that's what State versus Curry
6 says. They shouldn't have gone back and charged it. That
7 was the conversation -- the long conversation that you
8 and Mr. Rutherford and I had back in your office about
9 that where he was telling us what the intent was.

10 THE COURT: I very much remember that. That was
11 difficult to understand how we're -- I'm still curious
12 where it comes from, but it's there. We have that in the
13 statute. I find that kind of curious. I thought I missed
14 it really.

15 State's Number -- Defense Number 8, that is the
16 self-defense charge I've got, so I'm gonna charge that.
17 I'm gonna consider Number 4. Number 3's the 440(C).
18 I'm gonna try to go back and look at my prior charge and
19 see if I can maneuver it somehow to get that statutory
20 language in there. It's really a difficult charge the
21 way it's written.

22 All right. Are you-all ready to go?

23 MR. FLOYD: Yes, sir. How about 5 and 6, Your Honor?

24 THE COURT: I was inclined to give those. I was
25 inclined to give those.

1 MR. FLOYD: Okay.

2 MR. GRAHAM: I think 5 is right. I think 6 is not
3 appropriate in this case. There was not a single person
4 other than the Defendant -- he asked questions about
5 reputation for violence and I think all the answers were
6 no, so I don't think there's any evidence for him to say
7 that he had a right to use force in self-defense or
8 defense of others to say that his reputation as a violent
9 person may be relevant. Nobody's testified to that.

10 MR. FLOYD: He did, Your Honor.

11 THE COURT: Who did?

12 MR. FLOYD: The Defendant.

13 MR. GRAHAM: That goes into his reasonable belief
14 under self-defense though. I mean, it's already there.

15 THE COURT: Certainly you can argue that in closing.
16 Number 5's one of my favorite cases, one of my dad's
17 cases, State v. Hendrix. My dad argued that.

18 All right. Let's go. Bring them in.

19 (Whereupon, the jury returns to the courtroom at
20 1:46 PM.)

21 THE COURT: All right. Ms. Cagle and ladies and
22 gentlemen of the jury, the lawyers have informed me that
23 they've presented the testimony and the evidence that
24 you-all will get to consider. It's now the opportunity
25 for each of them to summarize their respective positions

1 of their cases. Once they're done speaking to you, then
2 depending on how long they talk -- and these lawyers have
3 been very, very efficient with their use of time, I'll
4 tell you. They've done well. I've been in other trials
5 where the lawyers were much more lengthy and longwinded
6 and I couldn't predict how long their closings would be,
7 but these two lawyers are very efficient -- or three
8 lawyers are very efficient with their use of time, so I
9 don't think their closings will be exceptionally lengthy.
10 They'll be appropriate.

11 Once they're done, depending on how long they go, if
12 it's enough time and you-all want a break, we will, and
13 then come back in and hear instructions, then you'll begin
14 your deliberations, all right?

15 So with that in mind, Mr. Floyd, are you ready?

16 MR. FLOYD: We go first?

17 THE COURT: (Nods head.)

18 MR. FLOYD: Madam Forelady and ladies and gentlemen
19 of the jury, I introduced you to this young man when we
20 began this situation and I'm bringing your attention again
21 to Nicholas Chhith-Berry. He's the man about who you're
22 gonna make one of the most important decisions you'll ever
23 make about anyone because you're gonna decided today
24 whether based upon the evidence you've heard this week
25 whether or not Nick Berry should be branded a criminal.

1 So the decision that you make about him will impact him
2 for the rest of his life.

3 Now I want to repeat a couple of things to you.
4 It's not that I think you forgot it, it's just that it's
5 so important because it goes to what you, the jury, has
6 to decide. You see, you've got to look at Nick Berry
7 and you've got to say in your mind and in your heart
8 Nick Berry is innocent and Nick Berry remains innocent
9 and that's until the State proves his guilt to each one
10 of your satisfactions beyond a reasonable doubt.

11 Now what do we mean by that? A lot of people define
12 reasonable doubt as that doubt which would cause a
13 reasonable person to act. That doubt which would cause
14 a reasonable person to act. So if you could somehow take
15 all of the evidence you've heard in this case and put it
16 in the shape of this piece of paper and because one piece
17 of that evidence you would hesitate before you would vote
18 to brand Nick Berry a murderer, it's your obligation as a
19 juror to return a verdict of not guilty. Even if there's
20 other evidence in the case that makes you suspicious of
21 his guilt because when you vote guilty or not guilty,
22 you're not voting on whether or not he did it, what
23 you're voting on is has the State proven Nick's guilt
24 beyond a reasonable doubt. And that's what you, the
25 jury, have to decide.

1 Now what do they have to prove to you? What they
2 have to prove to you -- and by the way, when we lawyers
3 finish speaking to you, the judge will speak to you. The
4 judge will give you -- we call it the charge, but the
5 judge will explain to you the law and you go by what the
6 judge says. Now I'm gonna say some things about the law
7 to you and Mr. Graham or Mr. Eargle, whichever one speaks,
8 they're gonna say some things to you about the law also
9 and we will try to be accurate in what we tell you about
10 the law, but if what we say to you is different than what
11 Judge Griffith says to you, then you go by what Judge
12 Griffith says because he's the judge of the law.

13 But basically murder is the unlawful killing of
14 another with malice aforethought, premeditation, evil,
15 evil intent. So in order to prove Nicholas Berry guilty
16 of murder, then the State must prove to you beyond a
17 reasonable doubt that he did murder Nick Berry {sic} with
18 evil intent in his heart, with premeditation, that that's
19 what he was all about, to kill Nick -- to kill Jamie
20 Galloway. And that's what they've got to prove to you.

21 Now you're gonna have certain options in this case
22 as to the verdict. There's murder, which we just went
23 through that, the unlawful killing of another with malice
24 aforethought, with evil in your heart. There's a lesser
25 included to murder, a lesser included charge if you don't

1 think the evidence proves the higher charge, there's a
2 lesser included charge called voluntary manslaughter. In
3 that situation, if a person kills another person but not
4 with evil intent in their heart or premeditation, but with
5 some type of provocation, and the judge will explain all
6 these things to you in the charge, then you could find
7 the Defendant guilty of voluntary manslaughter.

8 There is a third verdict. There is the verdict of
9 not guilty. Now maybe you're saying to yourself how can
10 he be not guilty? He admitted he stabbed him at least one
11 time. Well, you see, a defense to murder is what's called
12 the defense of others, which is the same as self-defense.
13 So if you kill someone while you're either defending
14 yourself or you're defending someone else, particularly a
15 relative, a close relative, that's a complete defense
16 because that shows there is no malice and the appropriate
17 verdict is one of not guilty.

18 And let me tell you this, too, because the defense
19 of others has certainly been raised in this case. It
20 is not incumbent upon Nick Berry to prove that to you
21 because, you see, in all matters, all matters in this
22 case, the burden of proof is always on the State. So
23 now that the defense -- the defense of others has been
24 raised, which it has been, the State must prove to each
25 and every one of you that self-defense or the defense of

1 others does not exist, and they must prove that to you
2 beyond a reasonable doubt.

3 So that's your three choices. Either he's guilty of
4 murder, guilty or manslaughter or not guilty. When you
5 go to determine whether or not Nick Berry is not guilty
6 because of this defense, you can't require Nick Berry to
7 prove that to you. You must hold the State's feet to the
8 fire and you must analyze the evidence you heard in this
9 case by the touchstone of whether or not the State has
10 proven beyond a reasonable doubt that Nick Berry did not
11 act in the defense of others.

12 Now let's talk a little bit about some of the
13 evidence you've heard in this case. One thing is certain,
14 one thing is not in dispute, and that is what started this
15 incident. And it is clear, every witness said the same
16 thing, Jamie Galloway struck Adam Berry. Jamie Galloway
17 struck Adam Berry. Now that's where it all started. Now
18 think about that a moment. There's no evidence that
19 Nick Berry went out there looking to harm or kill Jamie
20 Galloway. This all started when Jamie Galloway hit his
21 brother, continued to hit his brother, backed his brother
22 up. He jumps in to protect his brother. Not to kill
23 Jamie Galloway, to protect his brother. Now did you hear
24 anything other than that? I suggest not.

25 Now when you decide, I want you to listen closely

1 when the judge charges you the law because there's a few
2 legal concepts you can consider when you're trying to
3 decide whether or not Nick Berry was justified in taking
4 action. One, the reputation for violence. The reputation
5 for violence of the victim. Two, the relative ages,
6 sizes, weights of the victim and the Defendant. What do
7 you have on that point? What did everybody say? Jamie
8 Galloway, over 200 pounds. Nick Berry weighed between
9 110 and 115 pounds. He's twice his size. Twice his size.
10 So do you think he had some rational basis to be fearful
11 of Jamie Galloway? He knew about his reputation. The
12 man, he was out on bond for two counts of attempted murder,
13 was wearing a brace -- one of those ankle things to keep
14 track of where he was. A week earlier he had knocked Nick
15 Berry to the ground. Scared him so bad he urinated in his
16 pants. So do you think he had a reason that was rational,
17 that a reasonable person would have to be afraid, to be
18 fearful of Jamie Galloway? Because those are the things
19 you can consider because, you see, those are factors to
20 consider when you consider whether or not the force used
21 by Nick Berry was reasonable. You listen to what the
22 judge has to say about those kind of things.

23 You know something, Nick Berry, a seventeen-year-old
24 boy, 110, 115 pounds. You know, modern science is
25 starting to discover a young man's brain does not develop

1 as quickly as a female's and they have very undeveloped
2 areas of the brain covering things like impulse control.
3 So when you're trying to judge Nick Berry, think about
4 him being a seventeen-year-old kid with just a ninth grade
5 education. What standard are you gonna hold him to?

6 Here's what we know. We know he jumped on the back
7 and stabbed him. He didn't deny that. He never said I
8 never did anything. Then he blacked out. He doesn't
9 remember anything else until he wakes up in the jail. He
10 was in shock because he's not a violent person. Because
11 he's not a person -- you saw Mr. Sulier, he's a violent
12 person. Nick Berry is not a violent person. Certainly
13 he was in shock. He's never done anything like that
14 before and there's a dead man, a dead man. Think how that
15 would shock a seventeen-year-old kid, you know. Did he
16 stab him all those times? He didn't deny it. He just
17 don't remember it because he was blacked out. But you
18 heard the witnesses saying it all happened very fast;
19 boom, boom, boom, boom, boom, boom. How long did that
20 take? Fifteen seconds, twenty seconds, thirty seconds?
21 So I'm not going to stand up here and say hey, he didn't
22 do it. I don't know if he did it or not. There's no
23 evidence. There's evidence from Sulier claiming that
24 Adam also stabbed him, but I can't tell you whether that
25 happened or not and Nick can't tell you whether that

1 happened or not because Nick doesn't remember.

2 Now let's talk about some of the evidence I want to
3 point out to you. Nick doesn't remember whether or not
4 Jamie Galloway had a weapon. There was -- where's the
5 screwdriver? Thank you. There was a screwdriver found
6 right next to the right side of Jamie Galloway. Do you
7 remember that testimony? Right next to the right side of
8 Jamie Galloway. Whose DNA was on this? Jamie Galloway's
9 DNA. Do you remember the testimony on that? Was this
10 used? I don't know. Now Dr. Ross said that she didn't
11 think any of the wounds that she observed on Jamie
12 Galloway could be caused by this, but she never looked at
13 the wounds of Nick or Adam Berry.

14 Now let me tell you another little kind of thing you
15 need to think about. There is also a magazine. I saw a
16 picture of it a while ago. Now I don't want to mislead
17 you. There's are two magazines. One of them was found
18 right next to the stairway. Do you remember that? What
19 was funny about the DNA on that magazine? Do you know
20 what was found on that magazine? Adam Berry's blood.
21 Now how did Adam Berry's blood get on that magazine?
22 Could it have been held in the hand of Jamie Galloway to
23 give his fist extra firepower so that when he busted open
24 his lip, Jamie Galloway, and knocked his tooth out that
25 sprayed some blood on that magazine?

1 The State's going to try to argue to you. I don't
2 know what all they're gonna say, okay? It's gonna probably
3 be different from what I'm arguing to you, but I imagine
4 they're gonna try to argue to you, well, he planned it
5 all, he planned it all because Jamie Galloway hit him a
6 week earlier. And he wanted to get .22 bullets. But,
7 you know what, there weren't any guns involved in this
8 situation, there weren't any guns involved in this
9 situation. There was a .22, a sawed off .22, that Nick
10 said, yes, was his. It was back in the shed behind the
11 house. There was a .380 inside the house on the kitchen
12 table. I didn't hear anybody say that had anything to do
13 with Nick Berry. Did you-all? That actually came from
14 inside the house because that's where the gun case and
15 gun box and all that and everything was in the bedroom of
16 Kaysha. Now whether Jamie pulled it out when he went
17 inside, I don't know, but it wasn't used.

18 So all this stuff they'll get up and say well, I'm
19 gonna -- I'm gonna take him out. He's a twenty-two --
20 he's a seventeen-year-old kid that weighs 110 pounds. If
21 there were any threats, which he denied, how realistic
22 were they? You heard about one from one witness that said
23 Jamie was like her son. Jamie Galloway was like her son.
24 She came up with a treat. She obviously didn't think it
25 was real because she never communicated it to anyone. She

1 never called the police. She never told Jamie, she didn't
2 tell Jamie's momma, so she obviously didn't think it was a
3 threat.

4 So they don't have any evidence of premeditation.
5 That's the kind of thing they're gonna try to argue to you
6 to show premeditation, but if there was premeditation, he
7 didn't even know that I'm Jamie was gonna be there that
8 night. Now there's some -- a little bit of dispute on
9 when this call was made, but it was long after he was
10 there, and he was surprised. Adam was surprised. One of
11 the girls, I guess, texted Jamie. I don't remember which
12 one, if it was Kaysha or the other one, but if I say
13 something different than you-all remember it, you go by
14 your own memory because you're the judges of the facts.
15 Mr. Graham or Mr. Eargle and I when we stand up here and
16 talk with you, yeah, we're gonna probably point out what
17 we remember of the facts in the case, but if we remember
18 them differently than you do, you go by your memory of
19 them. Nobody's trying to mislead you, but we're all
20 involved in questioning, listening, and sometimes we don't
21 remember things exactly right. You go by your memory of
22 it.

23 Let's talk about one other thing that I ask you to
24 take into consideration in this case, and that's this.
25 Our key witness, our key witness, our witness who could

1 definitely tie down without any question the issue of
2 defense of others, is Adam Berry. He's our key witness.
3 Now we don't have Adam Berry here. Now that's not our
4 fault we don't have Adam Berry here and we don't have
5 Adam Berry here because this man who says that he's like
6 Jamie Galloway's brother assassinated him. Shot him down
7 and set him on fire and now we don't have him available as
8 a witness. Now how are you gonna handle that? Is that
9 held against us because Adam Berry is not here? Let me
10 ask you to bear that in mind when you make a decision
11 about somebody that's gonna affect him for the rest of
12 their lives. This man's on trial for murder and our key
13 witness is not here because they killed him. What could
14 he have said? Would his testimony have been persuasive
15 to you?

16 You know, I'm gonna shut up and sit down. I see you
17 with those signs of relief. I've been talking a long
18 time, and I apologize for that, but, see, the way this
19 system works, I'm not allowed to ask you questions and
20 you're not allowed to ask me questions. So you can't say
21 to me, well, Wayne, what about this piece of evidence or
22 what about this piece of evidence so I might could answer
23 it. So all I can do is stand up here and try to talk
24 about every possible thing that I can that you might have
25 a question about. But you know what? I can't ever cover

1 everything. I try, but I can't. And when I finish --
2 here's the reason. Because I don't get to talk to you
3 again. When I finish, one of these very experienced, able
4 prosecutors they'll get up behind me and they'll talk to
5 you. They get to go last, you see, because they have the
6 burden of proof. They must prove the guilt of Nicholas
7 Berry beyond a reasonable doubt, so they get to go last.
8 That's why they get to sit closest to you. You see, they
9 have the burden of proof, so the rules kind of give them
10 these advantages because of this burden of proof.

11 So all I can ask on behalf of Nicholas Berry is if
12 they bring up something when you get back in that jury
13 room I want you-all to discuss how we might could have
14 responded to them had we the opportunity to speak to
15 you last. And when you go back there and begin your
16 deliberations, bear in mind Nicholas Berry is innocent
17 unless the State proves his guilt beyond a reasonable
18 doubt.

19 And on that question of defense of others,
20 self-defense, they call it both ways, the State must
21 prove beyond a reasonable doubt that that defense of
22 others slash self-defense does not exist. You listen to
23 what the judge tells you about self-defense and you'll
24 see, number one, Nick was not at fault in bringing on the
25 difficulty, two, he had a lawful right to be where he was,

1 three, he had a reasonable fear of imminent peril to Adam,
2 four, he acted as a reasonable person would act knowing
3 the reputation and the violent nature of the victim. All
4 this they have to prove and we don't have to prove it to
5 you. The State has to prove they don't exist. Now if you
6 don't think self-defense and defense of others is a factor
7 in this case, you can consider it as to whether or not it
8 makes a difference as to whether or not it's murder or
9 manslaughter.

10 Let me tell you something, ladies and gentlemen, I
11 would submit to you there's absolutely no evidence in this
12 case that Nicholas Berry acted with malice aforethought,
13 an evil intent, to show this was a premeditated murder.
14 It's just a seventeen-year-old kid without a violent bone
15 in his body except he loved his brother and he worshipped
16 his brother and when he saw his brother was in danger,
17 he reacted to save his brother. You know he was only
18 110 pounds, only seventeen years old. Jamie Galloway was
19 over 200 pounds and a grown man. But loved his brother
20 so much that he risked his life to help him, to save him.

21 Ladies and gentlemen, I submit to you that's the
22 defense of others, it's as good a defense of others that
23 you could have, and the only appropriate verdict is one
24 of not guilty and we feel comfortable placing that
25 decision in your hands and we appreciate any attention

1 you give it.

2 Thank you very much.

3 MR. GRAHAM: Can I have just a moment to set up
4 exhibits, Your Honor?

5 THE COURT: Okay.

6 MR. GRAHAM: Mr. Floyd told you that you'd be
7 making the most important decision -- or one of the most
8 important decisions of your life, and that's correct.
9 You're gonna decide whether he's a criminal or not,
10 whether he's guilty of murder, whether you-all think he's
11 guilty of manslaughter; where if self-defense he gets to
12 take this knife and go home with it.

13 But we're here because you have to make that decision
14 because of the decisions he made on May 19, 2014. He was
15 seventeen years old at the time. That does not make him
16 any less responsible for the choices he made. You don't
17 give him sympathy because he's young, you don't give him
18 sympathy because he was short, you don't give him sympathy
19 because he weighed 115 pounds. You judge him on his
20 decisions and you judge him on his actions and you apply
21 the law, not sympathy. He doesn't get sympathy because
22 he was drinking alcohol and may have been drunk. He
23 doesn't get sympathy because he was taking Xanax and
24 might have been high. Those were his choices to drink,
25 his choices to take Xanax, his decisions, and he made

1 twenty-five decisions with a knife on James Galloway's
2 body May 19, 2014. Twenty-three times across his back
3 and shoulders, one in the front, one in the neck. No
4 defensive wounds, no cuts on his hands. An abrasion on
5 his knee and abrasions -- contusions on his forehead.
6 That's all Jamie Galloway had.

7 Was it a fight or was it a beating? That's what
8 you-all are gonna talk about. Maybe if it was a beating
9 and Adam Berry was close to death, then maybe he had the
10 right to do what he did. Maybe one stab, but twenty-five?
11 At what point does malice kick in? Even if he believed,
12 even if he believed, twenty-five?

13 Let's talk about the physical evidence a little
14 bit. Blood on a magazine. Adam Berry's blood. So they
15 processed everything we had, and we showed you everything,
16 and there's really not a lot on there, but everybody wants
17 to know what crime scene does and what it has, and you
18 got to see it. No fingerprints on the gun, no DNA off of
19 the gun. We've got no idea why the gun was out. The
20 magazine out below on the ground in the grass. No
21 testimony about how it got there. We don't know whether
22 it was in Jamie's hand, whether it was in Nick's hand or
23 Adam's hand or was already there or one of the girls had
24 it. From what he can remember, which he says he remembers
25 what happened before, Jamie Galloway had no weapon in his

1 hand. Latent prints were processed, so they looked for
2 latent prints. They're trying to figure out who held it,
3 who left fingerprints on it. They see what they think is
4 a spot of blood, a reddish-brown stain, and they swabbed
5 that and it comes back, and if I remember right, that was
6 Adam's. He's got a busted mouth and he's got a cut on
7 his hand. Maybe he handled it. Maybe he just dripped
8 blood on it. It's right off of the porch and they're up
9 on the porch, but that's not reasonable doubt.

10 Mr. Floyd showed you a piece of paper and said here's
11 the case, here's a few things, but we all know it's paper.
12 I tear off corner and this is reasonable doubt. We can
13 have this, and this is hesitate to act, then don't do it,
14 don't find him guilty, find him not guilty. But each and
15 every one of you knows that with all this evidence still
16 here is a piece of paper. Even if you have a little
17 question over here, each and every one of you know it's
18 a piece of paper. There's no doubt about that. There's
19 no reasonable doubt about that.

20 All Nick Berry can tell you is I don't remember. I
21 stabbed my brother one time -- I mean, I stabbed Jamie
22 Galloway one time in the back when Jamie was on top of
23 him on the porch. He can't even tell you that he was
24 getting beaten on the porch. He just said he saw Jamie's
25 hands up like this. What did Haley Stone tell you?

1 Haley Stone told you it was a fight, it was not a beating.
2 Haley Stone said Jamie even said he didn't want to fight.
3 Nick Berry remembered that part; I'm not here to fight.
4 He didn't go there to fight, he came to see his son. He
5 wasn't looking for trouble. He told him he wasn't
6 looking for trouble. Kayla Bass wouldn't get out of his
7 face. He tried to get Kayla Bass to stay away. At some
8 point she kept pushing him and pushing him and pushing
9 him and he apparently shoved her and went down to the
10 ground and Adam had to step in for his girlfriend.
11 Whatever was said we don't know, but Jamie struck Adam
12 and that's when the fight started.

13 Haley Stone was sober. Haley Stone doesn't have a
14 dog in this fight. If she does, you would think she'd be
15 lying for Nick Berry because she has children with Adam.
16 What did she tell you happened? She said Jamie may have
17 thrown four blows the whole time, Adam may have thrown
18 two the whole time. Neither one of them really wanted to
19 fight. There was a lot of wrestling. Jamie was trying
20 to stop them from fighting. What I remember hearing, and
21 if you-all need to go back and listen to it, I thought
22 on the porch that he was holding Adam down. He didn't
23 want to fight. Nobody was getting beaten to death. He
24 didn't call for help. Haley Stone would have said her
25 children's father was close to death if he was close to

1 death. It was a fistfight and a fistfight doesn't get
2 you a self-defense to murder.

3 And all Nick Berry can say is I don't remember. I
4 don't remember. He said there were no weapons. We won't
5 talk about the screwdriver. There was a screwdriver.
6 You saw it in the picture. They processed it for latent
7 prints. No latent prints, but it had Jamie's blood on
8 it. Jamie's blood was everywhere. You go look in the
9 photographs and you're gonna see blood dripping off the
10 porch. Twenty-five stab wounds. Cause of death, bled to
11 death. His blood was everywhere. There's a footprint.
12 People were stepping in his blood. Probably Kaysha's
13 when she was trying to save his life giving him CPR.

14 How convenient is it to say you don't remember when
15 there's so many different stories about what you said?
16 Because none of those stories work, so the best thing now
17 is to come to court and say no, I just don't remember.

18 You get to look at the credibility and the
19 believability of all of the witnesses, of everybody who
20 was up there, whether we put them up there, whether they
21 put them up there.

22 Mr. Sulier, let's talk him. Kind of a scary fellow.
23 He didn't really want to be here. He had a life sentence
24 he wanted to go do. He killed Adam Berry. He admitted
25 it. He wrote a letter two weeks before he was coming to

1 plead guilty and I believe he testified the reason he
2 wrote that letter was to try to get a lesser sentence.
3 He was being prosecuted for murder and that's what he
4 pled to. It was a choice he pled to. The unlawful
5 killing of another with malice aforethought.

6 Now when the judge reads it to you -- Mr. Floyd
7 used the word "premeditated". Premeditated means that
8 you planned it out, you've got a shopping list of stuff
9 to do and you go through and do it. And some murders are
10 like that. But when the judge reads you the jury charge,
11 you're not gonna hear it has to be premeditated. What
12 you're gonna hear is that you have to have malice right
13 before and at the moment the fatal blows are delivered.
14 So he didn't have to go out and say I'm going to lure
15 Jamie to this house and I'm going to lie in wait behind
16 this bush and I'm gonna stab him in the back. He didn't
17 have to have that conscious thought. So Mike Sulier told
18 you -- and he said that wasn't what he did either. You
19 heard all the questions he got asked about people who
20 said it didn't happen the way he said. His letter was
21 written to get a benefit, to try to make his crime not
22 look so bad. His story was I met up with Adam, who I
23 knew was involved with killing Jamie, if that makes sense.
24 If you-all think that makes sense, go with the story. I
25 just wanted to hang out. I didn't want to know anything

1 about the murder, I needed a ride and we were doing drugs
2 together, whatever we were doing, and at some point Adam
3 starts to talk about it, telling him what happened. He
4 doesn't want to. He said I don't want to talk about it,
5 I don't want to talk about it. Does that match the same
6 person you-all saw up there? He says he turned up the
7 volume because he didn't want to hear about it and that
8 Adam Berry kept talking about it, kept talking about it.
9 Why would Adam Berry tell Jamie Galloway's best friend,
10 his brother, I stabbed him, too? Nick did it and so did
11 I. If that makes sense to you-all, you give it what
12 weight you think it deserves or maybe he just said that
13 because he was trying to get a lesser sentence. Maybe he
14 was trying to say his crime wasn't premeditated.

15 But, regardless, if you believe it, if they were
16 both involved in the killing, the judge is gonna charge
17 you on a principle of law called the hand of one is the
18 hand of all. If two people join in to do a crime, both
19 are guilty.

20 Let's talk about what Nick Berry did that night.
21 Haley Stone testified that they were all there and one of
22 the girls said Jamie's on his way to see his son, Kolby.
23 He says he didn't know anything about it. Haley is sober,
24 not taking drugs. He's on trial for murder and has taken
25 Xanax and alcohol. That's that credibility question

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,

s/Susan B. Hackett

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ATTORNEY FOR APPELLANT

This 24th day of September, 2020.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NICHOLAS BENJAMIN CHHITH-BERRY,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon J. Anthony Mabry, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is amabry@scag.gov, this 24th day of September, 2020.

s/Susan B. Hackett
Susan B. Hackett
Appellate Defender

1 you-all get to talk about. Haley Stone said everybody
2 knew ten to fifteen minutes before. If you believe her,
3 what did Nick Berry do? What did he do? This man who
4 says he's so afraid. Did he call the police for some
5 reason? Did he walk down the street? Did he get in the
6 car and leave? What did he do? No, he stayed there.
7 And he would have had .22 rounds, but he couldn't find
8 them. He'd been looking for them. He tells you that
9 there is a fight, Jamie throws down his hat, and if you
10 look at the photograph, it shows you it's way on the other
11 side of the driveway where Jamie's hat it. It's not in
12 the walkway. And he describes a couple of blows, he
13 doesn't even tell you how many, and he sees blood from
14 his brother's face. His brother got hit in the face and
15 his brother lost a tooth. That's the injury he had.
16 Adam had two injuries. He was released from the hospital
17 that night. Nothing serious. No broken bones. He got
18 hit in the face, he lost a tooth and got his hand cut.
19 It's not a stab, it doesn't go all the way through, it's
20 not a penetrating injury. It's called a -- I think the
21 pathologist called it an incision, I guess, in one place,
22 a cut. That's what it was. He got a cut, not a stab.
23 Jamie Galloway didn't have a weapon in his hand.
24 The knife. The physical evidence on the knife.
25 This is the knife that he brought. Now he told other

1 people different things about where this came from, but
2 ultimately he's admitted this was his knife, it came out
3 of his pocket. No fingerprints. They looked and couldn't
4 find any. It's got Jamie's blood on it and somebody
5 else's. We didn't have his sample. We had Adam's and
6 they said it wasn't Adam's. So who's on there? How many
7 times do you stab yourself? He's got two stab wounds.

8 Let me back up to Adam for a second. Does this look
9 like a man who was beat to death? He's not dead, he's
10 alive and released from the hospital. Did he have serious
11 bodily injury?

12 Nick Berry. The only injuries he had were to his
13 hands. You guys will have the knife back there and you
14 can look at it. One on each pinky. So as he's stabbing
15 twenty-five times, it gets coated with blood, his hands
16 get slick, his hand slides off, he cuts himself. He's
17 got to pick it up with the other hand now and he stabs
18 and at some point his hand slides off. Jamie Galloway
19 didn't cut him, his own brother didn't cut him. He cut
20 himself when he was stabbing Jamie twenty-five times.

21 So what happened when the police come? They drive
22 up in their car. Allen Gleaton, the one who's with the
23 National Guard now, came up. That's the one who had the
24 little video clip that you-all are gonna look at. He
25 comes up, he pulls his gun out. What are they trying

1 to do? Does an innocent man who had to use a knife in
2 self-defense run? An innocent man calls the police. I
3 had to do something, it was a horrible thing, but I had
4 no choice. An innocent man stays on the scene and waits
5 for the police to come to tell them the story, tell them
6 the truth. That's what an innocent man does. A guilty
7 man runs. A guilty man lies over and over and a guilty
8 man says I don't remember.

9 Allen Gleaton said he pulled his gun, he ordered
10 them out of the car. What did the people do? What did Adam
11 do? He was the driver of the car. He got out, he laid
12 down on the ground just like you're supposed to. What
13 did Nick Berry do? He got out and he was hyped up, he
14 was jacked up, he wasn't following directions, and at
15 some point he said go ahead and shoot me. An innocent
16 man, self-defense or murderer? Did he say I had to do
17 it in self-defense to the first officer on the scene? I
18 did it, it's my fault, but I had to. Or did he say go
19 ahead and shoot?

20 Chris Hall, the EMS, he treated Nick Berry. He
21 told you that Nick gave him false information, evasive
22 answers, wouldn't answer his questions, lied to him about
23 his name, lied to him about his age, lied to him about
24 alcohol use, lied to him about drug use. Why does an
25 innocent man have to lie? You look at his credibility.

1 People are telling you he's a liar. You look at him
2 from there and you get to decide whether he's a liar.
3 Does he really not remember or does the truth hurt?

4 Chris Hall said that he asked him what happened
5 when he was trying to treat him. What happened to the
6 injuries on your hand? I don't remember. He went back
7 and asked him again. It happened so fast I don't know
8 what happened. And then he said Jamie Galloway attacked
9 my brother and I with a knife. That's what he said. He
10 wants to tell you now he doesn't remember it, but that's
11 what he said. Why would Chris Hall lie about that? Why
12 would he have to make up a story unless the truth doesn't
13 work? And that's what it is. The truth doesn't work.
14 The truth is he's a killer. The truth is he had no legal
15 justification to take Jamie Galloway's life. The truth
16 is when he stabbed him twenty-five times each blow was
17 with malice because he wanted Jamie Galloway dead. That's
18 not a very good story to tell EMS.

19 He talks to Sam Smith. That's the young detective
20 with the dark black hair. He was a deputy at the time.
21 He's the one who read him his Miranda rights on-scene
22 and transported him to the hospital and sat with him and
23 the phone. He was asking Deputy Smith, you know, what's
24 going on, when is somebody gonna talk to me and that kind
25 of question, and he said that's above my pay grade, people

1 are on the way. What he tells you is that Nick Berry said
2 he was fighting my brother and I came up behind. He was
3 fighting my brother, and that's what it was. It was a
4 fight. Exactly what Haley Stone said. He did not say he
5 was beating my brother and I had to to save his life. But
6 maybe Sam Smith's a liar.

7 Doug Bramlett, a lieutenant with Pine Ridge at
8 the time, along with Todd Garrick from the sheriff's
9 department, interviewed him. And you-all will have
10 those tapes. You heard them in here and you can listen
11 to them back there if you need to. I don't know how
12 many stories he told altogether. Five, six stories.
13 None of them are the truth. You give them what weight
14 you think they are, what they deserve. I think the only
15 thing that's consistent with what he said today was he
16 stabbed him one time. He talks about knives. Being
17 attacked with a knife. He talks about Jamie attacking
18 him with guns. We know that's not true and he said it
19 was not true.

20 Katie Leavitt, the first witness up, said that she
21 took Jamie over there to see -- Jamie wanted to see his
22 son, Kolby. Jamie didn't go to make trouble. Haley Stone
23 said, and he agreed, that Jamie said I'm not looking for
24 trouble. Kaysha said that Jamie could come over any time
25 he wanted, but Nick had not been invited that day. He

1 was tolerated, but he hadn't been invited. Haley Stone
2 was sober. She had her child. She wasn't drinking, she
3 wasn't taking drugs and nobody has said she was. She
4 said Jamie didn't want to fight. She said Adam really
5 didn't want to fight, but they were both kind of forced
6 to fight because of Kayla Bass, and that's what happened.
7 She said she saw four punches from Jamie from the whole
8 time. Said it started over in the driveway and went up
9 on the porch. Two blows by Adam. Nobody close to death.
10 It was a fistfight.

11 So the question then you-all have to think about is
12 why is Nick Berry bringing a knife to a fistfight? If he
13 hadn't of brought a knife, everybody would have gone home
14 that night. Jamie Galloway would be alive, Adam Berry
15 would be alive. It wasn't a beating, it was a lot of
16 wrestling. I think Haley said that even on the front
17 porch, what I remember, was somehow they ended up going
18 up the steps, but Adam {sic} Berry wants to say that
19 Jamie was chasing him up there. I don't think Haley
20 said that. I think it was the other way around. I think
21 that Adam was coming up toward Jamie and he knocked him
22 back down one more time and Adam came back up, so Adam
23 was choosing to fight. It's not a beating. He's not
24 running away in fear for his life.

25 What Haley Stone said was that after Jamie was --

1 Adam was down, she sees Nick come over, and she doesn't
2 see a knife. And you guys can go back and look at it.
3 The handle is silver-ish, the blade is black. She doesn't
4 see a knife. She sees downward blows on Jamie Galloway's
5 body and then game Jamie Galloway's over and off Adam and
6 does she say that Adam Berry punches at that point? I
7 don't think so. She says that Adam Berry kicks Jamie in
8 the head. That would be the contusion up on the head that
9 the pathologist talked about. She did say Adam did that.
10 He got his lick in. But she did tell you that Nick Berry
11 was hitting him in her opinion twenty times. So you've
12 got one kick from Adam and twenty blows with Nick Berry.
13 So where did the twenty-five blows come from with the
14 knife?

15 Self-defense. When the judge reads his charge, this
16 should be what he charges you. So once they talk about
17 it, we have to disprove it. If we disprove an element,
18 we disprove it. The Defendant was without fault in
19 bringing on the difficulty. I don't even know what that
20 means in this case. Adam and Nick were engaged in a
21 mutual fight -- Adam and Jamie were engaged in a mutual
22 fight. He's the one that came into that fight. His
23 brother didn't call him. Haley Stone said his brother
24 didn't need him, but his brother was being disrespected
25 again just like he was on May 11th. You-all decide

1 whether he was without fault.

2 He actually believed -- and it's gonna be a little
3 different. This is -- this is what self-defense is. When
4 you have a defense of another, the other person has to
5 follow the rules. So this is how Adam had to -- if Adam
6 felt this way and Nick jumps in, then Nick's justified in
7 doing what he did. Adam chose to fight Jamie. Jamie
8 wanted it to stop and Adam kept it going out of pride.
9 The Defendant actually believed he was in imminent danger
10 of losing his life or sustaining serious bodily injury or
11 death, or he was. Haley says they were fist-fighting.
12 Adam never cried for help. Adam's injuries show that he
13 wasn't. Did Adam believe -- if the defense is based upon
14 the Defendant's actual belief of danger, a reasonable
15 person of ordinary firmness and courage would have
16 entertained the same belief. So it basically means that
17 if he thought it -- if Adam thought it, then you-all look
18 back at it and go well, I could see why he'd say that --
19 or see why he'd think that, so you get to put yourself in
20 Adam's shoes.

21 The Defendant had no other probable means of avoiding
22 the danger of losing his life or sustaining serious bodily
23 injury than to act as he did. Haley Stone said it would
24 have been a fight, it would have been over, people would
25 have gone home alive except for his decisions, twenty-five

1 of them.

2 The judge is gonna charge you on voluntary
3 manslaughter. The unlawful killing of another without
4 malice in a sudden heat of passion based upon sufficient
5 legal provocation. That's what voluntary manslaughter is.
6 So if it's not self-defense and he didn't have a right to
7 kill him, it's unlawful. Without malice, and we're gonna
8 talk about malice in a second, in a sudden heat of passion
9 based upon sufficient legal provocation. Seeing his
10 brother get in a fight, that's probably sufficient legal
11 provocation. The heat of passion, that's the question.
12 Did you hear him get up and say I was so enraged? I was
13 so enraged, I went over and started stabbing him. That's
14 not what he said. He's not saying he did anything in the
15 sudden heat of passion. He did not say it. There's no
16 evidence of it.

17 Don't go back and compromise and take the easy way
18 and say it's voluntary manslaughter because he's a kid.
19 Don't go back and say murder, that's tough; voluntary
20 manslaughter, you know, we could say he's still guilty
21 and he'll be held responsible. But that's not what he
22 did. Him being seventeen years old and stabbing somebody
23 twenty-five sometimes doesn't get you voluntary
24 manslaughter. Being 113 pounds fighting somebody or going
25 and stabbing somebody in the back who's 170, that doesn't

1 give you a voluntary manslaughter. You've got to have
2 the elements. You've got to have heat of passion. He
3 didn't say a word about it. He said I went to stab him
4 to protect my brother.

5 Let's talk about murder. That's what the judge is
6 gonna read to you. You'll notice premeditated is not up
7 there. Now can premeditation be malice? It sure can.
8 Malice is ill will, it's hatred, it's evil. You don't
9 have to plan it days in advance, it can happen at the
10 moment, but, you know, I think if Nick would have had
11 .22 bullets, then that would be an easy one for you-all.

12 What do we know about his phone? They got his phone,
13 they seized his phone and they were able to download
14 Facebook conversations on there, and you guys will have
15 these conversations back there. He has a sawed-off .22
16 rifle and he's looking for .22 rounds. It starts off
17 actually on May 11th, which is a coincidence, May 11th,
18 because that's the same day that he had the incident with
19 Jamie. That's Mother's Day. Eight days before Jamie
20 was killed. May 11th he's talking about needing a burner.
21 He wants to tell you that's a cell phone. He didn't tell
22 you why he needed a throwaway cell phone, and that is the
23 definition of -- that's one definition of a burner. Drug
24 dealers use them because nobody can trace it and throw it
25 away. But a burner can also be a gun that you don't want

1 to have traceable to you.

2 Go through and read these. You'll see he's looking
3 for a gun because he wants to take care of Jamie Galloway.
4 He's looking for .22 bullets because he's wants to take
5 care of Jamie Galloway and he wants to tell you he doesn't
6 remember, and isn't that convenient? He's still looking
7 for it while he's there at Kaysha's house that night
8 before Jamie Galloway shows up. Express malice. That's
9 expressed. I need bullets to kill him.

10 What other things do we know about express malice?
11 May 11, 2014, at Kathy Polk's house Jamie goes out to
12 confront Adam and Kayla about being drunk and high with
13 his child. And who can blame him for doing that?
14 Ms. Polk doesn't say anything about Jamie spitting in
15 Nick's face, but that's what he said. If you believe it,
16 you give it what weight you want. Regardless, Adam's not
17 getting out of the car to fight. Adam's staying in the
18 car. Jamie didn't try to pull him out. There's no
19 testimony that Jamie said I'm gonna kick your butt, come
20 on out. There was nothing like that. He was just saying
21 don't be like that, I told you don't do that. The problem
22 is, and it's the same problem that happened this night,
23 Nick Berry worships his brother. A seventeen-year-old
24 and 115 pounds of him and he can't let his brother get
25 disrespected. He wanted you to believe that he got out

1 of that car to diffuse the situation. You don't get out
2 of the car -- in his own words he even said it. Don't
3 disrespect my brother. You don't get out of a car and
4 bow up at a man and say don't disrespect my brother.
5 He's looking for a fight. Any surprise that Jamie
6 Galloway hit him and knocked him down?

7 Now he wants to tell you that he's afraid of Jamie
8 Galloway and Jamie Galloway has attempted murder charges
9 is what he heard on the street, Jamie Galloway's wearing
10 an ankle monitor, he's violent, whatever he said. If
11 that's what he believed, do you get out if you're afraid
12 of a man and say that, don't disrespect my brother? He
13 gets knocked down. Ms. Polk says I think he only hit him
14 one time. He says he got hit, he didn't know how many
15 times, and he got kicked, he didn't know how many times,
16 but he didn't call the police and he could have called the
17 police. If he's got an ankle monitor on and he's out on
18 bond for serious charges, you get in trouble with the law,
19 you go to jail. You don't get out the next day. They
20 revoke your bond. But he didn't call the law.

21 And isn't it a coincidence that that same day --
22 well, I'm sorry. He pulls a knife. There's a coincidence,
23 isn't it? His weapon of choice. He pulls a knife. Kathy
24 Polk tells him to put it away, he puts it away. He comes
25 back later in the week to Kathy's house and she says that

1 he looked nervous, that he's wondering whether Jamie's
2 there, she says don't worry, Jamie's not here, and he
3 said you don't need to worry about Jamie, I've got him.

4 May 11, 2014, they leave Kathy's house and they go
5 to Tonya Griffin's house. What motive does she have to
6 lie? She says -- she hear's the story and she tells them
7 call the police, call the police, report him, get him in
8 trouble. If this is such a horrible thing, do it. And
9 what did she tell you that Nick Berry said? There is no
10 need to call the law, the next time I see him, he won't
11 be breathing, he's gonna be dead. And, you know, that's
12 a promise he lived up on. The next time he saw him, he
13 killed Jamie Galloway. Express malice.

14 And you've got the Facebook posting about needing a
15 burner, a gun, asking ten people the day Jamie was killed
16 for bullets. The gun at the house where he's at. I want
17 the bullets. I have something to handle. Jamie Galloway
18 is the one I'm trying to get down. Well, what is it? If
19 that's not malice, what is it? Is he gonna blame that on
20 his brother, too? Twenty-five stab wounds to the back.
21 Jamie Galloway never had a chance. The pathologist told
22 you that one or two of those blows up in the neck would
23 have paralyzed him in seconds. You think about yourselves,
24 each and every one of you, if somebody came and stabbed
25 you in the back, what would you do? You're gonna turn

1 towards your attacker. Whether you're weak, whether
2 you're strong, whether you're big, whether you're little,
3 you're gonna turn towards your attacker. You're gonna put
4 your hands up. That's what defensive wounds are. Jamie
5 Galloway didn't have any of those.

6 Jamie Galloway goes over there alive to see his son.
7 Adam Berry gets a knocked out tooth and a laceration.
8 Nick Berry has two cuts on his pinkies. Jamie Galloway
9 has twenty-five stab wounds; twenty-three in the back,
10 one in the arm and the other in the head. If you think
11 that's self defense, find him not guilty, let him take
12 that knife and go home. And that's not voluntary
13 manslaughter, ladies and gentlemen. He didn't say a word
14 about any passion. He said he went to defend his brother.
15 So you're stuck with those choices. Jamie Galloway went
16 over there alive. Adam Berry left with minor injuries,
17 Nick Berry left with minor injuries. Jamie Galloway, a
18 knife, in the head. What you're seeing is malice. Two
19 in the head in the back, two in the neck, nineteen more
20 or twenty more on his back.

21 What did he say in the call after he got booked to
22 his mother? You-all heard that and you'll have it back
23 there to listen to again. His mother's crying and asking
24 him what happened. He says he started beating on Adam
25 and that's when shit happened and I -- pardon my

1 language -- I fucked that boy up. So he was hitting
2 on Adam and you jumped in? Yeah. Again, pardon the
3 language, like what the fuck am I looking like -- look
4 like watching my brother get his get ass beat and plus he
5 thinks he was all hard and shit. His brother was in a
6 fight and his brother was losing, his brother was being
7 disrespected. The same thing that happened on May 11th
8 when he jumped out of the car and said don't disrespect
9 my brother. If Adam would have been beating Jamie that
10 night, he wouldn't have jumped in because his brother
11 wasn't being disrespected. Jamie didn't want to fight,
12 but he was bigger than Adam and he punched Adam in the
13 face. But it wasn't a beating. Does anywhere in that
14 call say I had to save Adam's life? Does anywhere say
15 Adam was involved, too, in the stabbing? It says I fucked
16 that boy up. And it's not because I had to, but it's how
17 it would look on him. Like what am I look like -- look
18 like watching my brother get his ass beat and not doing
19 anything. That's why he jumps in. The disrespect that
20 happened on May 11th when he got knocked down and knocked
21 out.

22 The malice, the ill will, the hatred for Jamie
23 Galloway had been building up all week long. He couldn't
24 let it go. He's still looking that day for bullets and
25 a gun and he ends up being able to take advantage of an

1 opportunity. He knew Jamie Galloway was coming. Did he
2 get in his car and go drive and hunt down Jamie Galloway?
3 No. But that would be easy, too. Then you go oh,
4 premeditated, but the law doesn't require premeditation.
5 He knew that Jamie was coming, he hated that he -- he
6 said to people he was gonna kill Jamie and he didn't
7 leave, he chose to stay, and when Jamie showed up and the
8 opportunity presented itself, he took advantage of it.
9 He's a predator. Literally he is a backstabber. He didn't
10 face him from the front because he knew he couldn't take
11 him. He stabbed him in the back like the cowardly murderer
12 that he is. Twenty-five times. Each and every time with
13 malice. It's murder or nothing.

14 Thank you, ladies and gentlemen.

15 THE COURT: All right, Ms. Cagle. I think we went
16 a little more than an hour. You-all go step in the jury
17 room, get a drink of water, use the restroom, and when
18 you-all are ready tell Mr. Mills to bring you back in
19 and I'll give you my instructions. I've been working on
20 them, I'm ready to go, and the lawyers, all they got to
21 do is listen, too, so when you-all are ready to come
22 back in, let me know, okay?

23 (Whereupon, the jury retires to the jury room at
24 2:58 PM.)

25 (Recess taken at 3:00 PM.)

1 (Whereupon, the jury returns to the courtroom at
2 3:11 PM.)

3 THE COURT: All right. I'm gonna read most of my
4 instructions to you. Some of it's very specific. Some
5 of the thing I can tell you because I've done it so many
6 times I pretty well have a lot of it committed to memory
7 and a lot of it is things we do as lawyers on a regular
8 basis, but I understand it's you-all's first time getting
9 jury instructions, so I'll try to go slow. And I'll tell
10 you now we can reinstruct you on anything that you don't
11 quite understand. After you start your deliberations, we
12 can bring you back in here and reinstruct you.

13 So, Ms. Cagle and members of the jury, the State of
14 South Carolina charges the Defendant, Nicholas Berry, with
15 the crime of murder and possession of a weapon during the
16 commission of a violent crime. You'll bear in mind that
17 he has pled not guilty and by that plea he has denied each
18 and every element of both of the allegations in those
19 indictments.

20 As I told you earlier, Mr. Berry comes into this
21 court clothed with a presumption of innocence and this
22 presumption of innocence stays with him throughout the
23 case and it entitles him to a verdict of not guilty until
24 that presumption of innocence is dispelled by the evidence
25 satisfying of you, the jury, of his guilt beyond a

1 reasonable doubt. Now as I told you, the State has to
2 prove each and every element of each of the crimes
3 separately. The indictments stand on their own.

4 Now our Constitution and statutory laws that makes
5 you the finders of fact, makes me the instructor of law.
6 I'm the sole and only exclusive instructor of the law.
7 I told you early on, I'll give you the law. I told you
8 everything you needed you to decide this case you would
9 get here in the courtroom. Now you must accept the law
10 as I am instructing it and I tell you that if you have an
11 understanding or a knowledge of what the law is or what
12 it ought to be or what you heard it might be, you must
13 disregard that understanding and accept the law as I am
14 giving it to you here today. If I make an error in
15 instructing you on the law, there's another time and
16 another place where that error can be considered and, if
17 necessary, corrected. But for our purposes here today,
18 you must accept the law as I'm giving it to you and
19 instructing you right now.

20 Now in criminal prosecutions, the State has the
21 burden of proving the Defendant's guilt. The Defendant
22 has no burden whatsoever to prove his innocence.
23 According to our Constitution, the State must prove its
24 case beyond a reasonable doubt and if the State fails to
25 meet that high burden, then a verdict of not guilty is the

1 proper verdict.

2 Under the same Constitution that makes me the
3 instructor of the law, the same Constitution makes you the
4 judges of the facts. I'm not allowed -- since you're not
5 allowed to comment on the law and must accept it, your
6 determination of the facts are the determination of facts.
7 Because of that, your primary job in making a factual
8 determination in a case like this is to determine and
9 evaluate the credibility and believability of the evidence
10 and testimony which you have heard in this trial.

11 Now in being judges of credibility, you twelve that
12 will make your deliberations, and currently the alternates
13 are still there, too, you must evaluate the believability
14 of the testimony and evidence that's been presented. You
15 can utilize any of your common experiences, your common
16 sense, your life experiences, in evaluating or judging a
17 person's believability. You may also consider other
18 things in evaluating and determining credibility such as
19 the manner and the appearance of the witnesses who have
20 testified, you can consider whether the witness was
21 straightforward in answering or whether they were
22 hesitant in answering. You can consider how the witness
23 came to know the facts to which he or she testified to
24 and what was the witness's ability to recollect these
25 facts. You can consider whether there would be some

1 reason a witness would want to give testimony which would
2 help or hurt one side or the other. In other words, was
3 the witness prejudiced or biased toward one side or the
4 other. You can consider whether the testimony of the
5 witness is strengthened or weakened by other testimony and
6 other evidence. You, the jury, may believe as much or as
7 little of any witness's testimony as you deem appropriate.
8 You can believe the testimony of one witness against that
9 of many or many against one. You can believe part of a
10 witness's testimony and disbelieve the rest. The fact
11 that testimony is not controverted does not mean you must
12 accept it as true and undisputed. You still must gauge
13 the credibility of each and every witness who testified
14 to determine the facts in your collective wisdom.

15 I also instructed you during the pendency of the
16 trial that there were several witnesses qualified as
17 experts. Expert witnesses are people who by education or
18 experience have become experts in some art, science or
19 profession, and they may be allowed to testify as to
20 opinions in that field of expertise and they may also
21 state their reasons for these opinions. Now you, as a
22 group, may consider any expert opinion received in
23 evidence in this case and like other evidence give it
24 the weight you deem it deserves. If you decide that the
25 opinion of an expert witness is not based upon sufficient

1 education and experience or if you conclude that the
2 reasons given in support of the opinion are not sound or
3 that the opinion is outweighed by other evidence, you
4 may disregard that opinion if you-all believe that. An
5 expert's opinion is only to be given -- is not to be
6 given any greater weight because they are experts than
7 the testimony of the other non-expert witnesses. You're
8 not required to accept an expert's testimony or opinion
9 even though it's not controverted.

10 Now as the sole factfinders, you're gonna weigh the
11 evidence. You should have closely listened to the
12 evidence presented and I tell you that the weighing of
13 evidence is entirely a mental process. You must weigh
14 the evidence using your good judgment and your common
15 sense. Evidence which weighs upon you which convinces
16 you of its truth. Regardless of where it came from,
17 whether it's from either side, your objective is to find
18 the truthful facts.

19 Now during this case there have been two types of
20 evidence presented to you and this generally happens in
21 most trials. There's direct evidence and there's
22 circumstantial evidence. Direct evidence is testimony
23 of a person who asserts or claims to have actual knowledge
24 of certain facts, such as an eyewitness. An eyewitness
25 can testify to what they saw, they heard, they smelled.

1 Circumstantial evidence is slightly different. It is
2 proof of a chain of facts and circumstances indicating the
3 existence of another fact. Our law makes no distinction
4 between the weight or value to be given to either direct
5 or circumstantial evidence, nor is a greater degree of
6 proof required of circumstantial evidence than that of
7 direct evidence. You should weigh all of the evidence
8 which has been presented in this case no matter whether
9 it's direct or circumstantial; however, to the extent
10 that the State relies upon circumstantial evidence in
11 their offer of proof, all the circumstances must be
12 consistent with one another and when taken together
13 point conclusively to the guilt of the accused beyond a
14 reasonable doubt. If these circumstances merely portray
15 the Defendant's behavior as suspicious, the truth has
16 failed. So after weighing all of the evidence, if you're
17 not convinced of the guilt of the Defendant, Mr. Berry,
18 beyond a reasonable doubt, you must find him not guilty.

19 I've used the term "reasonable doubt" throughout
20 my instructions thus far. Reasonable doubt is simply
21 this. It's the kind of doubt which would cause a
22 reasonable person to hesitate to act. Reasonable doubt
23 may arise from evidence which is in the case or from a
24 lack or absence of evidence in this case. Proof beyond
25 a reasonable doubt that leaves you firmly convinced of

1 the Defendant's guilt is the kind of doubt which one can
2 assign a reason if the assignment can be done reasonably
3 and firmly.

4 Now I further instruct you that the Defendant is
5 entitled to every reasonable doubt which may arise in
6 this case, and what that means is if you have had a
7 doubt about anything during the trial, you're required
8 to resolve that doubt in his favor. And I tell you the
9 very fact that you as a group engage in a full and free
10 discussion of the issue of guilt and non-guilt in this
11 case does not automatically mean that there is a
12 reasonable doubt. You must make that determination as
13 to whether or not a reasonable doubt exists as to his
14 guilt.

15 Now I'm gonna charge you with the specifics of the
16 law of the case. Criminal intent is a necessary element
17 of each crime. I will define that for you now. The State
18 must prove beyond a reasonable doubt there was criminal
19 intent present. Criminal intent is always a matter for
20 the jury to determine from the circumstances surrounding
21 the situation. There is no way to prove intent to a
22 mathematical certainty and there's no way medical science
23 can dissect a person's brain and determine what he or she
24 had in mind, so our law states that criminal intent may
25 be inferred from the circumstances shown to have existed

1 both before and after the fact. This is how you, the
2 jury, make a determination of whether or not the element
3 requiring criminal intent was present.

4 Criminal intent is a state of mind that operates
5 jointly with an act in the commission of a crime.
6 Criminal intent is a mental state of conscious wrongdoing.
7 It is up to you, the jury, to determine what the Defendant
8 intended to do based upon the circumstances shown to have
9 existed. And the State must prove criminal intent beyond
10 a reasonable doubt just as they must prove all of the
11 specific elements of each of the crimes alleged in the
12 indictments.

13 Now regarding the specifics of the indictments, in
14 the first indictment, the Defendant, Mr. Berry, is
15 charged with murder. In order to sustain a conviction
16 for murder, the State must prove beyond a reasonable
17 doubt that Mr. Berry killed another person with malice
18 aforethought. Malice is defined as ill will or hostility
19 towards another person. It is the intentional doing of a
20 wrongful act without just cause or excuse and with the
21 intent to inflict injury or under circumstances that the
22 law will infer an evil intent.

23 Now malice aforethought does not require that malice
24 exists for any particular time before the act is committed,
25 but malice must exist in the mind of the Defendant just

1 before and at the time the act is being committed;
2 therefore, there must be a combination of the previous
3 evil intent and the act itself. Now I tell you that
4 malice aforethought may either be expressed or may be
5 inferred. These terms "expressed" and "inferred" do not
6 mean different kinds of malice, but merely the manner in
7 which the malice may be shown to have existed either by
8 direct evidence or by an inference from the facts and
9 circumstances which are proven by the State.

10 Express malice is shown when a person speaks words
11 which express hatred or ill will towards another or where
12 the person prepared beforehand to do an act which was
13 later accomplished; for example, lying in wait for a
14 person or preparing other acts of preparation going to
15 show that the deed was within the Defendant's mind, that
16 would be express malice.

17 Inferred malice may be shown from conduct showing a
18 total disregard for human life -- life. Now if you find
19 the State has failed to prove beyond a reasonable doubt
20 that the -- yep, I'm good. Now if you find that the
21 State has not proven murder beyond a reasonable doubt,
22 included within that crime, a lesser included crime, is
23 the crime of voluntary manslaughter. The State must
24 prove the elements of voluntary manslaughter also beyond
25 a reasonable doubt. In order to sustain a conviction for

1 voluntary manslaughter, the State must prove beyond a
2 reasonable doubt that the Defendant took the life of
3 another in the sudden heat of passion based upon sufficient
4 legal provocation. Both heat of passion and sufficient
5 legal provocation must be present at the time of the
6 killing to constitute a voluntary manslaughter. Sudden
7 heat of passion may for a time affect a person's
8 self-control and temporarily disturb a person's reason.
9 The sudden heat of passion must be the type which would
10 make an ordinary person unable to coolly reflect upon his
11 actions and would produce an uncontrollable impulse to do
12 violence. Sufficient legal provocation must be the type
13 that would make a person of ordinary reason and caution
14 to become enraged and to lose control temporarily. The
15 provocation needed for voluntary manslaughter must come
16 from some act or be related to the victim involved.

17 I tell you now that words alone, however vulgar or
18 insulting, are not enough to be legal provocation. Where
19 death is caused by the use of a deadly weapon, the words
20 must be accompanied by some overt or threatening act which
21 could have produced the heat of passion. An exercise of
22 a legal right no matter how offensive it is to another
23 is never sufficient to sustain legal provocation for
24 voluntary manslaughter.

25 Now if the heat of passion had cooled or if there

1 was enough time between the provocation and the killing
2 for the passion of the reasonable person to cool, then
3 the killing would not be voluntary manslaughter. So
4 you must -- in deciding whether a person would have had
5 enough time to cool off, you may consider -- consider all
6 of the circumstances surrounding the killing, the nature
7 of the provocation and the Defendant's mental and physical
8 state and the circumstances and relationship between the
9 parties.

10 Now in the other indictment, Mr. Berry is charged
11 with possession of a weapon during the commission of a
12 violent crime. The State must prove beyond a reasonable
13 doubt that he was in actual possession or visibly
14 displayed what appeared to be a weapon during the
15 commission of a violent crime. Examples of weapons are
16 a gun, pistol, shotgun, machete, hatchet or a knife.

17 Now in order to find the Defendant guilty of
18 possession of a weapon during the commission of a violent
19 crime, you must first find that he was guilty of either
20 committing a violent crime or attempting to commit a
21 crime. I tell you that under Code Section 16-1-60 that
22 murder and voluntary manslaughter are both violent crimes.
23 I tell you, again, the State must prove the elements
24 beyond a reasonable doubt that the weapon furthered or
25 advanced or helped in the commission of this crime.

1 Now in this case the defense has raised what's
2 called the defense of others through self-defense, and
3 this is my first opportunity to give this definition to
4 a jury, so bear with me. This defense was raised and so
5 the law of self-defense in part says that a defendant may
6 take another's life in the defense of others. The right
7 to intervene to protect another person is subject to the
8 same rights and limitations as the right of self-defense.

9 Now I tell you that a defendant may take the life of
10 a person who assaults a friend, relative or bystander if
11 that friend, relative or bystander would have had the
12 right of self-defense. To show that the person being
13 defended had a right of self-defense, it must be shown
14 that the person being defended and the Defendant were
15 both without fault in bringing on the difficulty. If the
16 conduct of the person defended or the Defendant was the
17 type which would reasonably calculate to or did provoke
18 a deadly assault, the person at fault in bringing on
19 the difficulty, then he would not have the right of
20 self-defense; therefore, the Defendant would not have
21 the right to use deadly force in defending that person.

22 The second element in the defense of others is that
23 the defense of others -- of another person is excusable
24 if the Defendant had reasonable grounds to believe, and
25 in good faith did believe, that the person being defended

1 was in imminent danger of death or serious bodily harm
2 from the victim.

3 In deciding whether the person defended actually was
4 or the Defendant actually believed that the person was in
5 imminent danger of death or serious bodily injury, you
6 should consider all of the facts and circumstances
7 surrounding the crime, including the physical condition
8 and characteristics of all the parties involved. If the
9 Defendant or the other person being defended was in actual
10 imminent danger, it must be shown that the circumstances
11 would have warranted a person of ordinary firmness and
12 courage to strike the fatal blow to prevent the death or
13 serious bodily injury. Now if the Defendant believed he
14 or she was in imminent danger of death or serious bodily
15 injury, it must be shown that a person of reasonable
16 firmness and courage would have entertained the same
17 belief.

18 In deciding whether the Defendant actually was or
19 believed he or she was in imminent danger of death or
20 serious bodily injury, you should consider all of the
21 facts and circumstances surrounding the crime, including
22 the physical conditions of all the parties involved.

23 The final element of self-defense and defense of
24 others is that the Defendant had no other probable way to
25 avoid the danger of death or serious bodily injury than to

1 act as he did in defending the person in this particular
2 instance.

3 Now the State has the burden of disproving defense of
4 others or self-defense by proof beyond a reasonable doubt.
5 So if you have a reasonable doubt of the Defendant's guilt
6 after considering all of the evidence, including the
7 evidence of self-defense and the defense of others, then
8 you must find the Defendant not guilty. On the other hand,
9 if you have no reasonable doubt of the Defendant's guilt
10 after considering all of the evidence, including the
11 evidence of self-defense and defense of others, then you
12 must find him guilty.

13 Now I tell you also that there's several other
14 factors that a person who is not engaged in an unlawful
15 activity and who is attacked in another place where he has
16 a right to be, including a place where he was a lawful or
17 invited guest or his place of business, has no duty to
18 retreat and has the right to stand his ground and meet
19 force with force, including deadly force, if he reasonably
20 believes it's necessary to prevent death or great bodily
21 injury to himself or another person or to prevent the
22 commission of a violent crime.

23 A person cannot be required to make an exact
24 calculation as to the degree or amount of force which
25 may be needed to avoid death or serious bodily injury;

1 therefore, in self-defense a defendant has the right to
2 use the force needed to avoid death or serious bodily
3 harm. The force used in self-defense does not have to
4 be limited to the degree of force used by the victim. A
5 defendant has the right to use as much force as appeared
6 to be necessary for the complete self-protection or the
7 defense of the other person and which a person of
8 reasonable firmness and courage would have believed to be
9 needed to prevent this death or serious bodily injury.

10 Now if a defendant is justified in defending others
11 and in striking the first blow, he is also justified to
12 continue to strike until it's apparent that the danger of
13 death or serious bodily has ended. A defendant does not
14 have to show that the person the defendant defended was
15 in actual danger. It is enough if he believed that the
16 person was in imminent danger. A defendant has the right
17 to act on appearances even though the defendant's belief
18 may have been mistaken. A defendant must show under the
19 circumstances they appeared to defendant -- I'm sorry.
20 Yes. The Defendant must show that under the circumstances
21 as they appeared to him that the Defendant and the person
22 being defended was in danger and that a person -- a
23 reasonably prudent person of ordinary firmness and courage
24 would have entertained the same belief under similar
25 circumstances. It is for you, the jury, to decide whether

1 the Defendant's fear of immediate danger of death or
2 serious bodily injury to the person being defended was
3 reasonable and it would have been felt by an ordinary
4 person in the same situation. A defendant does not have
5 to wait until the victim gets the drop on the person being
6 defended. A defendant has a right to act under the law of
7 self-preservation to prevent the victim from getting the
8 drop on the person being defended.

9 I tell you also that you may consider evidence of
10 prior difficulties between the Defendant and the victim
11 in considering whether a threat existed, whether the
12 Defendant had a reason to believe a threat existed and
13 how serious that threat was. I also tell you that the
14 relative size, ages and weights of the Defendant and the
15 victim and the person being defended may be considered in
16 deciding whether there's an apparent or actual need of
17 force in self-defense and the amount of force needed.

18 I also tell you that reputation of the victim as a
19 violent person may be considered in deciding whether there
20 was need for force and whether the defendant had reason
21 to believe there was a need for force and whether deadly
22 force was a reasonable and necessary element. I tell you
23 further that in order to be entitled to defend another,
24 the person defended must have had no other probable way to
25 avoid the danger of death or serious bodily injury than to

1 act as the Defendant did in this particular instance.

2 Where the person being defended had no duty to retreat,
3 the Defendant would likely have no duty to retreat.

4 Now another -- it's not an element of self-defense,
5 but I tell you that if a crime is committed by two or more
6 people who are acting together committing a crime, the act
7 of one is the act of all. A person who joins another to
8 commit an unlawful act is criminally responsible for
9 everything done by the other person which happens as a
10 probable and natural consequence of the acts done in
11 carrying out the common plan. Two people can be guilty
12 of killing another person when only one of the two had a
13 gun and there was only one bullet and only one of the two
14 fired the shot that caused the death. If two or more
15 people are together, acting together, assisting each other
16 committing the offense, the act of one is the act of all
17 or as sometimes said, the hand of one is the hand of all.

18 Prior knowledge that a crime is going to be committed
19 without more is not sufficient to make a person guilty of
20 that crime. Mere knowledge that another person is going
21 to commit a crime, even if the Defendant was present when
22 the crime was committed, is not sufficient to convict him
23 as a principal; therefore, a finding of a prior arranged
24 plan or common scheme is necessary for a finding of guilt
25 as a principal, but the State must prove beyond a

1 reasonable doubt by competent evidence that the theory of
2 one -- that the theory of the hand of one is the hand of
3 all. When a person does an act in the presence of another
4 or with the assistance of another, the act may be done --
5 considered to be done by both. Where two or more acting
6 with a common plan or intent are present at the commission
7 of a crime, it does not matter who actually commits the
8 crime. All are guilty. The hand of one is the hand of
9 all.

10 Presence at the commission of a crime means
11 sufficiently near to, to aid, abet or assist in the
12 commission of this crime. Mere presence at the scene is
13 not sufficient to convict one as a principal in the theory
14 of aiding and abetting. The State must prove the elements
15 of the hand of one beyond a reasonable doubt.

16 There was testimony regarding intoxication in this
17 case. I tell you that insanity caused by the use of drugs
18 or alcohol may be a defense if the insanity is permanent
19 and destroys the Defendant's ability to know right from
20 wrong; however, when voluntary intoxication has not
21 produced permanent insanity, it is not a defense to a
22 crime. A person who becomes voluntarily intoxicated is
23 just as responsible for the acts committed while
24 intoxicated as when a person is not intoxicated.

25 I instruct you that the law says that a person who

1 has a past criminal record is competent to testify during
2 any trial. A past record does not affect the ability of
3 the witness to testify. A past record may be considered
4 by you in determining the witness's believability.
5 Remember, you are the judges of the facts and it is your
6 job to determine and evaluate the credibility of all the
7 witnesses who testified.

8 Now you've heard testimony and evidence that the
9 Defendant was convicted of a crime other than for the one
10 he's now on trial. This evidence shall be considered by
11 you, and if you conclude it as true, can only be considered
12 in deciding on the Defendant's testimony's believability
13 and for no other purpose. You must not consider a
14 Defendant's prior record as evidence of the Defendant's
15 guilt of the charge for which he is on trial today.

16 Now I tell you also that a number of you jurors have
17 taken notes during the trial. And the trial, what, lasted
18 three days of actual trial work? Different witnesses
19 testified, different jurors took notes, jurors who didn't
20 take notes, all of you collected and received information
21 during the trial. After you begin your deliberations,
22 if you-all begin discussing testimony or evidence and a
23 notetaker's notes -- and the juror says well, I remember
24 this because I wrote it down, that does not necessarily
25 trump a non-notetaker's hearing and recollection of the

1 testimony. You-all are to put it together. Twelve
2 people, equal votes. Note-taking doesn't trump listening
3 and listening doesn't trump note-taking. The notes are
4 for the note-taker's benefit and no other purpose.

5 Now for some of the evidence, which I explained to
6 you during the trial, there were redactions made, which
7 is a legal term for removal. And the best example was the
8 interview where the Defendant, in my opinion, was groggy
9 and sleepy. That part was deleted. Not to conceal
10 anything to you, but to make certain that I thought it was
11 appropriate for you to consider that when he was alert.
12 That would be for you-all to determine, but the redactions
13 are not to try to conceal things. They're just for the
14 purpose of making the record simplified for the purpose
15 of having an accurate record.

16 Now, Ms. Cagle and other members of the jury, I tell
17 you that I'm very mindful of the importance of your job
18 here today. It's been my job for the last four days and
19 every week to make certain that everyone who comes into
20 my courtroom receives fair and impartial justice. It's
21 your job to now go in the jury room and evaluate the
22 testimony and the evidence which you've seen, to consider
23 the instructions which the Court's given and accept that
24 law, and to reach a unanimous verdict. Because I tell
25 you your verdict must be unanimous. It can't be any

1 other way. Each indictment and the elements there must
2 be proven by the State beyond a reasonable doubt and the
3 Defendant is presumed innocent until the State disproves
4 it, and that's the questions of fact you-all must answer.

5 Now I have a verdict form somewhere. In any event,
6 it shows the two indictments; murder and voluntary is one,
7 use of a weapon in the commission of a violent crime is
8 the other. You can consider either one. You-all can
9 discuss the case as you-all deem appropriate.

10 Now it's an opportunity in a moment as soon as I
11 send you to the jury room to let the lawyers comment on
12 my instructions to you, and hopefully they'll believe and
13 indicate that they believe my instructions were sufficient
14 and complete; however, it was a lot and I was working on
15 it today. If they say, Judge, you know, you glossed over
16 one element or one facet of the theory of the law we
17 expected more on, I consider those suggestions and I may
18 bring you back in here momentarily and say I did forget
19 something and sometimes I do forget something. Like the
20 last trial I had I forgot note-taking. I forgot to tell
21 the jurors about the note-taking, and I didn't this time.
22 But I get to ask the lawyers' comments and then if they
23 have no further suggestions, once the evidence comes to
24 you and the verdict form, that's when you begin discussing
25 the case.

1 Now, additionally, if you-all have any questions
2 about my instructions or where is this or where is that,
3 if you want to hear the recordings, the computer right
4 there is basically an older computer with nothing much on
5 it. It's for playing videos and audios in the courtroom.
6 We can put it in the jury room for you and you-all can
7 listen to the recordings back there, and we'll be glad to
8 do that.

9 If you want to hear testimony of someone, all court
10 reporters give me the cringe look because then they've got
11 to get their speakers out, and Stacy didn't do it because
12 she's -- she's a good sport, but she recorded everything.
13 There's actual live testimony in addition to making a
14 record. If you want to hear testimony again, write down
15 who you want to hear and send a note to Mr. Mills and
16 we'll bring you in here and give her an opportunity to
17 cue it up. Now once you do that and say can we hear
18 testimony of whomever, that's a good time for a break
19 because it will take her a few minutes and so you-all can
20 stop discussing the case.

21 Now you-all are on you-all's time now once you start
22 deliberations. You-all can deliberate for thirty minutes,
23 an hour. If somebody wants to step outside and get some
24 fresh air, stop deliberations.

25 Mr. Mills has a funny story about somebody goes to

1 the bathroom. Don't deliberate unless you leave the door
2 open, and that's a joke. That's a joke, but it's pretty
3 good sometimes when you have the right jurors. In any
4 event, if twelve of you are there, you can discuss the
5 case. If one person wants to step out and take a break,
6 you stop. Everybody's got to be there for the discussion.

7 Now for my purposes, I'm gonna send all fourteen of
8 you in there and then once the evidence comes to you, I'll
9 pull the alternates out, okay?

10 All right. You-all step in the jury room and I'll
11 send the stuff to you as promptly as I can.

12 (Whereupon, the jury retires to the jury room at
13 3:44 PM.)

14 THE COURT: All right. Any exceptions or objections
15 on the jury instructions? The defense of others came out
16 better than I thought, but I hit it pretty close.

17 MR. GRAHAM: The only thing, just for the record
18 when it goes up on appeal, the State would object to the
19 language on the person and protection of property act.

20 THE COURT: And you notice how I wove it in?

21 MR. GRAHAM: Yes, sir.

22 THE COURT: And your objection's noted for the
23 record, but I did put it in there.

24 MR. FLOYD: Your Honor, the only thing for us is
25 you did deny our Defendant's Request to Charge Number 1

1 and 2, so we would object to your not including that.

2 THE COURT: And I -- for the record, I did not
3 utilize 1 and 2 and so if I'm wrong on that, that was not
4 instructed in any fashion.

5 MR. FLOYD: And the only other thing, Your Honor,
6 is I'm not sure you covered the concept in Defendant's
7 Request to Charge Number 4, which basically is about
8 mistaken belief in the need for deadly force.

9 THE COURT: Well, I thought I did when I talked
10 about --

11 MR. FLOYD: You may have.

12 THE COURT: I'll tell you where it was. Because I
13 thought about that and I hid it in -- I thought I put it
14 in here in the second element. Defense of others, that
15 the Defendant or the person being defended in good faith
16 did believe that the person being defended was in imminent
17 danger. Or in deciding whether the person defended
18 actually was or Defendant actually believed he was in
19 imminent danger, you should consider all of the facts and
20 circumstances surrounding the crime, including all the
21 physical characteristics. I thought I hit it right there
22 sufficiently.

23 MR. FLOYD: Your Honor, I think the concept -- and
24 maybe you have covered it, Judge. The concept was did he
25 have it, was that if you believe a person is in danger of

1 serious harm and you're mistaken, then that can be an
2 issue of -- that could be considered provocation, legal
3 provocation for voluntary manslaughter.

4 THE COURT: All right. I'll note your objection to
5 that -- failure to charge that specific language in
6 Number 4, but I think my charge as a whole is appropriate.

7 MR. FLOYD: Thank you, Your Honor.

8 THE COURT: Have you-all seen the verdict form?
9 All right. Are you okay with it?

10 MR. GRAHAM: (Nods head.)

11 THE COURT: Are you okay?

12 MR. FLOYD: I think we're okay with it.

13 THE COURT: Okay.

14 All right. Have we got the evidence ready?

15 THE COURT REPORTER: Uh-huh. It's all there.

16 MR. GRAHAM: Judge, there is a .380 and it does
17 have a pistol lock on it and there is two magazines of
18 ammunition. I don't know whether you want to hold pieces
19 or part of that back?

20 THE COURT: I want to keep that in here.

21 THE CLERK: Okay. That's what I was gonna ask you.

22 THE COURT: We'll let them know if they want to see
23 it, and they can have it, and then we'll give it to them
24 in parts, but I don't want both parts going back there.

25 THE CLERK: Do you want both of them to stay out

1 right now?

2 THE COURT: Yes.

3 All right. It looks like 3:50 to me, Stacy.

4 THE COURT REPORTER: Yes, I think so.

5 (Whereupon, the alternates were excused, and the
6 evidence, except for State's Exhibit Number 28 and
7 State's Exhibit Number 30, and the verdict form was
8 sent back to the jury at 3:50 PM.)

9 (Back on the record at 4:00 PM.)

10 (Court's Exhibit Number 5 and Court's Exhibit
11 Number 6 were marked for identification.)

12 (Pause in proceedings.)

13 THE COURT: Have we got everybody in?

14 MR. GRAHAM: Yes, Your Honor.

15 THE COURT: All right. Bring them in, please.

16 (Whereupon, the jury returns to the courtroom at
17 4:14 PM.)

18 THE COURT: All right. Ms. Cagle, has the jury
19 reached a verdict?

20 FOREPERSON: Yes, Your Honor.

21 THE COURT: And was it unanimous?

22 FOREPERSON: Yes, Your Honor.

23 THE COURT: Will you, please, hand it to Mr. Mills.

24 FOREPERSON: (Handing.)

25 BAILIFF: (Handing.)

1 THE COURT: All right. Madam Clerk, you may publish.

2 THE CLERK: Indictment 2014-GS-32-3244 and Indictment
3 2014-GS-32-3245, the State versus Nicholas Chhith-Berry.

4 As to the charge of murder, we, the jury, find as follows.

5 On the charge of murder, guilty.

6 As to the charge of possession of a weapon during a
7 violent crime, we find the Defendant guilty, and it is so
8 signed by the forelady, December 15, 2016.

9 Madam Forelady and ladies and gentlemen of the jury,
10 if this is your verdicts, please indicate each of you by
11 raising your right hand.

12 All hands raised.

13 THE COURT: Any further issue for the jury,
14 Mr. Floyd?

15 MR. FLOYD: We request polling, Your Honor.

16 THE COURT: All right. We're gonna actually poll
17 by the juror number, if that's okay? I find that's
18 appropriate.

19 THE CLERK: As I call your juror number, if you'll
20 hold up your hand so I can recognize you. I will ask you
21 as to the verdicts, were these your verdicts and are they
22 still your verdicts. When I finish that, then you give
23 me your response, please.

24 Number 34, as to the verdicts, were these your
25 verdicts and are they still your verdicts?

1 JUROR NUMBER 34: Yes, ma'am.

2 THE CLERK: Number 6, as to the verdicts, were these
3 your verdicts and are they still your verdicts?

4 JUROR NUMBER 6: Yes, ma'am.

5 THE CLERK: 144, as to the verdicts, were these your
6 verdicts and are they still your verdicts?

7 JUROR NUMBER 144: Yes, ma'am.

8 THE CLERK: 183, as to the verdicts, were these your
9 verdicts and are they still your verdicts?

10 JUROR 183: They are.

11 THE CLERK: 203, as to the verdicts, were these your
12 verdicts and are they still your verdicts?

13 JUROR 203: Yes, ma'am.

14 THE CLERK: 62, as to the verdicts were, these your
15 verdicts and are they still your verdicts?

16 JUROR 62: Yes, ma'am.

17 THE CLERK: 107, as to the verdicts, were these your
18 verdicts and are they still your verdicts?

19 JUROR 107: Yes, ma'am.

20 THE CLERK: 95, as to the verdicts, were these your
21 verdicts and are they still your verdicts?

22 JUROR 95: Yes, ma'am.

23 THE CLERK: 56, as to the verdicts, were these your
24 verdicts and are they still your verdicts?

25 JUROR 56: Yes, ma'am.

1 THE CLERK: 140, as to the verdicts, were these your
2 verdicts, are they still your verdicts?

3 JUROR 140: Yes, ma'am.

4 THE CLERK: 84, as to the verdicts, were these your
5 verdicts and are they still your verdicts?

6 JUROR 84: Yes, ma'am.

7 THE CLERK: 74, as to the verdicts, were these your
8 verdicts and are they still your verdicts?

9 JUROR 74: Yes, ma'am.

10 THE CLERK: All jurors polled, Your Honor.

11 THE COURT: All right. Thank you very much.

12 All right. Thank you-all for your service. I'd
13 like for you-all to step back to the jury room and let
14 me come back and talk to you. It's one of my favorite
15 things to do after a trial's over just to express my
16 thanks.

17 So you-all step back in the jury room and then I'll
18 release you.

19 Anything else for the jurors before I go back there?

20 MR. GRAHAM: No, your Honor.

21 MR. FLOYD: Not from the defense, Your Honor.

22 (Whereupon, the jury was dismissed at 4:19 PM.)

23 (Recess taken at 4:19 PM.)

24 (Back on the record at 4:38 PM.)

25 BAILIFF: All rise.

1 THE COURT: The jurors want to come and sit in the
2 courtroom. Some of them are. They're gonna come through
3 here and sit in the audience, so here they come.

4 All right. Mr. Mills, do you know if we've got all
5 the jurors in that want to come in?

6 BAILIFF: That's all, Your Honor.

7 THE COURT: Okay.

8 All right. Mr. Floyd, are you ready?

9 MR. FLOYD: Yes, Your Honor.

10 THE COURT: All right. Mr. Graham, I heard the
11 prior record of the Defendant and all the testimony. Do
12 any of the victim's --

13 MR. GRAHAM: There are two family members, Your
14 Honor, that would like to address the Court at the
15 appropriate time.

16 THE COURT: All right. Let me hear from them now
17 and then I'll hear from Mr. Floyd. And he's due days'
18 credit from May 14th -- May 19th of 2014, if I've written
19 that date correctly. He was in custody from May 19th?

20 MR. GRAHAM: That's correct.

21 MS. KIRBY: Thank you for your time, Your Honor.

22 THE COURT: Yes, ma'am.

23 MR. GRAHAM: Alicia Russell is Jamie's sister and
24 Julie Kirby is his aunt who raised him.

25 THE COURT: Okay. I'll hear from you, whichever

1 wants to go first.

2 MS. KIRBY: First off, Your Honor, I'd like to thank
3 you for your time and for this team that worked so hard
4 for the justice of Jamie. Jamie was -- I called him my
5 big-hearted baby, because that's exactly what he was. He
6 was a big boy, a huge heart. I can't tell you the loss
7 to our family, to his children, to his mother, to us all
8 as a whole. Jamie was a huge part of this family. He
9 actually took care of everyone, including my son, which
10 was a year younger. They -- he was just -- he was the
11 man left in our family and his loss will forever, forever,
12 change this family.

13 I ask that in your decision that you take into
14 consideration not only was Nick a young child, but so was
15 Jamie. Jamie was twenty-three years. He was a baby taken
16 from his -- his life and his family as well, and he has
17 two boys, too. Due to the actions of this one gentleman,
18 there are now four children without a father. I -- I see
19 no easy way around this. I ask for the maximum punishment
20 from my family, and that's all I want to say, Your Honor.

21 Thank you for your time, Your Honor.

22 THE COURT: All right. Do you want to speak next?

23 MS. RUSSELL: I just wanted to be here.

24 THE COURT: Okay. Very well.

25 All right, Mr. Floyd.

1 MR. FLOYD: Thank you, Your Honor.

2 Your Honor, I think -- do you want to speak? I
3 think I have a family member that wants to speak also,
4 Your Honor.

5 THE COURT: Okay.

6 MR. CHHITH: Thank you, Your Honor.

7 THE COURT: And your name?

8 MR. CHHITH: My name is Hunam Chhith. I'm the father
9 of Nicholas Berry -- Chhith-Berry. He's a very good son
10 for me. He never gave me any hard time and, you know,
11 like any teenager boy sometime they don't listen to their
12 parents, they tend to do bad -- make wrong decisions and
13 he never committed any violent crime his -- his whole
14 teenage life and I'm asking for mercy. Like I said, he's
15 not a violent person in and out of prison and for that
16 please don't lock him away and throw away the key. Don't
17 lock him up and throw away the key. Have some mercy.

18 Thank you, Your Honor.

19 THE COURT: Thank you, sir.

20 MR. CHHITH: Thank you. Thank you, everyone, that's
21 in this courtroom.

22 MR. FLOYD: Your Honor, you've heard -- you've heard
23 the case. We don't need to go into that. You know, he's
24 seventeen years of age, a very young man, had no previous
25 violence in his life. The jury has spoken, so we're not

1 gonna argue that point. We ask that Your Honor consider
2 giving him a -- I know your options are limited. We ask
3 Your Honor to consider giving him the thirty years and run
4 the other one concurrent. He would still be doing more
5 time in prison than he's lived and will be an old man when
6 he got out, so. It's an unfortunate situation and -- I
7 mean, he's very remorseful about the situation now and we
8 just ask for whatever mercy you can give him.

9 Thank you.

10 THE DEFENDANT: Your Honor, can I speak to the family,
11 please? I just want to tell the family I'm sorry for the
12 loss that you guys have had to take. I've lost a lot and
13 have taken losses in my family also. I wanted you guys to
14 know I'm extremely sorry for the mistake that I'm making,
15 not regarding just because of this situation putting me in
16 as much time as I can possibly get, you know. I understand
17 that Jamie Galloway had, you know, kids and I'm very sorry
18 that they have to go that time without him. I understand
19 you guys' pain and I'm just -- I wish you guys would just
20 know that I -- I want you to understand things and I just
21 wanted to really apologize for the things that have
22 happened. And I'm very sorry that the process had to
23 continue on until this far and I'd just like you guys to
24 know that. I just wanted to wish you guys a Merry
25 Christmas and I -- you know, I pray you guys will have

1 time to just continue to allow God to stay in the rest of
2 your lives and give you hope. I'm sorry for the pain you
3 guys had to go through. I understand you guys may look at
4 me as a bad person, but, I mean, this time -- you know, I
5 don't have any -- I understand you have to look at me as a
6 bad person. I'm just sorry for everything that happened,
7 you guys. Just I pray for you guys in comfort and I thank
8 you guys for coming here. I'm really sorry for the reason
9 I'm here today. Thank you, guys. And I thank the Court.

10 THE COURT: All right. Anything else?

11 MR. FLOYD: Nothing further, Your Honor.

12 THE COURT: All right. Considering everything I've
13 heard, the sentence of the Court is that on the possession
14 of weapon, five years, and that runs concurrent with
15 fifty years on the murder. He gets days earned since
16 May 19, 2014.

17 MR. FLOYD: Thank you, Your Honor.

18 (Whereupon, the proceedings were concluded at
19 4:48 PM.)

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C E R T I F I C A T E

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2
3 I, Stacy S. Johnson, Official Court Reporter for
4 the Eleventh Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a true,
6 accurate and complete transcript of record of all the
7 proceedings had and the evidence introduced in the hearing
8 of the captioned case in Circuit Court on the 12-15th days
9 of December, 2016.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor have an interest to any party hereto.

14
15 July 19, 2019

16
17 *Stacy S. Johnson*
18 STACY S. JOHNSON
19 CIRCUIT COURT REPORTER
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State of South Carolina
 County of Lexington

Court of General Sessions

State)	
)	
	)	Transcript of Record
v.	)	2014-GS-32-03244
	)	2014-GS-32-03245
Nicholas Benjamin)	
Chhith-Berry)	
)	
<u>Defendant.</u>)	

July 11, 2018
 Lexington, South Carolina

B E F O R E:

The Honorable Eugene Griffith, Jr., Judge.

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

Shawn Graham, Deputy Solicitor
 Attorney for the State

Wayne Floyd, Esquire
 Attorney for the Defendant

Bethanie K. Creppon
 Circuit Court Reporter

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1 P R O C E E D I N G S

2 * * *

3 THE COURT: Mr. Floyd, are you arguing this
4 one?

5 MR FLOYD: Yes, Your Honor.

6 THE COURT: All right. You ready?

7 MR. FLOYD: Ready, Your Honor.

8 THE COURT: Okay. And Solicitor Graham?

9 MR. GRAHAM: This is 2014-GS-32-3244, which is
10 the murder conviction for Nicholas Benjamin
11 Chhith-Berry, and also Indictment 3245, which is
12 possession of a weapon during the commission of a
13 violent crime, Your Honor.

14 THE COURT: All right. Mr. Floyd, your motion.

15 MR FLOYD: Thank you, Your Honor. Your Honor,
16 would you rather me go point by point or take every
17 point?

18 THE COURT: Let's go point by point.

19 MR FLOYD: Okay.

20 THE COURT: And as we do that, I'll let
21 Solicitor Graham -- if he wants me to hear anything,
22 I'll come to him.

23 MR. FLOYD: Okay. Thank you, Your Honor.

24 The first point that we'd like to address is
25 the defendant's rights to a fair trial and due

1 process of the law were violated.

2 During the trial, it came to the attention of
3 the Court that the jury was discussing his case.
4 The bailiffs had informed the Court that they could
5 hear the jury discussing his case. At that time, we
6 moved for a mistrial since they had violated their
7 instructions in discussing the case before they
8 heard it all.

9 Your Honor denied the motion for a mistrial at
10 that point, allowed the case to go along, and, as it
11 turned out, the jury ended up convicting the
12 defendant in less than 30 minutes after the trial
13 had lasted three days and after 50 exhibits and 30
14 witnesses.

15 So we can't help but think that they were
16 prejudiced by discussing the case during the State's
17 case, and, therefore, his rights to a fair trial
18 were violated and the motion for mistrial should
19 have been granted at that time. And we renew that
20 motion now.

21 THE COURT: All right.

22 Mr. Graham?

23 MR. GRAHAM: When I talked to -- earlier this
24 morning, I talked to the other people who were
25 involved in the case with me. We honestly don't

1 remember the incident. It didn't stick out that
2 much in our head. I guess maybe the reason was, was
3 because the evidence of his guilt was so
4 overwhelming.

5 Your Court -- I mean, Your Honor gave an
6 instruction to the jury. And I think that it was so
7 conclusionary, that that's why they reached a
8 verdict in 30 minutes. They reached a verdict in 30
9 minutes because of the evidence that was put up in
10 the case.

11 THE COURT: Mr. Floyd, I'm going back on my
12 memory. And I remember the incident with talking
13 with the bailiffs and I remember my curative
14 instruction in admonishing them to follow my
15 instructions and to not do that and wait for
16 everything because everything was not in evidence.

17 And I think my curative instruction was
18 sufficient and appropriate and was what was
19 appropriate and required in that situation. So,
20 respectfully, I'm going to deny your motion for new
21 trial on that basis.

22 MR FLOYD: Thank you, Your Honor. And, of
23 course, it's our position that no matter what you
24 say, you can't get it out of their head what they've
25 already decided and discussed.

1 THE COURT: The unringing-of-the-bell argument?

2 MR FLOYD: The unringing the bell.

3 And secondly, Your Honor, we believe that some
4 errors were made during the trial. One error, we
5 had requested a jury charge -- a jury charge that
6 had to do with a failed self-defense claim upon the
7 question of murder or voluntary manslaughter. Your
8 Honor denied that Jury Charge Request No. 4. And we
9 feel it was appropriate in the situation.

10 I'm sure you remember the trial. But in this
11 trial, basically, the defendant's brother was in a
12 fight. Somebody was beating up on the brother; he
13 jumped to his brother's defense. The victim in the
14 case was much larger and older than the defendant.
15 He was only 17 at the time.

16 The defendant ended up stabbing the victim
17 numerous times in the back. The victim died from
18 the bleeding out from the wounds. Our position was
19 that it was self-defense, and we tried to argue that
20 to the jury. The reason we request -- we had this
21 jury request -- this jury charge request, is because
22 it gives the jury instruction on if they don't feel
23 it was self-defense, they could still use the
24 possibility of an imperfect self-defense on the
25 question of whether or not it was murder or

1 voluntary manslaughter.

2 And we specifically requested the charge just
3 in case the jury did not believe that the
4 self-defense charge was perfected. And it's our
5 position that your failure to give that charge
6 prejudiced the defendant and merits a new trial.

7 THE COURT: All right.

8 Mr. Graham?

9 MR. GRAHAM: Your Honor, I think the jury heard
10 all of the evidence that was presented. They heard
11 whatever Mr. Floyd got through our witnesses and
12 what he put up. They considered self-defense, I
13 believe, and they found murder. I don't know that
14 the charge is appropriate under the law and the
15 facts of the case. I think Your Honor made the
16 right ruling at the time.

17 THE COURT: I'm always remembering, when
18 tailoring a charge, tailoring it with the facts
19 presented and tailoring it with the facts to the
20 jury and the inference therefrom and all that. And
21 my recollection of the facts are fresher in my mind
22 that that charge that the Court gave was
23 appropriate. I still feel that way.

24 And so I could have been wrong, but I'm going
25 to stand by my decision on those instructions given.

1 So I'm respectfully not going to grant a new trial
2 on the basis of that imperfect self-defense
3 instruction.

4 MR FLOYD: Thank you, Your Honor.

5 The next ground of our motion is, Your Honor,
6 there was a question about -- there was some
7 evidence that was seized from a telephone -- from
8 the defendant's cell phone. We moved to suppress
9 the seizure of the cell phone.

10 Basically what had transpired was the police
11 came onto the scene where the incident occurred and
12 they ended up getting a search warrant for the
13 scene. And the warrant allowed them to seize any
14 evidence at the crime scene, including any
15 telephones.

16 Well, before they served that warrant, which
17 was done that night or that early morning, the
18 defendant was transported from the crime scene and
19 was in the hospital. So while he was in the
20 hospital, his cell phone was with him in the
21 hospital and was laying on a table next to where he
22 was. Now, the hospital is also where they
23 questioned him. And videotapes came in of the
24 questioning and was enough of -- but they just
25 simply seized the telephone there.

1 Now, they later got a search warrant for that
2 telephone, several days later. Our position is, the
3 initial seizure was illegal and unlawful. And we
4 think we're pretty strong and pretty good on that
5 point because it was not evidence of the crime; it
6 was not a safety issue for the officer; it was not a
7 weapon. It was just a cell phone laying there next
8 to him on a table where he was being treated at the
9 hospital. So the seizure was unlawful.

10 They later obtained the search warrant to
11 then -- to then try to lawfully seize the phone
12 after they'd already seized it unlawfully does not
13 make the initial seizure lawful. Some items from
14 that phone were then introduced in evidence against
15 the defendant. We moved to suppress that phone and
16 any evidence seized from it, which Your Honor
17 denied. We feel that the seizure was unlawful,
18 renew that motion, and ask for a new trial on that
19 ground.

20 THE COURT: Mr. Graham?

21 MR. GRAHAM: Your Honor, if I remember right,
22 he was transported to the hospital, he was sat on by
23 two police officers, he was handcuffed, I believe,
24 to the bed rails, if I remember from the
25 photographs, he was arrested from that point.

1 The -- you heard the evidence, you heard the
2 testimony at the time. We both argued the law and
3 you made the proper ruling that it was seized while
4 he was in the custody of law enforcement and,
5 ultimately, placed under arrest. So I guess we
6 argued it was incident to arrest at that time.

7 THE COURT: And am I mistaken, but the phone
8 was seized and taken to -- the police had control
9 over it? But it wasn't searched or --

10 MR. GRAHAM: No. It was --

11 THE COURT: -- imaged or anything until --

12 MR. GRAHAM: The search --

13 THE COURT: -- the search warrant was issued.
14 But it was in the hands of the police from the time
15 that the hospital -- for some period of time until
16 the search warrant allowing extraction of the phone,
17 so to speak.

18 MR. GRAHAM: If I remember right, what happened
19 was, was that he was taken to the hospital for
20 treatment, the phone was sitting on the bedside
21 table. It wasn't seized by the police at that time;
22 it was just sitting there. Ultimately, when he was
23 placed under arrest and taken from there, the phone
24 was seized.

25 THE COURT: Okay.

1 MR FLOYD: And, Your Honor, we think the
2 supreme court case of Riley v. California is on
3 point on the case. It's a 2013 United States
4 Supreme Court case. The -- actually was decided in
5 2014.

6 The Riley case discusses the various times that
7 a law enforcement can seize property if it's without
8 a warrant. And it's our position that none of the
9 exceptions to the law of the crime okayed by the
10 case apply in this case. If it's evidence of the
11 crime -- it's not evidence of the crime. If it's a
12 weapon that, perhaps, presents a safety issue to the
13 arresting officer, well, then they can seize it.
14 But none of that applies in this case. It's just a
15 phone sitting there on the table.

16 Now, when they arrested him, they didn't have
17 to arrest the phone, they didn't have to take the
18 phone. The fact that they took the phone makes it
19 an unlawful seizure. And then later -- they got a
20 warrant maybe three or four days later for the
21 phone. But if it's unlawfully seized to start with,
22 then a subsequent warrant doesn't make it a valid
23 search of the contents.

24 THE COURT: All right. I'd like to review that
25 case you -- that Riley case out of California. I'll

1 review that and not decide that presently. All
2 right? Keep going.

3 MR FLOYD: Thank you, Your Honor.

4 Your Honor, our next issue is there was a
5 recorded telephone conversation between the
6 defendant and his mother from the jail which the
7 State was allowed to introduce into evidence over
8 our objection. And it's our position that that was
9 an error that prejudiced the defendant of some of
10 the contents of the conversation, and it was
11 improperly admitted and merits a new trial.

12 THE COURT: Okay.

13 Mr. Graham, on that jailhouse phone call?

14 MR. GRAHAM: Your Honor, the proper foundation
15 was placed down for that. The voices were
16 identified by someone with knowledge of who the
17 people were. It was a fair and accurate recording.
18 The fact that it was prejudicial and, I mean, it
19 hurt the defendant, that doesn't make it
20 inadmissible.

21 THE COURT: I think it was properly admitted,
22 so I'm going to deny the motion on that basis.

23 MR FLOYD: Thank you, Your Honor.

24 Our next point is, the defense offered a -- the
25 testimony of a witness named Oliver Edwards. And

1 the reason we offered that testimony of Mr. Edwards
2 was that Mr. Edwards, in January of 2014, several
3 months, two or three months before this incident,
4 was a shooting victim from this same defendant -- or
5 the same victim, Jamie Galloway, when he was in
6 Columbia. And, in fact, Mr. Galloway was out on
7 bond for attempted murder in connection with that
8 shooting.

9 We offered that testimony, of course, to show
10 the violent propensity of the alleged victim in this
11 case and show knowledge of the defendant that the
12 victim was the dangerous, violent person. And Your
13 Honor did not allow us to present that testimony.
14 We feel that that decision was erroneous and
15 prejudiced the defendant and merits a new trial.

16 MR. GRAHAM: Your Honor had a hearing with, I
17 think, several witnesses who were present. After
18 hearing from the witnesses and how they described
19 the situation and what facts could be gleaned from
20 that and what -- the testimony the jury might have
21 heard and applying the law, Your Honor found it
22 wasn't appropriate. And that was the proper ruling.

23 THE COURT: I'm going to stand by the in-camera
24 hearing we had regarding that issue and my ruling in
25 suppressing that testimony. So, respectfully, I'm

1 going to deny the motion for a new trial on the
2 basis of suppressing the testimony.

3 MR FLOYD: Your Honor, our next issue is -- of
4 course we raise the -- some people call it the
5 Castle Doctrine defense under U.S. -- SC Code
6 section 16-11-440. And it's our position that the
7 requirements of that statute were met by the
8 evidence and the Court should have granted the
9 defendant immunity from his actions pursuant to the
10 protections provided by 16-11-440(c). And,
11 accordingly, the charges should have been dismissed
12 against him.

13 THE COURT: All right. Mr. Graham, I remember
14 arguing this. I remember this argument on this
15 issue and whether it was -- (c) was the appropriate
16 exception maybe.

17 MR. GRAHAM: If I remember right, the
18 defendant -- the only evidence, I believe, that was
19 offered was the defendant's testimony. I could be
20 mistaken, but I believe that's correct. He was, by
21 his own admission, high and drunk on multiple Xanax
22 bars, if I remember right, along with liquor. A lot
23 of the answers he gave on the Stand Your Ground was
24 I don't remember. It was his burden to show, by the
25 preponderance of evidence, that he was entitled to

1 self-defense as a matter of law.

2 It was clear, after the testimony that you
3 heard, that that's not the case. And, ultimately,
4 that's shown by the verdict by the jury beyond a
5 reasonable doubt. He was found guilty of murder.

6 THE COURT: Mr. Floyd, anything else on that?

7 MR FLOYD: Your Honor, I think through the
8 trial, other testimony did come into evidence to
9 kind of support what he said. Several of the
10 witnesses have testified, yes, that the initial blow
11 to the brother was made by Mr. Galloway, the alleged
12 victim, and that he just joined in to defend his
13 brother after the fight started.

14 So there was no real evidence of premeditation,
15 although I can't argue with the jury's verdict,
16 necessarily, because they've spoken. We think it's
17 an erroneous verdict, but we do realize they have
18 spoken. However, I think there's plenty of evidence
19 in the case that this was a defense of others type
20 of a case. And I think the law is clear the defense
21 of others is the same -- you have the same rights as
22 self-defense. And, accordingly, we feel that
23 immunity should have been granted to him.

24 MR. GRAHAM: A couple points, Your Honor: I
25 don't know -- for the Stand Your Ground immunity

1 hearing, it was their burden to put up their case.
2 They chose to put up what the they wanted to put up.
3 And I think to now argue that people supported
4 during the trial somehow made him meet his burden, I
5 don't think that Your Honor could consider that.
6 The motion was made, evidence was heard, and it was
7 denied.

8 The case was heard through trial testimony and
9 you sent self-defense to the jury. So they heard
10 everything that was offered. And they found that
11 there was no self-defense beyond a reasonable doubt,
12 which is a different burden. I would take exception
13 to the fact that it was not premeditated. It was
14 planned. If Your Honor will remember, there was
15 text messages that were found on the phone that said
16 that he was looking for bullets to actually put
17 Jamie down.

18 There was an incident, if Your Honor will
19 remember, where Mr. Galloway had gotten into an
20 argument with the defendant's brother, I think
21 that's correct, and knocked him down to the ground.
22 And then he pulled a knife on him and then
23 Mr. Galloway knocked him down to the ground. And
24 then after that, he made expressed statements: I'm
25 going to kill him the next time I see him.

1 So I think there was clear evidence of malice
2 and premeditation. He was looking for weapons that
3 day of the incident. He had a .22 actually found in
4 a bag in a shed back at the house when he was
5 looking for bullets; he just couldn't find any at
6 the time. But Your Honor heard the Stand Your
7 Ground hearing. The evidence was offered and the
8 jury ultimately backed up your decision. It was
9 appropriate, Your Honor.

10 THE COURT: The Stand Your Ground hearing is
11 something the Court entertains separate burden of
12 proof trying to prove the elements. And once that
13 decision is made, it stands decided. You go to
14 trial, then the proof goes to the jury. Is that not
15 right? Am I wrong?

16 Mr. Floyd, are you suggesting it's different
17 than that? The Court should consider the testimony
18 during the trial which was different in addition to
19 what was heard in the Stand Your Ground hearing
20 because there was more testimony in the trial than
21 there was at the Stand Your Ground hearing? No
22 question there was more witnesses.

23 MR FLOYD: That's correct. Your Honor, it's
24 our position that the Court could reconsider its
25 decision once it hears additional evidence on the

1 point.

2 THE COURT: Okay. I disagree with you on that.
3 I think once the decision is made by the Court and
4 it goes to a trial, then the jury becomes the
5 factfinder on the self-defense issues. And they
6 did; they made their finding by the result of their
7 verdict. So it's an interesting argument, but I
8 disagree with you.

9 But you've made a clear record, the Stand Your
10 Ground hearing being distinct and then there were
11 additional facts certainly the Court heard during
12 the trial, but I don't think I can go back and
13 revisit my decision. I think that becomes a jury
14 issue. That's what I think.

15 Okay. Next one?

16 MR FLOYD: Thank you, Your Honor. The next
17 point is, it's our position that the Court erred in
18 the failure to suppress the second recorded
19 interview of the defendant at Lexington Medical
20 Center.

21 Your Honor, I don't know if you recall this off
22 the top of your head: There were actually two
23 tapes, two different interviews. The second
24 interview was longer, had more substance to it.
25 Your Honor, we moved to suppress because it was our

1 position that it was obvious from the tape that he
2 was under the influence of some type of substance.

3 He admitted to the EMS personnel on the scene
4 that he had five shots, a couple drinks, some
5 marijuana, and a bar and a half of Xanax. And Your
6 Honor picked up on the fact that he was very groggy
7 during the start of this interview. Rather than
8 suppress the entire interview, Your Honor ruled that
9 his head seems to clear up later on in the
10 interview, so you allowed that portion of the
11 interview into evidence. It's our position that the
12 entire interview should have been suppressed and it
13 was error not to, and he's entitled to a new trial
14 because of that.

15 THE COURT: Okay.

16 MR. GRAHAM: Your Honor, you saw, probably
17 multiple times, that video, and you heard from the
18 officers themselves that were there. And you ruled
19 that what was admitted into court was appropriate.
20 And I would just ask that you stand by that ruling.

21 THE COURT: All right. I do remember -- I
22 don't remember the exact specifics of the interview
23 and the results. But I do remember noticing the
24 grogginess and then the more clarity and suppressing
25 portions of it. So I'm going to stick by my ruling

1 at the time of the hearing and deny your motion on
2 that basis also.

3 MR FLOYD: Thank you, Your Honor.

4 The last point we'd like to argue with you --
5 address to you is, we're asking Your Honor to
6 reconsider the sentence in this case. At the time
7 of this incident, Mr. Berry was only 17 years of
8 age. Now, a lot of cases have come down recently.
9 And it started with the Miller case in the United
10 States Supreme Court: You're not supposed to give a
11 life sentence to someone under 18.

12 It's a recognition that science has combed up
13 here that young males who are not yet fully grown
14 men, that their brains develop later and the portion
15 of the brain having to do with impulse control is
16 one of the last portions of the brain of young
17 adolescent males to develop, so they don't have good
18 judgment in snap kind of decision-making.

19 A 55-year sentence that was given to Mr. Berry,
20 it's our position, is equivalent to a life sentence
21 with him being under 18 at the time, although he's
22 only -- I guess by the time of trial, he was 19. So
23 55 years, if you start at 17, would be, what, 72
24 maybe.

25 THE COURT: Was it 55 or 50? I thought it was

1 50.

2 MR FLOYD: 50. But then you added five for the
3 weapon.

4 THE COURT: Oh, okay.

5 MR. FLOYD: And we -- his life expectancy would
6 not be that great living his entire life in an
7 institution. He probably would not be more than 55
8 or 60. So it's our position that what he's been
9 given is a life sentence. We'd ask Your Honor to
10 reconsider the length of his sentence and shorten it
11 to 30 years.

12 MR. GRAHAM: Your Honor, Ms. Julie Kirby is
13 here. And if Your Honor wants to hear from her, she
14 is the aunt of the victim in the case. But our
15 position is that you heard it. Your Honor has heard
16 numerous murder trials. And Your Honor will
17 remember that -- I believe, and I could be off on
18 the number, but it was 27 stab wounds. And you had
19 the evidence of premeditation; 27 times of overkill.
20 I think the sentence is appropriate.

21 Like I said, Your Honor, his aunt is here if
22 you'd wish to hear from her.

23 THE COURT: I'll hear from her briefly if she'd
24 like to be heard. I don't want to -- I mean, I
25 remember this case. I remember the semi-related

1 loss of the brother. This case cost four people,
2 more or less, their life; not the two people who are
3 in jail. There are two people who are no longer
4 here. Very much a bad afternoon.

5 MR. GRAHAM: This is Ms. Julie Kirby, Your
6 Honor.

7 MS. KIRBY: Your Honor, I just wanted to state
8 that he laid in wait behind a house with a knife
9 that he already threatened to kill my son with. And
10 then from his actions, my child lost his life, his
11 brother lost his life; there are two people in
12 prison for -- one has got a life sentence from this.
13 There are five children that we now, as taxpayers,
14 will take care of because they have no fathers.

15 I mean, it was traumatic, it was ridiculous,
16 and it was uncalled for. I just wanted to reinsert
17 that. I think that the sentence was very fair. I
18 believe that this young man has no intentions of
19 doing anything good towards his life, ever. And I
20 believe that he will be a menace to society if he's
21 returned back.

22 THE COURT: Okay. All right. Thank you.

23 Mr. Floyd, anything else?

24 MR FLOYD: Yes, Your Honor. Just to address
25 that point: Mr. Berry is doing very good in SCDC.

1 He's gotten his GED, he's taking different classes,
2 he's about to graduate. He's working, he's doing
3 real well, he's learning things. He's trying to
4 make something of his life, trying to take as good
5 of an advantage as he can with the situation that
6 he's in. We'd just ask that you give him some
7 relief on the back end of it.

8 THE COURT: All right. I want to review the
9 Riley case. And so I'll make a decision on that and
10 the motion to reconsider sentence at the same time.
11 I'm going to sit on both of them. I don't want to
12 decide them one without the other. But both of
13 them, I'm going to take under advisement and let you
14 know in a few days.

15 MR. GRAHAM: Your Honor, the only thing I'd ask
16 is if you see yourself -- you've denied all the
17 motions except for the actual reconsideration of the
18 sentencing also to be about the seizure of the
19 telephone. If after looking at the case and you
20 feel that you might grant it, I would ask that we
21 order transcripts and we can brief the issue before
22 you do that. If you'll --

23 THE COURT: That's not unreasonable.

24 MR. GRAHAM: If we're sitting here a year and a
25 half later --

1 THE COURT: Yeah. That's a fair request.

2 MR. FLOYD: Thank you, Your Honor.

3 -- END OF TRANSCRIPT OF RECORD --

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 STATE OF SOUTH CAROLINA)
)
 Plaintiff,)
)
 vs.)
)
 Nicholas B. Chhith-Berry,)
)
 Defendant.)
)
 _____)

IN THE COURT OF GENERAL SESSIONS

COPY

2016 DEC 12 AM 8:27
 BETH A. CARRIGER
 CLERK OF COURT
 LEXINGTON, SC

**MOTION TO DISMISS PURSUANT
 TO PROTECTION OF PERSONS
 AND PROPERTY ACT**

Warrant No.: 2014A3220700008,
 2014A3220700009

Defendant moves that this Honorable Court grant him immunity from prosecution and dismiss the captioned cause pursuant to the provisions of S.C. §16-11-410, et seq. In support of this Motion the Defendant alleges that a preponderance of evidence shows that the Defendant was lawfully at the location where this incident occurred, that he was not engaged in unlawful activity, that he was initially acting to defend his brother and that he had a reasonable fear of the attacker Jamie Galloway.

Furthermore Defendant alleges that the evidence will show that the Defendant nor his brother was at fault in bringing on the difficulty in question, that Defendant believed he was in imminent danger for both he and his brother either losing their life or sustaining serious bodily injury and that they were both actually in imminent danger. Also, the evidence will show that a reasonably prudent man of ordinary firmness and courage would have entertained this same belief and that the circumstances were such as would warrant a reasonable man to strike the fatal blow to save Defendant and his brother from serious bodily harm or death and that the Defendant had no other probable means of avoiding the dangers of death or serious bodily injury except to act as he did.

WHEREFORE Defendant moves this Honorable Court to dismiss these charges as Defendant is immune from prosecution pursuant to the provisions of §16-11-440 (C), S.C. Code of Laws

Respectfully submitted,

WAYNE FLOYD LAW OFFICE, P.A.
1611 Augusta Road
P.O. Box 3972
West Columbia, S.C. 29171
(803) 739-1824

By: Wayne Floyd

West Columbia, South Carolina

December 12, 2016.

2016 DEC 12 AM 8:27
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

CERTIFICATE OF SERVICE**COPY**


This is to certify that the undersigned, Michelle M. Paralegal, Paralegal to Wayne Floyd, Esquire, has this 12th day of December, 2016, served the ***MOTION TO DISMISS PURSUANT TO PROTECTION OF PERSONS AND PROPERTY ACT.***

- Hand delivering a copy hereof.
- Depositing a copy hereof in the United States mail postage prepaid
- Certified Mail (Return Receipt Requested).
- Facsimile Transmission.

2016 DEC 12 AM 8:27
 BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

upon:

**Shawn Graham, Deputy Solicitor
 Lexington County Solicitor's Office
 105 South Lake Drive
 Lexington, S.C. 29072**


 Michelle M. Wash,
 Paralegal to Wayne Floyd
 WAYNE FLOYD LAW OFFICE, P.A.
 1611 Augusta Road
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 West Columbia, S.C. 29171-3972
 (803) 739-1824

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

STATE OF SOUTH CAROLINA)
)
 Plaintiff,)

vs.)

Nicholas B. Chhith-Berry,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS

FILED DEC 22 AM 10:00

CLERK OF COURT
 LEXINGTON, SC

MB
ORIGINAL

**MOTION FOR A NEW TRIAL AND
 FOR RECONSIDERATION OF SENTENCE**

Warrant No.: 2014A3220700008,
 2014A3220700009

Pursuant to Rule 29, SCRCRP, Defendant Nicholas Chhith-Berry files this his Motion for a New Trial in the captioned matters in which he was convicted and sentenced on December 15, 2016. Defendant is informed and believes that he is entitled to a new trial for the following reasons:

1. Defendants right to a fair trial and due process of law were violated when the jury discussed his case before all evidence and arguments were in. The fact that the jury was discussing the case during the trial was brought to the attention of the Court by the bailiff who heard the jurors discussing the case. Although the jury was then admonished by the Court that they should not discuss the case they obviously continued discussing the case or had already discussed the case to such an extent that their minds were made up as the jury returned with a verdict in less than thirty (30) minutes in a trial consisting of three days of testimony from over thirty (30) witnesses and over fifty (50) exhibits;
2. Defendant is further informed and believes that the Court made critical errors during the proceeding on the following matters:
 - a. The Court erred when it failed to instruct the jury on the impact of a failed self-defense claim upon the question of Murder or Voluntary Manslaughter as requested by the Defendant in Jury Charge #4;
 - b. The Court erred when it allowed evidence from Defendants telephone that was seized without a warrant;

- c. The Court erred when it allowed testimony of a recorded telephone conversation between the Defendant and his mother from the jail;
 - d. The Court erred when it refused to allow the testimony from Oliver Edwards who was a shooting victim of Jamie Galloway several months before the incident in question;
 - e. The Court erred when it failed to dismiss and grant Defendant immunity pursuant to §16-11-440 (c) S.C. Code of Laws;
 - f. The Court erred when it failed to suppress the second recorded interview of the Defendant at Lexington Medical Center;
3. Defendant also requests that this Honorable Court reconsider the sentence giving the Defendant of Fifty (50) years of incarceration due to Defendants age, his lack of any violent prior record and the circumstances of this incident in which he was motivated in defense of his brother.

Respectfully submitted,

WAYNE FLOYD LAW OFFICE, P.A.
1611 Augusta Road
P.O. Box 3972
West Columbia, S.C. 29171
(803) 739-1824

By: Wayne Floyd

West Columbia, South Carolina

12/22, 2016.

CLERK OF COURT
LEXINGTON, SOUTH CAROLINA

2016 DEC 22 AM 10:51

CERTIFICATE OF SERVICE

ORIGINAL


This is to certify that the undersigned, Michelle M. Paralegal, Paralegal to Wayne Floyd, Esquire, has this 22nd day of December, 2016, served the **MOTION FOR A NEW TRIAL AND FOR RECONSIDERATION OF SENTENCE.**

- Hand delivering a copy hereof.
- Depositing a copy hereof in the United States mail postage prepaid
- Certified Mail (Return Receipt Requested).
- Facsimile Transmission.

upon:

**Shawn Graham, Deputy Solicitor
Lexington County Solicitor's Office
105 South Lake Drive
Lexington, S.C. 29072**

2016 DEC 22 AM 10:51
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC


Michelle M. Wash,
Paralegal to Wayne Floyd
WAYNE FLOYD LAW OFFICE, P.A.
1611 Augusta Road
P.O. Box 3972
West Columbia, S.C. 29171-3972
(803) 739-1824

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

State of South Carolina,

vs.

Nicholas B. Chhith-Berry,

Defendant.

COURT OF GENERAL SESSIONS

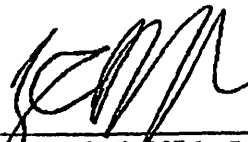
ELEVENTH JUDICIAL CIRCUIT

**ORDER DENYING DEFENDANT'S
MOTION FOR NEW TRIAL AND
GRANTING MOTION TO
RECONSIDER SENTENCE**

Warrant Nos: 2014A3220700008
2014A3220700009

The defendant was convicted and sentenced by this court on December 15, 2016 for Murder and Possession of a Weapon During a Violent Crime. This matter then came before the Court upon motion of the Defendant requesting that the Court grant a new trial and reconsider its sentence of December 15, 2016 on the above referenced warrants. Having heard all of the arguments raised in Defendant's post-trial motions, the court respectfully denies the Defendant's Motion for a new trial and grants Defendant's motion to reconsider the sentence by reducing the sentence to forty (40) years of incarceration in the South Carolina Department of Corrections. The sentencing sheet shall be amended to reflect this reduction in the sentence.

IT IS SO ORDERED.



Eugene C. Griffith, Jr.
Presiding Judge
Eleventh Judicial Circuit

Mand 44
February 2019
Albert SC

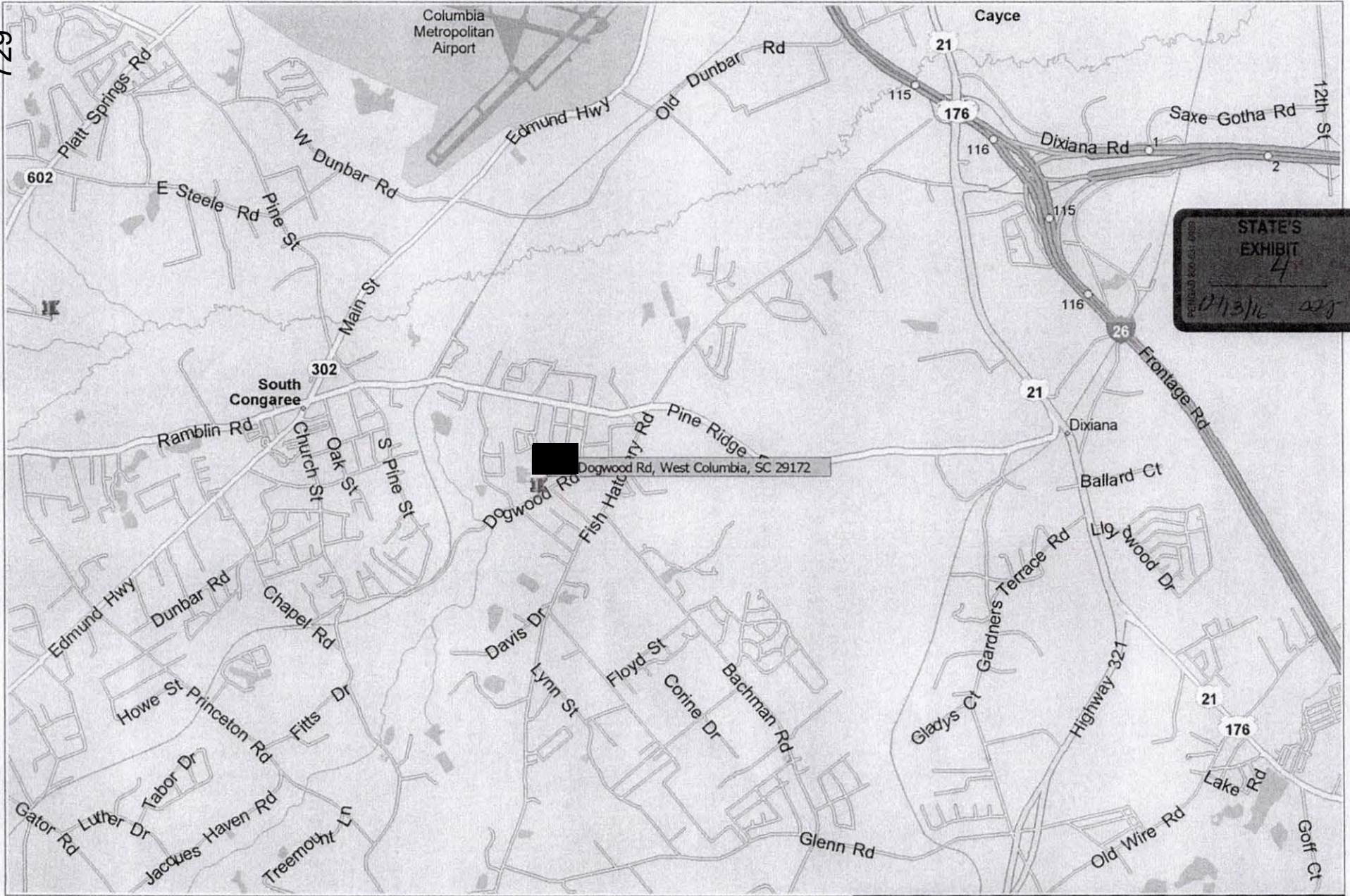
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CLERK OF COURT
LEXINGTON SC

2019 MAR -7 AM 11:03

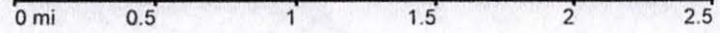
FILED

Pine Ridge, South Carolina

729



STATE'S EXHIBIT 4
01/13/16 228



2	<p>Participants: 100001859025057 * * *</p> <p>Justin Moore * * *</p> <p>100007063424259 * * *</p> <p>Nick Berry * * *</p> <p>Identifier: ONE_TO_ONE:100001859025057:100007063424259 Source: Facebook Source Extraction: Physical, Logical Body file: chat-5.txt</p>	<p>Start Time: 2/20/2014 10:52:05 PM(UTC-5) Last Activity: 5/20/2014 12:41:55 AM(UTC-4) Number of attachments: 0</p>	
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5/19/2014 5:35:58 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.837403, -81.090548)
Aye bru u got .22 rounds?

5/19/2014 5:37:51 PM(UTC-4), 100001859025057 (Justin Moore)
Hell na i might gotta homie that do tho

5/19/2014 5:38:22 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.858707, -81.096772)
Near lexington?

5/19/2014 5:38:47 PM(UTC-4), 100001859025057 (Justin Moore)
O na

5/19/2014 5:39:38 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.858707, -81.096772)
Dam, im tryna jus get front em so i can get sumthin solved n pay em after shit happen ya kno

5/19/2014 5:40:16 PM(UTC-4), 100001859025057 (Justin Moore)
Man yuu dnt need no gun to solve nottin pimpin

5/19/2014 5:41:51 PM(UTC-4), 100001859025057 (Justin Moore)
Let them niggas tik all the shit they want none of em shit i seen collin the other day an the nigga got hush mouth an nikieres want fight unless he got 8 niggas wid em they all bitches an yuu better then that bruh

5/19/2014 5:42:49 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.893842, -81.114207)
Not him im tlkin bout jamie galloway

5/19/2014 5:46:41 PM(UTC-4), 100001859025057 (Justin Moore)
Y he beefin wid yuu

5/19/2014 6:00:07 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.904075, -81.113686)
He snuck me ween i was talkin to my bro

5/19/2014 6:47:19 PM(UTC-4), 100001859025057 (Justin Moore)
Y he do that shit

5/19/2014 7:21:17 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.904311, -81.113509)
He a pussy



732

		Deleted
1	<p>Participants: 1658658758 * * * Randy Dale * * * 100007063424259 * * * Nick Berry * * *</p> <p>Identifier: ONE_TO_ONE:1658658758:100007063424259 Source: Facebook Source Extraction: Physical, Logical Body file: chat-1.txt</p>	<p>Start Time: 2/1/2014 10:33:43 PM(UTC-5) Last Activity: 5/19/2014 7:21:08 PM(UTC-4) Number of attachments: 0</p>

5/19/2014 6:37:14 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.904887, -81.112237)
Hell nah im chill wit femalea righy now but u got .22 rounds

2	<p>Participants: 100001859025057 * * * Justin Moore * * * 100007063424259 * * * Nick Berry * * *</p> <p>Identifier: ONE_TO_ONE:100001859025057:100007063424259 Source: Facebook Source Extraction: Physical, Logical Body file: chat-5.txt</p>	<p>Start Time: 2/20/2014 10:52:05 PM(UTC-5) Last Activity: 5/20/2014 12:41:55 AM(UTC-4) Number of attachments: 0</p>
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5/19/2014 5:35:58 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.837403, -81.090548)
Aye bru u got .22 rounds?

5/19/2014 5:37:51 PM(UTC-4), 100001859025057 (Justin Moore)
Hell na i might gotta homie that do tho

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Near lexington?

5/19/2014 5:38:47 PM(UTC-4), 100001859025057 (Justin Moore)
O na

5/19/2014 5:39:38 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.858707, -81.096772)
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5/19/2014 5:40:16 PM(UTC-4), 100001859025057 (Justin Moore)
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5/19/2014 5:41:51 PM(UTC-4), 100001859025057 (Justin Moore)
Let them niggas tlk all the shit they want none of em shit i seen collin the other day an the nigga got hush mouth an nikieres want fight unless he got 8 niggas wid em they all bitches an yuu better then that bruh

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Not him im tkin bout jamie galloway

5/19/2014 5:46:41 PM(UTC-4), 100001859025057 (Justin Moore)
Y he beefin wid yuu

5/19/2014 6:00:07 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.904075, -81.113686)
He snuck me ween i was talkin to my bro

5/19/2014 6:47:19 PM(UTC-4), 100001859025057 (Justin Moore)
Y he do that shit

5/19/2014 7:21:17 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.904311, -81.113509)
He a pussy



3

Participants:
100000263100461
* * *
Josh Moore
* * *
100007063424259
* * *
Nick Berry
* * *

Start Time: 2/22/2014 9:08:23 PM(UTC-5)
Last Activity: 5/20/2014 7:17:02 AM(UTC-4)
Number of attachments: 0

Identifier: ONE_TO_ONE:100000263100461:100007063424259
Source: Facebook
Source Extraction: Physical, Logical
Body file: chat-6.txt

5/19/2014 5:19:30 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.799581, -81.096077)
U got .22 rounds?

4

Participants:
100007063424259
* * *
Nick Berry
* * *
1067268390
* * *
Carey Lynn Wangness
* * *

Start Time: 3/6/2014 9:20:23 AM(UTC-5)
Last Activity: 5/19/2014 5:19:30 PM(UTC-4)
Number of attachments: 0

Identifier: ONE_TO_ONE:1067268390:100007063424259
Source: Facebook
Source Extraction: Physical, Logical
Body file: chat-9.txt

5/19/2014 5:18:51 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.809391, -81.100127)
Aye i gotta question for ya..

5/19/2014 5:19:30 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.799581, -81.096077)
U got .22 rounds?

734

Participants:
100007063424259
* * *
Nick Berry
* * *
100000077951052
* * *
Preston Wade
* * *

Start Time: 4/26/2014 9:52:20 AM(UTC-4)
Last Activity: 5/19/2014 3:44:00 PM(UTC-4)
Number of attachments: 0

Identifier: ONE_TO_ONE:100000077951052:100007063424259
Source: Facebook
Source Extraction: Physical, Logical
Body file: chat-26.txt

5/19/2014 3:00:39 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.970919, -81.212323)
Yu kno where .22 rounds at?

14

Participants:
100007169922903
* * *
Jamie Ogt-savages Leroy
* * *
100007063424259
* * *
Nick Berry
* * *

Start Time: 4/30/2014 11:56:58 PM(UTC-4)
Last Activity: 5/19/2014 1:28:33 PM(UTC-4)
Number of attachments: 1

Identifier: ONE_TO_ONE:100007169922903:100007063424259
Source: Facebook
Source Extraction: Physical, Logical
Body file: chat-29.txt

5/11/2014 4:07:13 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.846206, -81.092090)
Aye bru needa burner asap

5/19/2014 1:04:32 PM(UTC-4), 100007063424259 (Nick Berry)
U got .22 rounds?

5/19/2014 1:08:35 PM(UTC-4), 100007063424259 (Nick Berry)
I need em

5/19/2014 1:10:55 PM(UTC-4), 100007063424259 (Nick Berry)
Ohh, we are but i want them bullets got sumthin to handle

17

Participants:
 100007063424259

 Nick Berry
 **
 100000713689247

 Russell Derosia

Identifier: ONE_TO_ONE:100000713689247:100007063424259
 Source: Facebook
 Source Extraction: Physical, Logical
 Body file: chat-34.txt

Start Time: 5/2/2014 11:19:35 AM(UTC-4)
 Last Activity: 5/20/2014 12:53:00 PM(UTC-4)
 Number of attachments: 0

5/11/2014 4:45:47 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.871217, -81.107660)
 Needa burner asap

5/19/2014 2:53:50 PM(UTC-4), 100007063424259 (Nick Berry)
 Chillin.. U got .22 rounds?

5/19/2014 2:54:27 PM(UTC-4), 100007063424259 (Nick Berry)
 Fuck man i can't find any

18

Participants:
 100003801531854

 Cassey Argoe

 100007063424259

 Nick Berry

Identifier: ONE_TO_ONE:100003801531854:100007063424259
 Source: Facebook
 Source Extraction: Physical, Logical
 Body file: chat-35.txt

Start Time: 5/2/2014 8:21:19 PM(UTC-4)
 Last Activity: 5/19/2014 5:32:22 PM(UTC-4)
 Number of attachments: 0

5/19/2014 5:32:22 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.781118, -81.101609)
 Aye bru u got .22 rounds?

22

Participants:
 100000099573495

 Brice Horton

 100007063424259

 Nick Berry

Identifier: ONE_TO_ONE:100000099573495:100007063424259
 Source: Facebook
 Source Extraction: Physical, Logical
 Body file: chat-41.txt

Start Time: 5/14/2014 3:37:11 PM(UTC-4)
 Last Activity: 5/19/2014 5:39:41 PM(UTC-4)
 Number of attachments: 0

5/19/2014 5:33:45 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.810306, -81.100541)
 Aye u got .22 rpinds?

5/19/2014 5:33:49 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.810306, -81.100541)
 Rounds*

5/19/2014 5:35:23 PM(UTC-4), 100007063424259 (Nick Berry), Location:(33.810306, -81.100541)
 Dam, i need sum no places have any



Karma ain't done shit to me
bitch lol ill do my life
sentence with a smile on my
face karma will get all yall
that's faking on me u know
maybe I shoulda told the
truth bout the whole
situation and what part
every body played on how
mark gave me the gun and
told me where to go to kill
him but what about all the
boosting up of my head that
I got from you and Kathy
since the day I stepped out
of prison you and Kathy





To whom this may concern,

Page 1 of 5

I am writing this statement on my own Free Will. I want to clear all discrepancies on my case and tell what truly happened. On the night of March 3rd 2016 I called Mark Hodges to the Executive Inn in West Columbia across from the hospital to help me work on my girlfriend Susan Al-naqeeb's car. While we were working on the car we both wanted to "smoke a blunt" of marijuana but neither one of us had a cigar. We went to the gas station beside the hospital to purchase cigarettes and cigar wraps. While we were leaving the gas station Mark asked if I knew what was up with Zach Cully. I stated that he was living at the hotel across the bridge and asked if he wanted to go over there. He said yeah Zach owed him some money. When got to the West Columbia Extended Stay I noticed we parked next to a blue eclipse. Mark stayed in the truck with his girlfriend Ashley Slitzer while I went around trying to find what room Zach moved to. Once I located Zach's room and woke him up I went inside and told him Mark was down stairs and was wanting to know if he had the money he owed him. He said yeah tell him to come up. I stepped out of the room and yelled for Mark to come up. I stepped back in the room and asked Zach knew if Adam Berry was at the hotel because I heard that he drove a blue eclipse and that is what me + Mark were parked beside. Zach said he was but didn't know what room and had nothing to do with that situation. He was speaking about Adam's involvement in Jamie Galloway's murder. I said ok and I wish I could beat his ass. When Mark got up to the room he was smoking a

Page 2 of 6

blunt that he had rolled while he was waiting on me to find Zach's room. We finished smoking the blunt Mark got the money that Zach owed him and I asked Zach for a couple of dollars too. Me and Mark then went back to the Executive Inn and finished working on Shelley's car. When we finished Mark said he was going home it was late and he would talk to me later. I took the car for a test drive to make sure it wasn't still acting up. When I got back to the hotel room me and Susan "Shelley" Al-nageeb got in to a big argument. I walked over to Zach's hotel the West Columbia Extended stay. It was really late so I didn't bother waking Zach up again I just walked around the hotel sitting on the curb smoking marijuana and methamphetamine waiting for morning when Zach's girlfriend Jessica Spillman to get up for work. Once she woke up I went to Zach's room and hung out. Me + Zach were walking his dogs later that morning and Adam came out side and was smoking a cigarette. He seen me walking the dogs and called me over. We talked for a few minutes and smoked a cigarette. I went back to Zach's room and I told my self and Zach I was going to be his friend despite my negative feelings towards him so that I could try to find out the truth of what really happened in Jamie Galloway's murder. The reason I was trying to find out the truth is because it is rumored that one of the females that was there had Jamie set up. At some point I went outside on the balcony and took a picture of Adam's car. While I was out there Adam and his girlfriend came out and was fixing to leave. I asked him if he could run to McDonalds for me and I would

Page 3 of 6

buy them something to eat also. He said yeah so I gave him the money. When he got back with my food and I ate I called Kathy Polk and told her that I was at the hotel with Adam. She didn't believe me so I sent the picture of his car. I asked her if she wanted me to beat him up she told me no to leave him alone she didn't want anything to hurt the case of Jamie's murder. I said ok I'm just going to pretend to be his friend and find out the truth about if Jamie was set up. She said ok and for me to please not do anything stupid. I said ok and hung up. Later on that day when Adam returned to the hotel I asked him if he could take me to Gaston I needed a ride so I could go cook some meth. He said ok I just needed to give him gas money and he had a couple more errands to run before he could. We exchanged phone numbers and he said he would call when he was free. I said ok. I hung out with Zach and his friends until Adam called. Before I left the hotel I called Mark and told him that I was getting a ride to Gaston and being dropped off I might need a ride. He told me to just call if I needed him. Me & Adam left the hotel and went to the gas station beside the hospital and he got cigarettes. We took some pain pills and got on the interstate. We went to Gaston I got him to take me to TS Horton's camper where I had a back pack with a meth lab. While we were there we smoked a couple of bowls of marijuana. While we were smoking I started questioning him about Jamie's murder. After he admitted to stabbing Jamie along with Nick Berry. We got into a big heated and very hostile argument and I snapped. I jumped out

Page 4^{MS} of 5

of the car and pulled the 9mm pistol out of the inside of my Jacket and fired three shots. When I looked in the car I seen that he was unresponsive. I snatched my boog bag out from under the camper threw it in the car then moved Adams body to the passenger seat. I drove around for about ten or twenty minutes trying think of what to do in a state of shock. I then drove to the Gaston Ball Park and parked the car in the woods. I then walked back to Ball Park Rd and called Mark begging him to please come get me. He finally came and picked me up off the side of the road. We turned around and went back to his house because his girlfriend was arguing with him. On the way to his house I told him I needed some tools to cut my ankle monitor off. He asked me what I got him into and I said its nothing serious I just am leaving town. When we left his house we stopped at the Mobil gas station where he put gas in his truck and bought cigarettes. When he was getting in the truck he notice blood on the left side of me. He asked me what was going on I told him to quit asking me questions. When we pulled out of the gas station I cut my ankle monitor off. I threw it out of the window between the ~~gas~~^{MS} gas station and Ball Park Rd. We parked at the ball fields and I ran back to Adams car. I told Mark to follow me. I drove out to North cutting down random roads until I found what I thought was a secluded field. I drove the car back as far as I could then ran back to Marks truck. I noticed the gas can in the back of the truck so I picked it up to see if it had any gas in it. It did so I turned back around and poured the

Page 5 of 8

gas all in the car and set it on fire. I ran back jumped in the truck and directed him back to North. He asked me what I got him caught up in and why I asked him to give me a ride. I told him what happened and to just shut up he didn't do anything wrong he just gave me a ride. I told him he better not say anything to anybody. I got him to take me to my friend Tyler David's off of #3 Hwy. Tyler David is deceased now. I stayed with Tyler for almost a week or just over a week. Then I got in contact with Susan Al-naqeeb and forced her to get me a hotel room in Lugoff. I stayed there a couple of days then got dropped off at Mark's house in the middle of the night. The next day Robert Hoffman was asked to see if I could stay at his girlfriend's because I was arguing with my girlfriend. When we got to Amber Adkins house I introduced myself as CJ. I told Robert the reason why is because I don't like meeting new people and giving them my real name. I stayed there for one night the next day we took her to Blythewood to her sister's house. She came up with a story that my mom was in the hospital and I was Robert's cousin and she asked her sister to loan us money because we were broke and ran all the gas out bringing her out there. Later that night Mark asked Robert if he would take me to a hotel because he didn't want all the company at the house. He also told Robert he didn't feel like driving that was why he asked for him to get the room. I told him I didn't have an ID so he said he'll get the room. I want it to be known that I am full of regret and remorse for what happened. I never had any intentions of mortally harming

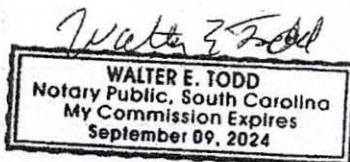
Page 6 of 8^{MS}

Adam Berry. I also want it to be known that I never intentionally meant to mutilate his body when I set the car on fire, I set the car on fire out of shock and panic and fear. I want to add also that before Mark dropped me off I had him take me to a pond off of Johnson King Rd where I threw my clothes and gun in the pond. The gun I threw if you are facing the pond about five feet to the right of the spillway about 20-40 yards out. It has fifteen bullets left in it with one in the chamber. All the facts in this statement are true to the best of my knowledge.

Sincerely,

Michael Sulier 5-9-16

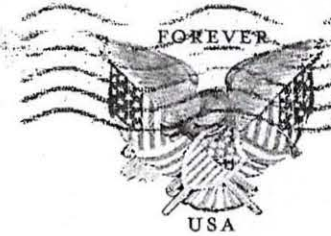
Michael Sulier 5-9-16



5/9/16

Michael Sulier 83371
LCDC 1st Floor A6
Po Box 2019
Lexington SC 29071

COLUMBIA SC 29004
11 MAY 2016 PM 1 L



Suzanne Mayes
Solicitor's Office
205 E. Main St.
Lexington SC 29072

29072358299





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745

STATE OF SOUTH CAROLINA

County of Lexington

SEARCH WARRANT

Date May 22, 2014

Officer Lieutenant Charles Bramlett



Certified True Copy

Swansea Magistrate - District 4

1400111 Murder
19-005988 CCSD
PR 77517

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Pine Ridge Police Department

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

A cell phone that is currently located at the Lexington County Sheriff's Department at 521 Gibson Rd, Lexington SC 29072. Further described as: a ZTE cell phone, model ZTE N800, serial # 321532855809, recovered during a search incident to arrest of Nicholas Berry based on a murder that occurred at [REDACTED] 4 Dogwood Road, Town of Pine Ridge, Lexington County.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Information stored on or in a ZTE cell phone, model ZTE N800, serial # 321532855809 to include detailed call records, dialed digits, incoming and outgoing call, text messages, digital images, IP address, internet browsing activity, any data contained in third party messaging or texting applications, received, or deleted, and stored contact phone numbers, date, time and duration of incoming and outgoing calls, and any deleted data.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Whalley

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

May 23, 2014 S/C.

[Signature]
Signature of Judge

(L.S.)

Certified True Copy
Swansea Magistrate - District 4

AFFIDAVIT

COUNTY OF Lexington

Personally appeared before me, one Lieutenant Charles Bramlett who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County

DESCRIPTION OF PROPERTY SOUGHT

Information stored on or in a ZTE cell phone, model ZTE N800, serial # 321532855809 to include detailed call records, dialed digits, incoming and outgoing call, text messages, digital images, IP address, internet browsing activity, any data contained in third party messaging or texting applications, received, or deleted, and stored contact phone numbers, date, time and duration of incoming and outgoing calls, and any deleted data.

Certified True Copy
Swanson Magistrate - District 4

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

A cell phone that is currently located at the Lexington County Sheriff's Department at 521 Gibson Rd, Lexington SC 29072. Further described as: a ZTE cell phone, model ZTE N800, serial # 321532855809, recovered during a search incident to arrest of Nicholas Berry based on a murder that occurred at █4 Dogwood Road, Town of Pine Ridge, Lexington County.

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

Detectives of the Pine Ridge Police Department and the Lexington County Sheriff's Office are investigating a Murder that occurred at █4 Dogwood Road a residence in the Town of Pine Ridge, Lexington County on or about 5-19-2014. On 5-19-2014 Officers with the Pine Ridge Police Department and the Lexington County Sheriff's Department responded to a stabbing incident at █4 Dogwood Road. The case number for the report is 1400111 and is currently under investigation. The cell phone was recovered during a search of Nicholas Berry incident to arrest. The prolific use of cell phones has made the recovery and documentation of the information stored on them vital in criminal investigations. It is by experience in conducting criminal investigations that the affiant has learned that cell phones are used to both communicate as well as document criminal exploits through video or audio recordings, photographs, or text messages. The call histories help to corroborate or disprove innocence by establishing timelines and identifying potential witnesses that the person had contact with. It is also through experience that the affiant has learned that address book entries identify relationships between individuals and provide nickname or "street name" links to the listed number.

Sworn to and Subscribed before me
this 25 day of MAY 2014

Signature of Judge (L. S.)

Affiant
Address 2757 Fish Hatchery Road
West Columbia, SC 29172
Phone 803-755-2500


STATE OF SOUTH CAROLINA

County of Lexington

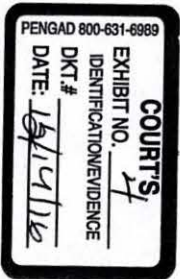
SEARCH WARRANT

Date July 25, 2016
Officer Lieutenant Howard Powell

Certified True Copy


Cayce West Columbia
Magistrate - District 6

7243



STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Search Warrant

Form approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF LEXINGTON COUNTY

It Appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED**

The property to be searched is a black in color ZTE N800 cell phone with serial number 321532855809 belonging to Nicholas Benjamin Chhith-Berry. This cell phone is located in the evidence room located at the Lexington County Sheriff's Department located at 521 Gibson Road, Lexington, South Carolina 29072.

Now, therefore, you are hereby authorized to search the subject premises described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Property sought is information stored in digital form on the phone or on any removable media which is currently accessible or previously deleted to include, but not limited to, phone and subscriber identify, photographs, text messages sent and received, call logs of incoming and outgoing phone transmissions, address book, and video and audio recordings.

This Search Warrant shall not be valid for more than ten days from the date of issuance.


A written inventory of all property seized pursuant to this Search Warrant shall be made to **The Honorable Albert J. Dooley III** within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Columbia, S.C.

7/25, 2016

SCCA/513 (3-78) *11:45am*



Signature of Judge (L.S.)

STATE OF SOUTH CAROLINA }
 COUNTY OF LEXINGTON }

AFFIDAVIT

Personally appeared before me, one Lieutenant Howard Powell
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Property sought is information stored in digital form on the phone or on any removable media which is currently accessible or previously deleted to include, but not limited to, phone and subscriber identify, photographs, text messages sent and received, call logs of incoming and outgoing phone transmissions, address book, and video and audio recordings.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED


The property to be searched is a black in color ZTE N800 cell phone with serial number 321532855809 belonging to Nicholas Benjamin Chhith-Berry. This cell phone is located in the evidence room located at the Lexington County Sheriff's Department located at 521 Gibson Road, Lexington, South Carolina 29072.


REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On May 19, 2014 at █4 Dogwood Road, West Columbia, Lexington County, South Carolina the defendant, Nicholas Benjamin Chhith-Berry, committed the crime of murder against the victim, James Galloway. The defendant was arrested by responding officers as he was attempting to flee from the scene and was subsequently charged with murder and possession of a weapon during the commission of a violent crime. In the defendant's possession at the time of the arrest was a black in color ZTE N800 cell phone with serial number 321532855809. At the time of the original investigation a lawful search warrant was executed in order to extract information from the defendant's cell phone, however the technology did not exist that would allow investigators to bypass this cell phone's security features. Since the incident date the technology has become more advanced and will now allow investigators to bypass the security features on this cell phone. The prolific use of cell phones has made the recovery and documentation of the information stored on them vital in criminal investigations. It is by experience in conducting criminal investigations that the affiant has learned that cell phones are used to both communicate as well as document criminal exploits through video or audio recordings, photographs, or text messages. In addition, the call history helps to corroborate or disprove innocence by establishing timelines and identifying potential witnesses that the person had contact with. I is also through experience that the affiant has learned that address book entries identify relationships between individuals and provide nickname or "street name" links to the listed numbers. A search of the above described cell phone is needed to obtain any and all evidence associated with the murder of James Galloway.

Sworn to and Subscribed before me

This 25th day of July, 2016. 11:45am


 Signature of Judge


 Affiant
 2757 Fish Hatchery Road
 West Columbia, South Carolina 29172
 803.755.2500

(L.S.)

1225

Return

I received the attached Search Warrant _____, 20_____, And have executed it as follows:
On _____, 20_____ at _____ o'clock _____ M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with _____

Name of the person searched or "at the place of search" with. _____

Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

This inventory was made in the presence of _____
AND _____

I swear that this Inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this _____

day of _____, 2015

Signature of Judge (L.S.)

(Signature of Officer Executing Warrant)

RETURN

I received the attached Search Warrant 7-25, 2016, and have executed it as follows:

On 7-25, 2016, at 1225 o'clock P m.,

I searched (the person) described in the warrant and (the premises).

I left a copy of the warrant with MICHAEL PHIPPS
Name of person searched or "at the place of search" together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant: Due to the exhaustive amount of information that may be stored in the device(s) seized and the necessary amount of time required to complete the search of these device(s), the results of any forensic analysis will be maintained by law enforcement for any subsequent legal proceedings.

Multiple horizontal lines for inventory details.

This inventory was made in the presence of Michael Phipps

AND _____

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

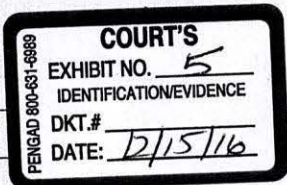
SWORN to before me this 15th

Day of August, 20 16

[Signature] 7253 (L. S.)
Signature of Judge

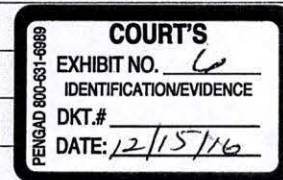
12:30pm

[Signature]
(Signature of Officer Executing Warrant)



Print out
copy of law
that the
judge read
out.

Laptop for
listening to
recordings.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
)	
COUNTY OF LEXINGTON)	
)	
STATE OF SOUTH CAROLINA)	
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT'S REQUESTED
	)	JURY CHARGE #4
Nicholas B. Chhith-Berry,)	
	)	Warrant No.: 2014A3220700008,
Defendant.	)	2014A3220700009
)	

If you find that the Defendant believes he or another person was in danger of serious injury or death and believes that deadly force was necessary to avoid this danger but that you also find that either of these beliefs was not reasonable then you should consider whether the threat constituted adequate legal provocation as that term is used in defining the crime of Voluntary Manslaughter *State v. Nicholas* 325 S.C. 111, 481 2d (1997)

WITNESSES

Pine Ridge Police Department
Officer Bramlett
Law Enforcement Case #: 1400111

DSG

ARREST WARRANT NUMBER

2014A3220700008

ACTION OF GRAND JURY

W. S. Bramlett
Foreperson of Grand Jury
Date: *Nov. 3, 2014*

VERDICT

Guilty
12-15-16

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS3203244

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS
NOVEMBER TERM 2014

THE STATE
vs.

Nicholas Benjamin Chhith-Berry

CDR #: 0116

Indictment for

Murder

§ 16-03-0010

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Paul Connor
Lex. Co. C.C.C.P., G.S. & F.C.


STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Murder
§ 16-03-0010

At a Court of General Sessions, convened on November 2014, the Grand Jurors of Lexington County present upon their oath:

That **Nicholas Benjamin Chhith-Berry**, did in Lexington County, on or about May 19, 2014, willfully, feloniously and with malice aforethought kill one James Galloway by stabbing the victim and that the victim, James Galloway, died as a proximate result thereof in Lexington County in violation of §16-3-10 of the South Carolina Code of Laws of 1976, as amended.

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


DEPUTY SOLICITOR

WITNESSES

Pine Ridge Police Department
Officer Bramlett
Law Enforcement Case #: 1400111

DSG

ARREST WARRANT NUMBER

2014A3220700009

ACTION OF GRAND JURY

Wendy G. Bramlett
Foreperson of Grand Jury
Date: *Nov 3, 2014*

VERDICT

GUILTY
12-15-14

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS3203245

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2014

THE STATE
vs.

Nicholas Benjamin Chhith-Berry

CDR #: 0549

Indictment for

Possession of a Weapon during a Violent
Crime

§ 16-23-0490

DONALD V. MYERS, SOLICITOR

A TRUE COPY

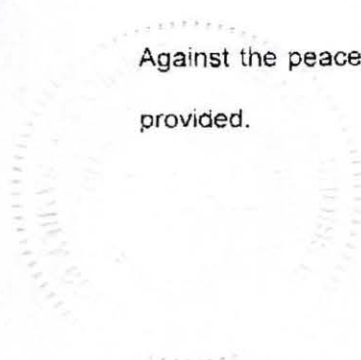

Donna Myers
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Possession of a Weapon during a Violent Crime
COUNTY OF LEXINGTON)	
	)	§ 16-23-0490

At a Court of General Sessions, convened on November 2014, the Grand Jurors of Lexington County present upon their oath:

That **Nicholas Benjamin Chhith-Berry** did in Lexington County, South Carolina on or about May 19, 2014 knowingly and willfully, during the commission of a violent crime or attempt to commit a violent crime, to wit: Murder, visibly display a knife in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

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

 DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF Lexington)
 STATE VS.)
 Nicholas Benjamin Chhith-Berry)
 AKA:)
 Race: White Sex: M Age: 19)
 DOB: ██████████ SS#: ██████████)
 Address: ██████████ Barco Court)
 City, State, Zip: Lexington, SC 29073)
 DL#: ██████████ SID#: ██████████)
 *CDL Yes No CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS3203244
 A/W#: 2014A3220700008
 Date of Offense: 5/19/2014
 S.C. Code § : 16-03-0010
 CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
 (CSC w/minor 1st or Lewd Act)

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

Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#
 WHEREFORE, the Defendant is committed to the State Department of Corrections, ~~County Detention Center~~,
 for a determinate term of 50 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on: 2014 GS 32-3245
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. Since May 19, 2014
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
 Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____
 Set by SCDPPPS _____
 Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 19-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2095 (DUI Assessment)	\$12	\$
§ 56-5-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 59-2-114 (BEI Breath Test Fee)	\$50	\$
§ 56-5-2942(L) (Vehicle Assessment)	\$40/ca	\$
3% to County (if paid in installments)		\$
TOTAL		\$ <u>135.00</u>

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

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

Presiding Judge [Signature]
 Judge Code: 2154
 Sentence Date: 12-15-16

Clerk of Court/Deputy Clerk: [Signature]
 Court Reporter: [Signature]
 SCCA/217 (07/2016)

EXHIBIT COPY

STATE OF SOUTH CAROLINA)
 COUNTY OF Lexington)
 STATE VS.)
Nicholas Benjamin Chhith-Berry)
 AKA: _____)
 Race: White Sex: M Age: 19)
 DOB: _____ SS#: _____)
 Address: _____)
 City, State, Zip: Lexington, SC 29073)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS3203245
 A/W#: 2014A3220700009
 Date of Offense: 5/19/2014
 S.C. Code § : 16-23-0490
 CDR Code #: 0549

SENTENCE SHEET

*CDI. Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
 (CSC w/minor 1st or Lowd Act)

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

Solicitor _____ SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____
 WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on: 2014 GS 32-3245
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State
 Department of Corrections. May 19, 2014
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 56-1-117(B) (Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$

TOTAL: \$ 125.00
 Clerk of Court/ Deputy Clerk Scott Carrigan
 Court Reporter: S. Johnson
 SCCA/217 (07/2016)

Appointed PD or appointed other counsel,
 § Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.
 Presiding Judge [Signature]
 Judge Code: 2154
 Sentence Date: 12-15-16

FREE COPY

*762 Sentence Amended to 40 yrs per Attached Order **

STATE OF SOUTH CAROLINA)
 COUNTY OF Lexington)
 STATE VS.)
Nicholas Benjamin Chhith-Berry)
 AKA: _____)
 Race: White Sex: M Age: 19)
 DOB: [REDACTED] SS#: _____)
 Address: Barco Court)
 City, State, Zip: Lexington, SC 29073)
 DL#: _____ SID#: _____)
 *CDI, Yes No CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#: 2014GS3203244
 A/W#: 2014A3220700008
 Date of Offense: 5/19/2014
 S.C. Code §: 16-03-0010
 CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Murder / Murder

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
 (CSC w/minor 1st or Lewd Act)

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

Solicitor _____ SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 50 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on: 2014 GS 32 - 3245
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Since May 19, 2014
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

Recipient: _____

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

TOTAL: \$ 1325
 Clerk of Court/ Deputy Clerk: [Signature]
 Court Reporter: [Signature]
 SCCA/217 (07/2016)

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

Appointed PD or appointed other counsel, § Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
 Presiding Judge: [Signature]
 Judge Code: 2154
 Sentence Date: 12-15-16