

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Chesterfield County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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SC Court of Appeals

THOMAS JEFFREY STEWART,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-002005

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

CHELSEY MARTO
Assistant Attorney General
1000 Assembly St.
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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1 Was the order of protection that she took out on the 29th
2 of December 2009 ever served on Thomas Stewart?

3 A. No, it was not. We looked for him.

4 Q. Why didn't you serve it? Why was it not serve?

5 A. We couldn't locate him.

6 Q. And I think you mentioned it previously, but was that
7 case ever heard in Court to the best of your knowledge?

8 A. No, it was not.

9 Q. And why wasn't it? Why was it not heard in Court?

10 A. Because he stabbed her to the death before the
11 warrant was served.

12 MR. REDMOND: I have nothing further, Your Honor.

13 THE COURT: Now, any further redirect on new issue --
14 excuse me. Recross brought up on new issues on re-direct?

15 MR. SECOR: No, sir.

16 COLLOQUY

17 THE COURT: Very good. Sir, you may step down.

18 THE WITNESS: I apologize to the jury.

19 THE COURT: All right, sir.

20 MR. YOUNG: I'm sorry, Your Honor. New issue that we
21 need to address outside the presence of the jury.

22 THE COURT: Go ahead. Address it now.

23 MR. YOUNG: I'd rather address it outside the
24 presence of the jury.

25 THE COURT: Well, what is it?

1 MR. YOUNG: Regarding unsolicited comments by the
2 witness.

3 THE COURT: Well, now, sir, the jury is here. It
4 just happened in front of the jury. If you have an
5 objection address it now.

6 MR. YOUNG: I'll make an objection to the witness
7 making unsolicited comments to the jury, Your Honor.

8 THE COURT: Well, did you hear what the comment was?

9 MR. YOUNG: I did not. I couldn't hear what it was.

10 THE COURT: All right. Madam Court Reporter, did you
11 hear what it was?

12 THE COURT REPORTER: Yes.

13 THE COURT: Okay. And can you tell us what it was,
14 please?

15 MR. YOUNG: Your Honor, I would object to the Court
16 Reporter reciting whatever the comments were inside the
17 presence of the jury.

18 THE COURT: What was the comment, please, Madam Court
19 Reporter.

20 THE COURT REPORTER: I apologize to the jury ---

21 THE COURT: Well, I'll rephrase if you wish if it's
22 easier, Madam Court Reporter, was "I'm sorry I got upset"
23 or something to that extent. That's what the Court
24 understood the witness to say.

25 Now, having understood that do you, and apologize to

1 the jury for that, do you still maintain your objection?

2 MR. YOUNG: I do maintain my objection to any witness
3 making unsolicited comments to the jury at any time. And
4 I object to this procedure where we rehashed it in front
5 of the jury.

6 THE COURT: Counsel, you raised it. We're going to
7 place it on the record. It all happened in front of the
8 jury, and thus I believe the jury has the right to see
9 this discussion that we have about it.

10 Ladies and gentlemen of the jury, I'm going to ask
11 you to take no inference from whatever comment was made as
12 a witness left the box. You saw the testimony. Whether
13 it was direct or cross-examination, and please, understand
14 that that is the evidence. The fact that some comment was
15 made to you of a personal nature as a witness exited the
16 box I just ask you to simply disregard that.

17 But I overrule the Defendant's objection. All right.
18 Let's take our lunch break. Ladies and gentlemen of the
19 jury, before we do that I need to talk a little bit about
20 scheduling. Counsel, step up here if you will, please.

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

24 THE COURT: All right. Ladies and gentlemen, let's
25 do this regarding our lunch hour. We are simply going to

1 take an hour today. It is 12:25. Let's be back at 1:30
2 in the jury room, and we will resume at that time. Again,
3 whomever you have lunch with please don't discuss the
4 case. Lunch is on you own. Enjoy your lunch. We will
5 remain where we are while you depart the courtroom. If
6 you need something from the jury room, help yourself. If
7 you don't you're free to leave.

8 (WHEREUPON, the jury panel was excused from the
9 courtroom at 12:26 p.m.)

10 THE COURT: All right. Before we leave for lunch we
11 have exhibits all over the place. They have been coming
12 and going. So I'm going to ask that only the lawyers come
13 before -- inside of the bar during the lunch hour. If
14 you're here during the lunch hour the courtroom may be
15 secured. If it is that will resolve the issue, but I
16 don't insist upon that.

17 Furthermore, lawyers may want to come in here and be
18 working during the lunch hour. But if you are, please,
19 at -- when we stop in just a moment if you have any
20 exhibits please bring them back. Let's put them on the
21 bench up here, and then on one have any interaction with
22 the exhibits during the lunch hour because we have to try
23 to reconcile the exhibits and make sure we have
24 everything. Any questions about that?

25 MR. REDMOND: None from the State, Your Honor.

1 THE COURT: All right. Very good. Then hearing none
2 from either side then Court declares adjournment until
3 1:30.

4 (WHEREUPON, Court was in recess at 12:30 and
5 reconvenes at 1:28 p.m.)

6 MR. REDMOND: I was conferring with the court
7 reporter during break just to make sure that we had
8 admitted all the evidence so far that we intended. I
9 actually referenced when -- on redirect of Chief Brown, I
10 referenced the order of protection and the summons. I
11 called it 'Exhibit 106'. It's actually Exhibit 20.
12 Exhibit 106 was the trespassing order.

13 I had no intention of introducing the trespassing
14 warrant. My intention was to introduce the petition and
15 the summons. And I did indicate that. I just called the
16 wrong exhibit number, and unfortunately, she marked it
17 down as being the exhibit -- the warrant for the
18 trespassing. So simply put, Your Honor, I just would want
19 to revise that at this time. State's Exhibit 20, that he
20 is introducing as opposed to 107.

21 THE COURT: Is there objection to that from the other
22 side?

23 MR. YOUNG: Not to that, Your Honor.

24 THE COURT: All right. Very good. Then, Madam Court
25 Reporter, if you will make that change, please.

1 (WHEREUPON, State's Exhibit No. 20 was admitted into
2 evidence.)

3 THE COURT: And note that for the record. And I
4 believe we're ready then for that jury.

5 MR. REDMOND: We are, and even though we won't be at
6 this time, but I am briefly going to have to recall.

7 THE COURT: Hang on.

8 MR. REDMOND: Oh, I'm sorry. Your Honor, I'm going
9 to have to briefly recall Chief Brown just for a couple of
10 questions regarding the video interview just to clarify
11 and, but we can move forward with our next witness, and I
12 can slip him in during the course of the testimony today.
13 It won't take but three minutes.

14 THE COURT: Is there objection to that?

15 MR. SECOR: We do have an objection to that.

16 THE COURT: All right. We'll have to take that up --
17 let's take that up at another time.

18 MR. REDMOND: That's fine, Judge.

19 THE COURT: All right, then. Let's bring in the
20 jury.

21 (WHEREUPON, the jury panel enters the courtroom at
22 1:31 p.m.)

23 THE COURT: All right. Welcome back, ladies and
24 gentlemen, and we are still in the State's case. Please
25 call your next witness.

1 MR. JONES: State calls Veronica Gibson.

2 THE COURT: Please come forward take the oath of a
3 witness.

4 VERONICA GIBSON, after being duly sworn,
5 testified as follows:

6 CLERK OF COURT: Thank you.. Please be seated.

7 DIRECT EXAMINATION

8 BY MR. JONES:

9 Q. Ms. Gibson, how are you today?

10 A. I'm good, and you?

11 Q. I'm doing well. Could you tell us where you work
12 please, ma'am?

13 A. I work for the South Carolina Law Enforcement
14 Division commonly referred to as S.L.E.D.

15 Q. And what's your current position there?

16 A. I'm a forensic technician in the D.N.A. Evidence
17 Processing Department.

18 Q. About how long have you worked for S.L.E.D.?

19 A. Four and a half years.

20 Q. Okay. And what was your position in January of 2010?

21 A. The same position.

22 Q. Can you tell the jury what type of education you
23 received for your position?

24 A. I have an associate's degree from Tryon Technical
25 College and an associate's degree from Greenville

1 Technical College in forensic, and through S.L.E.D. we
2 have an on the job training for specific jobs we do under
3 two court qualified experts and then we are tested to make
4 sure that we can do our job before we're able to do case
5 work on our own.

6 Q. And can you tell us are there any certificates or
7 anything you received through your training or through
8 your education.

9 A. Just routine testing or training that all new hires
10 must go through.

11 Q. And can you tell a little bit about exactly what you
12 do in your position?

13 A. We get large pieces of evidence, clothing, bed
14 linens, pieces of automobiles, and we process those for
15 body fluids or touch D.N.A. skin cells.

16 Q. And have you ever been qualified as an expert before?

17 A. I have. Yes, sir.

18 Q. And how many times have you have been qualify?

19 A. Approximately five.

20 MR. JONES: Your Honor, at this time I'd like to
21 offer Ms. Gibson as an expert in the field.

22 THE COURT: And in what area please?

23 MR. JONES: D.N.A. analysis.

24 A.

25 MR. REDMOND: Evidence processing.

1 MR. JONES: Evidence processing. Excuse me. I'm
2 sorry, Your Honor.

3 THE COURT: All right. Without objection. So
4 admitted. You may proceed.

5 MR. JONES: Thank you, Your Honor.

6 BY MR. JONES:

7 Q. Ms. Gibson, are you familiar with the case here
8 today?

9 A. Yes, sir.

10 MR. JONES: Your Honor, may I approach the witness?

11 THE COURT: You may.

12 BY MR. JONES:

13 Q. Ms. Gibson, I'm handing you State's Exhibit 18. Do
14 you recognize that document, ma'am?

15 A. Yes, sir.

16 Q. Can you tell the jury what it is?

17 A. It's the evidence processing report issued by
18 S.L.E.D.

19 Q. And did you complete that report? Did you make that
20 report?

21 A. I did not make the report itself. I did the work
22 that went into compiling the report.

23 Q. Okay. And can you tell us and go through the report
24 and tell us what items you tested and what the results
25 indicated?

1 A. Sure. The items numbers I refer to are our item
2 numbers from S.L.E.D. When they're logged in they're
3 given a unique number for the case. So Item Number 28 is
4 for the short sleeve shirt. There was blood indicated on
5 that item. And then evidence was collected from that and
6 sent to the D.N.A. Department.

7 Item Number 29, a long sleeved shirt. It also had
8 blood indicated and evidence was collected from it and
9 sent to the D.N.A. Department.

10 Item 30 was a belt which also had blood indicated and
11 evidence was collected from that and send to D.N.A.
12 Department.

13 Item 31 was jeans which also had blood indicated and
14 evidence was collected from it and sent to D.N.A.
15 Department.

16 Item 32 is underwear. There was no examination
17 performed on that.

18 Item 33 is socks. There was no examination performed
19 on that either.

20 Item 34 is boots and that as well has blood indicated
21 and evidence was collected from it and sent to D.N.A.

22 Q. Thank you, ma'am. And you said that you tested the
23 items and the results showed whether or not blood was
24 indicated or not?

25 A. Correct. We ---

1 Q. I'm sorry. Go ahead.

2 A. We do presumptive tests. It's a quick chemical test
3 on any area that appears that there might be blood, and
4 there is a quick color change. Those areas or some of
5 those areas are cut and forwarded to D.N.A. Department
6 because there is a possibility that that area could be
7 blood.

8 Q. So in your position could you tell us whose blood was
9 on each item?

10 A. No.

11 Q. So you would just be able to tell the jury if there
12 was blood or if there was not?

13 A. If there was a substance that is possibly blood.

14 Q. And from those items that you performed did you take
15 off any cuttings and submit to another department?

16 A. Yes, I did.

17 Q. Okay.

18 MR. JONES: One moment, Your Honor. May I approach
19 the witness, Your Honor?

20 THE COURT: Yes, you may.

21 BY MR. JONES:

22 Q. Do you recognize that packet, ma'am?

23 A. Yes, sir, I do.

24 Q. I'm sorry. I handed you State's Exhibit 17. Can you
25 tell the jury what that is?

1 A. It is the package where i took the cuttings from the
2 items. They are sealed inside the envelopes, labeled and
3 in the back is sealed with my initials and the date. Then
4 they're placed in the heat sealed pouch which has my
5 initials and the date. And this package is forwarded on
6 to whoever needs the evidence after I'm finished with it.

7 Q. And can you tell the jury, again, what objects
8 were -- what items were cut from the packet?

9 A. Which? The pair in which these cuttings came from?

10 Q. Yes, ma'am.

11 A. That is going to be Item 28. You just need the item
12 number or the names of what they are?

13 Q. The item number and the name.

14 A. Okay. Item 28 which is a short sleeved shirt. Item
15 29, a long sleeved shirt. Item 30, a belt. Item 31,
16 jeans. Item 34, boots.

17 Q. And just to be clear some were cuttings and some were
18 swabs, is that right?

19 A. Correct.

20 Q. And which items did you get the swabs from?

21 A. The swabs were taken from Item 30 and Item 34.

22 Q. Okay.

23 MR. JONES: Beg the Court's indulgence. Briefly,
24 Your Honor.

25 BY MR. JONES:

1 Q. State's Exhibit 18, was a processing report, is that
2 right?

3 A. Yes, sir.

4 Q. And you said that those -- that report has the
5 results of your tests?

6 A. Yes, sir.

7 Q. Okay.

8 MR. JONES: Your Honor, at this time I would like to
9 offer or move this into evidence.

10 THE COURT: Seventeen and 18.

11 MR. JONES: No, sir, not -- just 18. Just the
12 report.

13 THE COURT: All right. Is there objection?

14 MR. YOUNG: Yes, Your Honor.

15 THE COURT: And what is the objection?

16 MR. YOUNG: Your Honor, I believe my understanding
17 through the testimony this was not her report.

18 THE COURT: All right. You want to follow on that
19 issue?

20 BY MR. JONES:

21 Q. Okay. If we can look at that report again, ma'am?

22 A. Sure.

23 Q. The results, what does the report show that your
24 test?

25 A. They did the testing, yes, sir. The work is reviewed

1 by a D.N.A. analyst, and the D.N.A. analyst is the person
2 that actually signed the report. There is a statement at
3 the bottom that I'm the one that did the actual processing
4 and the work was reviewed by a D.N.A. analyst before being
5 issued.

6 MR. JONES: Your Honor, I would like to move this
7 into evidence.

8 THE COURT: All right. Very good. You maintain your
9 objection?

10 MR. YOUNG: Yes, sir, Your Honor. Under the --
11 yes -- United States Supreme Court says the report -- I
12 mean the proper person to submit those to the jury.

13 THE COURT: Objection is overruled, and 18 is in
14 evidence.

15 MR. YOUNG: Thank you, Your Honor.

16 THE COURT: You may proceed over objection.

17 (WHEREUPON, State's Exhibit No. 18 was admitted into
18 evidence.)

19 MR. REDMOND: Beg the Court's indulgence.

20 THE COURT: Okay.

21 MR. JONES: Briefly, Your Honor.

22 BY MR. JONES:

23 Q. Ms. Gibson, you have had an opportunity to review
24 each of these bags, correct?

25 A. Yes, sir.

1 Q. And the content of the bags is that what's in your
2 report?

3 A. Yes, sir, they are.

4 Q. Okay.

5 MR. JONES: Thank you, Your Honor. No further
6 question.

7 THE COURT: All right. Is there cross-examination?

8 MR. YOUNG: Yes, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. YOUNG:

11 Q. Good afternoon.

12 A. How are you?

13 Q. Doing well. A few minutes ago you mentioned
14 processing items for touch D.N.A.?

15 A. Yes, sir.

16 Q. Can you tell me a little bit more about that?

17 A. Sure. Items that have been touched or worn by a
18 person we can, if it's a soft item such as clothing,
19 scrape the area that come into a large amount of contact
20 with the skin to try to collect skin cell.

21 If it's something harder, like say a water bottle or
22 something like that, they can swabbed on the outside to
23 try to collect the skin cells.

24 Q. To show you what's been introduced as Defense Exhibit
25 Number Two did you take skin cells off of a knife handle?

1 A. It is possible. It depends on other fluids there.

2 Q. Okay. Did you try and take any skin cells off of
3 either one of these knife handles?

4 A. They were never in my possession.

5 Q. Never in your possession?

6 A. No, sir.

7 Q. How did you select these, the short sleeved shirt,
8 long sleeved shirt, the jeans and the boots as the items
9 that you were going to test?

10 A. The request for those was for D.N.A. processing for
11 blood. Any time there were larger items that were
12 actually sent to our department for processing with a
13 request made to S.L.E.D.

14 Q. So the request -- so did you select them or you were
15 told ---

16 A. I was told ---

17 Q. --- to test these item?

18 A. --- to test these items.

19 Q. Did you know about over evidence that was collected
20 in the case that might be suitable for testing?

21 A. I knew there was other evidence in the case, but I
22 don't go there and decide what I'm going to test.

23 Q. It's not up to you to decide what to test, what not
24 to test, what might be relevant, what's not relevant?

25 A. No, sir.

1 Q. You just do what you were told to do ---

2 A. Pretty much. Yes, sir.

3 Q. --- on these items. All of the items that you tested
4 were Mr. Stewart's clothes; is that correct?

5 A. That was my understanding.

6 Q. Okay. Did you test any of Miss Clyburn's clothes?

7 A. No.

8 Q. And that was because you were not asked to?

9 A. Those did not come to me. Correct, I wasn't asked
10 to.

11 Q. Thank you very much.

12 MR. YOUNG: I have no further questions.

13 THE COURT: Is there redirect?

14 MR. JONES: None, Your Honor.

15 THE COURT: All right, ma'am. you may step down, and
16 you're free to leave if you wish. Please call you next
17 witness.

18 MR. FOARD: Thank you, Your Honor. State calls
19 Maryanne Boehm.

20 THE COURT: Please come forward and take the oath of
21 a witness.

22 MARYANNE BOEHM, after being duly sworn,
23 testified as follows:

24 MR. FOARD: I apologize for the delay, Your Honor.

25 THE COURT: No problem.

DIRECT EXAMINATION

BY MR. FOARD:

Q. Good afternoon, ma'am?

A. My name is Maryanne Boehm.

Q. And can you please tell us who you work for?

A. I work for the South Carolina Law Enforcement
Division commonly known as S.L.E.D.

Q. All right. And what is your role at S.L.E.D.

A. I am a D.N.A. analyst. I work in the D.N.A. Casework
Department at S.L.E.D.

Q. When you say you're a D.N.A. analyst what exactly do
you do when you analyze?

A. I perform analysis on evidence and known standards
that are submitted to S.L.E.D. by investigating agencies
within South Carolina. I compare the evidence to the
known standard that I get and my report is based on my
findings.

Q. And I'm sure that requires some specialized education
and training, correct?

A. Yes, sir. We are required to have a Bachelor of
Science in a biological or a biology field of study. My
degree is in biotechnologies, integrated science and
technology with a concentration in biotechnology. We are
required to have three different cases -- classes:
molecular biology, organic chemistry and ---

1 Q. And you're confined -- your duties are confined to
2 the D.N.A. Department?

3 A. Yes, sir.

4 Q. That's what you do day in and day out?

5 A. Yes, sir.

6 Q. And from your work in D.N.A. you often appear in
7 settings like this and testify?

8 A. Yes.

9 Q. How many times do you think that you've testified
10 before?

11 A. Approximately 30 times.

12 Q. And all of those times or a significant portion of
13 them have you been entered as an expert witness in the
14 field of D.N.A. analysis?

15 A. Yes, every time.

16 Q. Every time?

17 MR. FOARD: Your Honor, at this time we would offer
18 Agent Boehm as an expert in the field of D.N.A. analysis.

19 MR. YOUNG: No objection.

20 THE COURT: All right. Without objection. So
21 ordered.

22 MR. FOARD: Thank you, Your Honor.

23 BY MR. FOARD:

24 Q. Agent, if you could please --

25 MR. FOARD: Actually, may I approach the witness,

1 Your Honor?

2 THE COURT: Certainly.

3 BY MR. FOARD:

4 Q. I'm going to hand you what has been previously marked
5 as State's Exhibit 19. Would you review that and tell the
6 jury what it is?

7 A. That is a copy of my report?

8 Q. All right. And this would be a report issued in
9 connection with the case of Thomas Stewart?

10 A. Yes, sir.

11 Q. All right. And you actually performed the analysis
12 as well as prepared the report?

13 A. Yes, sir.

14 MR. FOARD: Your Honor, we would ask that State's 19
15 be entered into evidence.

16 THE COURT: Is there objection?

17 MR. YOUNG: No objection.

18 THE COURT: Without objection.

19 MR. FOARD: Thank you, Your Honor.

20 (WHEREUPON, State's Exhibit No. 19 was admitted into
21 evidence.)

22 MR. FOARD: Now, when you perform an analysis if you
23 could take us through the process starting when you
24 receive an item and go from there.

25 A. Okay. In this case I receive cutting from evidence

1 Processing, and the first initial I looked at it and cut
2 out areas of interest. I received those cutting, and
3 initially, I will test it for biological fluids. In this
4 case the request was for blood, and so I tested it for
5 blood and blood was indicated.

6 And if there is a positive indication then I'd
7 forward it to D.N.A. The cuttings of that cutting.
8 Extract the D.N.A. from those cells and through a series
9 of instruments adding chemicals we develop a D.N.A.
10 profile. I also perform D.N.A. on known standards that
11 were submitted in this case. And then I performed D.N.A.
12 on that, generate a profile and then compare the evidence
13 to the known standard and write a report based on my
14 findings.

15 Q. All right. Let's clarify a couple of points there.
16 When you say, 'cuttings' in this instance did you
17 exclusively look at cuttings or were there other things
18 that were submitted to you as well?

19 A. There were also swabs.

20 Q. Swabs, okay. And that accomplishes the same things
21 if brought a sample to you for analysis?

22 A. Yes, sir.

23 Q. All right. And when you say, 'a known standard' or a
24 'standard' I believe you used that term, would you explain
25 to the jury what a standard is?

1 A. Yes, a known standard is a swab or blood from a known
2 individual is collected in front of a police officer and
3 submitted to S.L.E.D. with that person's name and is said
4 to be from that individual.

5 Q. All right. And if I could have you look at a couple
6 pieces of evidence. I'm handing you what's been
7 previously marked as State's Exhibit 17. Can you review
8 that and identify that for us?

9 A. These are all the items that I received from Evidence
10 Processing.

11 Q. So those are the actual items that you performed
12 analysis upon?

13 A. Yes, sir, those are the evidence items.

14 Q. The evidence items, okay. All right. If I could
15 hand you State's 10. Would you identified that for us?

16 A. It is S.L.E.D. Item 41 which would the blood standard
17 from Bellany Clyburn, known standard.

18 Q. And that's in fact the standard that you used in
19 performing your analysis?

20 A. Yes, sir..

21 Q. And State's Nine, please?

22 A. This is S.L.E.D. Item 23 which is buccal swab from
23 Thomas Jeffrey Stewart, and that is a known standard in
24 this case.

25 Q. This is what you actually used to perform the tests?

1 A. Yes, sir.

2 MR. FOARD: Your Honor, at this time the State has
3 not already been entered into evidence. I would ask that
4 State's Nine, 10 and 17 be entered in evidence?

5 MR. YOUNG: No objection.

6 THE COURT: Without objection, Nine, 10, 17 in
7 evidence.

8 (WHEREUPON, State's Exhibit Nos. 9, 10, and 17 were
9 admitted into evidence.)

10 BY MR. FOARD:

11 Q. If you could, please, in referring to your report
12 guide us through exactly what items were analyzed and what
13 your finds were for each of those items?

14 A. I analyzed four different cuttings from a short
15 sleeved tee shirt. First like I said I performed a
16 serology test to determine whether blood was there or not
17 and blood was indicated so performed D.N.A. analysis on
18 all four cuttings.

19 Q. And these four cuttings from the short sleeved shirt
20 what are their item numbers?

21 A. Their S.L.E.D. item numbers are 28.1, 28.2, 28.3,
22 28.4.

23 Q. And does the .1 or .2 does that have significance to
24 the S.L.E.D. number system?

25 A. Yes, it does. The parent item, we call it, Item 28,

1 which was the actual short sleeved shirt, and then each
2 cutting gets an individual, unique number and that gets a
3 point whatever numerical order is next. So if there are
4 four cuttings then one would be .1, .2, .3, .4.

5 Q. All right. And if you would go through all the other
6 items that you performed analysis upon?

7 A. I also received two cuttings from Item 29. -- 29 is
8 the long sleeved shirt. Those cuttings for me were 29.1
9 and 29.2. Blood was indicated on those two items so I
10 performed D.N.A. analysis.

11 I received a swab from the belt which was our Item
12 30.1. Blood was indicated so I performed D.N.A. analysis.
13 I received cuttings from the blue jeans, Item 31. It was
14 my Item 31.1, 31.2 and 31.3. Blood was indicated on all
15 three items so I performed D.N.A. analysis.

16 Then I received three swabs from the boots, Item 34.
17 My Items 34.1, 34.2 and 34.3. Blood was indicated on all
18 those items as well. I performed D.N.A. analysis on Item
19 23. This is a buccal swab from Thomas Jeffery Stewart,
20 and Item 41 was the blood standard for Bellany Clyburn.

21 Q. And these are items contain -- that are contained in
22 the Court's exhibit that were just entered, correct?

23 A. Yes.

24 Q. All right. Now, if you would please discuss the
25 specific results of each item that you found?

1 A. Okay. The D.N.A. for the following items: 28.1,
2 28.4, 29.1, 29.2, 31.1, 31.2, 31.3, and 34.3, matches the
3 D.N.A. profile of Bellany Clyburn. The following
4 unrelated individual having a D.N.A. profile matching
5 these is approximately one in 210 quadrillion.

6 Q. All right. So let me stop you right there. So first
7 of all you're saying it is a positive match; that cuttings
8 from -- and if you would refer to the parent item for us
9 just for simplicity purposes. Which parent items had
10 Bellany's blood on it?

11 A. Two of the cuttings from the short sleeved tee shirt.
12 Both cuttings were long sleeved undershirt. All three
13 cuttings from the jeans and one swab from the boots.

14 Q. All right. And the probability of it being any
15 unrelated individual being a match for these would be one
16 in 210 quadrillion you said?

17 A. Yes, sir.

18 Q. All right. So very, very, very small chance?

19 A. Very small chance.

20 Q. Now, if you would go on to the other items in your
21 report?

22 A. D.N.A. profile developed from Item 23 and 28.3,
23 because this is another cutting from that short sleeved
24 tee shirt, and Item 30.1. Those were the swabs that were
25 developed matches the D.N.A. profile of Thomas Jeffery

1 Stewart. The probability of any unrelated individual
2 having a D.N.A. profile matching these items the
3 probability would be one in 6.4 quadrillion.

4 Q. All right. Go on?

5 A. The D.N.A. profile developed from Item 28.2 which was
6 the cuttings from the short sleeved tee shirt, is a
7 mixture at least two individuals. The D.N.A. profile of
8 the major contributor to this match up also matches the
9 D.N.A. profile of Thomas Jeffery Stewart.

10 Béllany LaMonica Clyburn could not be excluded as a
11 possible minor contributor to this mixture.

12 Q. All right. Let's stop right there. If you could
13 explain the mixed sample and what these results tell us?

14 A. Sure. Sometimes evidence will be a mixture of two
15 different D.N.A. profiles or different body fluids. In
16 this case 28.2 was the mixture of two different profiles.
17 There is a major contributor meaning there is one
18 individual who contributes a lot more D.N.A. than a second
19 or third person.

20 So I was able to pull out that D.N.A. profile and
21 match it to somebody or compare it to one person. And
22 then the minor contributor I can also compare it to
23 another person or people of interest.

24 Q. All right. And so this could be accomplished by
25 saying one drop of blood falling on the same spot where

1 another drop of blood has fallen?

2 A. That's possible.

3 Q. And in this instance you said that Bellany Clyburn
4 cannot be excluded as a possible minor contributor. So
5 you're basically saying it is possible she is the second?

6 A. Yes, sir, that is correct.

7 Q. All right. And if you would go on to the next one,
8 please?

9 A. All right. The D.N.A. profile developed from Item
10 34.1, which was the boots is a mixture of at least two
11 individuals. The D.N.A. profile from the major
12 contributor also matches the D.N.A. profile Bellany
13 LaMonica Clyburn. Thomas Jeffery Stewart cannot be
14 excluded as a possible minor contributor.

15 Q. All right. So the same as the other one just
16 inversed?

17 A. Yes.

18 Q. And, finally, the third and fourth ones?

19 A. The D.N.A. profile developed from Item 34.2 which was
20 a swab from the boot is a mixture of at least two
21 individuals. The D.N.A. profile of the major contributor
22 also matches the D.N.A. profile of Bellany LaMonica
23 Clyburn. Thomas Jeffery Stewart could not be excluded as
24 a possible minor contributor.

25 Q. All right. And in your analysis you did you not find

1 any unknown samples that could have come from any other
2 individuals other than the two standards that you have?

3 A. That's correct.

4 Q. All right. And just from a quantitative standpoint it
5 appears from your report that more of the cuttings matched
6 Bellany than they did Thomas; is that correct?

7 A. Yes; that's correct.

8 MR. FOARD: No further questions, Your Honor.

9 THE COURT: Cross-examination.

10 CROSS-EXAMINATION

11 BY MR. YOUNG:

12 Q. Good afternoon, Agent Boehm. In the beginning of
13 your testimony you talked about evidence submitted by the
14 police; is that correct?

15 A. Yes, sir.

16 Q. Can I send you stuff and ask you to D.N.A. test
17 something for me?

18 A. Only if you worked for a local law enforcement
19 agency,

20 Q. Only local law enforcement agencies, and you're
21 S.L.E.D, State Law Enforcement Division?

22 A. No, sir.

23 Q. So the Defense can't send you stuff. You have to go
24 somewhere else?

25 A. Or you could go through a local law enforcement

1 agency.

2 Q. Or I could ask the law enforcement agency to submit
3 it on my behalf?

4 A. Yes, sir.

5 Q. You've been in the Court during the testimony this
6 morning?

7 A. Yes, sir.

8 Q. So you know that we've been talking about what was
9 tested, what was not tested, how did you decide what to
10 test. Did you decide what items to test?

11 A. No. I can explain that a little bit. We have a case
12 assessment policy or guidelines. It's different for each
13 type of cases. For a sexual assault it is a C.S.C. kit
14 and pair of underwear. For our homicides or violent
15 crimes we do accept five items of evidence. For burglary
16 it's two items of evidence. It's just to lighten our
17 caseload a little bit and not waste State's time or money
18 on performing analysis on items that aren't necessarily
19 needed.

20 We ask the agency select the first five probative or
21 what they think is going to be probative items of
22 evidence. That means that you know evidence that's going
23 do have some kind of value to it -- to the case. So in
24 this case like a lot of homicides there is blood on the
25 suspect's clothes or person of interest clothing. That's

1 what happened in this case.

2 Q. In this case Mr. Stewart has never said that he
3 wasn't the person who stabbed Ms. Clyburn, has he?

4 A. I don't know.

5 Q. So did you -- you didn't have any input on the
6 process of what was the most probative pieces of evidence.

7 A. No. And there is no way of knowing. That's why we
8 have the agency or somebody that may be able to make those
9 determinations. We're not involved in the case at all.

10 Q. And if you had an allegation where two people were
11 both accused of wielding weapons you want to know who had
12 which one? That would be something that you could
13 determine?

14 A. It's possible.

15 Q. Thank you, Agent Boehm.

16 MR. YOUNG: I have no further questions.

17 THE COURT: Is there redirect?

18 MR. FOARD: No redirect, Your Honor.

19 THE COURT: Ma'am, you may step down. You're free to
20 leave. Please call your next witness.

21 COLLOQUY

22 MR. REDMOND: Your Honor, we've actually reached the
23 point where I think I had indicated earlier outside of the
24 presence of the jury where the Defense had an objection.
25 Now would be the time to take up that issue.

1 THE COURT: Let me let you all discuss that among
2 yourselves and see if you can reach an accord and then
3 we'll make a response.

4 MR. REDMOND: Yes, sir.

5 THE COURT: Just one moment, ladies and gentlemen.

6 MR. SECOR: May we approach.

7 THE COURT: Yes, you may.

8 (WHEREUPON, a bench conference was held off the
9 record in the presence of the jury, but out of the
10 hearing of the jury.)

11 THE COURT: Ladies and gentlemen, we're going to take
12 a break for five minutes or so. We'll stand down for
13 approximately five minutes while we arrange one or two
14 things and then we'll come back in just a moment. So
15 enjoy you're break. We'll let you return to your jury
16 room, and we'll be in recess about five minutes.

17 (WHEREUPON, the jury panel was excused from the
18 courtroom at 2:03 p.m.)

19 (WHEREUPON, Court was in recess at 2:03.)

20 (WHEREUPON, Defendant's Exhibit No. 90 was marked for
21 identification only.)

22 (WHEREUPON, Court reconvenes at 2:09 p.m.)

23 THE COURT: All right. So when the jury comes back
24 in you gentlemen will stipulate as to the evidence as it
25 has been discussed, and when will you show the video?

1 MR. REDMOND: The videos, we've actually got -- we've
2 got one, two, three more witnesses and then the videos.

3 THE COURT: All right. Very good.

4 MR. REDMOND: We should be concluding our case within
5 the next hour and a half.

6 THE COURT: All right. When the jury comes back in
7 then we'll go into the stipulations and I'll call on you
8 as well as Defense counsel for the stipulations that each
9 of you have entered.

10 MR. SECOR: Yes, sir.

11 MR. REDMOND: Yes, sir.

12 THE COURT: Very good. Please bring in the jury.

13 (WHEREUPON, the jury panel enters the courtroom at
14 2:09 p.m.)

15 THE COURT: All right. Welcome back, ladies and
16 gentlemen. The attorneys in the case have entered into an
17 agreement, what we call a stipulation; that is that they
18 both agree to certain facts or evidence that are to be
19 admitted in evidence. A purpose of that is to save time
20 and the calling of a witness or examination of certain
21 documents. So let's turn first to the Solicitor if you
22 will state your stipulations, and we'll give the Defense
23 an opportunity the same. Go ahead, sir.

24 MR. REDMOND: Absolutely, Your Honor. Thank you.
25 May it please the Court. At this time, Your Honor, the

1 parties have agreed that as it relates to testimony by
2 Chief brown regarding whether or not he was present at the
3 video interview there is a video interview that will be
4 played. In fact it's already in evidence of K.S.
5 where he does not appear on camera, but he does -- you can
6 hear he's asking questions.

7 So we just want to clear that up that he was mistaken
8 in that regard, and that was the purpose that we were
9 going to recall him, but the Defense graciously agreed to
10 this stipulation. Thank you.

11 THE COURT: All right. Then is there objection to
12 the stipulation?

13 MR. SECOR: No, sir.

14 THE COURT: That's your stipulation is so stipulated.
15 And, now, to Defense.

16 MR. SECOR: Thank you, sir. I just would like,
17 pursuant to the same stipulation stated, and the Defense
18 agrees that what has been marked as Defense Exhibit 90
19 will be admitted in evidence pursuant to the Court's
20 ruling.

21 THE COURT: Very good. And is there objection to
22 that?

23 MR. REDMOND: It is without objection, Your Honor.

24 THE COURT: All right. Then Defendant's 90 in
25 evidence without objection.

1 (WHEREUPON, Defendant's Exhibit No. 90 was admitted
2 into evidence.)

3 MR. SECOR: Thank you, sir.

4 THE COURT: Thank you. Please call your next
5 witness.

6 MR. JONES: State calls Pierre Kirby.

7 THE COURT: Please come forward and take the oath of
8 a witness.

9 PIERRE KIRBY, after being duly sworn, testified
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. JONES:

13 Q. How you doing there, Mr. Kirby?

14 A. All right.

15 Q. Can you tell us what name do you go by?

16 A. Pierre.

17 Q. Pierre Kirby?

18 A. Yes.

19 Q. Mr. Kirby, can you tell us where you live?

20 A. In Lylesville.

21 Q. Say that again?

22 A. In Lylesville.

23 Q. We need you to sit up close.

24 A. In Lylesville.

25 Q. All right. And, Mr. Kirby, can you tell me how you

1 know the Defendant and if you knew the victim?

2 A. I know the Defendant. We played cards together.

3 That's the only way I know him. I don't know the ---

4 Q. Victim?

5 A. Yeah, the victim.

6 Q. How often did you play cards with the Defendant?

7 A. We played.

8 Q. Often?

9 A. Yeah.

10 Q. Okay. So how long have you known him?

11 A. For a few years.

12 Q. Would you say your whole life? Since you were a
13 teenager? Could you give us some?

14 A. At least about five years. Something like that. At
15 least five years

16 Q. And can you tell us what happened on December 31st
17 2009?

18 A. He came by and wanted to use my vehicle. He say he
19 had to go. Baby's momma was having a party or something;
20 that he needed to be down there.

21 Q. Okay. He came by your house and asked you that?

22 A. Yeah.

23 Q. And if I said I hear you right you said he said his
24 baby momma was having a party?

25 A. Yeah.

1 Q. Did he give you any more details about that party?

2 A. No. He didn't give me no details.

3 Q. He ask you to come or anything?

4 A. No.

5 Q. And tell us what happened after he asked to borrow
6 your vehicle?

7 A. That's about it. He asked me to use my vehicle. We
8 traded vehicles and he left, but the -- he said why he
9 couldn't drive -- he didn't want to drive his vehicle
10 cause his old lady -- people stay around might know his
11 vehicle or something.

12 Q. He said that his ole lady's people stay around there?

13 A. Yeah. Something like that.

14 Q. Did you know who he was referring to, when he said,
15 'ole lady' and 'baby momma'?

16 A. Not really. I ain't get into details.

17 Q. Okay. Can you tell us what kind of car you drove?

18 A. A white Suburban.

19 Q. And what kind of car did he use regular?

20 A. A Lexus. A gold Lexus.

21 Q. Okay.

22 MR. JONES: Beg the Court's indulgence, Your Honor.

23 May I approach the witness, Your Honor?

24 THE COURT: Yes, sir, you may.

25 BY MR. JONES:

1 Q. Handing the witness State's Exhibit 77. Can you take
2 a look at that for me, sir. Do you recognize that?

3 A. Yés.

4 Q. Can you tell the jury what that's a photograph of?

5 A. Any white Surburban.

6 Q. And is that the Surburban that you gave the Defendant
7 that day?

8 A. Yes.

9 Q. Okay?

10 MR. JONES: Beg the Court's indulgence.

11 BY MR. JONES:

12 Q. And just to be clear what day did he ask you to trade
13 vehicles?

14 A. It was the 31st, New Year's Eve.

15 Q. And were you expecting to get it back any time soon
16 or did you talk about that?

17 A. No. We ain't discuss when he give me the vehicle
18 back.

19 Q. Okay.

20 MR. JONES: Thank you, Your Honor. Beg the Court's
21 indulgence.

22 BY MR. JONES:

23 Q. And can you briefly tell us how you found out about
24 the incident or when you expected to get your car back?

25 Excuse me. Tell us how you found out about the incident?

1 A. The Pageland Department notified and the County. And
2 a sheriff came out to my house and gave me a number, a
3 card, to call the Pageland Police Department.

4 Q. Okay.

5 MR. JONES: No further questions, Your Honor.

6 THE COURT: All right. And cross-examination.

7 CROSS-EXAMINATION

8 BY MR. YOUNG:

9 Q. Good afternoon, Mr. Kirby?

10 A. All right.

11 Q. You went to the police department on January the 1st
12 in the afternoon and gave them a statement; is that
13 correct?

14 A. Yes.

15 Q. And did you write that statement yourself?

16 A. Yes.

17 Q. And do you know who you gave that statement to?

18 A. I believe it was -- what they call him, S.L.E.D?

19 Q. Was it a S.L.E.D. agent and was it Chief Brown?

20 A. Yeah, Chief Brown. Yeah, Chief Brown.

21 Q. All right. Had Mr. Stewart ever borrowed your car
22 before?

23 A. Yeah, he used it before.

24 Q. Was it always to go see his baby momma?

25 A. No.

1 Q. There were other times that he borrowed your car?

2 A. Yeah, like running errands. Running and doing
3 something or something.

4 Q. Okay. And the passenger side window in your car, was
5 it broken when you gave it to him?

6 A. No, sir.

7 Q. Was it broken when you got it back?

8 A. Yes, sir.

9 Q. Okay. Thank you, Mr. Kirby.

10 A. All right.

11 THE COURT: Redirect?

12 MR. JONES: None, Your Honor.

13 THE COURT: All right, sir, you're not required to
14 leave, but you're free to leave if you wish.

15 MR. REDMOND: Thank you, Your Honor. May it please
16 the Court. The State would next call Crystal Clyburn.

17 THE COURT: Please come forward and take the oath of
18 a witness.

19 CRYSTAL CLYBURN, after being duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. REDMOND:

23 Q. Miss Clyburn, good afternoon?

24 A. Good afternoon. How are you?

25 Q. I'm going fine. Let me just ask you some background

1 questions first, and then I'll just start. How did you
2 know the victim, Bellany Clyburn. I'm sorry. Yes,
3 Bellany Clyburn?

4 A. Bellany Clyburn was my cousin, and also she was my
5 best friend.

6 Q. All right. And excuse me. Did you know the
7 Defendant, Thomas Stewart?

8 A. Yes.

9 Q. Did you see your cousin and best friend late in the
10 evening on the 31st of December 2009?

11 A. Yes, I did.

12 Q. Before we get into that let me ask you this. How
13 long had you known the Defendant, Thomas Stewart?

14 A. I had known him from the very beginning of their off
15 and on so called relationship.

16 Q. Okay. Now, on the 31st of December '09 tell the
17 ladies and gentlemen of the jury -- first, I ask you, did
18 you see Bellany that night?

19 A. Yes, I did.

20 Q. Tell us about that?

21 A. That night when I saw her?

22 Q. Yes.

23 A. I went to her house that night. We had talked
24 earlier on the phone. And we discussed maybe, you know,
25 celebrating the New Year with our kids and her kids and

1 possibly having a little sleep over and getting things for
2 the kids to eat and games for them to play. But,
3 ultimately, what happened was my kids didn't attend cause
4 they were somewhere else and I went to her house anyway.

5 And as usual I knocked. She answered. I went in.
6 We sat. We talked. We laughed. I spoke to the kids.
7 And what we mainly discussed that night, because she was
8 super excited about the New Year because she specifically
9 stated that the New Year's ---

10 MR. YOUNG: Objection, Your Honor.

11 THE COURT: Just a moment, ma'am. Let me talk about
12 this for a moment. This is an objection to hearsay. What
13 you say to that, counsel?

14 MR. REDMOND: Your Honor, actually, I will move on
15 from the question, however, I would submit at some point,
16 as it relates to the victim's state of mind, there is
17 evidence that we will seek to get through this victim --
18 through this witness, excuse me, that we believe is
19 admissible under the rules of evidence.

20 THE COURT: All right. I'm going to sustain at this
21 point as to that comment, and please move to your next
22 question. We will take up the other issue whenever we
23 reach it.

24 MR. REDMOND: Thank you Your Honor.

25 THE COURT: Go ahead.

1 BY MR. REDMOND:

2 Q. So y'all talked for a while?

3 A. We did.

4 Q. Do you remember about what time it was? Best as you
5 can remember estimate that you got to Bellany's apartment?

6 A. The best of my knowledge it was around 11:00.

7 Q. Okay. And when y'all got there you talked. Did you
8 do anything else while you were there at the apartment?

9 A. I did.

10 Q. Okay. Tell us about that?

11 A. Her oldest son was upstairs playing video games. I
12 walked up the stair and I talked to him. Her youngest
13 son, K.S. , was running around as a six year old does
14 playing, and we ate pizza. We talked about a lot of
15 things, and before I left? Should I move on to that.

16 Q. Well?

17 A. What happened when I left.

18 Q. Well, yes. Go ahead?

19 A. Okay. And as I was getting ready to go she walked me
20 to the door as she normally does. And when we opened the
21 door we saw police lights flashing. And then she started
22 saying -- we both were ---

23 MR. YOUNG: Objection. What she said.

24 BY MR. REDMOND:

25 Q. Please don't say anything she said at this point?

1 A. Okay.

2 Q. But you saw the police lights, and then what did you
3 do?

4 A. We stood there and we watched what was going on.

5 Q. Now, I'm going to back up a little bit because we
6 already heard Defendant's statement. So there is some
7 questions I need to ask you. Did I understand you
8 correctly that the children were actually up and you saw
9 them while you were at the apartment?

10 A. I did.

11 Q. Okay. So both of the children?

12 A. Were they both up?

13 Q. Yes.

14 A. Yes, sir.

15 Q. Okay. Let me ask you this. At any time at the
16 apartment did you see Thomas Stewart?

17 A. No, I did not.

18 Q. Okay. Now, I am going to ask you this question as it
19 relates to the discussion you had. Without getting into
20 any detail at this point, while you were inside of
21 Miss Clyburn's apartment did y'all have a discussion about
22 the Defendant?

23 A. Yes, we did.

24 Q. Okay. Now, do you know what her plans were for the
25 next day? I'm skipping ahead. Do you know what her plans

1 were for the next day?

2 A. Yes, I do.

3 Q. Okay. And is that based upon what you both talked
4 with her about and observed?

5 A. Yes.

6 Q. Okay. Now, her mindset -- let me ask you this. Her
7 mindset, her state of mind, did y'all have any discussions
8 regarding ---

9 MR. YOUNG: I'm going to object to the question about
10 what her state of mind was from the witness.

11 THE COURT: Well, I can't rule until after I've heard
12 the question. So let's do it this way. Let me hear the
13 question before you answer then I'll rule. Go ahead.

14 BY MR. REDMOND:

15 Q. As it relates to Bellany Clyburn's state of mind
16 while you were at the apartment did y'all have a
17 discussion where she expressed her state of mind regarding
18 her status/relationship with the Defendant?

19 THE COURT: And you object to that, counsel?

20 MR. YOUNG: Yes, Your Honor.

21 MR. REDMOND: And, Your Honor, for the record I would
22 point to 80 -- Rule 803(3) for Then Existing Mental,
23 Emotional and Physical Condition specifically talks about
24 declarant's state of mind.

25 THE COURT: All right. All right, ladies and

1 gentlemen, just a word or two about the hearsay rule. I
2 told you the other day that, typically, you can't come in
3 and testify about what someone else said, and I gave you
4 the reason for that. But just so you will see the rules
5 that we operate under sound fairly simple, but they're in
6 this book. So it's a fairly thick book, and there are a
7 lot of rules.

8 The hearsay rule has many exceptions to it. Those
9 exceptions are based on various rulings by our Supreme
10 Court. And you have anything further you wish to say on
11 the issue before the Court rules?

12 MR. YOUNG: Absolutely.

13 THE COURT: Go ahead.

14 MR. YOUNG: Your Honor, the rule goes on to say, "But
15 not including a statement of memory or belief to prove the
16 fact the memory or belief must, as it relates to the
17 execution, replication or vindication or terms of the
18 declarant's will" would be the completion of Rule 803
19 Paragraph Three. So we would be it is a proper hearsay
20 for this witness to talk about Ms. Clyburn's state of mind
21 pursuant to the rule cited by the State.

22 THE COURT: Counsel, I'm going to sustain the
23 objection.

24 MR. YOUNG: Yes.

25 BY MR. REDMOND:

1 Q. Let me ask you this. So bottom line is there was a
2 discussion about the Defendant being in that apartment?

3 A. Yes, there was.

4 Q. And we heard the Defendant's statement where he
5 claimed that he hears what's being said in the apartment.
6 But if I understand you correctly right now that while
7 y'all were in the apartment y'all had a discussion about
8 the Defendant?

9 A. Yes, you are.

10 Q. And without getting into what was said was there a
11 discussion about her status with the Defendant?

12 MR. YOUNG: I'll renew my objection, Your Honor.

13 THE COURT: All right. Just a moment. I'm going to
14 overrule the objection. I find that this has to do with
15 present tense impression of the condition. Again, the
16 Court is not aware of what the testimony is going to be,
17 but based upon the question the Court overrules the
18 objection and will be permit the evidence.

19 MR. REDMOND: Thank you, Your Honor.

20 BY MR. REDMOND:

21 Q. And I'm specifically going to ask you not to state
22 what was said. My only question is did you and Bellany
23 Clyburn have a discussion about her status with the
24 Defendant on the 31st of December?

25 A. Yes, we did.

1 Q. While you were in the apartment?

2 A. Yes.

3 Q. Now, let's move forward. There was talk about pizza.
4 Do you know something about pizza aspect of this, don't
5 you?

6 A. Yes.

7 Q. Could you explain that to the jury?

8 A. The pizza?

9 Q. The pizza. Let's talk about the pizza?

10 A. All right. The pizza. What happened with the pizza
11 was as I stated prior we were going to spend the night
12 together with our kids. So she said that, "Well, I'm
13 going to order pizza so the kids could eat pizza." So
14 that's the pizza.

15 Q. And was the pizza made or did she, to the best of
16 your knowledge, leave the residence and come back with the
17 pizza?

18 A. She had to leave and come back with the pizza.

19 Q. Let's talk about a particular vehicle that may have
20 been out there. You heard discussion about the S.U.V.,
21 the Surburban. Did you see it? Did you see that vehicle
22 out there?

23 A. I did.

24 Q. Okay. Could you tell us about that?

25 A. Well, I actually parked right next to this Surburban,

1 but you know it's an apartment complex. So it wasn't
2 really out of place. You know, it was the holidays, so
3 you know, it could have been someone had visitors or
4 family members. So it wasn't really like odd, but it
5 wasn't a usual car that was there cause I visited her
6 regularly on several different occasions.

7 Q. Where is the park? Let's talk about that real quick.
8 If, let's say that where I'm standing is the door ---

9 A. Um hum.

10 Q. --- to ■■■, Ms. Clyburn's apartment, was the S.U.V.
11 parked within sight of the front door?

12 A. Yes.

13 Q. Okay. So in other words whoever is inside that
14 S.U.V. has a clear view of the front door?

15 A. Definitely.

16 Q. So somebody leaving the residence or entering the
17 residence would be with anything would be able to see
18 what's going on?

19 A. Definitely.

20 Q. And possibly even be able to hear anything going on
21 outside?

22 A. Absolutely.

23 Q. Thank you. Now, last thing I want to get into.

24 Well, one of the last things I want to get into with you
25 is when you were leaving. Again, referring to the

1 Defendant's statement I recalled hearing on there where
2 you knocked -- you left and then knocked on the door once
3 the police arrived. Is that what happened?

4 A. No, that is not what happened.

5 Q. Okay. Tell us what happened. Without saying
6 anything that Bellany Clyburn said just tell us -- I'll
7 just ask you like this. When you were leaving and saw the
8 police coming did the door to Bellany's apartment, ■,
9 ever close and you have to know to re-enter the residence?

10 A. No.

11 Q. And if I recall your testimony correctly were you and
12 Bellany both at the door open and it never closed until
13 you left?

14 A. Yes, we were.

15 Q. Okay. And do you recall about, to the best of your
16 recollection, about how long y'all stood out there and
17 talked and watched what was going on? And if you don't
18 know that's fine. Just estimate to the best of your
19 recollection?

20 A. Less than 10 minutes.

21 Q. Okay. But -- and while the door was open and while
22 y'all were standing out there did you ever go back into
23 the residence?

24 A. No.

25 Q. While y'all were standing at the door?

1 A. No.

2 Q. Okay. But the door was open?

3 A. The door was open.

4 Q. Did you ever -- and from where the door is situated,
5 and rather than dig through the pictures, they're in
6 evidence, but if somebody were to come downstairs would
7 you have noticed them coming downstairs if you were
8 standing in the doorway?

9 A. Yes.

10 Q. Okay. Did you notice or observe anybody coming down
11 the stairs while you were in the apartment at that time?

12 A. No, I did not.

13 Q. Was there anything indicated that made you believe
14 that Thomas Stewart was actually in that apartment?

15 A. None whatsoever.

16 Q. When you left was that the last time you saw your
17 cousin and best friend? Just take your time?

18 A. I apologize, but, yes.

19 Q. I think we understand. So no apology necessary. And
20 I'm going to ask you a question, and you take your time
21 and answer it. Did you call and talk with her one more
22 time later on that evening? The early, early hours of
23 January 1st 2010?

24 A. I called her to wish her a happy new years.

25 Q. And was that after noon -- after midnight between

1 midnight and 12:30?

2 A. Yes, sir, it was.

3 Q. Okay. And you call to -- could you repeat? You
4 called to tell her what?

5 A. I called to wish her a happy new year.

6 Q. And was that the last time you, after you called to
7 wish her a happy new year, was that that last time that
8 you talked to your cousin and best friend?

9 A. Yes, it was.

10 Q. Please answer any questions that the Defense may
11 have. Thank you.

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. YOUNG:

15 Q. Miss Clyburn, I'm very sorry for your loss. Do you
16 need a minute or do you want to answer these questions
17 now?

18 A. We can proceed.

19 Q. Miss Clyburn, on January the 1st you got asked to
20 come up to the police department?

21 A. Did I get asked to come to the police department?

22 Q. Yes, ma'am.

23 A. I don't remember.

24 Q. Do you remember giving a statement at the police
25 department?

- 1 A. I don't remember because there was a lot going on
2 that day.
- 3 Q. Yes, ma'am.
- 4 A. It was a very life changing day.
- 5 Q. Yes, ma'am.
- 6 A. So there was a lot going on that day. So I don't
7 remember.
- 8 Q. Okay.. I'm showing you this. Just take your time.
- 9 A. Okay.
- 10 Q. Do you recognize that?
- 11 A. I do. Thank you.
- 12 Q. Yes, ma'am. Is that the statement that you gave at
13 the police department?
- 14 A. Um hum.
- 15 Q. And don't -- please, I need to ask you to say yes.
16 The court reporter is taking down everything we say. She
17 needs a clear answer. Is that a yes?
- 18 A. Yes or no?
- 19 Q. Yes.
- 20 A. Yes.
- 21 Q. Thank you. You told the police that you got to Ms.
22 Clyburn's house at 10:15?
- 23 A. Around about.
- 24 Q. Is that correct?
- 25 A. Here it says ---

1 Q. Ma'am, I don't need you to read the whole thing?

2 A. Here is says, "At Bellany Clyburn's house 12:31:09,
3 approximately." Approximately mean approximate. Not
4 exact. "Approximately 10:15 until about 11:15. I do
5 remember parking beside a white S.U.V. when I arrived. I
6 also talked to Bellany Clyburn at approximately -- means
7 approximate. Not exact, 12:30 a.m."

8 Q. Thank you, Miss Clyburn.

9 A. You're welcomed.

10 MR. YOUNG: That's all I have.

11 THE COURT: Is there redirect?

12 MR. REDMOND: No redirect, Your Honor. Thank you,
13 Mr. Clyburn. We appreciate it.

14 THE WITNESS: You're welcomed.

15 MR. REDMOND: And, Your Honor, I have another short
16 witness.

17 THE COURT: Please call your next witness.

18 MR. REDMOND: Ms. Carrie Day.

19 THE COURT: Ma'am, please come forward and take the
20 oath of a witness.

21 CARRIE DAY, after being duly sworn, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. REDMOND:

25 Q. Ms. Day, I'm going to ask before you get started.

1 Matter of fact, I need to do it for you.

2 MR. REDMOND: Beg the Court's indulgence.

3 BY MR. REDMOND:

4 Q. I'm going to slide you up a little bit closer here to
5 the microphone and hold this down. I don't want to hit
6 you with it. Slide this a little bit closer. That way so
7 you can -- if you can speak as loudly as you can. I'm
8 going to be brief, and I appreciate you're being here,
9 okay. Ms. Day, could you again state your name for the
10 record?

11 A. Carrie Lee Day.

12 Q. Okay. And, Miss Day, I don't mean to embarrass you,
13 but we've talked before. Were you 72 years old at the
14 time this happened?

15 A. Yes, sir.

16 Q. And I believe you're now 75 years of age?

17 A. Yes, sir.

18 Q. Well, congratulations on that longevity. I think we
19 all appreciate that, and we appreciate you're being
20 willing to be here today. Ms. Day, I'll just get right
21 into it. Did you know the victim, Bellany Clyburn?

22 A. Yes, I did.

23 Q. I believe you live in Chesterfield now?

24 A. Yes, I do.

25 Q. At the time did you live at Pageland Place

1 Apartments?

2 A. Yes, I did.

3 Q. You said you knew Bellany Clyburn?

4 A. Yes, I did.

5 Q. Okay. Now, did you know the Defendant?

6 A. Know of him. Not know him.

7 Q. Okay. Had you ever scene him there in that area
8 before?

9 A. Yes, sir.

10 Q. Let me direct your attention to January 1st of 2010.
11 That morning, could you tell the ladies and gentlemen of
12 the jury -- I'll just ask you this. Did you get a knock
13 on your door by one of Bellany Clyburn's children?

14 A. Yes, I did.

15 Q. Okay. Do you recall which child it was?

16 A. The baby.

17 Q. Okay. That would be K.S. ?

18 A. Yes, sir.

19 Q. When K.S. knocked at the door I want you to tell us
20 from that point forward what happened?

21 A. He knocked at the door. He called me grandma. He
22 said, "Grandma, my daddy out there stabbing my momma." I
23 said, "What?" I came and run out the house. I was
24 cooking. I just came run out the house.

25 Q. I didn't ask you this. You came out the house.

1 Where is your apartment situated compared to where Ms.
2 Clyburn's apartment was?

3 A. Beyond Bellany's door.

4 Q. Okay. I think the next apartment complex? The next
5 section over?

6 A. E4.

7 Q. Now, and I interrupted you and I apologize?

8 A. K.S. comes to the door and knocked, "My daddy is
9 stabbing my mommy."

10 Q. You go out. You were cooking, I believe you said?

11 A. I was.

12 Q. And you go outside. And from that point forward tell
13 these ladies and gentlemen of the jury what you observed?

14 A. When I went out that young man over there was already
15 stabbing the children's mother. And I just walked on
16 around there, and I said, "Hey." He didn't say nothing.
17 So I just walked on around. So I was scared to get up
18 close to be honest. So I walked around and just he was
19 just steady stabbing her. There was nothing I could do
20 but just stand there.

21 And when she rolled over -- no, he turned her over.
22 He rolled her over and stabbed her. I know I seen him
23 stab her three times in the chest. And I walked on to my
24 son.

25 Q. And then did you see when Miss Clyburn tried to get

1 up and get to your daughter, Anita Little's, apartment?

2 A. Yes, I did.

3 Q. And was she able to make it into the apartment?

4 A. No, sir.

5 Q. And do you recall and did you see about where she
6 fell?

7 A. Yes, sir.

8 Q. All right. Where was that?

9 A. Between her door and (undecipherable) door.

10 Q. Okay. Just right there at the door, near the door?

11 A. Yes, sir.

12 Q. And does Anita Little -- she lives in ■ of the
13 apartment complex?

14 A. Right.

15 Q. Okay. That was two doors down from where Bellany
16 Clyburn?

17 A. Yes, sir.

18 Q. Now, when you first saw him stabbing her, were they
19 outside when you saw the Defendant stabbing Bellany
20 Clyburn?

21 A. Yes, sir.

22 Q. And at any time did you see another black male come
23 in the direction trying to help Bellany? In other words
24 did you see a -- another black male other than the
25 Defendant come out of Bellany Clyburn's apartment?

1 A. No, sir, I didn't.

2 Q. Okay. Cause we heard that before, and you did not
3 see it?

4 A. That didn't happen.

5 Q. At any time while you saw her did Bellany Clyburn
6 have anything in her hand? Any way was she attacking the
7 Defendant?

8 A. No, she didn't.

9 Q. Was this a one sided attack?

10 A. Right.

11 Q. Let's talk about the S.U.V. real quick. Did you see
12 a white S.U.V. with gold trim parked in the apartment
13 complex on December 31st 2009?

14 A. Yes, I did.

15 Q. Okay. And did you see when that S.U.V. left the
16 scene of Ms. Clyburn's murder?

17 A. Yes, I did.

18 Q. Now, tell us what you saw. And let's start from that
19 point. You see her staggering forward. Tell us what took
20 place from that point forward.

21 A. When he left?

22 Q. Yes, when he left?

23 A. When he left a friend of mine threw the candle threw
24 the window and I said there wasn't nothing I could do but
25 get the tag number.

1 Q. And you got the tag number?

2 A. I got the tag number.

3 Q. And you said a friend threw something?

4 A. Threw a candle through the window.

5 Q. You saw when that happened?

6 A. Yes, sir.

7 Q. And do you remember who it was that did that?

8 A. T.J.

9 Q. T.J. I think -- do you know his last name?

10 A. I don't want to lie. I can't remember.

11 Q. But you know him as T.J?

12 A. I know him.

13 Q. And were there -- had a lot of people come out by the
14 time the Defendant left?

15 A. Yeah, a lot of family came.

16 Q. And at the time that Defendant left and whoever
17 through the candle holder in there were there a lot of
18 people yelling in the direction of Defendant?

19 A. Yes, sir, it was.

20 Q. Okay. In what you observed was the victim trying to
21 get away from the Defendant?

22 MR. YOUNG: Objection. Speculation.

23 THE COURT: Actually, sustain as to leading.

24 MR. REDMOND: I'll rephrase.

25 BY MR. REDMOND:

1 Q. Did you see -- you've already testified. Did you see
2 the Defendant stabbing the victim?

3 A. Yes, I did.

4 Q. Did you see the -- was the victim trying to move
5 physically in a direction away from the Defendant?

6 A. Yes, she was..

7 Q. Okay. So he was trying to move -- she was trying to
8 move away?

9 A. He was trying to get her collar pulling her back.

10 Q. Okay. Could you repeat that, please?

11 A. He had her, the back of her clothes pulling her back.

12 Q. And did he do that while he was stabbing her?

13 A. Yes, he did.

14 MR. REDMOND: Beg the Court's indulgence.

15 BY MR. REDMOND:

16 Q. Did you hear him say anything? Did you hear Thomas
17 Stewart say anything while he was stabbing her?

18 A. I did hear him say one thing.

19 Q. And what's that.

20 A. "I'm going to kill you."

21 Q. Could you repeat that?

22 A. "I'm going to kill you." That's all I heard him say.

23 Q. That's all that I have. Please answer any questions
24 that the Defense may have.

25 THE COURT: Cross-examination.

CROSS-EXAMINATION

1
2 BY MR. YOUNG:

3 Q. Good afternoon, Ms. Day?

4 A. Good afternoon.

5 Q. You nervous?

6 A. No, sir.

7 Q. Ms. Day, after -- when it happened out there,
8 Pageland Place Apartments, were you asked to go to the
9 police department?

10 A. Yes, sir.

11 Q. How did you get there?

12 A. I don't remember how I got there, but I know I was up
13 there..

14 Q. Did you ride with your daughter and granddaughter?

15 A. Probably.

16 Q. Manita and Kimberly?

17 A. Yes, I did.

18 Q. When you went to the police department you were asked
19 to make a statement; is that correct?

20 A. Yes, sir.

21 Q. Were you put into a room by yourself?

22 A. No.

23 Q. Did all of y'all sit down at a table together?

24 A. Yes.

25 Q. Did all of y'all write your statements together?

1 A. We didn't. We sat there while the police wrote them.

2 Q. You sat there while the police wrote them? Did you
3 hear Ms. Little -- did you hear Manita Little give her
4 statement to the police?

5 A. Not really. Not really.

6 Q. Not really. Were you in the room with her when she
7 gave her statement?

8 A. I was in the room with her.

9 Q. Did you hear Kimberly Little give her statement to
10 the police?

11 A. No, because I was in another world, all right.

12 Q. Okay, but y'all were all in a room together?

13 A. Yes, sir.

14 Q. Have you reviewed a copy of your statement?

15 A. No, I haven't.

16 Q. Do you mind if I show you a copy of your statement,
17 and I just ask you to review it. Ms. Day, today your
18 testimony was that K.S. told you when he knocked
19 on the door that daddy was stabbing my mommy?

20 A. Right.

21 Q. Is that correct?

22 A. Correct.

23 Q. And you've reviewed your statement that you gave on
24 January the 1st 2010, correct?

25 A. Um hum.

1 Q. And in your statement you said that K.S. said this
2 man is hurting my momma.

3 A. He said, "stab my momma." So much was going on I
4 could have made a mistake right then. I do know heard
5 the baby say, and I know what I said.

6 Q. So you may have been mistaken when you wrote your
7 statement on January the 1st?

8 A. It's a mistake. So much was going on you can't
9 think.

10 Q. Yes, ma'am. Ms. Day, when you first went outside and
11 looked outside did you see Ms. Clyburn standing outside of
12 her apartment?

13 A. He was stabbing her.

14 Q. He was on top of her. She was already ---

15 A. He had her -- that man had her in the back of her
16 collar stabbing her, and she was trying to get away.

17 Q. And that was the first thing that you saw?

18 A. It sure was.

19 Q. Did you say that Ms. Clyburn, when you first looked
20 outside, was saying, "Get him out of my house?"

21 A. I believe she did tell him get him out of my house
22 because she was trying to get away to my daughter's house
23 and then she fell.

24 Q. So just so I'm clear Ms. Clyburn is outside of her
25 apartment, correct?

1 A. Yes, he was stabbing her out there.

2 Q. And she was saying, "Get him out of my house,"
3 correct?

4 A. He went in there and got a knife stabbing her out the
5 door.

6 Q. Did you see Ms. Clyburn with a knife?

7 A. No, I didn't.

8 Q. Did you see another knife out there?

9 A. No, I didn't.

10 Q. Did you see Mr. Stewart come out of the house?

11 A. He was already out the house stabbing her.

12 Q. And I'm just asking you if you would follow along
13 with me on your statement. You said, "So I came outside
14 and was trying to find somebody to get him out of her
15 house;" is that correct?

16 A. In front of her door stabbing her.

17 Q. Okay. "So as I was walking to my daughter's house he
18 came walk running outside behind her."

19 A. No. No. No. He came out behind her stabbing her.
20 He wasn't running. He walked out there stabbing her out
21 of her house.

22 Q. Okay. So your statement on the 1st is not correct?

23 A. It's almost correct, but when I seen him he was
24 coming out the house stabbing her. Had her in the back of
25 her clothes pulling her back.

1 (WHEREUPON, Defendant's Exhibit No. 91 was marked for
2 identification only.)

3 MR. REDMOND: No objection to that all coming in.

4 MR. YOUNG: Your Honor, at this time I would offer
5 Defense Exhibit 91 into evidence.

6 THE COURT: Without objection 91 is in evidence.

7 (WHEREUPON, Defendant's Exhibit No. 91 was admitted
8 into evidence.)

9 MR. YOUNG:

10 Q. Thank you, Ms. Day.

11 A. You're welcomed.

12 THE COURT: And is there re-direct?

13 MR. REDMOND: Briefly, Your Honor. Beg the Court's
14 indulgence for just a moment.

15 THE COURT: Yes, sir.

16 REDIRECT EXAMINATION

17 BY MR. REDMOND:

18 Q. On January the 1st 2010 when you gave the statement
19 at Pageland Police Department did you tell them that the
20 Defendant was the one that was stabbing -- the one that
21 was stabbing Bellany Clyburn?

22 A. Pardon me.

23 Q. Did you tell Pageland Police Department that the
24 Defendant was the one stabbing Bellany Clyburn?

25 A. Yes, I did.

1 Q. And in fact in booking it I'll let you look at
2 Defense 91 again. In it -- in that statement don't you
3 say that the Defendant was stabbing Bellany Clyburn?

4 THE COURT: Counsel, don't lead your witness, please.

5 MR. REDMOND: I apologize, Your Honor.

6 BY MR. REDMOND:

7 Q. And let me just ask you this. Is there any doubt in
8 your mind that it was the Defendant that was stabbing
9 Bellany Clyburn?

10 A. No.

11 Q. Okay. Is there any doubt that it was him? And I saw
12 you just pointed at him?

13 A. It was him, period.

14 Q. Okay. And it's been three years?

15 A. Yes, it has.

16 Q. Do you remember every detail of what was going on
17 that day?

18 A. It was so much of what was going on. But I know he
19 was the one doing the stabbing. Definitely.

20 Q. And did she do any stabbing back that you saw?

21 A. No. She didn't have nothing to stab with.

22 Q. And was she physically trying to move away from him?

23 A. She was trying to get away to get to my daughter's
24 house.

25 Q. As he was stabbing her?

1 A. As he was stabbing her.

2 Q. And those things are things you remember clearly?

3 A. Clearly.

4 MR. REDMOND: I have nothing further, Your Honor.

5 THE COURT: All right. Anything new brought up on
6 that?

7 MR. YOUNG: No, Your Honor.

8 COLLOQUY

9 THE COURT: On redirect. All right, ma'am, please,
10 watch your step stepping down, and you're free to leave.
11 You may remain with us or you may leave in you wish.
12 Counsel, what do you estimate to be the length of your
13 next witness?

14 MR. REDMOND: Actually, Your Honor, this would
15 conclude our live witnesses. We've got the two that are
16 back to back, the two videotapes of the boys, and ---

17 THE COURT: Let's take our afternoon break. Ladies
18 and gentlemen, we will stand down now for a few minutes.
19 Those that may wish to go outside to take the break.
20 We'll remain where we are while you either leave the
21 courtroom or exit to the outside.

22 (WHEREUPON, the jury panel was excused from the
23 courtroom at 2:55 p.m.)

24 THE COURT: All right. Court in recess now
25 approximately 15 minutes.

1 (WHEREUPON, Court was in recess at 2:55 p.m. and
2 reconvenes at 3:14 p.m.)

3 MR. YOUNG: Your Honor, are you going to give them
4 the stipulation?

5 THE COURT: I am.

6 MR. YOUNG: Thank you.

7 THE COURT: And what I will intend to tell them is
8 that by agreement with the Defendant -- well, I probably
9 say it this day. "Typically, witnesses do not appear by
10 videotape in a criminal trial, but because of the tender
11 age of the witnesses by agreement of the Defendant who has
12 waived his right to confront the witnesses and
13 cross-examine the -- rather than have the witnesses appear
14 at trial their taped statements taken shortly after the
15 incident are going to be placed in evidence."

16 First of all, is that a correct summation of what's
17 happened?

18 MR. REDMOND: Yes, sir.

19 THE COURT: And is that agreeable to the State?

20 MR. REDMOND: Yes, sir.

21 THE COURT: And to the Defendant?

22 MR. YOUNG: Yes, Your Honor.

23 THE COURT: All right. Let's bring in the jury.

24 (WHEREUPON, the jury enters the courtroom at
25 2:15 p.m.)

1 VIDEOTAPED STATEMENT OF J.D.

2 THE COURT: All right. Welcome back to the
3 courtroom, ladies and gentlemen. Typically in a criminal
4 trial we do not have witnesses that appear by videotape
5 because the Defendant has a right to confront a witness
6 through counsel as well as to cross-examine a witness.

7 And with regard to our next two witnesses, because of
8 their tender age, they're younger age, the Defendant has
9 waived that right, and these witnesses will be presented
10 rather than by live testimony by playing the video of
11 their taped statement that was given relatively soon after
12 this incident occurred.

13 That's by agreement of both sides of this case, and
14 you may proceed.

15 MR. REDMOND: Thank you, Your Honor. If it please
16 the Court. We've got the tape queued, and I can go ahead
17 and play it and publish it at this time.

18 THE COURT: Go ahead.

19 MR. REDMOND: Your Honor, this is going to be the
20 videotaped statement of J.D.

21 THE COURT: All right. Do we need to do a voice?
22 Got a volume check on this? Have you ---

23 MR. REDMOND: I have not. Looks like, according to
24 this, as far as the computer is maxed out ---

25 MR. FOARD: I think we're all right, Judge.

1 THE COURT: Okay. Go ahead.

2 (WHEREUPON, the videotaped statements of J.D.
3 was played for the jury.)

4 MR. REDMOND: For the record, just to make the record
5 clear who was present during the interview. On camera you
6 saw in the interview was J.D. that we just saw.
7 That was, of course, J.D. . It was his father, and
8 I apologize. I don't have his father's name, but his
9 father was there sitting next to Young J.D. . Then
10 you had Christina Gainey with S.L.E.D. and, of course,
11 Mikkos Newman with Pageland P.D.

12 VIDEOTAPED STATEMENT OF K.S.

13 On this tape now we're about to hear from K.S.

14 . And Miss Clyburn son's. He is seated on the lap
15 of Pastor David. He's been here during the course of the
16 trial. He had to leave today early. Of course, we've got
17 Mikkos Newman here and we've got Christina Gainey.

18 (WHEREUPON, the videotaped statement of K.S.
19 was played for the jury.)

20 MR. REDMOND: That concludes those statements, Your
21 Honor.

22 THE COURT: All right. Very good. Please call your
23 next witness.

24 COLLOQUY

25 MR. REDMOND: Your Honor, at this time the State a

1 has completed it's testimony. The only thing, just as a
2 matter of habit, I'd like to go through, with the number
3 of exhibits we've got, just want to make sure that
4 everything that has been admitted that has been admitted.
5 So if the Court would allow me to formally rest once I've
6 had the opportunity to do that. Then we can, obviously,
7 proceed with anything else in the case.

8 THE COURT: All right. Counsel, step up a moment.
9 Let's talk about scheduling, please.

10 (WHEREUPON, a bench conference was held off the
11 record in the presence of the jury, but out of the
12 hearing of the jury.)

13 THE COURT: All right. Ladies and gentlemen of the
14 jury, the State tells me that they are just about to rest.
15 You heard it here in the courtroom, and at the conclusion
16 of any -- in any case at the conclusion of one side or the
17 other in the case the Court has to stop, review the
18 evidence, revisit certain matters which may still be
19 pending on the record.

20 And, thus, I believe it's probably best or most
21 efficient for us not to go forward this afternoon any
22 further with the Defendant's case, if the Defendant wishes
23 to put up a case, but to stop for the day and to come back
24 tomorrow. Mr. Foard.

25 MR. YOUNG: Your Honor, may we approach one more time

1 about the schedule?

2 THE COURT: Yes, you may.

3 (WHEREUPON, a bench conference was held off the
4 record in the presence of the jury, but out of the
5 hearing of the jury.)

6 THE COURT: All right. So there is no need for you
7 to remain here this afternoon. It won't be any more
8 testimonial evidence in this case today. And so what
9 we're going to do is stop for the day, and then we'll come
10 back tomorrow and i anticipate that the Defendant at that
11 time will be given an opportunity to put a case, call
12 witnesses if they wish.

13 And whether they intend to or whether they do not the
14 Court would intend that tomorrow we will argue and charge
15 and send this case to you at some point during the day.
16 So that most likely we would conclude it as some point
17 tomorrow afternoon. Late afternoon or evening. I just
18 tell you that so you can have your own personal schedules
19 in your mind as you consider that.

20 But what we'll do is rather than start at 9:30 in the
21 morning, so that the lawyers can go ahead and prepare for
22 closing arguments, we'll start at ten o'clock again just
23 as we did a couple of days ago. We will see you tomorrow
24 morning at 10:00.

25 Now, of course, please, again the same admonition

1 that we've had every night. Please don't discuss the case
2 with anyone, the facts, the allegations in the case. Just
3 get a good nights rest, and come back at ten o'clock
4 tomorrow morning in the jury room and we'll be ready to
5 go. Now, there is one other thing that I want to discuss
6 with you, and that is this. Let's see, Mr. Gainey is one
7 of our alternates, and Mr. Sellers is one of our
8 alternates. I'm going to ask you two gentlemen tomorrow
9 morning when all the jury is together to preside over the
10 jury choosing their own foreperson among themselves. It
11 should not be the two of you, although you may have a vote
12 on the issue. It should not be that either one of you is
13 chosen because ultimately you may not deliberate with the
14 jury.

15 But I would suggest to you, ladies and gentlemen, as
16 you choose your own foreperson tomorrow that the best
17 foreperson; whether that be forewoman or foreman is
18 certainly your decision, is an individual who is not a
19 controller or dictator of opinion, but someone who you
20 know to be a moderator and facilitator of discussion
21 because, ultimately, your verdict must not only be a
22 consensus verdict; that is that everyone agrees.. But it
23 must be a unanimous verdict in this case.

24 And so you know one another well enough by now, and
25 you may have known one another fairly well before you got

1 here to choose among yourselves the foreperson. And,
2 again, I'd ask our two alternates to preside. I thank you
3 in advance for doing that. Let's wait until in the
4 morning until everyone is in, and once you do and make
5 that decision, please, write the name of the chosen juror
6 on the -- on a piece of paper, knock on the door and give
7 it to us, and we'll seat the foreperson in the
8 foreperson's seat and we'll be ready to go after you all
9 do that.

10 Now, any questions about scheduling? So we'll see
11 you tomorrow morning at ten o'clock. And out of respect
12 for you what we will all remain where we are while you
13 depart the courtroom.

14 (WHEREUPON, the jury panel was excused from the
15 courtroom at 3:44 p.m.)

16 THE COURT: Have a good day. All right. Jury is
17 clear. Now, while we are out of the presence of the jury
18 are there any motions for here at the close of the State's
19 case?

20 MR. SECOR: Me first?

21 THE COURT: Yes, sir, Mr. Secor. Go ahead.

22 MR. SECOR: The Defendant, moves pursuant to Rule
23 19(A) of the rule -- of the South Carolina Rules of
24 Criminal Procedure. Specifically regarding the defense of
25 self-defense. Pursuant to State v. Dixie, 394 SC 491,

1 2011. The argument being that we do not believe the State
2 has beyond a reasonable doubt disproven each of the four
3 elements of self-defense.

4 THE COURT: Now, our court reporter is asking that
5 you speak up a little more so that she can follow you.

6 MR. SECOR: I'm sorry.

7 THE COURT: Yeah, I think that you said that the
8 State has failed to disprove the four elements of the
9 self-defense. Did I understand you to say that?

10 MR. SECOR: Yes, sir.

11 THE COURT: Okay. Go ahead.

12 MR. SECOR: The State failed to disprove beyond a
13 reasonable doubt the four elements of self-defense. His
14 alibi in this case is outlined in Dickey. Dickey is
15 spelled D-I-C-K-E-Y. The citation 394 SC 491 from the
16 year 2011 which is cited in State v. Wiggins, 500 SC
17 2(D)492.

18 Regarding the specific indictment of murder we would
19 also move pursuant to South Carolina Rules of Criminal
20 Procedure 19(A) under the theory of proof and variance
21 with the indictment as outlined in State v. Jones, 342 SC
22 248 from the year 2000 which held that the directed
23 verdict was proper where there was a material variance
24 between the indicted crime and the crime proven at trial.

25 It would be our position specifically regarding the

1 element of malice that the State has failed to put forth
2 sufficient evidence to survive directed verdict on that
3 element. And that the proof they have put forth is far
4 greater and stronger for an indictment of voluntary
5 manslaughter. But in light of the fact that they indicted
6 him for murder we would move for a directed verdict.

7 THE COURT: All right. Let's take those two. What
8 response do you have?

9 MR. REDMOND: Briefly, Your Honor, I think in the
10 light most favorable to the State, which is of course, the
11 standard based on the evidence that's been presented we do
12 have -- we would contend an abundance of evidence that
13 would sustain a conviction for murder.

14 On the issue of self-defense that's been raised by
15 the Defense I think that with the evidence that's been
16 presented at this point, clearly, there is enough for the
17 State to overcome an argument of s self-defense. And if
18 fact for this jury to convict of the offense of murder.

19 If the Court needs me to I can be much more detailed,
20 but I think the evidence if viewed as a whole is clearly
21 enough to get us to a jury for them to make the
22 determination on this issue as on the issue of guilt of
23 murder. And as it relates to the Defense's contention
24 that the crime as indicted is somehow inconsistent we
25 would simply that he was indicted for murder.

1 The allegations and the elements that are set forth
2 are -- have been -- we have introduced evidence to that
3 regard. Specifically on the issue of malice I do want to
4 address that briefly. There are a couple of things that I
5 would like to raise. One, that based on the evidence
6 that's been present, including motive evidence which could
7 obviously be argued based on the warrant that had been
8 taken out and based on the order of protection that had
9 been taken out two days before Ms. Clyburn's death.
10 Basically, two days before -- three days before her death.
11 Two days before he and our contention stakes out her
12 apartment.

13 And I think that we had, obviously, introduced enough
14 evidence to make that particular argument. Further, Your
15 Honor, I would submit to you that on the issue of us
16 proving malice even though I'm aware that the Court cannot
17 instruct the jury that use of a weapon is evidence of
18 malice we are still as stated -- I do not have the case in
19 front of me, but we still are entitled to argue that use of
20 a weapon is evidence of malice.

21 And we understand that the Court does not have to
22 instruct -- cannot instruct it, but we can still argue it.
23 So I think with that, and obviously, it was a knife that
24 he was going to use. So with that, Your Honor, I think we
25 have sustained our burden up to this point to get past the

1 directed verdict motion.

2 THE COURT: All right. My understanding of the case
3 you're referring to is that when the use of the deadly
4 weapon is the only evidence of malice the Court what does
5 not instruct as that time that the use of a deadly weapon
6 may be inferred as malice. Is that your understanding?

7 MR. REDMOND: That is my understand, Your Honor.
8 Yes.

9 THE COURT: All right. Just a moment, please. All
10 right. The Court is prepared to rule on these two motions
11 at this time. First of all as to the issue of malice the
12 Court is aware that it's not this judge of the law's
13 position to weigh what really is an issue of fact. The
14 question before me is, is there sufficient evidence in
15 this record that would tend to prove; that is
16 appropriately admissible evidence in the record, that
17 would tend to prove the element of malice.

18 If the Court needs to construe the facts it must be
19 construed in the light most favorable to the non-moving
20 party at this juncture, which of course would be the
21 State. The Court finds that malice may be proved either
22 by direct or express evidence or it maybe proved by
23 inferred or circumstantial evidence.

24 The Court finds that based on this record there is
25 sufficient evidence of malice both direct; that is express

1 and inferred that would require the Court to send the
2 issue to the jury because it is a matter of fact for the
3 jury to determine. So I deny your motion with regard to
4 the absence or alleged absence of malice.

5 Further, on the issue of self-defense I said to those
6 who are here, and we will charge the jury to this tomorrow
7 that the burden is on the State under current South
8 Carolina law, basically, to disprove the self-defense
9 assertion made by the Defendant, which is a little
10 different than the Defendant being required to prove what
11 many see as an affirmative defense because the Defendant
12 has no burden of proof.

13 The question for the Court is, is there sufficient
14 evidence in this record put forth by the State that would
15 disprove a defense of self- defense. South Carolina law
16 requires that in order to successfully assert a
17 self-defense defense it must be shown that the Defendant
18 was without fault in bringing on the conflict or
19 altercation.

20 It must be shown that the Defendant was or reasonably
21 believed that he was in imminent danger at the time of the
22 incident. And it must also be shown that the Defendant
23 could not retreat; that is in other words the Defendant
24 had a duty to retreat or otherwise it must be shown why
25 the Defendant could not retreat. Again, burden of proof

1 on the state to disprove self-defense.

2 I find that on each of these elements of
3 self-defense, and there are more components and elements
4 of self-defense. I just named only certain ones of them
5 that the State has placed sufficient evidence in the
6 record that would disprove the assertion of self-defense
7 on the part of the Defendant.

8 I find that by direct and circumstantial evidence
9 including the testimony of eyewitnesses, the evidence of
10 animus, which is in this record between the Defendant and
11 the deceased, as well as some of the statement made by the
12 Defendant which the Court perceives to bare on the issue
13 and to provide evidence actually against the assertion of
14 self-defense or a finding of self-defense.

15 For all of these reasons the Court denies those
16 motions finding these to be jury issues. Anything
17 further, now, from Defense at the end of the State's.

18 MR. SECOR: We just ask that Your Honor note and
19 state on the record any appropriate and all previously
20 made objections are properly preserved.

21 THE COURT: The Court will decline to weigh in on
22 whether there's been a proper preservation of error. I
23 have ruled upon what has been stated to me in the best of
24 my ability, and I do not believe that there are any issues
25 which have not yet been ruled upon. But the Court

1 declines to respond further on that issue.

2 MR. SECOR: And perhaps what I should have said was I
3 just renew our previously made objections.

4 THE COURT: Very good. And with regard to your
5 previously made objections the Court having denied each
6 and every one at the time they were made, and typically
7 stating reasons contemporaneously on the record why they
8 were decided the Court will reaffirm those decisions.

9 MR. SECOR: Yes, sir.

10 THE COURT: All right. Now, anything else here at
11 the end of the State's case?

12 MR. REDMOND: Nothing from the State, Your Honor.

13 THE COURT: All right. Let me speak with the
14 Defendant at this time then. So, Mr. Stewart, I would ask
15 if you would stand, please, and raise your right hand.
16 You can just stay where you are is fine and follow our
17 Clerk's instructions.

18 THOMAS STEWART, after being duly sworn,
19 testified as follows:

20 SPEAKER 2: Your Honor, I haven't talked to Mr.
21 Stewart about this colloquy. May I have a minute?

22 THE COURT: Go head. We'll just sit right here and
23 you go ahead and speak to him about what's getting ready
24 to happen. All right. Mr. Stewart, as you have observed
25 now the State has rested their case which means that we're

1 in a position for the Defendant to go forward and put up a
2 case if they wish to do so. Do you understand that issue.

3 MR. STEWART: Yes, sir.

4 THE COURT: All right. And as part of the
5 Defendant's case, if you wish to testify, you are given
6 that right, and if you wish to remain silent you are given
7 that right as well. And have you discussed that; that is
8 your right to testify and your right to remain silent with
9 your attorneys?

10 MR. STEWART: Yes, sir.

11 THE COURT: All right. And have you understood the
12 things, in your opinion, have you understood the things
13 that they have explained to you about your right to
14 testify or your right to remain silent?

15 MR. STEWART: Yes, I have.

16 THE COURT: All right. Now, in this courtroom
17 because you have no burden of proof you have the right to
18 remain silent, and you're not required to testify. If you
19 choose not to testify the Court will instruct the jury
20 that they may not hold that against you. In fact they may
21 not even use that as a fact or even a discussion point in
22 their deliberations because you have a constitutional
23 right to remain silent. And do you understand that, sir?

24 MR. STEWART: Yes, sir, Your Honor.

25 THE COURT: All right. And is what I just told you

1 about the fact that you don't have to testify; that you
2 have the right to remain silent the same thing that your
3 attorney told you about your right to remain silent?

4 MR. STEWART: Yes, sir.

5 THE COURT: And on the other hand you have the right
6 to testify which means that you would take the oath of a
7 witness just like all our other witnesses, take the
8 witness stand and be able to tell your version of events
9 subject to direct examination by you own attorney and
10 subject to cross-examination by the State's counsel.

11 If you have in your record -- in your criminal -- in
12 your past a criminal record that may be admissible on the
13 issue of credibility and believability that criminal
14 record may come into evidence. And in addition the jury
15 may take what you say and use it either for you or against
16 you as they determine the facts of the case to be because
17 all of this will occur in front of the jury. And so do
18 you understand your right to testify, sir.

19 MR. STEWART: Your Honor, can I ask you a question?

20 THE COURT: All right. Go ahead.

21 MR. STEWART: Twenty something years ago, on my
22 credibility and liability, since I -- when I did the
23 robbery I said I did it. It wasn't about I didn't do it.
24 It was about I did do it. I don't want to waste this time
25 in Court. You follow me. I mean like the whole thing.

1 I'm just asking him cause I don't understand.

2 THE COURT: All right, sir. And let me, make sure
3 that I understood what you said. You tell me that 20
4 years ago or more you were convicted or actually pled
5 guilty to a charge of robbery?

6 MR. STEWART: Yes, sir.

7 THE COURT: Is that armed robbery or common law
8 robbery?

9 MR. STEWART: It was armed robbery. It was in North
10 Carolina.

11 THE COURT: All right. And then the question is
12 whether that would be admissible against you.

13 MR. STEWART: Yes, sir.

14 THE COURT: If you testify. And I will tell you,
15 sir, I cannot answer that question for you. I'm going to
16 let your lawyer talk to you about that because there are
17 certain indicators that would make -- that would exclude
18 that testimony or that fact. But there are also maybe
19 other indicators that would include it. So before I can
20 make that decision I would first have to hear from the
21 State, hear from your lawyers, and then make a decision
22 after everyone has put their position on the record.

23 I just simply say that if you have a criminal charge
24 in your past there is a potential that that may come into
25 evidence against you. Not on the issue of whether you

1 committed this crime, but on the issue of whether you are
2 a believable or a credible witness. Now, what I just
3 explained to you, not only about the criminal record but
4 the other issues about your taking the stand and
5 testifying. Is that the same what your lawyer has told
6 you about your right to testify? Have I told you
7 basically the same thing that your lawyers have told you
8 about your right to testify?

9 MR. STEWART: Yes, Your Honor.

10 THE COURT: Have you understood the things I've
11 explained to you about your right to testify?

12 MR. STEWART: Yes, sir, Your Honor.

13 THE COURT: All right. And do you have any questions
14 other than the one I just answered in the best way I could
15 about your right to remain silent or your right to
16 testify?

17 MR. STEWART: Yes, Your Honor, I understand.

18 THE COURT: Well, I'm asking you do you have any
19 questions about what I said to you?

20 MR. STEWART: No. Well, yes, I do have a question.
21 On the last, when we had that Denno v. Jackson hearing.

22 THE COURT: Yes, sir.

23 MR. STEWART: I read it, and you said you didn't rule
24 in my favor because of my credibility and liability
25 because of the charge he took out on me. And it was not

1 null prosed. But I read the thing, and you said I was
2 credible but these officers here couldn't show you the
3 tape and you agreed with me. Your Honor, I don't know
4 which way to go.

5 THE COURT: Well.

6 MR. STEWART: You agreeing with them, and they'd give
7 you evidence of the same.

8 THE COURT: Well, First of all, sir, please
9 understand that whatever rulings I made were limited in
10 the Jackson v. Denno hearing. They were limited to the
11 issue of whether or not your statement was voluntarily.
12 And that required me to make certain factual findings, but
13 with regard to this charge I don't make the factual
14 findings with regard to the charge of murder or a lesser
15 included offense.

16 And not only that the jury will not be advised of any
17 finding that I made about whether you were credible or
18 whether you were not credible based upon my perception
19 when you appeared in front of me on the issue of Jackson
20 v. Denno. On the jury will have no knowledge of that.
21 All right. Now, is there anything further that Defense
22 counsel had me ask Mr. Stewart or discuss with him
23 concerning his right to remain silent or his right to
24 testify?

25 MR. SECOR: No, Your Honor.

1 THE COURT: Anything further the State would have me
2 ask Mr. Stewart.

3 MR. REDMOND: No, sir.

4 THE COURT: Mr. Stewart, tell me as we are here today
5 have you made a decision as to whether you wish to testify
6 or you wish to remain silent.

7 MR. STEWART: I have not decided at this time.

8 THE COURT: All right. Then we will conclude this
9 discussion, and you may be seated. And is there anything
10 further now for our record today before we close this
11 record to resume tomorrow morning at ten o'clock?

12 MR. REDMOND: Nothing from the State, Your Honor.

13 MR. SECOR: No, Your Honor.

14 THE COURT: All right. Then, gentlemen, I will
15 simply say to you we have a proposed copy of the charge
16 which we will give you as we leave the courtroom today.
17 And then tomorrow, after all the testimony is in, we'll
18 have a chance to have a charge conference. And this Court
19 is now in recess until ten o'clock tomorrow morning.

20

21 END OF TRANSCRIPT OF RECORD

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Chesterfield County, South Carolina, on the 5th day of
December, 2012.

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

May 13, 2013

A handwritten signature in black ink, appearing to read 'Hattie O. Gordon', written over a horizontal line.

HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
<u>COUNTY OF CHESTERFIELD</u>	)	2010-GS-13-0192
	)	2010-GS-13-0263

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THOMAS J. STEWART	)	
<u>DEFENDANT</u>	)	

December 3-6, 2012
 Chesterfield, South Carolina
VOLUME NUMBER 04 OF 04

B E F O R E:

THE HONORABLE J. MICHAEL BAXLEY, JUDGE; and a jury.

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

KERNARD E. REDMOND, DEPUTY SOLICITOR
 Attorney for the State

ADAM FOARD, ASSISTANT SOLICITOR
 Attorney for the State

CASEY SECOR, DEPUTY ATTORNEY
 Attorney for the Defendant

S. BOYD YOUNG, DEPUTY ATTORNEY
 Attorney for the Defendant

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

CLARENCE FRANCIS, PAGELAND POLICE DEPARTMENT
MARTY HORTON,
JOSEPH CARNES, CHESTERFIELD CTY SHERIFF'S OFF.
MIKKOS NEWMAN, LANCASTER CTY SHERIFF'S OFF.
VICKI HALLMAN, S.C. LAW ENFORCEMENT DIVISION
BRADLEY MARCUS, M.D., NEWBERRY PATHOLOGY
LARRY BROWN, PAGELAND POLICE DEPARTMENT
VERONICA GIBSON, S.C. LAW ENFORCEMENT DIVISION
MARYANNE BOEHM, S.C. LAW ENFORCEMENT DIVISION
PIERRE KIRBY,
CRYSTAL CLYBURN,
CARRIE DAY,
KIM DANZEY,
SHARON RIVERS,
MELISSA STEWART,
SHERRY MACLAMORE,
RANDALL MULLIS,
KIMBERLY LITTLE,

HATTIOE O. GORDON
Circuit Court Reporter

COLLOQUY

(WHEREUPON, Defendant's Exhibit Nos. 92 THROUGH 97

were marked for identification only.)

THE COURT: All right. Are you ready to proceed this morning?

MR. REDMOND: State is ready. However, the Defense has an issue regarding a witness that we are actually discussing when you came on the bench, Your Honor. It's the Defense's witness who's also subpoenaed by the State. Obviously, we concluded our case so we didn't need them. I was not aware that they were also subpoenaed by the Defense.

So they have -- actually, that witness is not here this morning, and we're actually discussing -- obviously, the State will cooperate in trying to help procure the witness.

THE COURT: I'll let you discuss that among yourselves for a minute.

MR. REDMOND: Your Honor, just to report back to the Court on what's going on. Contacted Pageland P.D. and one of the officers was actually on the way to Court anyway. So he's going to swing through there and try to locate the Defense witness and have her brought over.

THE COURT: Good. All right.

MR. REDMOND: So with that, Your Honor, we're ready

1 to proceed. If the Court would allow me to formally rest
2 in front of the jury. We've had a chance to make sure all
3 of our exhibits are in evidence. So we're ready to rest
4 and proceed with the Defense case.

5 THE COURT: Very good. And are you ready to call
6 your first witness, Mr. Young?

7 MR. YOUNG: It looks like my first witness is not
8 here either. Yes, sir.

9 THE COURT: All right. Then please bring in the
10 jury. Well, actually, have they chosen their foreperson?
11 Have we heard from them on that issue? Check and see if
12 they have.

13 All right. Our jury has chosen as a foreperson juror
14 Number 76, Michelle Kennedy. When Ms. Kennedy comes out
15 if you would seat her in the foreperson seat. And with
16 that understand, please bring in the jury.

17 (WHEREUPON, the jury enters the courtroom at
18 10:03 a.m.)

19 THE COURT: All right. Good morning, ladies and
20 gentlemen. I see that we all are present, and let me
21 ask -- well, before I ask you anything let me just simply
22 say this. Mr. Gainey and Mr. Sellers, thank you for your
23 leadership this morning with the jury, and congratulations
24 to Madam Forelady on being chosen as foreperson of the
25 jury. I will talk with you a little bit more, you and

1 your colleagues, about your role as foreperson during the
2 deliberations. But in advance I simply say thank you for
3 being willing to serve and for the confidence that your
4 colleagues have shown in you.

5 All right. Now, since we were last together, ladies
6 and gentlemen, is there any member of this jury panel who
7 has had any discussion concerning the facts of this case
8 with anyone? If so please raise your hand. Please let
9 the record reflect that no one has raised their hand.
10 Thank you again for complying with the Court's
11 instructions.

12 You will remember we reached what appeared to be the
13 end of the case yesterday. And, now, beginning this
14 morning, Mr. Redmond, are there further witnesses for the
15 State?

16 MR. REDMOND: No further witnesses for the State,
17 Your Honor. And with that the State respectfully rests
18 its case.

19 THE COURT: State rests. And, now, will there be
20 witnesses for the Defense?

21 MR. YOUNG: Yes, Your Honor.

22 THE COURT: All right. Mr. Young, call your first
23 witness.

24 MR. YOUNG: Your Honor, the Defense calls Kim Danzey.

25 KIM DANZEY, after being duly sworn, testified as

1 follows:

2 DIRECT EXAMINATION

3 BY MR. YOUNG:

4 Q. Good morning, Miss Danzey?

5 A. Good morning.

6 Q. Can you tell the ladies and gentlemen your name?

7 A. My name is Kim Danzey.

8 Q. Ms. Danzey, were you a friend of Ms. Bellany Clyburn?

9 A. Yes, sir, I was.

10 Q. How long how you known Bellany?

11 A. Known her since the sixth or seventh grade.

12 Q. Were y'all pretty good friends?

13 A. Yes, we were.

14 Q. Did you know about her and her relationship with
15 Thomas Stewart?

16 A. Somewhat.

17 Q. Can you tell me what you mean by somewhat?

18 A. I know the things that she told me.

19 Q. Did you know that they had an off again, on again
20 relationship?

21 A. Yeah.

22 Q. Did Ms. Clyburn ever ask you to go by Mr. Stewart's
23 house?

24 A. Yes.

25 Q. What did she ask you?

1 A. To go by Mr. Stewart's house.

2 Q. And do what?

3 A. Go by Mr. Stewart's house.

4 Q. For what reason?

5 A. I don't remember.

6 Q. Did she ask you to tell her what Mr. Stewart was
7 doing?

8 A. No.

9 Q. Did you call her after going by his house?

10 A. I was on the phone with her.

11 Q. You were on the phone with her when you went by
12 there?

13 A. Yeah.

14 Q. Would you tell her things like whether or not Mr.
15 Stewart was there?

16 A. I don't remember.

17 Q. Thank you, Miss Danzey.

18 MR. YOUNG: That's all the questions I have.

19 THE COURT: Is there cross-examination?

20 MR. REDMOND: Beg the Court's indulgence.

21 CROSS-EXAMINATION

22 BY MR. REDMOND:

23 Q. Do you know anything about what happened at Pageland
24 Place Apartments on January 1st 2010?

25 A. No. just what I heard.

1 Q. But as far as your own personal knowledge?

2 A. I wasn't there.

3 Q. So you really can't tell us what happened?

4 A. Exactly. No.

5 MR. REDMOND: Nothing further, Your Honor.

6 THE COURT: All right. Is there redirect?

7 MR. YOUNG: No, sir.

8 THE COURT: All right, ma'am, you may step down.

9 You're free to leave if you wish. You're not required to
10 leave but you're free to leave. Please call your next
11 witness.

12 MR. YOUNG: Your Honor, the Defense calls Sharon
13 Rivers.

14 THE COURT: Please come forward and take the oath of
15 a witness.

16 SHARON RIVERS, after being duly sworn, testified
17 as follows:

18 DIRECT EXAMINATION

19 BY MR. YOUNG:

20 Q. Good morning Ms. Rivers?

21 A. Good morning.

22 Q. Will you please tell the ladies and gentlemen your
23 name for the record?

24 A. Sharon Rivers.

25 Q. Ms. Rivers, are you related to Melissa Stewart?

1 A. Yes, I am.

2 Q. And how are you related to her?

3 A. First cousins.

4 Q. Ms. Stewart, I'm going to kind of cut straight to it.
5 Was there a time when you found out about Melissa
6 Stewart's car being parked at a church?

7 A. Yes.

8 Q. Can you tell me about that?

9 A. I heard it come across the scanner like between three
10 to four o'clock in the morning. And she was like, 'call
11 Melissa and see if her car broke down'. So I did that,
12 and I asked Melissa if her car broke down and she said no.
13 And so she was like how you get here and I told her the
14 direction that I came from the other way, White Plains
15 Church Road.

16 And we met up there and parked the car up under a
17 tree. So we sit and waited until both of them pulled up
18 and they spotted me sitting there. So ---

19 Q. Who pulled up?

20 A. Bellany and Thomas on the white Cadillac. And they
21 saw us and turned around. We followed them. Then they
22 went down the road, White Plains Church Road. Turned
23 around, came back and we all got out the car and was
24 talking. And Melissa just kept telling Bellany, 'Why
25 don't you just leave him alone and go on with your life

1 because you're better than that. You're a beautiful girl
2 because he's married and not going to leave me and my
3 family." You know and then she ---

4 MR. REDMOND: Your Honor, I'm going to object to
5 hearsay.

6 THE COURT: That's hearsay. All of that is hearsay.
7 Ma'am. Just a moment. You're not permitted to testify
8 about what other persons said or did -- well, actually
9 what other persons said. That's hearsay. And I'm going
10 to sustain that objection unless there is some exception
11 to the hearsay rule applies.

12 MR. YOUNG: Thank you, Your Honor. I'll move on.

13 BY MR. YOUNG:

14 Q. Did you witness and altercation between Miss Clyburn
15 and Mr. Stewart?

16 A. Well, she just told her give her her hundred dollars
17 back ---

18 MR. REDMOND: Your Honor, same objection.

19 THE COURT: Sustained.

20 BY MR. YOUNG:

21 Q. Not saying what anybody said. Did anything else
22 happen?

23 A. She just wanted and her hand and he kept it.

24 Q. She was swinging at him?

25 A. Yes.

1 Q. Did he ever swing back at her?

2 A. No. He had his hand in his pocket.

3 Q. What happened after that?

4 A. Nothing. I went home. They went home, and he went
5 to work.

6 Q. Ms. Rivers, were you up at the gym in Pageland on
7 December the 28th 2012?

8 A. Yes, I was.

9 Q. And what were you doing up there?

10 A. It coach the basketball team.

11 Q. Did you call Melissa Stewart?

12 A. After the fact. After my assistant coach got me and
13 said, "Your cousin ---"

14 MR. REDMOND: Your Honor, again, objection.

15 BY MR. YOUNG:

16 Q. You can't say what anybody else said, but did you
17 call Melissa Stewart?

18 A. Yes.

19 Q. Did you tell her to come up to the gym?

20 A. No.

21 Q. Did she come up to the gym?

22 A. No. Well, she came up earlier to talk to me when --
23 before all that altercation came about.

24 Q. So she was up there earlier in the day? Earlier in
25 the evening?

1 A. Prior to that. Maybe 20, 30 minutes before.

2 Q. Before the altercation in the parking lot?

3 A. Yes.

4 Q. Is that what you're talking about?

5 A. Yes.

6 Q. Do you know why she came up there?

7 A. She come to talk to me about getting her son a Game
8 Boy.

9 Q. Okay. Thank you, Ms. Rivers.

10 MR. YOUNG: That's all the questions I have.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. REDMOND:

14 Q. Just to be clear the first incident that you were
15 referring to, if I'm understanding you correctly the
16 Defendant [sic], Bellany Clyburn and the Defendant were
17 together?

18 A. Yes, sir.

19 Q. And you and Melissa Stewart followed them?

20 A. They came up, and she spotted my car, and yes, she
21 just drove up a little piece. She had never got out the
22 car. And then followed them and came back and then all of
23 us got out and talked.

24 Q. Okay. So this wasn't a situation that -- in other
25 words y'all went to where they were, correct?

1 A. I went to where her car was parked at.

2 Q. And where Thomas and Bellany were?

3 A. Right. They pulled up where I was.

4 Q. Okay.

5 MR. REDMOND: Nothing further.

6 THE COURT: Redirect.

7 MR. YOUNG: No, your Honor.

8 THE COURT: All right, ma'am, you may step down, and
9 you're free to leave if you wish to leave. Call your next
10 witness.

11 MR. YOUNG: The Defense would call Melissa Stewart.

12 THE COURT: Please come forward and take the oath of
13 a witness.

14 MELISSA STEWART, after being duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. YOUNG:

18 Q. Good morning, Ms. Stewart?

19 A. Good morning.

20 Q. Can you tell the ladies and gentlemen of the jury who
21 you are?

22 A. I'm Melissa Stewart.

23 Q. And how are you related to Thomas Stewart?

24 A. I am Thomas Stewart's wife.

25 Q. Ms. Stewart, I have to ask you. Why are you here?

1 A. I'm here because I love my husband. That's my
2 children's father. We been married for 17 years. It
3 hadn't been an easy 17 years, but o love my husband. My
4 children love their father. I love him.

5 Q. In spite of everything?

6 A. In spite of everything. The same way that anyone
7 else loves anybody that they love in spite of.

8 Q. Miss Stewart, was Thomas Stewart ever violent towards
9 you?

10 A. No, sir.

11 Q. He never hit you?

12 A. No, sir. .

13 Q. Did he beat you when you didn't do what he told you
14 to do?

15 A. No, sir.

16 Q. Would you have stood for that?

17 A. No, sir.

18 Q. Ms. Stewart, you heard your cousin, Sharon Rivers,
19 talk about an incident that was out on White Plains Church
20 Road?

21 A. Yes.

22 Q. Is there anything else you want to add to what she
23 said about that?

24 A. That night I got a call from my aunt. She had have
25 him an ultimatum where he was supposed to leave by the

1 first of the year, and this was 2008. It was supposed to
2 be 2009, the next year. And that's when I told her that
3 she should go on with her life because that's my husband.
4 You're a beautiful girl, and get somebody that can love
5 you and your kids for you because it will never work.

6 I never put her down. I never belittled her. I
7 never done anything bad towards her. I would speak to
8 everybody in the family, cousins or whatever friends.
9 They wouldn't speak back, but I never did nothing to hurt
10 nobody. Never. But I was looked at as the bad one, and
11 this a married man which is my husband, rightfully.

12 Q. Ms. Stewart, in April the 26th of 2009 did something
13 happen to you?

14 A. Yes, Bellany Clyburn came to my job and attacked me
15 with a tire iron that she had in the side of her door.
16 And she told me that, "Bitch, I'm going to kill you
17 because Thomas Stewart is mine." And she hit me over and
18 over and over in my head and in my temple. And just like
19 I told her when we came to Court if it had not been for
20 God I would be dead because you don't hit somebody with a
21 lug wrench, a tire iron, and think that it can be okay.
22 You don't do that.

23 I never, ever did nothing to her even though she was
24 messing with my husband. Never. Never attacked her.
25 Never tried to fight her. For what? Never did that. But

1 for her to do something like that that really hurt me to
2 my heart.

3 Q. Miss Stewart, when did y'all to go Court?

4 A. We went to Court in December of 2009.

5 Q. Miss Stewart, I'm going to show you what been marked
6 as Defendant Exhibits 94, 95, 96 and 97, a series of
7 photograph. Don't say anything about them. Just let me
8 know if you recognize those?

9 A. Yes.

10 Q. Ms. Stewart, on Defense Exhibit Number 94, can you
11 tell me what that is?

12 A. That's a picture of where she hit me in my temple
13 with the tire iron and gashed me in my head several times.
14 Hit me in the top of my head where it was split open to
15 there. The doctor had to sew it back together.

16 MR. YOUNG: Your Honor, at this time I offer Defense
17 Exhibit Number 94 into evidence?

18 MR. REDMOND: Your Honor, I actually don't have any
19 objection together any of those pictures.

20 THE COURT: Without objection.

21 MR. YOUNG: Your Honor, in that case I'd offer
22 Defense 95, 96, and 97 into evidence as well.

23 THE COURT: Ninety-four, 95, 96 and 97 in evidence
24 without objection.

25

1 (WHEREUPON, Defendant's Exhibit Nos. 94 through 97
2 were admitted into evidence.)

3 MR. YOUNG: Ms. Stewart, let me show you what's been
4 entered in evidence as Defense Exhibit Number 95, and ask
5 you if you recognize this?

6 A. Yes.

7 Q. Could you tell the ladies and gentlemen what that is?

8 A. That's the tire iron that she attacked me with.

9 Q. This is Defense 96. Can you tell me what these are?

10 A. That's the blood in the car.

11 Q. Defense 97, can you tell me what that is?

12 A. Blood on the back of the car and on the door and the
13 window.

14 Q. How did your blood get on the back of the car?

15 A. Because my head was busted open and gashing out with
16 blood.

17 MR. YOUNG: May I publish?

18 THE COURT: You may.

19 BY MR. YOUNG:

20 Q. Ms. Stewart, I'm going to direct your attention to
21 December 17th of 2009. Do you recall that day?

22 A. Yes, sir.

23 Q. And how do you recall that day?

24 A. My grandmother called me and told me that my husband.

25 MR. REDMOND: Your Honor, I'm going to object to

1 anything anybody else said.

2 BY MR. YOUNG:

3 Q. You can't say what anybody else said? Did you get a
4 call about ---

5 THE COURT: Just a moment, counsel.

6 MR. YOUNG: I apologize.

7 THE COURT: And just explain to the jury. Ladies and
8 gentlemen, you've already heard this witness testify to
9 some things that were hearsay that was unobjected to. I
10 just would say to you the way the Court operates is that
11 it's not the Judge sits here and sees or hears an
12 infraction and immediately responds to it. He let's the
13 lawyerS try their cases because if there is an objection
14 the Court will respond to it.

15 It it's unobjected to it comes in for whatever
16 reason. So I wanted you to understand why sometimes you
17 hear hearsay evidence that comes into evidence when there
18 has been no objection and the Court doesn't respond.
19 There was an objection on that last one, and you're
20 correct. So, ma'am, please don't testify about what
21 others told you. And testify about what you did but not
22 what you heard. Go ahead, sir.

23 BY MR. YOUNG:

24 Q. Mrs. Stewart, did you get a call about your car?

25 A. Yes. I got a car about my car being parked at

1 Pageland Place Apartments.

2 Q. And what did you do in response to that call?

3 A. I went to Pageland Place with the police. Went down
4 to Bellany Clyburn's apartment with the police and told
5 the police to get my keys so I can take my car back to
6 where it belongs. Thomas Stewart and Bellany Clyburn
7 stepped to the door, and the police took my keys from him.
8 He went inside in bed pants. She went in behind him,
9 closed the door and that was the end it.

10 Q. And what did you do after that?

11 A. What did I do after that? I went home.

12 Q. Did you stay at your house?

13 A. I stayed at my house.

14 Q. Did Thomas ever come back to your house?

15 A. When I let him come back that was on Saturday.

16 Q. Was that about three days later?

17 A. About three days later. Whatever day that was she
18 got out of jail. He stayed there from that Saturday.
19 Saturday night he came back home.

20 Q. Thank you, Mrs. Stewart. I don't have any further
21 questions for you.

22 THE COURT: Cross-examination.

23 MR. REDMOND: Thank you, Your Honor. May it please
24 the Court.

25 CROSS-EXAMINATION

1 BY MR. REDMOND:

2 Q. Kind of work backwards. I want to make sure I'm
3 clear. 17th of December of '09 that's when the -- I guess
4 I don't even want to call it an incident. That's when you
5 had to go to the apartment to get your -- to Pageland
6 Place Apartments to get your keys?

7 A. Correct.

8 Q. Okay. And you took law enforcement with you. And at
9 that time you did not engage in any altercation with
10 anyone? You got your keys and ---

11 A. No, I didn't get my keys. The police ---

12 Q. The police got your keys.

13 A. I was in the back of the car the whole time.

14 Q. Okay. Well, again, you got your keys back, and they
15 both went back into her apartment, correct?

16 A. Yeah. And ---

17 Q. In his bedroom.

18 A. In his bedroom. With her behind and closed the door.

19 Q. Okay. Let me ask you this then. This didn't occur
20 on the 28th of December. We can agree the 28th of
21 December is 11 days later, correct? I mean that's simply
22 math. The 17th to the 28th is 11 days?

23 A. I'm telling you what happened.

24 Q. Exactly. Because you hadn't said anything from the
25 17th forward and that's fine. But let me move on. You

1 made the comment when you first started testifying that
2 the reason you had testified on your husband's behalf is
3 because of your love for him and your children. Isn't
4 that pretty much what you said?

5 A. Correct.

6 Q. You are aware Miss Clyburn had children?

7 A. Most definitely.

8 Q. Matter of fact you're also aware, I don't know if you
9 testified to this or not, but you're also aware that one
10 of her children is also your husband's child? You're
11 aware of that? When did you become aware of that?

12 A. I'm not sure.

13 Q. Okay. And I need you to -- you're nodding. We need
14 verbal responses so the court reporter can pick up what
15 you're saying. But you just said you weren't sure?

16 A. Not sure. That was a long time ago.

17 Q. You found out a long time ago?

18 A. Yes, sir.

19 Q. So and then you talked about the incident which
20 happened in April of 2009. And in fact Bellany Clyburn
21 was prosecuted for what happened to you with?

22 A. Somewhat.

23 Q. Well, you were in Court when she pled guilty, if I
24 recall, weren't you?

25 A. Yes.

1 Q. Okay. And you had the opportunity to address the
2 Court about your feelings?

3 A. Yes.

4 Q. Correct, okay. And if I recall correctly she
5 actually had to go to jail for I think a couple weeks
6 after her plea of guilty, correct?

7 A. Correct.

8 Q. And if I recall correctly I think she may have pled
9 guilty in November and got out of jail in the middle of
10 December. Something like that; is that correct?

11 A. I thought we went to Court in December. I'm not sure
12 of all that.

13 Q. But here's the thing. Then after she gets out of
14 jail he's right back over there with Bellany Clyburn?

15 A. Yes.

16 Q. Drove your door to go see Bellany Clyburn?

17 A. He drove his car. It's in my name.

18 Q. Okay. Well, it was -- you felt enough of a
19 possession of that car that you had the police go get the
20 keys to it?

21 A. Correct. It belonged home.

22 Q. I understand that, but what I'm saying is that when
23 you say that it was y'all car, and obviously ---

24 A. I didn't drive it.

25 Q. Okay. You didn't drive the car. Supposedly it was

1 his car, but you had enough of an interest in the car that
2 you went and got the police to go get the keys to a car
3 that you say you didn't drive?

4 A. Correct.

5 Q. I'm just asking a question. That's all. Just trying
6 to ask a question. Now, you were not out there on the 1st
7 of January of 2010?

8 A. No, sir.

9 Q. When was the last time that you had seen the
10 Defendant prior to January the 1st 2010? Did you see him
11 on the 31st?

12 A. I don't remember.

13 Q. Did you see him on the 29th or the 28th, 27th?

14 A. I don't remember. That process right there I try to
15 black it out. I really do.

16 Q. All right. Let's try to unblock it just briefly?

17 A. I don't remember.

18 Q. So you're telling me that you are aware that your
19 husband was arrested for murdering Bellany, for killing
20 Bellany Clyburn, for murdering her on the 1st of January
21 2010, aren't you?

22 A. Of course.

23 Q. I think if I'm not mistaken you went -- you came to
24 the police department or in the vicinity of the police
25 department, didn't you, at that time?

1 A. To the police station to talk to Larry Brown, yes.

2 Q. Well, so you were aware that he was arrested. So you
3 mean to tell me that you're telling us and this jury today
4 that the date that you saw your husband get arrested -- I
5 mean you saw him, you knew he was arrested for killing
6 Bellany Clyburn, you cannot tell us when the last time you
7 saw him before that?

8 A. I don't remember.

9 Q. Okay. You can't tell us anything about what happened
10 in that apartment, can you?

11 A. Of course not. I wasn't there. No, I can't tell
12 you.

13 Q. Exactly. So with everything you're testifying to ---

14 A. All I can tell you is what happened to me.

15 Q. Exactly, what happened to you. But you can't testify
16 as to what he did, what you saw, what he did that day.
17 You weren't there?

18 A. All I can tell you is what happened to me.

19 Q. Okay. And that's fair enough. I'm not trying to
20 argue with you. I'm just trying to establish the point
21 that as it relates to the murder of Bellany Clyburn you
22 cannot tell us what happened?

23 A. All I can tell you is what happened to me.

24 Q. Is that a yes or no, ma'am?

25 A. All I can tell you what happened to me.

1 MR. REDMOND: Your Honor, I would say unresponsive,
2 but it would do no good with that. I have no further
3 questions for this witness.

4 THE WITNESS: Thank you..

5 THE COURT: Is there any re-direct.

6 MR. YOUNG: No, Your Honor.

7 EXAMINATION BY THE COURT

8 BY THE COURT:

9 Q. All right, ma'am, you testified about children. How
10 many children do you have?

11 THE WITNESS: We have four boys. A 16 year old, a
12 nine year old, and a set of twins that are six.

13 THE COURT: I'm sorry. I didn't catch those ages.
14 Tell me that again, ma'am.

15 THE WITNESS: Sixteen, nine and a set of twins that
16 are six. All boys.

17 THE COURT: All right. And those are your children
18 or his children? Y'all have four children together?

19 THE WITNESS: You have four children, yes, sir.

20 THE COURT: Are those the Defendant's children as
21 well?

22 THE WITNESS: Yes, sir.

23 THE COURT: Okay. Now, based on the questions I
24 asked are there further questions from either side on
25 those issues?

1 MR. YOUNG: No, sir.

2 MR. REDMOND: No, Your Honor.

3 THE COURT: Ma'am, please watch your step as you exit
4 the box, and you may return to your seat. Please call
5 your next witness.

6 MR. YOUNG: Your Honor, the next three witnesses are
7 in one sheriff deputy's car on the way here.

8 THE COURT: All right. Let's do this, ladies and
9 gentlemen. We, as we move towards the conclusion of this
10 case and prepare the charge for you as well as make sure
11 the evidence is in order, we're going to start that
12 process now so that time would not be wasted while we wait
13 on other witnesses to be brought in.

14 I'm going to let you return to the jury room. Please
15 don't discuss this case. If you wish to go outside and
16 take a break we will make that available to you, and as
17 soon as you're ready to proceed then we'll go forward.
18 All right. We'll remain where we are while you retire to
19 the jury room.

20 (WHEREUPON, the jury panel was excused from the
21 courtroom at 10:31 a.m.)

22 THE COURT: Court in recess now subject to the
23 arrival of the final witnesses.

24 (WHEREUPON, Court was in recess at 10:32 a.m. and
25 reconvenes at 10:55 a.m.)

1 THE COURT: We are told that our witnesses have
2 arrived. So please bring in the jury.

3 (WHEREUPON, the jury panel enters the courtroom at
4 10:56 a.m.)

5 THE COURT: All right. Welcome back, ladies and
6 gentlemen. Our witnesses have arrived. And, counsel,
7 please call your next witness.

8 MR. YOUNG: Your Honor, the Defense calls Sherry
9 MacLamore.

10 THE COURT: Please come forward and take the oath of
11 a witness. Please come right through here.

12 SHERRY MACLAMORE, after being duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. YOUNG:

16 Q. Good morning, Ms. MacLamore. Please tell the ladies
17 and gentlemen of the jury your name?

18 A. My name is Sherry MacLamore.

19 Q. And where do you work?

20 A. Pageland Police Department.

21 Q. And in what capacity do you work there?

22 A. I'm the Chief Dispatcher.

23 Q. As the Chief Dispatcher do you keep records?

24 A. Yes, I do.

25 Q. Are those records kept during the normal course of

1 business?

2 A. Yes, sir, they are.

3 Q. Are you the custodian for those records?

4 A. Yes, sir, I am.

5 Q. I'm going to show you what has been marked as Defense
6 Exhibit Numbers 92 and 93 and I ask if you recognize
7 those?

8 A. Yes, sir.

9 Q. Can you please tell me what those are?

10 A. These are our daily radio logs.

11 Q. Are those the logs you kept in the normal course of
12 business?

13 A. Yes, sir. Everything is hand written.

14 MR. YOUNG: Your Honor, at this time I would offer
15 Defense Exhibit Numbers 92 and 93 into evidence.

16 MR. REDMOND: Without objection.

17 THE COURT: So ordered, 92 and 93 for Defense in
18 evidence.

19 (WHEREUPON, Defendant's Exhibit Nos. 92 and 93 were
20 admitted into evidence.)

21 MR. YOUNG: Your Honor, that would be all the
22 questions that I have of Ms. MacLamore.

23 THE COURT: Is there cross-examination?

24 MR. REDMOND: None.

25 THE COURT: Then, ma'am, you are free -- please watch

1 your step. You are free to leave if you wish. Have a
2 good day.

3 MR. YOUNG: Your Honor, the Defense would call
4 Randall Mullis.

5 THE COURT: Please come forward and take the oath of
6 a witness.

7 RANDALL MULLIS, after being duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. YOUNG:

11 Q. Mr. Mullis, could you please tell the ladies and
12 gentlemen of the jury your name?

13 A. Randall Mullis.

14 Q. And where do you work?

15 A. Pageland Police Department.

16 Q. And in what capacity do you work there?

17 A. Police officer.

18 Q. Mr. Mullis, let's cut straight to it. I'm handing
19 you what's been entered in evidence as Defense Exhibit
20 Number 93 and ask if you recognize that?

21 A. Yeah, I recognize the call number.

22 Q. Is that a daily log sheet from the Pageland Police
23 Department.

24 A. Yes, sir.

25 Q. Have you reviewed that at my request?

1 A. Yes.

2 Q. Is your unit number on there?

3 A. Yes, sir.

4 Q. Can you please tell the ladies and gentlemen what
5 date that flay radio log is for?

6 A. It's for 12/17/2009.

7 Q. And at what time is your unit number at the Pageland
8 Place Apartments?

9 A. The time I arrived at Pageland Place Apartments was
10 2352. Of course, military time is 11:52.

11 Q. And, Mr. Mullis, what were you doing out at Pageland
12 Place Apartments at 11:52? Can you tell from the ten
13 codes what was going on?

14 A. We were dispatched there in reference to a domestic.

15 Q. What apartment number did you go to?

16 A. Apartment [REDACTED].

17 Q. Okay. How about later on after that? Were you ever
18 at [REDACTED]?

19 A. Yes, [REDACTED].

20 Q. And do you recall what you were doing at [REDACTED]?

21 A. Due to high call volume say like year 2009 I don't
22 remember.

23 Q. Okay. You just know that you were there at that
24 time?

25 A. Yes, sir.

1 Q. On that day?

2 A. Yes, sir.

3 Q. Okay. I'm going to show you what's been entered in
4 evidence as Defense Exhibit Number 92 and ask if you
5 recognize that?

6 A. Yes, sir..

7 Q. And is that another copy of a daily log, radio log?

8 A. Yes, sir.

9 Q. And is that -- what date does that start?

10 A. 12/31/2009.

11 Q. Have you reviewed those logs at my request?

12 A. Yes, sir.

13 Q. And directing your attention to about 11:30 in the
14 evening on December the 31st, were you out at Pageland
15 Place Apartments?

16 A. Yes, at 2332 I was.

17 Q. And that's 11?

18 A. 11:32 p.m.

19 Q. 11:32 p.m.?

20 A. Yes, sir.

21 Q. Thank you very much, Mr. Mullis. That's all the
22 questions I have.

23 MR. REDMOND: No questions, Your Honor.

24 THE COURT: All right. Then, sir, you made step down
25 as well.

1 MR. YOUNG: Your Honor, the Defense will call
2 Kimberly Little.

3 THE COURT: Please come forward and take the oath of
4 a witness.

5 MR. YOUNG: Your Honor, may I publish?

6 THE COURT: You may give those to the jury, yes.

7 KIMBERLY LITTLE, after being duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. YOUNG:

11 Q. Good morning, Miss Little?

12 A. How you doing.

13 Q. Can you please tell the ladies and gentlemen your
14 name?

15 A. Kimberly Little.

16 Q. Miss Little, where do you live?

17 A. Pageland Place Apartments.

18 Q. Did you live there on December the 31st? January of
19 2009? January 1st 2010?

20 A. Yes, sir.

21 Q. Did you witness an incident between Mr. Stewart and
22 Miss Clyburn?

23 A. Yes, sir.

24 Q. Did you go to the police department and give a
25 statement?

1 A. Yes, sir.

2 Q. Is that statement in writing?

3 A. Yes, sir.

4 Q. Was it signed by you?

5 A. Yes, sir.

6 Q. Do you recall what happened?

7 A. Yes, sir.

8 Q. Can you tell us what happened?

9 A. Well, from what I know, what I seen it was just her
10 son, her oldest son, was bamming on the door like just
11 knocking real hard. So I got out of my bed and went to
12 the door. All he was just screaming like, 'Help my mom.
13 Help my mom. He won't leave out our house.' And so my
14 mom was coming around the corner at the same time. So
15 when we got outside we just -- like we could hear them in
16 her house like arguing or whatever.

17 And then somehow it was just arguing there inside,
18 and somehow they came out. And just from what I seen just
19 stabbed her.

20 Q. Did it all happen pretty fast?

21 A. Yes, sir.

22 Q. Did you see Miss Clyburn with anything in her hand?

23 A. Yes, sir.

24 Q. What did she have in her hand?

25 A. She had a knife.

1 Q. Was she swinging that knife?

2 A. No, sir.

3 Q. You didn't see her swinging?

4 A. No, sir.

5 Q. Have you had conversations with Investigator Watkins?

6 A. Yes, sir.

7 Q. Did you ever tell him you saw her swinging that
8 knife?

9 A. No, sir.

10 Q. Thank you, Miss Little. That's all the question I
11 have at this time. Answer any questions the State would
12 have.

13 THE COURT: All right, ma'am. We'll let you remain
14 seated. There may be other questions for you.
15 Cross-examination.

16 MR. REDMOND: May it please the Court. Before I
17 begin I'm going to mark -- I think this is going to be
18 State's 108.

19 (WHEREUPON, State's Exhibit No. 108 was marked for
20 identification only.)

21 CROSS-EXAMINATION

22 BY MR. REDMOND:

23 Q. I'm going to show you what's been marked as State's
24 108. Can you take a look at that and see if you recall
25 giving that statement. And just let me know once you've

1 had a chance to review it.

2 A. I have.

3 Q. Is that an accurate copy of the statement you gave?

4 A. Yes, sir.

5 Q. And I think, and it wasn't established on direct
6 examination, but you gave -- I guess use talked to the
7 investigator for the Defense like in June of this year ---

8 A. Yes, sir.

9 Q. --- for the first time. When did you give that
10 written statement?

11 A. About, well, I say it happened when I went to the
12 police station.

13 Q. On January 1st?

14 A. Yes, sir.

15 Q. 2010?

16 A. Yes, sir.

17 Q. So you gave this statement the same day that it
18 happened?

19 A. Yes, sir.

20 MR. REDMOND: Now, if there is no objection I would
21 move to introduce State's 108 at this time.

22 MR. YOUNG: I would object to the prior statement.
23 It would be improper.

24 BY MR. REDMOND:

25 Q. Well, is there any mention of a knife in Bellany's

1 hand in that first statement?

2 A. No, sir.

3 THE COURT: Is there objection?

4 MR. YOUNG: Yes, sir.

5 THE COURT: Overruled.

6 MR. REDMOND: Thank you, Your Honor.

7 BY MR. REDMOND:

8 Q. Let me just read to you ---

9 THE COURT: Let's take a moment and let's mark it,
10 please.

11 MR. REDMOND: Yes, oh, I think it's been marked, but
12 I think it needs to be admitted. I'm sorry.

13 (WHEREUPON, State's Exhibit No. 108 was admitted into
14 evidence.)

15 BY MR. REDMOND:

16 Q. Now, I'm going to read your statement, and you tell
17 me if I'm reading it wrong, okay?

18 A. Okay.

19 Q. All right.

20 MR. YOUNG: Your Honor, I don't think that's proper
21 either.

22 THE COURT: Just a moment. It's in evidence and,
23 thus, you may publish it if you wish.

24 MR. REDMOND: And I've asked that if I say anything
25 wrong the Defense has a copy and Ms. Little can correct

1 me.

2 THE COURT: Overruled. You may publish it.

3 MR. REDMOND: Thank you.

4 BY MR. REDMOND:

5 Q. Now, you were 17 at the time that you gave this
6 statement, correct?

7 A. Yes, sir.

8 Q. And I'm going to start at the beginning. 17 years of
9 age. You live in Pageland Place Apartments. Your
10 apartment, and you weren't asked, you were in [REDACTED]?

11 A. Yes.

12 Q. And was that the apartment where Bellany Clyburn came
13 to rest after she collapsed?

14 A. Yes.

15 Q. You say her son was bamming on the front door. "And
16 I went to it and then I seen her run out saying, 'get him
17 out of my house. He won't leave me. He beating me'.
18 Then he came out. He was angry, bleeding and he grabbed
19 her by the back of her head and started stabbing her over
20 and over. Then she fell to the ground. She started -- he
21 started stabbing her again. Then he jumped in a white
22 Surburban and took off.

23 She made it to our porch, and Bellany collapsed. So
24 I got her a pillow and cover to put over her until someone
25 came over to help. But the car he was in was there ever

1 since yesterday. He had a very low hair cut, some light
2 blue jeans, pants, and a blue coat." Is that the
3 statement that you wrote at Pageland P.D. on January 1st
4 2010?

5 A. Yes, sir, I did.

6 Q. And is that accurate to the best of your -- at the
7 time you gave this statement did you actively portray what
8 you saw?

9 A. Yes, sir.

10 MR. REDMOND: I have nothing further.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MR. YOUNG:

14 Q. Ms. Little, why didn't you tell the police that you
15 saw a knife in Bellany Clyburn's hand?

16 A. Because I was in shock, and it was a lot going on at
17 the time.

18 Q. Are you here trying to help Mr. Stewart? Are you
19 here trying to help Mr. Stewart?

20 A. What do you mean by that.

21 Q. Are you lying to help him?

22 A. No.

23 Q. Did you see a knife in her hand?

24 A. Yes, sir.

25 Q. Did anybody ask you about seeing a knife in her hand

1 when you went to the police department?

2 A. No, sir. They just asked me for my statement.

3 Q. When you gave your statement were you in a room by
4 yourself?

5 A. No, sir.

6 Q. Who else was in the room with you?

7 A. Also my grandmother and my cousin and my mom.

8 Q. Can you tell me who your grandmother is?

9 A. Carrie Day.

10 Q. And who is your mom?

11 A. Juanita Little.

12 Q. And who is your cousin?

13 A. Melissa Little.

14 Q. Y'all were all in the same room?

15 A. Yes, sir.

16 Q. And you all gave your statements together?

17 A. Yes, sir.

18 Q. Thank you, Miss Little.

19 MR. YOUNG: That's all I have.

20 THE COURT: All right. That was the conclusion of
21 redirect, but was there new issue on redirect that needs
22 to address.

23 MR. REDMOND: Just briefly, Your Honor.

24 RECROSS-EXAMINATION

25 BY MR. REDMOND:

1 Q. The other people that were there and what not, again,
2 when you gave your -- did you see what took place?

3 A. Yes, sir.

4 Q. At any time, because you were asked about the knife
5 in the hand again so I'll ask you. At any time did you
6 see Bellany Clyburn attack the Defendant?

7 A. No, sir.

8 Q. Was Bellany Clyburn running away from the Defendant?

9 A. Yes, sir.

10 Q. Was Bellany Clyburn asking to get him off of her?

11 A. Yes, sir.

12 MR. REDMOND: I have nothing further.

13 THE COURT: Now, this is your witness, so final
14 redirect, counsel, if any.

15 MR. YOUNG: No, Your Honor.

16 COLLOQUY

17 THE COURT: All right. Ma'am, you may step down.
18 Watch your step, and you're free to leave if you wish.
19 Please call your next witness.

20 MR. SECOR: Your Honor, we need to make some
21 preparations.

22 THE COURT: All right. Counsel, let's come up and
23 talk about scheduling if we may a moment, please. Ladies
24 and gentlemen of the jury, we will be right back with you.

25

1 (WHEREUPON, a bench conference was held off the
2 record in the presence of the jury, but out of the
3 hearing of the jury.)

4 THE COURT: All right. Ladies and gentlemen, we need
5 to stand down for a few moments and resolve or discuss a
6 matter of law. What I'm going to ask you to do is I'm
7 going to return you to your jury room for a few minutes.
8 I know you just had a break, but please, enjoy another
9 one. As soon as we're able to conclude our matter then we
10 will know whether we're going to stop and go to lunch
11 early and come back and argue and charge or whether we
12 will proceed in some other fashion.

13 So I can't tell you that right now. I'll know in a
14 few moments. So enjoy your break, and we'll send for you
15 as soon as we can make these decisions. If you wish to go
16 outside we will make that opportunity as well.

17 (WHEREUPON, the jury panel was excused from the
18 courtroom at 11:56 a.m.)

19 (WHEREUPON, open Court was in recess at 11:56 a.m.)

20 IN CHAMBERS CONFERENCE

21 (WHEREUPON, an in chambers conference was held on the
22 record.)

23 THE COURT: Hattie, we'll give you a moment or two to
24 get set up.

25 MR. YOUNG: Your Honor, we have only had that

1 situation arise once before. In that situation pre-trial
2 and my client told me directly that he intended to take
3 the stand and not be honest and he intended to lie. And
4 as what I had to do under those circumstances was to move
5 to be relieved. And the argument here is grant that or
6 not. But in that particular case -- in this particular
7 case it's not that straight forward. I think it's a much
8 closer issue, so I'm at a loss.

9 This situation is a much more mixed situation in that
10 Mr. Stewart has indicated to me that he wants to testify.
11 I told him that's his choice. I'm not going to stand in
12 his way. If that's what he wants to do it's over my --
13 against my advice. I don't know that I can object or
14 what, but I advised him not to.

15 There are matters that he wishes to discuss during
16 his testimony which I don't know. I wasn't there. He is
17 not directly told me something -- that he intends to say
18 something that I know for a fact to be untrue. Having
19 said all that I think I would protect myself by moving to
20 be relieved.

21 THE COURT: All right. And, Mr. Secor, co-counsel,
22 do you have anything that you wish to say while we're back
23 here in chambers on this issue?

24 MR. SECOR: I share Boyd's concerns. You know, when
25 I first started working on this case I thought that Thomas

1 was dishonest with us about some things. But my opinion
2 about has changed. In the coarse of our investigation
3 I've been actually shocked by a number of thing that he
4 told us that we've been able to confirm.

5 But I think that he is extremely paranoid, and I
6 think that the things that he wants to testify to are
7 things that aren't even relevant. But his paranoia is
8 such that thinks that they need to be said, and we have
9 been unable to convince him that by testifying to those
10 things all he will really succeed in doing is exposing
11 himself to cross-examination.

12 THE COURT: All right. Your motion is noted for the
13 record, but given the state of the charges against the
14 Defendant as well as the lateness of these proceedings
15 when this matter arises cannot relieve you at this time
16 for several reasons. But first and foremost the Defendant
17 on trial for murder has exposure to be sentence to up to
18 life in prison.

19 And the substance of those charges and the high
20 stakes which he faces are too great for him to proceed
21 without counsel. There are no other attorneys in the
22 courtroom or ready to come stand in and to have him
23 deliver final argument as well as render his own testimony
24 and be attorney for himself while he renders his own
25 testimony and respond urgently to objections which must

1 surely come from the other side would be an impossible
2 feat. Thus, it would highly prejudice him to lose his
3 counsel at this time.

4 Secondly, you have not advised me of some specific
5 lie that you believe the Defendant intends to perpetrate
6 or to put forth. The -- in the absence of that I don't
7 find that the conflict is sufficiently ripe that the Court
8 can simply release or dismiss you, relieve you, at this
9 juncture particularly given the risk facing the Defendant
10 which is what I just talked about.

11 And, thirdly, the Defendant has a right to drive the
12 decisions and make the decisions with regard to his own
13 case. We can advise him as lawyers. We can tell him what
14 the law is, and he may choose to disregard it. He may
15 choose to accept it. But ultimately he decides his own
16 fate as far as the strategy and tactics of his defense.

17 And, thus, I would hesitate to attempt to
18 circumscribe him or tell him he can't do something. With
19 that said, now, I ask you do you wish for me to have a
20 discussion with the Defendant. He's not in the room,
21 obviously. Our record will reflect that. We're back in
22 chambers and only Defense counsel is present along with
23 the court reporter and my law clerk.

24 So do you wish for this issue to be discussed by the
25 Court with the Defendant directly? And if so in what

1 fashion? What would you have the Court to say?

2 MR. YOUNG: Your Honor, I would suggest that the
3 Court -- I think you've already cautioned him about
4 testifying, and I would, out of an abundance of caution,
5 suggest that maybe the Court could consider a competency
6 inquiry prior to doing it. That's all I've got.

7 THE COURT: All right. I may ask him some questions
8 about his competencies including medications, orientation
9 to time and place. It would be something that would be
10 relatively superficial because, first of all, I don't
11 claim to be a forensic examiner.

12 But, secondly, of my observations of the Defendant he
13 is well oriented to time, place, issue. He's intelligent.
14 He is well spoken, but nevertheless, out of an abundance
15 of caution what I will do. It will be my intention to go
16 back out, have that discussion with him outside of the
17 jury's presence, bring the jury back in, have him testify
18 if he wishes to do so.

19 I will ask him at the end of my competency questions
20 whether he intends to testify. And do you wish me to ask
21 him whether this is against your advice to -- so that the
22 record would reflect that he has full understanding of the
23 position you've taken with him. And as I'm sure your
24 discussions with him previously. I've not been on the
25 record, and this may be collaterally reviewed at some

1 time.

2 MR. YOUNG: I don't think that. No, sir.

3 THE COURT: Okay. Very good. Then we'll go forward.

4 COLLOQUY

5 (WHEREUPON, open Court reconvenes at 12:30 p.m.)

6 THE COURT: All right. All jurors are in the jury
7 room. Very good. Mr. Stewart, let me speak with you if I
8 may, sir, a moment or two. You now have reached the point
9 in the case where all other Defense witnesses have been
10 put up and testified. And I'll ask you, sir, before
11 Defense closes the case, have you made a decision of
12 whether or not you wish to testify?

13 MR. STEWART: Your Honor, yes, I have.

14 THE COURT: Before I ask you what that decision is I
15 want to ask. Yesterday we had a discussion about your
16 right to testify, and your right to remain silent. And
17 did you fully understand the discussion I had with you at
18 that time?

19 MR. STEWART: Yes, sir, Your Honor.

20 THE COURT: Okay. Do you have any questions today
21 about that discussion we had at the end of the day
22 yesterday?

23 MR. STEWART: No, Your Honor.

24 THE COURT: All right. And what is the decision that
25 you have made with regard to whether you wish to testify?

1 Are you going to testify?

2 MR. STEWART: Yes, sir, Your Honor.

3 THE COURT: You are?

4 MR. STEWART: Yes, sir, I am.

5 THE COURT: And let me ask you, sir. Is this your
6 decision that you have made to testify?

7 MR. STEWART: Yes, Your Honor, it is.

8 THE COURT: And have you had ample time to discuss
9 this issue with your attorneys?

10 MR. STEWART: No, not really. I guess then. Yes,
11 Your Honor.

12 THE COURT: Well, of course, this issue has been part
13 of your Defense now for months that ultimately we would
14 reach the point where you would either decide to testify
15 or not to testify. So are you telling me now that you've
16 not had ample time to discuss with your lawyer whether you
17 should or should not testify?

18 MR. STEWART: Oh, no. I thought you just asking me
19 yesterday for the first time. You asked -- I thought it
20 was the first time. I'm good. Yes, sir, Your Honor. We
21 had.

22 THE COURT: You had ample time with your lawyer?

23 MR. STEWART: Yes, sir.

24 THE COURT: And have you understood the things that
25 your lawyer has advised you about? Whether you should or

1 you should not testify?

2 MR. STEWART: Yes, sir.

3 THE COURT: And you understand that ultimately it's
4 your decision as to whether you will testify or not?

5 MR. STEWART: Yes, Your Honor.

6 THE COURT: And you're telling me that you wish to
7 testify?

8 MR. STEWART: Yes, Your Honor.

9 THE COURT: Now, let me ask you, sir. Today in the
10 courtroom are you taking any type of medications? You
11 take my medicine?

12 MR. STEWART: No, Your Honor.

13 THE COURT: All right. Are you under the influence
14 of any alcohol or drugs today?

15 MR. STEWART: No, Your Honor.

16 THE COURT: All right. Can you tell me today's date?

17 MR. STEWART: Today's date?

18 THE COURT: Yes.

19 MR. STEWART: December -- I'm sorry. January the
20 7th. Yes, it's 2010 -- 2012.

21 THE COURT: All right, sir. Let me ask you this, Mr.
22 Stewart. How far did you go in school, sir?

23 MR. STEWART: The tenth.

24 THE COURT: Okay. You have a G.E.D?

25 MR. STEWART: Yes, sir. I got one when I was

1 incarcerated I went to college.

2 THE COURT: What type of work did you do back when
3 this incident happened?

4 MR. STEWART: I was a professional gambler, and -- I
5 can't say it.

6 THE COURT: Yes, sir. The jury is not in the
7 courtroom. You can tell us what you did.

8 MR. STEWART: I sold drugs with Larry Brown.

9 THE COURT: Yes, sir. And, Mr. Brown, of course, you
10 say Larry Brown you're talking about the Chief of Police?

11 MR. STEWART: Yes, sir, I am.

12 THE COURT: And let me ask you, sir. Have you ever
13 had any mental health treatment, Mr. Stewart?

14 MR. STEWART: No, Your Honor, I haven't.

15 THE COURT: Have you ever been diagnosed by anyone as
16 being mentally ill or having some sort of emotional or
17 mental health issue?

18 MR. STEWART: No, Your Honor, I haven't.

19 THE COURT: Okay. And do you believe that you have a
20 mental health issue?

21 MR. STEWART: No, Your Honor.

22 THE COURT: Can you tell me who is the President of
23 the United States?

24 MR. STEWART: Obama.

25 THE COURT: All right. And let me ask you, sir.

1 Just your opinion of what is the Court's role; that is my
2 role in this proceeding here today? Well, from this trial
3 that week?

4 MR. STEWART: You're just like the officer or the
5 chief of this courtroom, but right now it's in the jury's
6 hands.

7 THE COURT: All right, sir. Very good. I'm going to
8 let you be seated. Let the record reflect that I had a
9 discussion with Mr. Stewart. This is not my first
10 discussion with him about his right to remain silent as
11 well as his right to testify.

12 He advises me that he intends to testify. He
13 understood yesterday that if he testified today he would
14 be under oath, and of course, would be required to tell
15 the truth; that he would be subject to cross-examination
16 in addition to direct examination.

17 I find that Mr. Stewart, although he was a little
18 confused on the date, he was in some components of the
19 date reasonably correct; that he is competent today; that
20 he is responsive to my questions. His affect is
21 appropriate here in the courtroom. He gave a correct
22 layman's description of the role of the Judge. And for
23 those reasons the Court is going to permit Mr. Stewart to
24 testify.

25 Based upon the decision that he has made, a fully

1 informed decision, to testify. What I would intend to do
2 would be to bring in the jury, have you call your witness,
3 Mr. Young proceed through direct examination and go to
4 cross-examination, and depending on the length of that
5 time we will have a bench conference to determine whether
6 we should send the jury to lunch, come back, and argue and
7 charge or how we would proceed because it is my
8 understanding that Mr. Stewart would be the last of the
9 Defense witnesses; is that correct?

10 MR. YOUNG: That is correct.

11 THE COURT: All right. And based upon the fact that
12 there maybe reply testimony we'll just have to see. We
13 would make that decision at that time whether or not we
14 would go on into reply. All right. So let's bring in the
15 jury, please. Counsel, while the jury is in coming in
16 step up just for a minute if you would.

17 (WHEREUPON, a bench conference was held off the
18 record, but out of the presence of the jury.)

19 (WHEREUPON, the jury panel enters the courtroom at
20 12:38 a.m.)

21 THE COURT: All right. We didn't forget about you
22 back there. We were resolving certain issues and we have
23 now concluded that. And, Mr. Young, please call your next
24 witness.

25 MR. SECOR: Your Honor, the Defense calls Thomas

1 Stewart.

2 THE COURT: All right, Mr. Stewart, please come
3 forward and take the oath of a witness.

4 THOMAS STEWART, after being duly sworn,
5 testified as follows:

6 THE COURT: All right. You may proceed.

7 MR. SECOR: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. SECOR:

10 Q. How you doing, Thomas?

11 A. I'm doing fine.

12 Q. Introduce yourself to the jury?

13 A. My name is Thomas Jeffery Stewart.

14 Q. Tell everybody where you're from?

15 A. I'm from Wadesboro, North Carolina. Been staying in
16 Jefferson, South Carolina for 16 years.

17 Q. Try to speak up a little bit, okay. Not too close to
18 the microphone. Just enough for it to pick up your voice.
19 And tell the jury about your wife?

20 A. My life, I'm a professional gambler.

21 Q. No. No. No. I said your wife?

22 A. Wife. She's a very caring and loving wife and.

23 MR. REDMOND: Your Honor, if I could, with the
24 microphone, if he can adjust it. I'm having trouble
25 hearing.

1 THE WITNESS: She's a remarkable wife. One that --

2 BY MR. SECOR:

3 Q. Tell the jury where you and Melissa met.

4 A. Me and Melissa worked -- we met at Tyson Food. Tyson
5 Food.

6 Q. When was that?

7 A. 1994, '95. No, it was '94. We met in '94.

8 Q. How long did you date before you got married?

9 A. A year. A year.

10 Q. One year?

11 A. Yes, sir.

12 Q. Do you remember when you asked her to marry you?

13 A. I asked her on my birthday -- two days before my
14 birthday so I could keep up with the anniversary and all
15 that stuff.

16 Q. And did she say, yes, the first time or did you have
17 to try to convince her?

18 A. Well, she was asking me a lot of questions: Did I
19 have a baby momma, have you ever been with a woman and all
20 that stuff. And I lied. I lied because I know that she
21 was one that never had a man. She was a virgin.

22 MR. REDMOND: Your Honor, I'm still having trouble
23 hearing.

24 THE COURT: Mr. Stewart, I'm going to get you to lean
25 up close to that microphone so we can. That will be good.

1 We can hear you better. Let's move to your next question,
2 please, sir.

3 BY MR. SECOR:

4 Q. And you and Melissa eventually had children, right?

5 A. Yes, we did.

6 Q. And you've been married for about 17 years?

7 A. Yes, we have.

8 THE COURT: Go ahead and pull that microphone to him
9 if you will so we can all be sure to hear you, Mr.
10 Stewart. You're a little bit soft spoken and it's
11 difficult to hear you.

12 BY MR. SECOR:

13 Q. And I guess it's no secret to anybody that you were
14 unfaithful to Melissa, right?

15 A. Yes, I was.

16 Q. And who were you unfaithful to Melissa with?

17 A. I have five -- I have four other baby mommas, and I
18 was unfaithful with all four of them.

19 Q. And one of those people was Bellany Clyburn, right?

20 A. Yes, sir, it was.

21 Q. And how long had you been spending time with Bellany
22 Clyburn?

23 THE COURT: Mr. Stewart, are you ready to go forward,
24 sir?

25 THE WITNESS: Eight years.

1 BY MR. SECOR:

2 Q. Eight years?

3 A. Yes.

4 MR. REDMOND: Your Honor, if I may stand during this?
5 I'm having trouble hearing this. Plus, in the way he's
6 sitting I'm having trouble seeing him?

7 THE COURT: And, Mr. Stewart, I realize that you are
8 facing the jury, but I ask if you would sit, please, and
9 change your position to you're speaking into the
10 microphone so we can all hear you in this courtroom.
11 Thank you.

12 BY MR. SECOR:

13 Q. So the answer to that was eight years; is that right?

14 A. Yes, sir.

15 THE COURT: Move closer to the microphone. That's
16 good right there.

17 BY MR. SECOR:

18 Q. The whole time you were seeing Bellany, am I correct,
19 you were married to Melissa?

20 A. Yes, I was.

21 Q. Okay. Tell the jury about your relationship with
22 Bellany over the course of that eight years?

23 A. I met her at CVS. She had been hearing about me
24 coaching baseball. She had been watching me cause she
25 used to work with Chesco. And she used to bring the

1 people out there. And she put a note on my car saying
2 that she wanted to see me. And she put her phone number
3 and I called her and I said, "I want to start taking you
4 to the gambling games with me cause his wife, she don't do
5 that. She's a Christian." And she said, "Any time," and
6 me and her started dating.

7 MR. REDMOND: Your Honor, I'm going to object to
8 hearsay.

9 THE WITNESS: It's not hearsay. Me and her -- I'm
10 telling you the story.

11 MR. REDMOND: Mr. Thomas ---

12 THE WITNESS: Okay. Okay.

13 THE COURT: Mr. Stewart, I'm going to sustain that.
14 Don't tell us what said.

15 THE WITNESS: Okay. Got you.

16 THE COURT: Tell us what you did.

17 THE WITNESS: Okay. Got you.

18 BY MR. SECOR:

19 Q. Let me just make sure that you get the question right
20 so that we don't have to be dealing with too many
21 objections. What I want you to tell the jury is about
22 your relationship?

23 A. Okay.

24 Q. Can't say what other people say ---

25 A. Got you.

1 Q. --- like the Judge told you.

2 A. Got you.

3 Q. Tell the jury about your relationship with Bellany?

4 A. Okay. It was always -- one of us always wanted to
5 control the other, always. We -- she bought me a phone to
6 keep in tab with me. I buy her a phone to keep tabs with
7 her. It was always about control. It was always she
8 wanted to control me. I had to answer the phone at home.
9 She had people riding by the house. If they seen my car
10 in the yard she would call me, "You better answer that
11 phone. You need to get out that house."

12 MR. REDMOND: Your Honor, hearsay.

13 THE WITNESS: I'm sorry. I'm sorry. I'm sorry.

14 THE COURT: Sustained. Go ahead to your next
15 question, counsel.

16 BY MR. SECOR:

17 Q. In April I think it was, of 2009, there was an
18 incident between Bellany and your wife, Melissa, correct?

19 A. It was.

20 Q. Okay. Now, you weren't there, so I'm not asking you
21 what happened cause you weren't there. But did your
22 relationship with Bellany change after that incident?

23 A. Yes, it did.

24 Q. Okay. Tell the jury room how your relationship with
25 Bellany changed after Bellany committed that assault and

1 battery on your wife?

2 A. It changed because I didn't want that to hurt no one
3 trying to control me because she -- it was like if I can't
4 have you nobody will. And when she went to my wife's job
5 and attacked her every time I went to gamble my friends
6 would say, "Why don't you leave that girl alone?"

7 MR. REDMOND: Your Honor, objection to hearsay.

8 THE WITNESS: Well, I was ---

9 THE COURT: Sustained.

10 THE WITNESS: I was told to leave her alone, and I
11 left her alone. We have a son, and I was coaching
12 baseball. I coach other people's kids. I was doing right
13 by everybody in the community. I was a community man, and
14 she understand that. She wanted to hurt me so bad to
15 where I had to keep running to her, running to her. Take
16 out warrants. No good. Do this. Do that. I couldn't
17 never shake her.

18 And when I tried to shake her I said, "Pack my
19 stuff." She would pack my stuff, cut my clothes up. Do
20 all kinds of stuff, and I just couldn't shake her. I even
21 went to my brother, and I said, "Brother, please, tell me
22 how to get rid of this girl." He said, "Just leave her
23 alone. Just ---

24 MR. REDMOND: Your Honor, again.

25 THE WITNESS: I'm sorry.

1 BY MR. SECOR:

2 Q. First of all you need to slow down, okay?

3 A. Yeah, got you.

4 Q. And one thing I would ask you to talk with the jury
5 about is regarding problems you and Bellany had. Are you
6 suggesting that you had no fault in the problems in your
7 relationship?

8 A. I had fault a few times. Nine months again, but when
9 I said, 'nine months ago' on the tape I was talking about
10 when I said I used to hit her bad I wasn't meaning it that
11 way. What I was meaning was this here: When she went to
12 do that to my wife my son was in the car. My son was in
13 the car. She took pictures. She had him take pictures of
14 her trying to kill my wife. That's ---

15 MR. REDMOND: Your Honor, objection to the
16 characterization.

17 MR. STEWART: Okay.

18 THE COURT: Overrule.

19 THE WITNESS: Okay. When I got -- when I got the
20 call -- when I got the call I was in Columbia, South
21 Carolina. My son called me on his brother's phone,
22 J.D. 's phone, and said ---

23 MR. REDMOND: Your Honor, objection, hearsay.

24 BY MR. SECOR:

25 Q. Tell us what you did.

1 A. Okay.

2 Q. Not the phone call.

3 A. I got the phone call. And I left Columbia, South
4 Carolina. And when I got home my four boys said ---

5 Q. Don't tell us what anybody else said.

6 A. Okay. Got you. When I got home -- okay. I got you.
7 Got you. Got you.

8 Q. You just say how you felt.

9 A. Okay.

10 Q. Not the information was that you received.

11 A. Got you.

12 Q. How you felt?

13 A. I felt like a fool. I felt like I caused all of
14 this. And I wanted it to go away.

15 Q. How did you cause it?

16 A. I caused it by telling her that I loved her. She was
17 promising me that she would get a tattoo if I get rid of
18 my wife, if I divorce my wife. If I don't get a tattoo --
19 I mean to say if I don't get a tattoo then she going to,
20 you know ---

21 MR. REDMOND: Your Honor, I object. I think he's
22 saying what she's saying.

23 THE COURT: Sustained. Let's move forward to your
24 next question, counsel. Go ahead.

25 BY MR. SECOR:

1 Q. But you knew based on what you said, I think, that
2 you had some fault in the problems that were going on,
3 correct?

4 A. Yes, I did. Yes, I did. I did.

5 Q. This was either late November or early December when
6 Bellany went to jail, correct?

7 A. Yes, it was.

8 Q. And I believe that Bellany got out of jail sometime
9 right around the middle of December 2009, right?

10 A. Bellany got out of jail December the ---

11 Q. The specific date doesn't matter ---

12 A. Right.

13 Q. --- but sometime in the middle of December 2009?

14 A. Yeah. Right. That's right.

15 Q. And what happened immediately when she got out of
16 jail? From your recollection and not what anybody said,
17 what went on between you and Bellany right in the first
18 couple of days when she got out of jail?

19 A. When she got out of jail she came by my house and let
20 me know she was out.

21 Q. Did you all spend time together?

22 A. Yes, we did.

23 Q. Where?

24 A. We went to -- I was -- when she came by the house she
25 called on the phone and said that she got out of a day

1 early.

2 Q. Don't tell us what anybody said.

3 A. Oh, okay. She got out of jail ---

4 Q. Did you spend time together with her?

5 A. Yes. Yes, I did. Yes, sir.

6 Q. In the days after she got out of jail?

7 A. Yes, sir.

8 Q. How many days?

9 A. Three.

10 Q. Where?

11 A. At her house.

12 Q. And were you intimate with her during that period of

13 time?

14 A. Yes, I was.

15 Q. Did you see your wife at her house -- at Bellany's

16 house during that period of time?

17 A. Yes, I did.

18 Q. Tell the jury about that.

19 A. December the 17th, I parked my car at the first

20 building coming in because Bellany was over her grandma

21 house doing her hair. And so I recall I had a key, and I

22 went into the house and waited on her when she got there.

23 And I told her let's go park my car before somebody see it

24 cause my wife had a lot of people over there that lives in

25 that apartment.

1 And so before we did the police pulled up. I was in
2 my night clothes. The police pulled up, knocked on the
3 door and he asked me, said ---

4 Q. Don't say ---

5 A. Okay.

6 Q. --- what anybody said?

7 A. Talking about the police, okay.

8 Q. It doesn't matter.

9 A. Got you. It's hard to cope with.

10 Q. I know that.

11 A. Got you. Got you.

12 Q. I had to go to law school three years before I
13 figured out all these rules. But your wife came to
14 Bellany's house?

15 A. Yes, she did.

16 Q. And the police were there?

17 A. Yeah.

18 Q. Is that a proud moment for you?

19 A. No, it wasn't.

20 Q. Why not?

21 A. Oh, boy. It's -- I just was a dirty man. I just was
22 dirty. I was dirty. I was no good for no one for on one
23 to have. I was just dirty. I mean I was dirty.

24 Q. Okay. And you then returned to Melissa, correct?

25 A. Yes, I returned on that Saturday. Sure did.

- 1 December the 19th.
- 2 Q. And did you spend -- or I have to remember to ask
3 questions the right way. Where did you spend that week?
4 Did you spend that week with Melissa or did you spend that
5 week with Bellany?
- 6 A. The week before or the week after?
- 7 Q. The week of Christmas ---
- 8 A. The week of Christmas.
- 9 Q. --- after you left ---
- 10 A. Okay.
- 11 Q. --- Bellany's house?
- 12 A. I spend it home with my family.
- 13 Q. Okay. And was that the week of Christmas?
- 14 A. Yes, it was.
- 15 Q. And I believe that there was some evidence that came
16 out that you had lost some money?
- 17 A. Right.
- 18 Q. Is that correct?
- 19 A. Yes, it is.
- 20 Q. That was money that belonged to whom?
- 21 A. Bellany.
- 22 Q. And she had given it to you for what purpose?
- 23 A. To win more.
- 24 Q. To win more?
- 25 A. Um hum.

- 1 Q. Okay. And how would you do that?
- 2 A. By going to gamble.
- 3 Q. Okay. And did you gamble that money?
- 4 A. Yes, I did.
- 5 Q. Did you win more?
- 6 A. No, I didn't.
- 7 Q. How much did you win?
- 8 A. I lost.
- 9 Q. How much of it?
- 10 A. All of it.
- 11 Q. How much was it?
- 12 A. \$300 at that time.
- 13 Q. Do you have any idea what that money was going to be
- 14 used for?
- 15 A. Yes, I did.
- 16 Q. What was it going to be used for?
- 17 A. Christmas.
- 18 Q. Whose Christmas?
- 19 A. K.S.
- 20 Q. K.S. is your son?
- 21 A. Yes, it is.
- 22 Q. And Bellany was K.S.'s mother?
- 23 A. Yes, she was..
- 24 Q. Based on what you observed, without saying what
- 25 anybody said, was Bellany upset that you had lost that

1 money?

2 A. Yes, she was.

3 Q. Based on what you observed, not saying what anybody
4 said, do you believe that she was upset that you spent
5 that Christmas with Melissa instead of her?

6 A. She was upset over the fact that I bought my other
7 kids Christmas and not her.

8 Q. I'm sorry. Go ahead.

9 A. She was upset over the fact that I had bought my
10 other kids Christmas and I didn't buy K.S. anything for
11 Christmas. And that she had gave me money. And she had
12 said, "Why would you ---

13 Q. Don't say what somebody said.

14 A. Got you. Got you. Got you. I know. It's just hard
15 to explain something, I guess, without ---

16 Q. I understand. But that is your impression?

17 A. Yes, it was.

18 Q. She was upset?

19 A. Yes, it was.

20 Q. And then after spending Christmas with Melissa and
21 your boys that you have with Melissa did you then start
22 see Bellany again?

23 A. Yes, I did.

24 Q. And where did you see her?

25 A. I went over to her house on the 27th of December.

1 Q. Okay. And you just spent some time with her?

2 A. I stopped by Carol's house first to make sure that
3 nobody tried to say I was over there seeing Bellany. So I
4 went to Carol's first, and then I tried to act like I was
5 going around, turned around and knocked on the door. I
6 ---

7 Q. Let me stop you a second.

8 A. And I talked to her.

9 Q. Let me stop for a second. Why were you doing all
10 this? Going to both people's house and getting different
11 cars?

12 A. My wife had two sisters stay over there. Her best
13 friend stays next door. Her cousin says in [REDACTED]. Her aunt
14 stayed in a building right up the road. I mean right on
15 the same -- in the same area. And she had a lot of
16 friends that live in the neighborhood in the apartments.

17 Q. So were you trying to hide the fact that you were
18 going to Bellany's house?

19 A. Of course, yes. Of course.

20 Q. Is this something that you had done before?

21 A. All the time.

22 Q. Had you driven various vehicles to Bellany's house in
23 the past?

24 A. Yes, I have.

25 Q. And it was the 27th of December, you said?

1 A. Yes, it was.

2 Q. And so after getting this other car from somebody
3 else you went to Bellany's house; is that right?

4 A. Went to Bellany's -- I got the car from the 31st;
5 that morning.

6 Q. Okay. But I'm talking about the 27th?

7 A. The 27th I drove the Lexis over there.

8 Q. Okay. And she was there?

9 A. Yeah, she was there.

10 Q. Did you spend time with her that day?

11 A. I talked to her.

12 Q. Was that, without saying what anybody else said, was
13 that interaction or conversation that you had with Bellany
14 on the 27th was that a hateful conversation or was it a
15 perfectly fine, loving conversation? How was that
16 interaction on the 27th?

17 A. The 27th is -- why did you ---

18 MR. REDMOND: Your Honor, objection, hearsay.

19 MR. STEWART: No, I'm saying -- I said, "Why ---

20 BY MR. SECOR:

21 Q. Again, listen.

22 A. I got you.

23 Q. Look at me.

24 A. Got you. Got you.

25 Q. Look at me?

1 A. Got you. Okay, got you.

2 Q. Don't look at anybody but me.

3 A. Got you.

4 Q. Until you're talking, okay?

5 A. Okay. I got you. I was explaining ---

6 Q. Tell the jury what the interaction with Bellany was
7 like on the 27th at her house, without saying what anybody
8 said?

9 A. She was mad. She was mad.

10 Q. Okay. And based on what you perceived what was it
11 that she was mad about?

12 A. That I didn't come over there for Christmas and I
13 didn't buy K.S. any Christmas stuff.

14 Q. Okay. How long would you say you were there for?

15 A. Probably about 25, 30 minutes.

16 Q. When did you next see Bellany?

17 A. She told me -- I seen her on the 28th.

18 Q. Okay. And did you have an arrangement to see her on
19 the 28th?

20 A. Yes, I did.

21 Q. Okay. And where was it that you had arranged to meet
22 with her?

23 A. At the gym.

24 Q. Okay. What are you talking about, the gym?

25 A. At the Community Center in Pageland.

- 1 Q. What was the purpose of going there?
- 2 A. To see my son play basketball.
- 3 Q. K.S. ?
- 4 A. Yes, sir.
- 5 Q. So when you went there did you know that Bellany was
- 6 going to be there?
- 7 A. Yes, I did.
- 8 Q. Okay. And how was K.S. going to get to the gym to
- 9 play basketball?
- 10 A. By his mother.
- 11 Q. Excuse me?
- 12 A. His mother took him.
- 13 Q. Bellany?
- 14 A. Yeah.
- 15 Q. Who else did you see at the gym?
- 16 A. Crystal two kids with her, Sharon, my wife came,
- 17 Mikkos Newman, Francis, there was another -- he's a
- 18 captain. Captain or whatever he is, and another officer
- 19 and two sheriffs.
- 20 Q. Okay.. I'm going to ask you to tell the jury in your
- 21 own words what happened at that gym, okay.
- 22 A. Okay.
- 23 Q. But I need you to slow down when you talk.
- 24 A. I will.
- 25 Q. And I need you as hard as you possibly can to

1 remember to not say what anybody else said?

2 A. Got you.

3 Q. Okay?

4 A. Right.

5 Q. So you arrived at the gym and what happens?

6 A. I arrive at the gym about 6:00, about 6:00 -- I don't
7 know what time it was. About 6:30, 6:15 I rode through
8 the gym on the gold Lexis, and I notice Sharon's car was
9 in the parking lot. That's my wife's cousin. And I
10 thought that Bellany was -- well, I thought I was being set
11 up.

12 So I went to Brenda's house and borrowed her car and
13 came back to the gym after telling Brenda that I needed to
14 borrow it because my wife is -- my wife's cousin is
15 coaching baseball -- I mean basketball and I need to be up
16 at the gym. So I borrowed her car and came back and
17 parked in the parking lot and five minutes -- about a
18 minute later my wife come driving through.

19 So I couldn't get out the car until my wife had left.
20 I didn't want to get out and let her know I was up there.

21 Q. And based on what you observed did Bellany know that
22 Melissa was going to be there?

23 A. No, she didn't.

24 Q. And based on what you observed did you get the
25 impression that she was upset that Melissa was there?

1 A. Oh, she was. Sure. Sure.

2 Q. And you were aware at that time ---

3 A. Yeah.

4 Q. --- that Bellany was on probation?

5 A. Yes, I was.

6 Q. Okay. She was on probation for hitting Melissa,

7 right?

8 A. Yes, she was.

9 Q. And the police arrived as you said?

10 A. Yes, they did.

11 Q. Correct?

12 A. Yes, they did.

13 Q. Did they talk to you?

14 A. Mikkos just came in ---

15 Q. Did they talk to you?

16 A. Oh, not at first.

17 Q. Okay.. But they talk to you ---

18 A. Yes, they did.

19 Q. --- while they were there?

20 A. Yes, they did.

21 Q. Based on what you observed did they talk to Bellany?

22 A. No.

23 Q. You didn't see them talk to Bellany?

24 A. Mikkos came in. Mikkos, he's the first one on the

25 scene.

1 Q. Okay. Just try as hard as you can just to answer my
2 question?

3 A. Okay.

4 Q. The police talked to you at the gym?

5 A. Yes, they did.

6 Q. And you don't know if they talked to Bellany or not?

7 A. I'm going to tell you what I want to tell you what
8 happened. Why didn't nobody talk to Bellany, but Mikkos,
9 I want to tell you that -- well, what I'm saying is this
10 here.

11 When I was there the four officers had me and was
12 asking me my name. Mikkos came in, in the gym, and
13 snatched Bellany out and told her to get in the car. He
14 followed her home. So didn't nobody had a chance to talk
15 to her.

16 Q. Okay. Were you arrested at the gym?

17 A. No, I wasn't.

18 Q. Okay. Were you ever charged with a crime?

19 A. No, I wasn't.

20 Q. And this was the 28th, right?

21 A. Yes, it was.

22 Q. December 2009?

23 A. Yes, it was.

24 Q. Tell us the next time that you saw Bellany after
25 that?

1 A. I went to Brenda's house and I told Brenda, I said,
2 "You need to go check on Bellany because she just call the
3 police up to the gym, and Mikkos come in and just grab her
4 and take her right out." I want to know what's going on.
5 And so Brenda put on her shoes, and we -- she went over to
6 Bellany's. I was in the car with her. I got out the car
7 at the first apartment, and she went on down there to talk
8 to Brenda. Her grandma was there. Her other baby daddy
9 was there. His girlfriend was there in the apartment, and
10 Mikkos Newman was there in the apartment.

11 And Brenda came out and told me that Mike said that
12 he was going to put a ball in me for upsetting his son.

13 MR. REDMOND: Your Honor, I object to hearsay.

14 MR. STEWART: Oh, I'm sorry.

15 THE COURT: Don't tell us ---

16 MR. STEWART: Got you. Got you.

17 THE COURT: --- what somebody said. Tell us what you
18 did.

19 MR. STEWART: Got you.

20 BY MR. SECOR:

21 Q. All right. That was the next day. I guess that was
22 the 29th?

23 A. That was the same. Still on the 28th.

24 Q. Okay. And I assume that you left with Brenda?

25 A. Yes, we did.

1 Q. Okay. And did you go back home?

2 A. No. We went back over to Bellany's house again after
3 Mikkos was gone and grandma and Mike and his girlfriend.

4 Q. Okay. And did you have a conversation with Bellany?

5 A. Yes, we did.

6 Q. Okay. And were you discussing same old stuff you had
7 been in days past about people being upset, mad about
8 things surrounding Christmas? Would that be fair to say?

9 A. Yes, sir.

10 Q. Now, on the 31st, New Year's Eve, tell the jury what
11 happened beginning with why you went and borrowed Mr.
12 Kirby's Surburban?

13 A. I came from gambling, and I was in Columbia.
14 Columbia or Sumter that night. And it was late. The
15 30th. The 30th. The 30th of December. That morning on
16 the 31st of December, I went by Bellany's house about
17 three o'clock that morning. I knocked on the door, and I
18 said, "What's going on."

19 And I didn't have a phone at that time because my
20 wife broke the phone on December the 19th. She came back
21 home. She broke my phone cause Bellany was calling the
22 phone. So that's why I didn't have the phone to call
23 Bellany. So I stopped by on the 30th, and -- well, the
24 31st, that morning, and three o'clock, and she told me to
25 not drive that bitch's car over to her house ---

1 MR. REDMOND: Your Honor, objection to hearsay.

2 THE WITNESS: Okay. Well, she told me not to drive
3 that car over there anymore because it don't, you know, it
4 don't belong to me. It belongs to her. So she told me
5 don't drive it over there no more. She said if I wanted
6 -- well.

7 MR. REDMOND: Your Honor.

8 THE WITNESS: She said if I come over there ---

9 MR. REDMOND: Objection. Hearsay.

10 BY MR. SECOR:

11 Q. Let's just go to where I asked you to start. Let me
12 ask it this way. When you went to borrow the Surburban,
13 okay, was it to conceal from other people the fact that
14 you were going to Bellany's house?

15 A. No. I told them where I was going.

16 Q. I'm not saying that. I'm saying that that's the
17 reason you got the car, though, right?

18 A. Um hum.

19 Q. Other people wouldn't know that you were going to
20 Bellany's, right?

21 A. I got it -- I got it so ---

22 Q. Your family.

23 A. I got it.

24 Q. Your family ---

25 A. I got it. So I could hide it like we always did hide

1 it like we have. And I wanted to be spend some time. It
2 was about me staying there for days. You know, it -- I
3 was a professional gambler, and I can go to the casino all
4 the time. You've got the pictures and all that. You've
5 got the cards. And I can call my wife and say, "Look
6 here, honey. I'm in Atlantic City, and she would never
7 check to make sure. So I switched cars to make it look
8 like I'm somewhere else.

9 Q. I understand.

10 A. Yeah.

11 Q. So the answer to my question is yes?

12 A. Yes. Yes. Yes, it is.

13 Q. You got the Surburban ---

14 A. Yeah.

15 Q. --- so other people wouldn't know that you were going
16 to Bellany's?

17 A. That's true. Right. Yes.

18 Q. And you told Mr. Kirby where you were going?

19 A. Yes, I did.

20 Q. What time did you get the car?

21 A. I got the car about 12:00. About 12:00 that
22 afternoon.

23 Q. The afternoon. What afternoon?

24 A. The 31st.

25 Q. New Year's Eve?

1 A. Yes.

2 Q. And where did you drive the car to from Mr. Kirby's
3 house?

4 A. We drove to the air pump, and they put air in the
5 tire. And we switched cars and I left come on straight to
6 Pageland, South Carolina.

7 Q. Okay. To where?

8 A. To Bellany's apartment.

9 Q. Where did you park the car?

10 A. Right in front of the door.

11 Q. And then what happened?

12 A. I got out of it. I looked around to make sure wasn't
13 nobody looking that knew me. And I got out and went to
14 the back like I always come in. But since I park out in
15 the front cause it was kind of strange to me to sneak back
16 to the back and go to the patio because she said the light
17 was going to be on or off.

18 The light was going to be off, and if it was off the
19 door would be unlocked for me.

20 Q. Okay. So is this about the patio light, is this some
21 sort of like secret like messaging system or a way to --
22 for her to let you know that you can come in?

23 A. Yeah, it was then. That was the first time we ever
24 did that.

25 Q. Okay. And so was she there?

1 A. No, she wasn't.

2 Q. Did you go inside?

3 A. Yes, I did.

4 Q. Okay. Did you have to use the key that you had or

5 was the door open?

6 A. My wife broke the key.

7 Q. Okay. So the door was open, I guess?

8 A. The kitchen door was open.

9 Q. So then did Bellany eventually come back home?

10 A. Yes, she did.

11 Q. Around what time do you think?

12 A. She got there about 4:00 cause the kids was at [REDACTED].

13 They was keeping themselves, so she had two girls with a

14 key, Kim Little. She had Kim Little with her and she had

15 Dyshelle Little with her. They went and got some hair

16 stuff. She wrote me a note on the door. And when she

17 drove up her car is very loud. Her muffler was messed up

18 real bad, and I knew that she was pulling up. So I looked

19 out the window and those two got out the car with her.

20 And she told the kids to stay outside.

21 Q. So Bellany came inside?

22 A. Yes, she did.

23 Q. And you were inside?

24 A. Yes, I was.

25 Q. All right. And did you spend some time we her ---

1 A. Yes, I did.

2 Q. --- during that afternoon?

3 A. Yes, I did.

4 Q. And where was J.D. ?

5 A. Outside playing and they were over there in ■. They
6 were keeping themselves.

7 Q. Okay. And just keep telling the jury about that
8 afternoon?

9 A. Well, that afternoon we was fussing or fighting about
10 I didn't come over for Christmas. I loss the money.
11 Phone, the phone is, who, man. Got digity dog; that
12 phone. That phone was something between me, her and Larry
13 Brown. And I'm going to tell the story. I'm going to
14 tell it.

15 MR. REDMOND: Your Honor, at this point I'm going to
16 impose an objection to relevance, 403.

17 THE COURT: Very good. I'm going to sustain that
18 objection. But, sir, first of all I'm going to ask you to
19 lay the microphone so we can hear you. You lean back from
20 it.

21 THE WITNESS: Okay.

22 THE COURT: Counsel is asking you about the events of
23 the day, so what -- lets return to that point and ask the
24 question is -- well, actually, counsel, you ask the
25 question. You ask what the next question is.

1 THE WITNESS: But ---

2 BY MR. SECOR:

3 Q. Listen. I'll give you an opportunity.

4 A. All right.

5 Q. But right now we want to be -- to stay on this track,
6 okay?

7 A. Yeah. I got you, but ---

8 Q. I know, but just stay with me?

9 A. I will. I'm with you.

10 Q. Please?

11 A. I'm with you. I'm with you. I'm with you.

12 Q. You were arguing with Bellany again about the same
13 stuff, right, on the afternoon of the 31st?

14 A. Yeah, we were arguing about the same stuff.

15 Q. And those things involved the phone, right?

16 A. The phone, Christmas, and money.

17 Q. And losing the money?

18 A. Yeah. Yes, it was.

19 Q. Stuff that didn't make you feel real great about
20 yourself?

21 A. Right. That's true.

22 Q. And so you spent the afternoon or at least some
23 period of the afternoon there with her?

24 A. Yes, I did.

25 Q. At some point did you discuss with her dinner on that

1 night?

2 A. 31st, yes, we did.

3 Q. All right. And did you give her money to get dinner?

4 A. I gave her \$20 to get a pizza.

5 Q. All right. And did you go and get the pizza?

6 A. No, I didn't. Her and the kids went to get the
7 pizza.

8 Q. Okay. And when they went to get the pizza where were
9 you?

10 A. I was in the bedroom at that time. In her bedroom
11 with the door shut.

12 Q. Who is her?

13 A. Bellany.

14 Q. Okay. Do you have any idea, just based on your own
15 knowledge, did K.S. and J.D. know that you were inside?

16 A. No, because we had the door shut to the bedroom.

17 Q. And when they came back with the pizza did they all
18 come inside?

19 A. Yes, they did.

20 Q. You were upstairs in the bedroom at that point?

21 A. Um hum.

22 Q. All right. When did you next talk to Bellany inside
23 the house?

24 A. She -- oh, I talked to her when she came upstairs.

25 She Said that the boys were down there eating. To be

1 quiet. But she said -- I can't say what she said, but she
2 informed the kids to not to say that I was over there
3 because -- or I'll wait until do get to that point.

4 Q. Okay. Do you know where she went to get the pizza
5 from?

6 A. Yes, I do.

7 Q. Where?

8 A. Pizza Hut.

9 Q. Okay. And how do you know that?

10 A. Because she come back in the with the box and she
11 gave me a piece of pizza. She brought a piece of to the
12 bedroom.

13 Q. So while you were up in her bedroom as that night was
14 progressing did anybody come to the house other than K.S.
15 and J.D. who came in sometime in the around?

16 A. Crystal called and said she was going to come over
17 and change clothes to go out.

18 Q. All right. In terms of what you saw did you see
19 Crystal come to the house?

20 A. Yes, I did.

21 Q. Where did you see her from?

22 A. She knocked on the door. Bellany said, "Who it is."
23 She said, "Crystal," and I went to the closet. I was
24 already upstairs, but the knock was loud and I know it was
25 Crystal because it was time for her to come. She said she

1 would be there in five minutes.

2 Q. You saw Crystal from a window; is that correct?

3 A. No, I seen Crystal -- I didn't see Crystal. I heard
4 her knock at the door. So I went on in the closet and hid
5 because she wasn't going to come upstairs.

6 Q. So you hid in an upstairs closet?

7 A. Yes, I did.

8 Q. Did you have any idea how long Crystal was there?

9 A. Crystal got there about 11:00, about 11:00 something.
10 She stayed probably about 11:15. She stayed about 20
11 minutes.

12 Q. What did you see when Crystal left or did you see
13 anything when Crystal left?

14 A. I peeked out the window when the door closed. See if
15 Crystal gone. I went to the boy's room and peeped out the
16 window. The two boys was sleep at that time. I went to
17 the window and peeped out the window to see was Crystal
18 gone. And that's when I seen -- I seen when she was
19 backing out of the parking lot two cops pulled behind her
20 and they stopped and she stopped and she got out of the
21 car.

22 And two officers got out the car, and I'm pretty sure
23 they asked her whatever and she came back to the door and
24 knocked on the door. And I told Bellany, "No, don't
25 answer it yet. That's Crystal." And when I came down to

1 where Bellany was and I say, "It's two cops out there." I
2 said, "Ill see you later. I don't know what you did." I
3 said, "I'll see you later," and I went out -- I went to
4 the kitchen door. It's a patio door.

5 Q. Slow down?

6 A. Okay. Okay. I went to the kitchen door, and I took
7 the stick from the thing and I ---

8 Q. Speak up.

9 A. And I took the stick from behind the kitchen patio
10 door. And I opened it a little bit to see if she was
11 going to let Crystal in because you can't see all to the
12 way to the thing if I'm standing there. And Crystal said,
13 "There were two cops out here." And I slid the door open.
14 I eased up, and I went out the park and I just going to
15 see where the police ---

16 Q. Slow down.

17 A. See what the police gone do. Whatever they was gone
18 do. When I came back, I walked down. I walked by the
19 mailbox. I came down by H5. I come down through all the
20 H buildings in the back. And I went to the corner.

21 Q. Slow.

22 A. Okay. And I checked the door first. My fault. I
23 checked the door and I went to ■. The door was locked.
24 So I went back to H1 -- H1, and I peeked around the
25 corner.

1 Q. Slow.

2 A. And I seen some people standing outside. And I
3 didn't want to make myself known, and in a few minutes
4 later, after those people left, Mark pulled up in a white
5 Honda right in the same spot in J Building. He pulled up
6 at Ms. Carrie house, and I couldn't come from around the
7 corner at that time.

8 So when Mark went inside the house to go get Tim I
9 went to the truck and the tire was flat. I got in the
10 truck.

11 Q. And you said the truck you're talking about is the
12 Surburban?

13 A. The Surburban tire was flat. I seen it leaning down
14 to the side. The driver's side was leaning. I couldn't
15 get in the driver's door because we had a string tied to
16 keep it pushed together. You couldn't open it. So I get
17 into the passenger's side back door, and I get in and I
18 feel it. And I just drive it all the way to the car wash
19 to put some air in the tire.

20 And I went to Marshville, North Carolina to gamble.
21 And when I got to Marshville I went to ---

22 Q. Give us a timeframe?

23 A. This had to be at least -- Crystal left about 15
24 minutes after 11:00. 11:20. 11:30. So it had to be
25 about 11:45 before I got to the car wash. And then when I

1 got to the Cyber Center it was New Years. And when I got
2 there everybody said, "Happy New Year's." So it was about
3 12:01 or 12:02 when I walked into the gambling house -- to
4 the gambling casino.

5 And I told you I had gone to Wendy's first to get a
6 Kid's Meal and then I went to the casino. And then I
7 stayed there until they closed. And when they closed I
8 went to the store and bought \$10 worth of gas and put it
9 in the truck. And then I called Bellany at the pay phone.
10 I called her on J.D. s phone. She had two phones. She
11 gave J.D. one to call his daddy's people to pick them up
12 on Friday's where they get picked up. And call and inform
13 them how he's doing. So that's the phone I had called,
14 and I tried to give it to Mr. Brown, but ---

15 Q. Okay. So you called Bellany?

16 A. Yes, I did.

17 Q. And did she answer?

18 A. Yes, she -- no, she didn't answer. J.D. answered.

19 Q. Did -- but did you talk to Bellany on the phone?

20 A. J.D. gave the phone to Bellany.

21 Q. Okay. You did talk to her from Marshville, North
22 Carolina?

23 A. Um hum.

24 Q. And then after talking to her where did you drive to
25 from Marshville, North Carolina?

1 A. I went back to Brenda's house and I -- well, Brenda
2 was out. There wasn't nobody there, so I went back to
3 Bellany's house.

4 Q. And around what time do you think you got there?

5 A. About -- might have been about four o'clock, 3:30.
6 Somewhere along in there. About four o'clock or 3:30 in
7 the morning I got back to Bellany's house.

8 Q. In the morning?

9 A. Yeah.

10 Q. Did you knock on the door?

11 A. Yes, I did.

12 Q. Did anybody answer the door?

13 A. Yes, she did.

14 Q. Okay. So you talked to Bellany at that point?

15 A. Yes, I did.

16 Q. And based on what you observed your assumptions were
17 that the boys were inside at this time asleep, right?

18 A. They was.

19 Q. All right. So you didn't go inside then?

20 A. Yes, I did.

21 Q. Oh, you did go inside?

22 A. Um hum.

23 Q. Then what time was that?

24 A. That was about 4:30. I mean 3:30, four o'clock.

25 Somewhere along in there. I didn't have a watch, but I

1 know it was that time.

2 Q. And how long were you inside with Bellany?

3 A. Well, I knocked on the door. She answered the door,
4 and she said, "Crystal, called me."

5 MR. REDMOND: Your Honor, I object.

6 BY MR. SECOR:

7 Q. All right?

8 A. Okay. She got a call. She got a call.

9 Q. But you had a conversation with Bellany?

10 A. Yes, I did.

11 Q. Was it an adversarial conversation?

12 A. It was a conversation about Crystal.

13 Q. About Crystal?

14 A. Yes, it was.

15 Q. And based on your observation, without saying what
16 anybody said, was it your impression that Bellany was
17 upset because you guys had almost got caught again
18 together?

19 A. No. She was just -- she was ---

20 MR. REDMOND: Your Honor, I would object. This
21 question has hearsay -- the answer has hearsay.

22 THE WITNESS: She had got some information.

23 MR. SECOR: Stop for a second.

24 THE COURT: Just a moment. I'm going to sustain
25 that, counsel. We have the first word in the answer was

1 no, so let's move to the next question, please.

2 BY MR. SECOR:

3 Q. You talked to Bellany early on that morning?

4 A. Yes, I did.

5 Q. You were inside the house?

6 A. Yes, I was.

7 Q. Did you break into her house at that point?

8 A. No.

9 Q. Did you force your way into that house at that point?

10 A. No, I didn't.

11 Q. You were there for a period of time?

12 A. Yes, I was.

13 Q. And then left again; is that correct?

14 A. That is correct.

15 Q. And where did you go?

16 A. I went to Brenda's house.

17 Q. Okay?

18 A. When I entered the house at four o'clock or 3:30.

19 Four o'clock I entered the house. I had pulled down my

20 clothes because she had got a call. She had got a call

21 and wanted to smell me. And the call was related to --

22 someone had called her and said I was home, but I went to

23 the Cyber Center. So when I -- when she opened the door,

24 pull down your clothes. She had a knife. Pull down your

25 clothes. Let's me smell you. That's what she did because

1 she got that call.

2 I mean it sounds crazy, but that is what she did.

3 She had got a phone call. Somebody told her I wasn't
4 home. I went to the Cyber Center. So we were trying
5 to -- I was trying to prove something that I did not go
6 home. I was at the Cyber Center.

7 Q. Okay. And then you did -- you left the house again,
8 right?

9 A. I left the house again.

10 Q. And where did you go that time?

11 A. I went to Brenda's house.

12 Q. Okay. For what purpose?

13 A. To come over and get Bellany to cool down and listen
14 to that I wasn't home. I wanted to prove to her where I
15 was at.

16 Q. And I think -- didn't you say at one point you also
17 went to the car wash to put air in the tire?

18 A. Yes, I did.

19 Q. And then did you go back to Bellany's house in the
20 morning of January 1st?

21 A. I did. After leaving Brenda's house I went to
22 Bellany's house. After getting some air in the tire I
23 went back to Bellany's house.

24 Q. And I think there was some evidence that you left a
25 note on Bellany's car; is that correct?

1 A. Yeah, that's what I said.

2 Q. Okay. And that would have been early in the morning
3 on January 1st?

4 A. About eight o'clock.

5 Q. Eight o'clock?

6 A. Eight, nine o'clock, yeah.

7 Q. And where were you? Were you in the Suburban still
8 at that point?

9 A. I just had pulled up. I just had pulled up in the
10 Suburban. I wrote the note and said Brenda wrote it so
11 she can listen to me talk cause she was angry about what
12 somebody had said that I was at and I wasn't.

13 Q. Okay. So you wanted to talk to her about this
14 argument that y'all had been having; is that correct?

15 A. Yes.

16 Q. And then when did you see Bellany?

17 A. I knocked on the door when the girl left in [REDACTED]. When
18 she come out I was pulling in. When the girl come out of
19 the house I was pulling in. That was Mark's girlfriend.
20 My wife's cousin. I was like, God, again.

21 So I had to wait a minute. She went in the house and
22 got the baby and come out. And then she drove off. I
23 went and tapped on Bellany's door. I wrote a note. Put
24 it on the car. I tapped on the door. She seen the note.
25 And she come out to get the note. And when she come out I

1 said, "Bellany, I need to talk to you." She said, "What
2 for?" I said -- she said, "Didn't I tell you if you don't
3 get a divorce don't come back."

4 Q. Slow down.

5 MR. REDMOND: Your Honor, and, again, I would object
6 to hearsay at this point.

7 MR. SECOR: He's testifying to evidence that's been
8 put in by the State.

9 THE COURT: Counsel, I'm going to overrule this time
10 on reasons of race.gestae as well as the fact there is
11 cumulative evidence is in. All right. The State, I
12 accept what Defense counsel says. Go ahead and take us
13 from that point, sir.

14 BY MR. SECOR:

15 Q. Proceed.

16 A. And so K.S. come to the door with his drawers on,
17 and he said, "Daddy, what you doing?" I said, "I ain't
18 doing nothing." I said, "Im going to take you in the
19 morning when you put some clothes on and take you to go
20 get you a four wheeler, what you want." He wanted a four
21 wheeler from Walmart with the battery.

22 And we went back in the house. Wasn't in the house
23 at this time, and she said, "I tell you what you're going
24 to do. You're going to get your stuff. I'm going to pack
25 your stuff." And she went up in the bedroom and she

1 closed herself up in the bedroom. And she said, "I'm
2 going to cut all your clothes up. I'm going to pack your
3 stuff. Take that shit and get it out of here."

4 So by this time J.D. woke up and J.D. said, "Momma,
5 what you doing behind that door?" I said, "Your momma in
6 there cutting up my clothes." And like always and stuff
7 like that. So kids done seen me, now. So now she tells
8 the kids, you know, y'all can't tell your grandma or David
9 that Thomas been over here cause they going to take the
10 car. I can get kicked out of my apartment." All kinds of
11 stuff. This is how she threaten the kids.

12 We always taught them to lie. We always taught the
13 kids to say I was never there. I don't care what the
14 situation is, the police, anybody ask you, "Is Thomas over
15 here?" Say, 'no' because this is where we live. And if
16 you say Thomas been over here then we can get kicked out.
17 So this was the plan for the kids, day one. Day one of
18 however long she was staying in the apartment, three
19 years.

20 And so J.D. come out. Bellany behind him. Bellany
21 is behind the door, oh, cussing and saying all kinds of
22 stuff. And I'm at the door, "J.D. , get me a clothes
23 hanger." And he got me a clothes hanger. It was a purple
24 one. I tried to get in the door, but he brought the wrong
25 kind. It wasn't the -- it was the plastic kind, big

1 handle: And so I said, "Jalen, that ain't going to work."
2 And she opened the door, and she gave me -- she said,
3 "Here. Take your clothes."

4 So she gave me this Army jacket and Army pair of
5 pants. And when I go down there to put it in the truck --
6 when I put it in the truck in the inside I put it -- I
7 handled both of them only on the -- under the driver
8 behind the seat. I hung both of them over there. And so
9 I closed the door, go back in to get the rest of my stuff,
10 and she said she got it packed. She's ready to throw it
11 outside to me.

12 So I come back in and she said, "Get out of my house.
13 Get out." I said, "Get out your house." I said, "Fine.
14 I'm going to leave." So I was going on out the door. And
15 I waited two minutes, and she come out pulling J.D. and
16 K.S. . And I said, "Baby, let me talk to you five
17 minutes." okay, before she come out that house I was
18 standing at the truck. I was standing at the truck. I
19 had the door open, and I reached over there to got my
20 jacket. I said, "So you want me to go with you?" And
21 then she said, "No. I don't want you to go with me." I'm
22 trying to get it all straight.

23 And so I hung my jacket back up. I hung my jacket
24 up. This is how the kids say that the kids say that I
25 jumped out of a Jeep, but how can I jump out a Jeep when

1 I'm hanging up my jacket? I hung up my jacket. I had the
2 pants over here. Jacket is over here. I fin to put the
3 jacket on, and I hung the jacket up. And the kids say I
4 jumped out the Jeep. Well, J.D. did. But what I'm
5 trying to say is she walked over to where I was. She came
6 over there and said, "You going to with me to get K.S.
7 his toy?" And I said, "I can't go with you." I said,
8 "I've got to take Pierre his Jeep back." I said, "Let me
9 talk to you for five minutes."

10 And so she said, "Okay. Not outside." So as we were
11 going to the door I said, "You need to open that door
12 before I kill you." Like that. But I didn't mean it how
13 it sounds. It's a word that I use daily in my gambling.
14 You know because when I call one of my buddies I said -- I
15 say like, "Man, did you kill them last night?" You know,
16 It was just a word we use as gamblers. You know what I
17 mean?

18 Q. I understand what you mean.

19 A. Yeah. I didn't mean no harm by it. And I said, "I'm
20 going to kill you." I did it like that. "If you don't
21 open the door." But it was just as we were walking to the
22 door. She was in front. The two kids behind them. I'm
23 at the Jeep. And then I just come on in.

24 Q. And you go inside?

25 A. Then we go inside. She unlocked the door. The kids

1 goes in. We goes in, and they sit down. I sit down. No,
2 she sit down here. They sit down, and I kneel down in
3 front of her. I kneel down, and we had a long -- we had a
4 conversation and I asked for the phone.

5 Q. Whose phone?

6 A. Bellany's phone.

7 Q. Why?

8 A. Because -- can I say it?

9 Q. I want -- was it the fact that you didn't trust her?

10 A. Yes.

11 Q. Okay. That's all you need to say I think.

12 A. Okay. I asked to see the phone because ---

13 MR. REDMOND: Your Honor, may we approach, please.

14 THE WITNESS: Yes.

15 THE COURT: It's not necessary. You told us you
16 asked to see the phone, and you go from there. Tell us
17 what you did, sir. Not -- just move forward. No need to
18 approach. Go ahead.

19 THE WITNESS: Well, I asked to see the phone because

20 ---

21 THE COURT: Not why. Just we understand you asked to
22 see the phone. Now go ahead and tell us what happened.

23 THE WITNESS: I don't know how to say it if -- I
24 mean.

25 BY MR. SECOR:

1 Q. Did the -- did you have an argument about the phone?

2 A. Yes, we did.

3 Q. Okay.

4 A. Well. See. See. What I'm trying to say is this
5 here. It's not about no jealousy. It's about something
6 that happened. It's about something that happened that I
7 need to say. That's the only way you will be able to
8 understand why I'm asking for this phone at this time.

9 Q. Why you needed to look at her phone?

10 A. Yes.

11 Q. Okay. Why do you think you needed to look at her
12 phone?

13 MR. REDMOND: Your Honor, at this point may we
14 approach briefly?

15 THE COURT: Counsel, I'm going to overrule your
16 objection. If the Defendant believes that this is
17 something that -- for which he needs to testify.

18 MR. REDMOND: We have no problem with that.

19 THE COURT: Go ahead, sir.

20 MR. REDMOND: I withdraw my objection.

21 BY MR. SECOR:

22 Q. Tell us why you needed the phone.

23 A. The reason I needed the phone is because Larry Brown
24 is texting her saying that I got to pay his money. He
25 texting me through her phone cause I don't have one now.

1 This is why. So I wanted to see her phone. This is why.
2 This is why she wouldn't give me the phone because her and
3 Larry Brown was messing around. This is why I said on the
4 tape -- this is why I said on the tape about a note. I
5 said, "You know that she like notes because you is messing
6 with her." He been messing with her.

7 Q. You remember talking about in the video ---

8 A. Yeah, that's what I'm talking about, him.

9 THE COURT: So now that you've said that now go ahead
10 and tell us what happened.

11 THE WITNESS: Okay.

12 BY MR. SECOR:

13 Q. And in referencing the video of your statement?

14 A. Right.

15 Q. Okay. You're talking about the point of the video
16 where you say to Larry Brown -- you're talking about the
17 note?

18 A. That's right.

19 Q. And you say to Larry Brown, "You know what I'm
20 talking about?"

21 A. That's right. That's right.

22 Q. So then tell the jury what happened next?

23 A. She said, "No. I'm not going to let you see what
24 Larry Brown texted me." I said, "I sell drugs for him.
25 you mean to tell me you ain't going to let me -- you ain't

1 going to let me see the phone and I sell drugs for the
2 man. He's going behind my back sleeping with you and I
3 sell drugs for him. I done made this man thousands --
4 hundreds and thousands of dollars. You mean to tell me I
5 can't see this phone. And he messing with you behind my
6 back, and I'm selling drugs for him." And that's how we
7 got into the argument. That's how we got into the
8 argument.

9 And she said, No. I'm not going to let you see the
10 phone. And they J.D. said, "Momma, give him the phone."
11 I said, "J.D. , she don't want to give me the phone cause
12 she's messing with Larry Brown." And then she said, "You
13 know what, Thomas, here. Text him." And she gave me the
14 phone and when she gave me the phone I was reaching to get
15 the knife out of her way. She grabbed -- she beat me to
16 the knife and cut her thumb.

17 And K.S. said, "Mommy, you cut your thumb." She
18 said, "Go get me some toilet paper." And when she was
19 going to get the toilet paper I had the phone then, and I
20 was fin to hit it. She had an I-Pod. I was fin to touch
21 her phone. And when I touched it I said, "Bellany, it's
22 locked." And when I turned back around she pepper sprayed
23 me, and she stuck a knife in my chest. She stuck the
24 knife in my chest.

25 And I stood up. I was on my knees, and I got up.

1 And that's when she started stabbing at me, and I put my
2 hands up. She said, "I'm going to kill you." And I put
3 my hands up, and I started putting my hands up and she was
4 stabbing at me. And then while she was stabbing at me,
5 before the mace got me good, I grabbed her wrist. I grab
6 her wrist and got behind her, and we were struggling over
7 that knife. And this is how -- I'm just showing you an
8 example how she got stabbed.

9 I was behind her, and you can see it on the autopsy.
10 I got her wrist. My right hand is on her. She bigger
11 than I am. She's behind. I'm behind her. I got behind
12 her. And she just going up, and she -- and I got my face
13 turned on the back of her neck, and she hit me in my ear
14 two times with that knife. I didn't know what was going
15 on. I had never been pepper sprayed a day in my life. I
16 didn't know what was going on. I'm fighting for my life
17 now. People, I'm fighting for my life now. I'm fighting.
18 And I said, "Put that knife down, Bellany." She said, "No
19 ---

20 Q. Slow down.

21 THE COURT: We'll let you be seated.

22 THE WITNESS: She said, "No. I ain't putting it
23 down." She said, "I'm going to kill you.

24 THE COURT: The court reporter has to take down what
25 you say.

1 THE WITNESS: She said, "I'm going to kill you. I
2 said, "Put that knife down, Bellany. Drop that knife."
3 And all this time and all this time -- can I stand up,
4 Your Honor? How long am I going to be allowed?

5 THE COURT: No. Please remind seated. Again, slow
6 down. Our court reporter can only take down a certain
7 speed. So slow down and go ahead and tell us.

8 THE WITNESS: And I had her wrist. I was behind her.
9 I had both of her arms. I had both of her arms. I had
10 both of her arms. I was wrestling with her. I was
11 wrestling.

12 Q. This is inside the house?

13 A. This is inside the house. I'm wrestling with her.
14 I'm wrestling with her about this knife. I said,
15 "Bellany, please drop this knife. Drop it. I can't see.
16 I don't feel good. Drop this knife." And I'm behind her.

17 Q. I know. And you said ---

18 A. I'm behind her.

19 Q. I know.

20 A. And she goes up and hits me in my ear.

21 Q. I know?

22 A. And ---

23 Q. Have you ever seen the pictures?

24 A. Uh huh. And ---

25 Q. And then did altercation then end?

1 A. No, it didn't end. We kept on struggling. And she
2 was just going with her arms, going with her arms. And
3 then I got to the point where if she wasn't going to drop
4 it and I put my arm -- I had my arm on her. And I went
5 down on the knife. I went down to it, to the knife. And
6 I said, "Bellany, you need to drop this knife." She
7 wouldn't drop the knife." Lord, have mercy. She wouldn't
8 drop it.

9 Q. So ---

10 A. And we was just still going. We were still going.
11 She trying to reach me. We was just -- we was just -- I
12 don't know. We were in another state. She was just
13 going. She was just going, but she hit herself. I don't
14 know if she.

15 Q. Stop.

16 A. She was hit.

17 Q. At some point did she go outside of the apartment?

18 A. At that time Miss Carrie -- Miss Carrie come to the
19 door. We was stabbing. She see me behind. She got the
20 knife in her hand.

21 Q. Are you inside or outside?

22 A. I'm inside the house. I still ain't told you it all
23 yet. So, Bellany, what she did was when she was stabbing
24 at me like this when I got behind her. When I got behind
25 her she took her left hand -- she's right handed. She

1 took her left hand and put it on the blade. And I pulled
2 her arm.

3 I didn't know what she was doing, but I pulled
4 because I know she was reaching. And this is how she cut
5 her finger. This is how she cut her -- this -- cut her
6 right hand fingers cause -- her left fingers because,
7 "Thomas, you made me cut my hands. And that's when she
8 start going just crazy. Just crazy at me. I'm behind
9 her, but this is how it happened. This is how it
10 happened.

11 And then after that I let her go. I couldn't hold on
12 no longer. I was holding on for as long as I could, and I
13 squeezed her wrist as hard as I could. I squeezed her as
14 hard as I could with my right hand. I'm right handed. I
15 squeezed her wrist as hard. I squeezed her hand as hard
16 as I could to make her drop that knife, and she wouldn't.
17 She wouldn't drop it. And then I gave up. And then she
18 hit me, and the next thing I knew I woke up on the floor.

19 And when I woke up on the floor all I hear people
20 saying is, "Get him. Get him." So I --

21 Q. Stop for a second. You were inside the house?

22 A. I was inside the house.

23 Q. Where did you hear the voices coming from?

24 A. Outside. Outside. So I -- it was a knife that come
25 out of her pocketbook. I probably should have said that,

1 but y'all already got that on tape or whatever. So I
2 reached for that knife, and as I was reaching for that
3 knife my hand was, you know, bloody. And I'm the one all
4 spilling over the carpet. And I just walking to the
5 kitchen. Walking to the kitchen, and this man approached
6 the door, and she said, "Get him. Kill him."

7 Q. Why were you going in the kitchen?

8 A. I was going to try to get something out my eyes. I
9 couldn't see. I didn't know what was going on. I was in
10 pain. I was in fear. I was just confused. I didn't know
11 what was going on. I'd been threatened a couple of days
12 before that they were going to kill me. So I don't know
13 what to do. I don't know what to do.

14 Q. You said that you saw somebody through the doorway?

15 A. Yeah -- no. He was standing in the doorway. He had
16 the door blocked. He had the door blocked. T.J. I know
17 who he is now. T.J., he had the door blocked.

18 Q. And you were still under the ---

19 A. Yeah, I was messed up. I couldn't see from the
20 pepper spray. I was in pain. I was in fear, and I wasn't
21 fin to die in there. I wasn't fin to die.

22 Q. So what did you do at that point?

23 A. I ran out. I ran -- I went up and I ran out. I ran
24 out the door, and when I ran out I hear something hit my
25 shoulder.

1 Q. Where were you trying to run to?

2 A. I was trying to run to my truck. Get back in that
3 truck.

4 Q. Which was where?

5 A. Down in the parking lot right in front of the door.

6 Q. And once you made it outside?

7 A. She hit me with a can of mace. She hit me with that
8 can of mace on my shoulder. And I couldn't move my arm
9 up, but I had a knife in my -- I don't remember having the
10 knife, but I do -- I had to have one cause I ran out the
11 house with it. But I don't remember what I did with the
12 knife.

13 But what I'm saying is this: I bent that blade
14 getting up inside the house. When I got that blade I bent
15 that blade inside the house. I was trying to destroy it
16 because I was angry at the fact that I couldn't see. And
17 when I ran out the house she hit me, and she stuck me.
18 She had to -- when I -- it's some kind of way that I
19 grabbed her. I can't explain it. I ran up on her and I
20 grabbed her, but she hit me. She was already there. She
21 hit me when I come up under this arm.

22 And some kind of way the knife then cut my ear, and I
23 felt that pain and I couldn't take it. I just reacted.
24 To whatever happened I just reacted. I was just trying to
25 get away. And she fell. We fell together, and I'm on the

1 ground. She's on top of me. She's laying between my
2 legs. I want to get up, and she just -- she just throwing
3 her hands up. And I'm must swinging. I don't know what
4 I'm doing. I'm swinging. She got her hands up like this,
5 and she's still got the knife in her hand, but she's got
6 her hands up.

7 And I'm just hitting. I can't see all what's going
8 on. I can't tell you really what happened, but I know
9 what I did see. You know what I mean, and I just wanted
10 to get away. And about that time me and her roll dow the
11 hill to the truck. And that's where ---

12 Q. And were you able to get to the truck?

13 A. Yes, I was.

14 Q. Okay. And what happened when you got to the truck?

15 A. I heard something say, 'boom'. I jumped in and drove
16 off.

17 Q. Okay. And where did you drive to?

18 A. Piggs Park.

19 Q. Were you having trouble driving?

20 A. Yes, I was.

21 Q. Why?

22 A. Because I couldn't see. I kept putting one hand over
23 the other wiping. And I just kept putting one hand over
24 the other wiping it. I just kept on till I made it
25 somewhere safe. I thought it was safe for me.

1 THE COURT: Let me stop you there. Counsel, we're
2 approaching the lunch hour. Is there anything further
3 with regard to the testimony of the witness?

4 MR. SECOR: If I can have just a minute, please.

5 BY MR. SECOR:

6 Q. I'm just going to ask you a couple of questions,
7 okay. You can just answer yes or no, okay? Did you hide
8 out in the white Surburban and wait for an opportunity to
9 murder Bellany?

10 A. No. I was in the house many of times. I didn't have
11 no -- I carry a gun with me 24/7.

12 Q. The answer is no?

13 A. No. No, I didn't.

14 Q. When you were inside, after you gotten into this
15 fight with Bellany, were you scared?

16 A. Yes, I was scared.

17 Q. Did you feel as though your life was in danger?

18 A. I was.

19 Q. And I think you did say you tried to get away?

20 A. I did. That's what I was trying to do, get away.

21 Q. And I think you said that you don't really remember
22 all of what happened; is that right?

23 A. I don't remember all of what happened on the outside.

24 Q. Is that partially due to being pepper sprayed?

25 A. Pepper sprayed, and I was knocked out.

1 Q. Okay.

2 MR. SECOR: Just one moment, please?

3 THE COURT: Yes, sir. Anything further, counsel?

4 MR. SECOR: I think those are all the questions that
5 I have.

6 THE COURT: Very good. Thank you. Is there
7 cross-examination?

8 MR. REDMOND: Yes, sir, there is, Your Honor. And
9 may we approach briefly?

10 THE COURT: You may.

11 (WHEREUPON, a bench conference was held off the
12 record in the presence of the jury, but out of the
13 hearing of the jury.)

14 THE COURT: For that reason we'll take the testimony
15 at this time then we will break for lunch thereafter. So
16 cross-examination.

17 MR. REDMOND: Thank you, Your Honor. May it please
18 the Court, and first, indulge me. I think there is an
19 exhibit that is not in evidence. If I can ask the court
20 reporter.

21 CROSS-EXAMINATION

22 BY MR. REDMOND:

23 Q. Mr. Stewart, believe it or not I'm going to be brief.
24 Let me start by asking you, though. How old were -- it's
25 been established, but how old were you when you first met

1 Bellany Clyburn?

2 A. Thirty-five.

3 Q. Thirty-five. More important question to me is how
4 long ---

5 A. Not 35. Let me see cause I'm 43 now. I was trying
6 to add. I was 32.

7 Q. Thirty-two, okay. Fair enough. How old was Bellany
8 at the time you met her?

9 A. She told me that she was ---

10 Q. Not what I ask you. How old was she?

11 A. I don't know how old. I didn't check her I.D.

12 Q. Okay. How old did you discover she was?

13 A. I never discovered how old she was, but she told me
14 how old she was.

15 Q. Okay. I'm sorry. Go ahead and finish.

16 A. She told me how old she was.

17 Q. Okay. How old did she tell you she was?

18 A. Twenty-four years old, and she had a son.

19 Q. She told you she was 24, and you assumed that. So
20 how long have you discovered that she really was at the
21 time that y'all met?

22 A. Say what now? I can't hear you.

23 Q. How old was she when y'all met?

24 A. I don't know. I never checked her age.

25 Q. Okay. It was eight years before her death, right?

1 A. Eight, yeah.

2 Q. Okay. And you know she was 25 years old at the time
3 that she died?

4 A. Yeah, I know it now.

5 Q. You know it now, of course. But that means that she
6 was actually, if my math is correct, about 17 years old?

7 A. She told me she was a lot older because she had a
8 child.

9 Q. That not what I asked you?

10 A. I'm just trying to help you.

11 Q. I'm just trying to do some simple math here. You
12 know she's 25 now? You say now you know it?

13 MR. SECOR: Object. Asked and answered. The point
14 has been made.

15 THE COURT: Sustained, counsel. Its been asked and
16 answered. The jury is observant. Please move to your
17 next area.

18 BY MR. REDMOND:

19 Q. You mentioned that, and I'm not going to get into the
20 whole history.

21 A. No, you can. I hope you can. You should.

22 THE COURT: Go ahead. Mr. Stewart, let him ask ---

23 THE WITNESS: Okay.

24 THE COURT: --- questions, and you answer them, sir.

25 BY MR. REDMOND:

1 Q. You mentioned that you were a community man. That's
2 your words not mine?

3 A. Yes. Yeah, I was.

4 Q. And you were trying to do the right thing?

5 A. Yes.

6 Q. You also testified about having four baby mommas, I
7 think to use your term.

8 A. Um hum.

9 Q. Now, many of these children, I guess four of them?

10 A. Five.

11 Q. Five, I'm sorry. Five. How many did you have after
12 you began seeing Bellany Clyburn?

13 A. How many did I have after?

14 Q. Um hum?

15 A. After I see ---

16 Q. After you started dating Bellany Clyburn? How many
17 of those children were born after you began dating
18 Bellany?

19 A. Me and my wife had two after -- three -- three -- I
20 have two. I had four.

21 MR. SECOR: Objection. Relevance.

22 MR. REDMOND: He actually opened the door. I'm just
23 asking the question based on what he testified to on
24 direct: He said he was a community man.

25 THE COURT: Overruled.

1 BY MR. REDMOND:

2 Q. Please?

3 A. Okay, I have ---

4 Q. How many did you have after you met Bellany?

5 A. After I met Bellany how many did I have? One by her.

6 Two, three, four. I think four. Pretty sure it was four.

7 Q. All right. So four after you met Bellany.

8 A. Um hum.

9 Q. Thank you. Now, when you were testifying on directly
10 initially -- well, let me ask you. You've had a chance to
11 see the interview that you have to Pageland P.D, right? I
12 was actually -- do you recall me being in the building a
13 couple of weeks ago when you were looking at the video?

14 A. Yeah. Yeah. I wanted to see the original video. I
15 seen a copy.

16 Q. And you saw the original video?

17 A. Yeah, I seen it. Yeah.

18 Q. Now, as I recall in looking at that video I didn't
19 see you break down once?

20 A. Because -- I'll wait until you get through.

21 Q. No, I'm asking you. You didn't break down at all?

22 A. That was eight, nine hours later. I had already been
23 doing all the crying.

24 Q. But even when you started talking about Bellany ---

25 A. Um hum.

- 1 Q. --- its been three years later?
- 2 A. Um hum.
- 3 Q. And you mentioned ---
- 4 A. Um hum.
- 5 Q. --- or were asked about how long were y'all together,
- 6 something.
- 7 A. Um hum.
- 8 Q. And you bgo whoed and wailed until I'm sure they
- 9 heard you in the next building?
- 10 A. Yeah. Yeah. Yeah. And you know.
- 11 Q. But you didn't do that on the tape?
- 12 A. No, I didn't.
- 13 Q. Okay?
- 14 A. Because of who was interviewing me. Because of who
- 15 was interviewing me, Larry Brown.
- 16 Q. Well, you know what? That's the interesting thing.
- 17 All this stuff that you have to say now let's be honest
- 18 with ourselves.
- 19 A. That's what I'm doing. That's what I'm doing.
- 20 Q. Most of what you testified to today ---
- 21 A. Um hum.
- 22 Q. To today is not even on that tape, is it?
- 23 A. Good point you said that. I know. I know.
- 24 Q. Please.
- 25 MR. REDMOND: Your Honor, if you can explain to him.

1 I understand that, but I just want an answer.

2 THE COURT: Just one moment.

3 THE WITNESS: My ear ain't even on the tape. My ear
4 ain't even on the tape. My ear. That's the same ear.

5 THE COURT: Yes, sir. Mr. Stewart, just a moment,
6 sir. Let's do this for our court reporter's health. One
7 person ask the question, and one person answer it. Now,
8 if Mr. Redmond asks you a question, sir, you give us a yes
9 or no answer and then you may explain if you wish.

10 THE WITNESS: Okay. I want to explain what you mean
11 by that tape. Well, you said -- did I get ---

12 BY MR. REDMOND:

13 Q. Okay. Can I ask -- let me ask you this.

14 A. Ask the question again.

15 Q. Isn't your testimony today different than what you
16 said on the tape a few hours after you killed Bellany?

17 A. No, it's not.

18 Q. It's the same, okay.

19 A. It's the same.

20 Q. That's fine.

21 A. It's the same.

22 Q. So I guess, and let me just ask you. Today -- well,
23 let me ask you this. When you left the first time to
24 avoid the police, I don't know if you testified to it
25 today but I'm going to tell you, do you recall talking

- 1 about some papers being served? Being aware of some
2 papers being served? And in fact you also said, isn't it
3 true, that your wife I think made you aware that there
4 were some papers ---
- 5 A. No.
- 6 Q. --- that were trying to be served?
- 7 A. No.
- 8 Q. You never said that on the tape?
- 9 A. See, you're saying on the tape that I said some
10 papers, but that ain't what I said. I said my wife told
11 me don't go to the apartment. And she didn't want me at
12 no apartments. That's my wife, you know. Of course, she
13 don't want me there. You know she don't want me there.
14 That's what she said. Nothing about no papers.
- 15 Q. Okay.
- 16 A. Okay. We just want to make that clear.
- 17 Q. Okay. So you never mentioned anything about
18 papers ---
- 19 A. No, sure haven't. And never knowing you had none.
- 20 Q. Well, the video is in evidence.
- 21 A. Yes, that's right. And we need to play it if you
22 need to see it.
- 23 Q. Actually not a bad idea?
- 24 A. That sure ain't.
- 25 Q. Now, you said ---

1 A. I would like to see it.

2 Q. I'm going to get straight to the attack itself
3 because that's where the story really gets ---

4 A. Good.

5 Q. --- altered?

6 A. Good.

7 Q. When you on the tape talk about Bellany coming
8 outside isn't it true that you said, and you even
9 gestured, that you put your hand up to her to ---

10 A. No. No. No. I didn't ---

11 Q. You put your hand up to your neck and threatened to
12 kill her to get her back into the apartment?

13 A. No.

14 Q. Is that not what you said?

15 A. No. No, it's not. Look at the tape. Look at the
16 tape. I said, "Open the door," and I made a gesture with
17 my hand, "before I kill you." But that was outside. We
18 were outside. I just testified about that. That's on the
19 tape.

20 Q. But you made the gesture?

21 A. No, you said I made it to her -- on her is what you
22 said.

23 THE COURT: I'll tell you what, gentlemen. Mr.
24 Redmond, I realize that you may have more questions, but
25 we're getting ready to end this because we're at ten

1 minutes, and if you have anything further or any one more
2 area of substance that you want to approach.

3 Please, gentlemen and Mr. Stewart, you can't just
4 give and take and talk over one another because we're
5 trying to keep a record here.

6 THE WITNESS: Yes, sir. Yes, Your Honor.

7 THE COURT: So let's go ahead and hear your final
8 area if you have one and ask your question.

9 MR. REDMOND: Yes, Your Honor. If I may.

10 BY MR. REDMOND:

11 Q. So let me ask you this. Let's just clarify this
12 whole thing. Your testimony right now is that what you
13 testified to today is what you said on the tape on
14 January 1st 2010?

15 A. Not all of it.

16 Q. Not all of it?

17 A. Right cause all the questions ain't been asked.

18 Q. Okay. Is everything that you said about how the
19 murder of Bellany Clyburn took place correct? In other
20 words, is it the same thing you testified to today?

21 A. I can't be 100 percent sure, but what I'm saying is I
22 have -- well, I can explain my answer because the Judge
23 just said. So what I'm trying to tell you is what I
24 didn't say is what Bellany did.

25 I just said what I did. I never said what Bellany

1 did in the tape. I never told what happened to me or
2 where K.S. was or where J.D. was. I never told. K.S.
3 was standing beside me when she was stabbing at me.

4 Q. Okay. And I think you said that you had stabbed --
5 you made a gesture that she even hit you in the chest with
6 the knife?

7 A. No. No. No. She hit me in the chest with the knife
8 when I was on my knees when we first got in the apartment.

9 Q. Anyway, you were hit in the chest?

10 A. No. She didn't hit me. She put it in my chest. She
11 just stuck it there. That's why you don't see a big
12 puncture hole.

13 Q. Well, the jury will be able to remember what your
14 testimony was?

15 A. Right. That's right. You got the pictures anyway.

16 Q. This the picture of you with your shirt off, State's
17 Exhibit Number One?

18 A. Yes, it is.

19 Q. State would move to introduce into evidence at this
20 time?

21 THE COURT: Is there objection? All right. In
22 evidence without objection.

23 (WHEREUPON, State's Exhibit No. 1 was previously
24 admitted into evidence.)

25 MR. REDMOND: And that will conclude the State's

1 cross examination.

2 THE COURT: All right. Very good. And is there
3 re-direct?

4 MR. SECOR: One question.

5 REDIRECT EXAMINATION

6 BY MR. SECOR:

7 Q. Did you love Bellany Clyburn?

8 A. Oh, yes. Yes; I did. Yes. Yes, I did. I did.
9 Sure did. Sure did.

10 Q. Thank you, sir?

11 COLLOQUY

12 THE COURT: Very good. Sir. I'm going to let you
13 return to your seat. Please watch your step. All right,
14 ladies and gentlemen, what we're going to do now is we're
15 just going to stand down and take our lunch break. And
16 What I ask you to do is this. Be back in the jury room at
17 2:15. It's one o'clock now. That's an hour and 15
18 minutes for lunch.

19 And at that point we will resume and conclude the
20 trial. Let's again, please, don't discuss the case with
21 whomever you have lunch and keep an open mind. Just enjoy
22 your lunch. We will see you at 2:15. We will remain where
23 we are while you depart the courtroom. Have a nice lunch.

24 (WHEREUPON, the jury panel was excused from the
25 courtroom at 1:01 p.m.)

1 THE COURT: All right. Defense will rest at this
2 point?

3 MR. YOUNG: Yes, sir, Your Honor.

4 THE COURT: All right. Will there be rely evidence
5 from the State?

6 MR. REDMOND: Your Honor, we were just discussing
7 that. If I may have -- I guess I can let the Court know
8 immediately after the lunch break. If there is reply it
9 will be extremely brief cause I'm not even sure it will be
10 necessary based on everything.

11 THE COURT: All right. Well, gentlemen, then let's
12 go ahead and stand down. We will be back shortly after
13 2:00 in case we need put anything on the record. We'll
14 take an hour for lunch. Court is now in recess until
15 two o'clock.

16 (WHEREUPON, Court was in recess at 1:10 p.m. and
17 reconvenes at 2:00 p.m.)

18 THE COURT: All right. We're all in place now.
19 Ladies and gentlemen, what I would propose to do is that
20 we bring the jury out. I'm told that the Defendant -- the
21 Defense rests, and then there is no reply from the State.
22 And thus we would proceed into closing. Also by agreement
23 of counsel the Court will charge on the law first and then
24 be followed by the Defense closing argument to be followed
25 by the State's closing argument. Meaning that the State

1 has waived opening. We will proceed in that fashion. Any
2 objection from the State?

3 MR. FOARD: None from the State, Your Honor.

4 THE COURT: From the Defense?

5 MR. YOUNG: No, Your Honor.

6 THE COURT: All right. Then I believe we're ready.
7 Please bring out the jury

8 (WHEREUPON, the jury panel enters the courtroom at
9 2:04 p.m.)

10 THE COURT: All right. Welcome back, ladies and
11 gentlemen. I trust you had a nice lunch, and if you
12 recall we were at the end of the testimony phase of the
13 case when we stopped this morning after our morning
14 session. And let me ask now, are there further witnesses
15 for the Defendant?

16 MR. YOUNG: No, Your Honor. The Defense rests.

17 THE COURT: All right. The Defense rests. Is there
18 reply witnesses for the State?

19 MR. FOARD: None from the State, Your Honor.

20 THE COURT: All right. Good very. Then that means
21 that all of the testimony in the case has concluded, and
22 we're now at the point in the case where we will have
23 closing arguments by counsel and the charge on the law by
24 the Court. And I will tell you that pursuant to a
25 discussion with the attorneys over the lunch hour we have

1 made a determination that I will actually charge first.

2 The Court will give you the charge of the law first,
3 and then you will hear arguments of counsel. So the way
4 we're going to proceed is charge on the law and then
5 closing argument from Defense and then closing arguments
6 from the State. State is given final argument; that is
7 the last argument because the State again bares the burden
8 of proof.

9 CHARGE OF THE COURT

10 All right. Let me ask. Let's do a little voice
11 check. Are you able to hear me in the courtroom, ladies
12 and gentlemen? Everyone over here? All right. Very
13 good.

14 As you are aware the State, seated at the table
15 closest to you, has charged the Defendant, Thomas Jeffery
16 Stewart, with one count of murder and the possession of a
17 weapon during the commission of a violent crime. And as
18 you know the Defendant has denied these charges against
19 him. He's entered a plea of not guilty. These charges
20 are based on an indictment, and of course, as was
21 explained to you at the beginning -- I hate to sound like
22 a broken record, but to say it again because of its
23 importance, the indictments are simply a set of
24 accusations against the Defendant.

25 They're not evidence in this case. The evidence

1 which you are to consider you've already heard which is
2 the testimony of the witnesses along with such exhibits as
3 may have been admitted in the record during the course of
4 the trial. And as you know there are many exhibits that
5 came into evidence, and we will provide all of those to
6 you whenever you begin your deliberations.

7 Now, I said to you a moment ago that the Defendant
8 pled not guilty, and you heard that. You're aware of that
9 because it happened here in the courtroom. But even
10 beyond that, even if the Defendant had not entered a plea
11 he comes into this courtroom clothed with a presumption of
12 innocence, and that presumption of innocence continues
13 with the Defendant and entitles him to a verdict of not
14 guilty unless and until that presumption is dispelled by
15 evidence that satisfied you, ladies and gentlemen of the
16 jury, beyond a reasonable doubt that the Defendant is
17 guilty of the offense charge and the State has proved each
18 and every element of the alleged crime beyond a reasonable
19 doubt.

20 Now, as I said to you at the beginning of the trial
21 please remember that you are the judges of the facts in
22 this case. And under the constitution that means you make
23 the decision as to what the facts are. And also discuss
24 with you that because you're the judge of the facts that
25 means you're going to have to gauge the credibility and

1 the believability of the witnesses who come before you if
2 you find that there is testimony that is inconsistent or
3 mutually exclusive.

4 There is no need for me to go over again those
5 factors that we discussed at the beginning of the trial.
6 I will simply say you constantly, every day, all of us in
7 our lives gauge people's credibility and believability.
8 You use those factors that have proved well for you
9 through your common sense here in the courtroom. But I
10 will tell you that in deciding the evidence in this case;
11 that is what are the facts of the case, you may believe as
12 much or as little of any one witness' testimony you think
13 proper,

14 You can believe the testimony of one witness against
15 a whole group of people or you can do just the opposite.
16 You can believe part of what a witness says and completely
17 disbelieve the rest. I further tell you that the fact
18 that certain testimony may not be directly controverted
19 does not mean that you have to accept it as true because
20 you must still first gauge the credibility and the
21 believability of the witness through which it comes. Keep
22 in mind throughout this process you have one objective,
23 and that is to search for and find the truth regardless of
24 from which side of the case or from which witness that
25 truth may come.

1 Now, there are two types of evidence that is put
2 forward in cases such as these. There is direct evidence
3 and there is circumstantial evidence. Direct evidence is
4 the testimony of a person who asserts or claims to have
5 actual knowledge of a fact such as an eyewitness witness
6 who testifies about what they say or heard or did. That
7 is direct evidence. Circumstantial evidence, on the other
8 hand, is proof of a set or chain of facts that then
9 indicate the existence of yet another fact. I will tell
10 you that the law makes no distinctions between the weight
11 or value to be given either direct or circumstantial
12 evidence. Nor is a greater degree of one required over
13 the other as to the certainty of the evidence.

14 It's up to you to weigh any and all evidence which is
15 put forth. And after weighing all the evidence, which is
16 what you should do; both direct and circumstantial, if
17 you're not convinced of the guilt of the Defendant on a
18 particular charge beyond a reasonable doubt then you must
19 find the Defendant not guilty of that charge.

20 Now, I talked to you a little bit about gauging
21 credibility and weighing the evidence, and of course, I've
22 been back in your jury room. Not while you've been back
23 there, but I've been back there before, and there is not a
24 set of scales to go back and weigh the evidence on. Well,
25 obviously, you know that. And the reason for that is

1 because it's entirely a mental process. But on that point
2 I will say this to you. That evidence that weigh with you
3 is evidence that convinces you of its truth. Again,
4 regardless of which side of the case or which witness --
5 from which witness it may have come.

6 Now, ordinarily -- I want to talk with you just a
7 little bit again about expert witnesses. Ordinarily, the
8 rules of evidence don't permit witnesses to come in and
9 give opinions or conclusions. But an exception to this is
10 what we call the Expert Witness Rule. And this is for a
11 witness who by some level of education or experience or
12 knowledge in a particular education or art or science or
13 profession may come in and on a relevant and material
14 matter state an opinion with regard to something that
15 maybe within that expert's purview.

16 You should consider that expert opinion just as you
17 would any other evidence in the case. And you give it the
18 weight that you believe it is entitled to. If you decide
19 that it is not based on sufficient reasoning or education,
20 experience, then you should disregard the testimony of the
21 expert witness. Again, I say to you that an expert
22 witness testimony should not be given any greater weight
23 than any other witness simply because the person is
24 determined to be an expert. But I say to you that you're
25 not required to follow an expert's opinion. You simply --

1 is given to you for the purposes of assisting you in
2 finding matters of fact that are within that expert's
3 purview if you deem it to be helpful. So you give it the
4 weight you believe it is entitled to.

5 Now, during the trial you also heard by videotape the
6 testimony from children. And where a witness is a child
7 you must determine as with any other witness whether that
8 testimony is believable. And in deciding believability
9 you may consider not only matters that I've already
10 discussed with you about believability or credibility, but
11 you may also consider the age of the child, the child's
12 ability to observe and remember facts, and the child's
13 ability to understand what was happening and to answer
14 questions.

15 Because young children may not fully understand what
16 is happening in a particular situation it's up to you to
17 decide whether the child understood the seriousness of
18 appearing as a witness on the videotape and whether the
19 child understood the questions and whether the child has a
20 good and valid memory. Whether the child understand the
21 difference between lying and telling the truth. In
22 addition young children may be influenced by the way
23 questions are posed. So it's up to you to decide whether
24 the child understood the questions that were asked and
25 then answered truthfully.

1 Now, the same constitution that makes you the judge
2 of the facts makes me the judge of the law here in the
3 courtroom. And I will tell you from just like as you do
4 from living in a small town or a small county most of your
5 life and being out on the street and around people I know
6 that there is a lot of bad information about what the law
7 is on any particular subject out on the street. And so
8 I'm asking you, ladies and gentlemen, to set aside what
9 preconceived notion you may have of what the law is or
10 even what you or I think might be a better idea of what
11 the law should be and just accept the law as I give it to
12 you in this charge, apply it to the facts as you find it
13 in this case if you do. And if you do that you're going
14 to find a verdict which is just and which is true and
15 which is fair.

16 I will tell you that this charge I'm giving you I've
17 gone over it with the attorneys, and I have reviewed the
18 law that I'm giving to you, and if I should make a mistake
19 which I am not doing. I do not believe I'm doing, then of
20 course, that error would be preserve because our court
21 reporter is taking this down. And there will be another
22 day and time that that can be addressed by another court
23 if necessary. But I say to you for today's purposes I am
24 giving the law correctly. Please accept it as I give it
25 to you, and apply it to the facts as you find them.

1 Now, in a criminal prosecution of this type, as I've
2 already said. In fact I've said it many times. The
3 State, seated at the table closest to you. The
4 prosecution has burden of proof at all times. The Defense
5 doesn't have a burden of proof, and the Defendant is
6 presumed innocent. And in this State, according to our
7 constitution, the prosecution must prove its case to the
8 standard of proof we call beyond a reasonable doubt.
9 That's the standard. Beyond a reasonable doubt before a
10 finding of guilt may occur. And if the State fails to
11 meet this high burden then the Defendant is entitled to an
12 acquittal.

13 And so you say, "well, all right then. What is a
14 reasonable doubt?" Well I'm going to start by telling you
15 what it's not. It's not an imaginable or a fanciful doubt
16 or a weak doubt. It's a substantial doubt. It's a doubt
17 for which the words imply. A doubt for which you can give
18 or assign a reason based on the testimony and the evidence
19 in this case. And you and I know that a reasonable doubt,
20 it's not any sort of a doubt. You and I know that a
21 reasonable doubt may arise from any number of everyday
22 life experiences we have. Such as what tie to wear to an
23 event or what pair of shoes to wear. That is not a
24 reasonable doubt.

25 A reasonable doubt is a doubt that makes an honest,

1 sincere, conscientious juror in search of the truth
2 hesitate to act. Proof beyond a reasonable doubt is proof
3 that leaves you firmly convinced of the Defendant's guilt.
4 If you have a doubt for which you can give or assign a
5 reason as to the guilt of the Defendant based on the
6 evidence in this case then he's entitled to a verdict of
7 not guilty.

8 Now, I tell you a reasonable doubt may arise from the
9 evidence that's in the case or from the lack or absence of
10 evidence in the case. And you the jury must make the
11 determination of whether or not reasonable doubt exists as
12 to the guilt of the Defendant in these two cases.

13 I will say to you the very fact, however, that the
14 jury goes back in the jury room and engages in a full and
15 free discussion on the issue of guilt or non-guilt this
16 these cases with a conversational ebb and flow on those
17 issues doesn't automatically mean that reasonable doubt
18 exists in this case or in any other case for that matter.

19 Now, let's talk about criminal intent. Criminal
20 intent is a necessary element of each crime that must be
21 proved by the State beyond a reasonable doubt. Criminal
22 intent is always a matter that must be determined by the
23 jury from the circumstances that surround the situation.
24 Now, you and I know that there is no way to prove intent
25 to some mathematical certainty. And there is no way that

1 medical science lets us open up someone's mind and look in
2 and determine what they had in mind at a particular
3 moment.

4 So the law states that criminal intent maybe inferred
5 from the circumstances shown to have existed both before
6 and after the fact. And this is how you the jury make a
7 determination of whether or not the element requiring
8 intent, criminal intent, is present. I tell you that
9 criminal intent is a state of mind that operates jointly
10 with an act or omission in the commission of a crime.

11 Criminal intent is a mental state of conscious wrong
12 doing. So it's up to you the jury to determine whether
13 the State has proved the element of criminal intent in
14 this case based on the circumstances shown to have
15 existed. I tell you that the State must prove criminal
16 intent beyond a reasonable doubt just as the State must
17 prove every element of the accusations beyond a reasonable
18 doubt.

19 Now, during the course of the trial, of course you in
20 the courtroom here you heard this, the Defendant took the
21 stand and testified and made certain explanations. But I
22 charge you it's not incumbent upon the Defendant to prove
23 his explanations or anything else for that matter. The
24 Defendant's plea of not guilty placed the burden of proof
25 on the State to prove his guilty beyond a reasonable doubt

1 before the Defendant can be found guilty. And you must
2 gauge the credibility and the believability of the
3 Defendant just as you would any other witness in the case.

4 Now, furthermore, a statement alleged to have been
5 made by the Defendant was admitted into evidence in this
6 case. You may recall you saw it on videotape. And as
7 well as there may have been other oral admissions that
8 were testified to or oral statements testified to. So
9 while the Court has determined these statements were
10 admissible; that is they came into testimony, I instruct
11 you that you make the ultimate decision of whether or not
12 the Defendant made the statement.

13 And if the Defendant did make the statement you must
14 then determine whether the statement was made by the
15 Defendant voluntarily and of his own free will. This
16 means the statement was not caused by pressure or force or
17 fear or threats or coercion, intimidation or by hope or
18 promise of lenience or reward of any kind. In determining
19 whether a statement is voluntary you should consider both
20 the characteristics of the Defendant and the details of
21 the question.

22 Some of the factors you just consider are: The age
23 of the Defendant. The Defendant's education or perhaps
24 lack of it. The Defendant's mental ability or capacity.
25 The Defendant's I.Q. or his intelligence as you perceive

1 it. The Defendant's background and environment. The
2 place and length of detention. The nature of the
3 questioning. And the advice or lack therefore to the
4 Defendant of his constitutional rights, including but not
5 limited to, the right to remain silent; that any statement
6 can be used against him in a Court of law. The right to
7 have a lawyer present. That if he could not afford a
8 lawyer one would be appointed to represent him without
9 cost. And that he could stop making his statement at any
10 time.

11 You must carefully consider all the surrounding
12 circumstances before you give any weight to an alleged
13 statement by the Defendant. The State has the burden of
14 proving beyond a reasonable doubt that the alleged
15 statement was voluntarily, and if you determine it was you
16 made then give the statement any further consideration you
17 deem proper. You must decide what weight if any should be
18 given to that statement. But if you determine the alleged
19 statement was not freely and voluntarily the statement of
20 the Defendant then you should not consider that statement
21 at all.

22 All right. Now, let me define for you the charges;
23 that is the criminal charges which have been levied in
24 this case. I charge you first on the crime of murder.
25 The Defendant is charged with murder as you are aware. In

1 order to prove murder the State must prove beyond a
2 reasonable doubt that the Defendant killed another person
3 with malice aforethought. Malice is hatred or ill will or
4 hostility towards another person. It is the intentional
5 doing of a wrongful act without just cause or excuse and
6 with intent to inflict an injury or under circumstances
7 that the law will infer an evil intent.

8 Now, malice aforethought doesn't require that the
9 malice exist for any particular amount of time before the
10 act is committed, but the malice must exist in the mind of
11 the Defendant just before and at the time the act is
12 committed. Therefore, there must be a combination of
13 previous evil intent and the act itself.

14 Malice aforethought may be either expressed or it
15 maybe inferred. The terms, 'expressed' and 'inferred'
16 don't mean different kinds of malice, but they merely mean
17 the manner in which malice may be shown to exist; that's
18 either by direct evidence or by inference from the facts
19 and circumstances shown to have existed.

20 Express malice is shown when a person speaks ill will
21 or expresses hatred for another or when the person
22 prepares beforehand to do an act which was later
23 accomplished. For example, any act of preparation that
24 goes to show that the deed was within the mind; that is
25 within the Defendant's mind. Well, that would be

1 expressed malice.

2 But malice may also be inferred from conduct showing
3 a total disregard for human life. Now, that was the
4 charge of murder, but I want to say to you, ladies and
5 gentlemen, that many greater offenses which murder, of
6 course, is a greater offense also have what we call lessor
7 included offense. Now, it sounds a little bit
8 complicated, but it's really not. What it means is that
9 the -- a Defendant who is indicted for a greater crime
10 such as murder may be convicted by the jury of a lessor
11 charge if the jury finds that the facts proven actually
12 fit that lessor charge and not the greater charge. And
13 that the elements of the lessor charge have each been
14 proved beyond a reasonable doubt.

15 I will tell you that specifically the greater charge
16 will include an additional element that is not necessary
17 for the lessor charge. Now, included within the offense
18 of murder is the lessor included offense of voluntary
19 manslaughter. And if you find that the State has failed
20 to prove beyond a reasonable doubt that the Defendant
21 committed a murder then you must consider whether the
22 State has proved beyond a reasonable doubt that the
23 Defendant committed a crime of voluntary manslaughter.

24 Now, in order to prove voluntary manslaughter the
25 State must prove beyond a reasonable doubt that the

1 Defendant took the life of another person in the sudden
2 heat of passion based on a sufficient legal provocation.
3 Both the heat of passion and the sufficient legal
4 provocation must be present at the time of the killing to
5 constitute voluntary manslaughter. Sudden heat of passion
6 may for a time affect a person's self-control and
7 temporarily disturb a person's reason. The sudden heat of
8 passion must be the type that would make an ordinary
9 person unable to coolly reflect on his actions and would
10 produce an uncontrollable impulse to do violence.

11 Sufficient legal provocation must be the type that
12 would make a person of ordinary reason and caution to
13 become enraged or lose control temporarily. The
14 provocation needed for voluntary manslaughter must come
15 from some act of or related to the victim.

16 Words alone, however vulgar and insulting they may
17 be, are not enough sufficient legal provocation where
18 death is caused by the use of a deadly weapon the words
19 must be accompanied by some overt, threatening act which
20 could have produced the heat of passion.

21 The exercise of a legal right, no matter how
22 offensive it is to another is never sufficient legal
23 provocation for voluntary manslaughter. And if the heat
24 of passion had cooled or if there was sufficient time
25 between the provocation, if any, and the killing for the

1 passion of a reasonable person to have cooled the killing
2 would not be voluntarily manslaughter.

3 In deciding whether a reasonable person would have
4 had enough time to cool off you should consider all the
5 factors and circumstances that surround the killing. You
6 may consider the nature of the provocation if any. The
7 Defendant's mental and physical state. And the
8 circumstances and the relationship between the parties.

9 I also tell you that in determining whether an act
10 which caused death was impaled by heat of passion or by
11 malice all surround circumstances and conditions are to be
12 taken into consideration including previous relations and
13 conditions connected with the tragedy as well as those
14 existing at the time of the killing.

15 Now, let's go back to the greater offense versus the
16 lessor offense. If you find that the Defendant is guilty
17 of one of the charges. In other words has committed a
18 homicide; that is has caused the death of another person,
19 and that's either manslaughter or murder, one of the two.
20 But you cannot determine which of the charges it is then
21 you must resolve that doubt in favor of the Defendant and
22 find him guilty on the lessor charge of voluntary
23 manslaughter. Of course, you can't find the Defendant
24 guilty on any charge unless the State proves all the
25 element of that particular charge beyond a reasonable

1 doubt.

2 Now, let's also talk about the possession of a weapon
3 during the commission of a violent crime. The Defendant
4 is charged with this as well. And it is with the
5 possession of a weapon during the commission of or the
6 attempt to commit a violent crime. And in order to prove
7 this the State must prove beyond a reasonable doubt the
8 Defendant visibly displayed a knife or a weapon during the
9 commission of a violent crime. A knife means an
10 instrument or tool with a sharp cutting blade whether or
11 not fastened on a handle which can be caused to inflict a
12 cut, a slash or a wound.

13 In order to find the Defendant guilty of the
14 possession of a weapon during the commission of a violent
15 crime you must first find the Defendant guilty of either
16 committing a violent crime or attempting to commit a
17 violent crime. I charge you that under South Carolina law
18 murder and voluntary manslaughter are both classified as
19 violent crimes.

20 All right, now. The Defendant has raised the issue
21 of self-defense in this case, and let's talk about that.
22 Self-defense is a complete defense. And if it's
23 established then you must find the Defendant not guilty of
24 any charge. The State has the burden of disproving
25 self-defense by proof beyond a reasonable doubt. Just to

1 make sure we understood that. It's not the Defendant's
2 position to prove it. It's the State's position to
3 disprove it.

4 And if you have a reasonable doubt of the Defendant's
5 guilt after considering all the evidence, including the
6 evidence of self-defense, then you must find the Defendant
7 not guilty. On the other hand if you have no reasonable
8 doubt of the Defendant's guilt, after examining all the
9 evidence, including the evidence of self-defense, then you
10 must find the Defendant guilty.

11 And the following elements are required to establish
12 self-defense, okay. So let's listen carefully.

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

19 So again, the Defendant must be without fault in
20 bringing on the difficulty. And if the Defendant
21 voluntarily participated in some sort of mutual combat for
22 purposes other than protection the killing of the victim
23 would not be self-defense. This is true even if during
24 the combat the Defendant feared death or serious bodily
25 injury. However, if before a killing is committed the

1 Defendant withdraws and tries in good faith to avoid
2 further conflict, and either by word or act makes that
3 fact known to the victim he would be without fault in
4 bringing on the final difficulty.

5 For mutual combat there must be a mutual intent and
6 willingness to fight between the parties. This intent may
7 be shown by the acts and conduct of the parties and the
8 circumstances that surround the combat. In addition it
9 must be shown that both parties were armed with a deadly
10 weapon.

11 Secondly, so the first was without fault. Secondly,
12 the second element of self-defense was that the Defendant
13 was actually in imminent danger of death or serious bodily
14 injury or that he actually believed he was in imminent
15 danger of death or serious bodily injury. If the
16 Defendant was actually in imminent danger it must be shown
17 that the circumstances would have warranted a person of
18 ordinary firmness and courage to strike the fatal blow to
19 prevent death or bodily injury to himself.

20 If the Defendant believed he was in imminent danger
21 of death or serious bodily injury it must be shown that a
22 reasonably prudent person of ordinary firmness and courage
23 would have had the same belief under the same
24 circumstance. In deciding whether the Defendant actually
25 was or believed he was in immediate danger of death --

1 excuse me. Of death or serious bodily injury you should
2 consider all the facts and circumstances that surround the
3 situation including the physical condition and
4 characteristics of the Defendant and of the victim.

5 Now, the Defendant does not have to show that he was
6 actually in danger. It is enough that the Defendant
7 believed he was in imminent danger, and a reasonably
8 prudent person of ordinary firmness and courage would have
9 believed the same thing under the same circumstances. The
10 Defendant has the right to act on appearances even though
11 the Defendant's beliefs may have been a mistake. It is
12 for you to decide whether the Defendant's fear of
13 immediate danger of death or serious bodily injury was
14 reasonable and would have been felt by an ordinary person
15 in the same situation.

16 Now, evidence of prior difficulties between the
17 Defendant and the victim maybe considered in deciding
18 whether a threat existed and whether the Defendant had
19 reason to believe that a threat existed and how serious
20 that threat was and the Defendant's state of mind on the
21 particular occasion. Now, the relative sizes and ages and
22 weights of the Defendant and the victim may be considered
23 in deciding the apparent or actual need for force in
24 self-defense and the amount of the force that is needed.

25 Also, the reputation of the victim as a violent

1 person may be considered in deciding whether there was a
2 need for force, whether the Defendant had to believe --
3 excuse me. Had reason to believe there was a need for
4 force and whether deadly force was reasonably necessary
5 and whether the victim had such a reputation.

6 And also prior instances of violence by the victim
7 may be considered in deciding whether the Defendant
8 actually believed he was in imminent danger of death or
9 serious bodily injury or was actually in imminent danger.

10 And the final element of self-defense is that the
11 Defendant had no other probable way to avoid the danger of
12 death or serious bodily injury than to act as the
13 Defendant did in this particular instance. We call this
14 the duty to retreat. Now, the Defendant has no duty to
15 retreat if by doing so the danger of being killed or
16 suffering serious bodily injury would increase.

17 Now, as I instructed you earlier a man does not have
18 the right to act in self-defense if he brought about the
19 difficulty. That principle is subject to the following
20 limitation I have: If after bringing on the difficulty
21 the aggressor withdraws in good faith from the conflict
22 and announces in some way to his adversary of his
23 intention to withdraw he's restored his right to
24 self-defense, and he may act accordingly.

25 I further charge you that being under a peace bond

1 does not deprive the Defendant of a plea of self-defense
2 if the Defendant's actions otherwise comport with the
3 requirements of the law of self-defense. I further charge
4 you that the jury may consider prior instance of violence
5 or unprovoked aggression by the victim in determining
6 whether the Defendant had a reasonable belief of imminent
7 danger. Such prior instances of violence or unprovoked
8 aggression by the victim need not have been committed
9 against the Defendant.

10 It is only necessary that the Defendant knew of such
11 prior instances of violence or unprovoked aggression by
12 the victim, and that such prior instances of violence of
13 unprovoked aggression were so closely connected at a point
14 of time or occasion with the homicide as to produce from
15 the Defendant a reasonable apprehension of great bodily
16 harm.

17 And then, further, in consideration of whether
18 self-defense is applicable here you should try as near as
19 you can to put yourself in the Defendant's situation at
20 the time of the stabbing. You should consider the
21 circumstances by which he was surrounded, and take into
22 consideration the person with whom he was dealing and all
23 the facts which surrounded him as you obtained from the
24 testimony. And as near as you can view the situation
25 accordingly.

1 Accordingly, unless the State shows that a person of
2 ordinary reason, coolness and prudence would not have
3 acted as the Defendant did under the circumstances that
4 surrounded him at the time of the stabbing then you should
5 find the Defendant not guilty. You are not to determine
6 if the Defendant made the wisest choice possible but only
7 a reasonable one under the circumstances as he perceived
8 them.

9 And then finally on the issue of self-defense a
10 person cannot be required to make an exact calculation as
11 to the degree or amount of force which may be needed to
12 avoid death or serious bodily harm. Therefore, in
13 self-defense the Defendant has the right to use the force
14 needed to avoids death or serious bodily harm. The force
15 used in self-defense does not have to be limited to the
16 degree or amount of force used by the victim.

17 The Defendant has the right to use so much force as
18 appear to be necessary for complete self-protection in
19 which a person of ordinary reason and firmness would have
20 believed to be needed to prevent death or serious bodily
21 harm.

22 All right. Now, ladies and gentlemen, I'm going to
23 conclude these comments and then you will hear from the
24 lawyers and you will retire to deliberate. And when you
25 do that I want to express to you the hope that each of you

1 will be mindful of your importance of your responsibility.
2 And I know you are. You may recall when we were together
3 on Monday I mentioned to you that you cannot be required,
4 you have an exemption, cannot be required to serve as a
5 juror more than one time in a three calendar year period
6 in the same court. And there is a reason for that.
7 Because it's a difficult duty. It's a difficult task. It
8 requires the proper performance. It requires each of us
9 to reach the height of freeing our minds of all outside
10 and improper influences because you and I are acting for
11 the community to see to it that every trial here is fair
12 and every verdict here is just.

13 Now, you probably noticed that the presiding officer
14 in the courtroom which in this case is me is referred to
15 as 'Your Honor'. And I know you know that's not some
16 title given to me individually. It's a title that is
17 assigned to the position that I'm privileged to hold
18 because this Court is entrusted with the honor of this
19 community, this county, this state and indeed this nation
20 to see that to it that every trial here is fair and every
21 verdict is just.

22 Now, in a few moments you're going to take the
23 preservation of the honor of this community, county, state
24 and nation with you in the jury room and decide this case.
25 Now, when I say that please understand I'm not telling you

1 how you should decide this case. That's not my point at
2 all. I'm simply saying this: As the presiding officer in
3 this courtroom it is of vital importance to me that
4 whatever verdict you reach will be the result of your
5 going back in the jury room and confining your
6 consideration to the evidence put forth in this courtroom.
7 And weighing that evidence fairly and impartially and
8 apply that evidence to the law that I've given you here in
9 this charge.

10 And if you do that, and I have every confidence that
11 is what you will do, then you will reach a verdict that is
12 just and fair. I say to you, ladies and gentlemen,
13 everyone in this case is entitled to justice. Nothing
14 more and nothing less. We owe no sympathy to any party.
15 We owe no support to any party. And, again, I'm of the
16 confirmed opinion that what verdict you reach will
17 represent truth and justice for all parties.

18 Now, Madam Forelady and members of the jury, remember
19 that the verdict must be unanimous as to all issues. And
20 I will talk with you a little further after the lawyers
21 conclude their arguments about the specific verdict form
22 we will give you and the responses for that verdict form.
23 But at this time the Court recognizes Defense counsel for
24 closing statement.

25 MR. YOUNG: Thank you, Your Honor.

1 THE COURT: Yes, sir. Mr. Young.

2 CLOSING STATEMENT BY MR. YOUNG

3 MR. YOUNG: There are a bunch of people in this
4 courtroom that think I'm wasting my breathe. They think
5 that what happened in here this morning means I should not
6 bother. But they don't know what I know, and Thomas
7 doesn't know what I know. I don't know what it feels like
8 to be accused of something you didn't do. Especially not
9 the most serious crime in South Carolina.

10 Thomas didn't murder Bellany Clyburn. What happened
11 was a tragedy and should never have happened. But it
12 wasn't murder. And Thomas doesn't know what I know about
13 you, and that is how serious you take your
14 responsibilities as jurors. How that oath meant something
15 to you. How when you agreed to look through all of this
16 evidence with an eye towards common sense and examine it
17 critically and hold the State to it's burden of proof
18 beyond a reasonable doubt, beyond any and all reasonable
19 doubt, that you would arrive at a just verdict.

20 Sometimes we get caught up in this fight about us,
21 them, us and them. Me and him. And I feel like I lost
22 the trust of my client. But I shouldn't cause I trust
23 you. The State wants you to convict Thomas Stewart of the
24 most serious crime in South Carolina when they know for a
25 fact that there are questions about the evidence. Those

1 questions can be answered. The answers are right here.
2 All we've got to do is test them. I understand that some
3 point in time S.L.E.D. had some five item limit policy
4 because of a backlog. Okay. Test it now. Test it today.
5 Don't convict a man for murder when you have those
6 questions.

7 Whose blood is on the carpet? Test it. Whose blood
8 is on the wall? Test it. Whose hand was the knife? Test
9 it. Whose blood is on the knife? Test it. We all know
10 I'm talking about the knife with Marker Number Two. The
11 bent bladed knife. Test it.

12 What happened to Bellany Clyburn was a tragedy. I
13 wrote in my prepared remarks about the crazy thing called
14 love. People do crazy things when they're in love.
15 Bellany and Thomas did crazy things. There is no doubt
16 about that. The State start its case with a description
17 of their relationship as a sorted tale. I had to look it
18 up. Sorry. But I don't think that their relationship was
19 loveless. I think take experienced joy at times. But at
20 times. Other times not. They weren't nice to each other
21 all the time. But there were times.

22 Their relationship wasn't dirty. It wasn't evil. It
23 doesn't deserve to be characterized that way. Wasn't one
24 that they should have had, but they did the best they
25 could with what they had. And at the end of the day,

1 ladies and gentlemen, the State's theory of the case, and
2 this may not be what they say. But my understanding from
3 what we heard so far is that because Bellany Clyburn went
4 and got a trespassing and a simple assault warrant out on
5 Thomas Stewart after the thing on the 27th and the other
6 thing on the 28th and the thing at the gym, that this
7 enraged Thomas -- well, first off, the Thomas knew about
8 these warrants and this protection order. And that
9 enraged Thomas to the point where he hatched a plan to
10 murder Bellany Clyburn. If you believe that, if that's
11 what you think this evidence shows after a critical
12 examination, then you should convict Thomas Stewart of
13 murder.

14 But that's not what happened. They want you to
15 believe that Thomas Stewart knew about these papers.
16 Well, had discussions with Thomas about the papers on
17 video. He wants you to watch it. There is one thing that
18 he said that was the same both times. There is absolutely
19 not one shred of evidence that Thomas knew about the
20 existence of these warrants or this protection order. The
21 State just wants you to take it on their; that it enraged
22 him to the point that he was homicidal.

23 So he takes -- so he goes to North Carolina. He
24 borrows a car that has a driver's side door that's tied
25 shut. The passenger side door doesn't work. A leaking

1 tire that you have to constantly put air back into or it
2 goes flat. And he drives this vehicle and parks it right
3 in front of Bellany Clyburn's apartment. And according to
4 some witnesses he waits in the car for, I don't know.
5 According to some witnesses 24 hours. Nobody ever sees
6 him. Never gets out. Nobody ever notices him. He drives
7 through. Crystal comes over. At one point in time
8 Bellany leaves to go get a pizza. At night. In the dark.
9 Next to an S.U.V. I would think that homicidal, jealous
10 boyfriend might find that to be a fortuitous opportunity
11 seeing how he's laying in wait to kill her. That didn't
12 happen.

13 He fortuitous, unless, of course, he was hiding in
14 her closet upstairs. I know the State doesn't want you to
15 not believe anything that Thomas said. And that's okay.
16 They can want that and they can ask for it. But you've
17 taken an oath to tell them one thing. Prove it. All you
18 got to do is prove it. Prove what he said was a lie.
19 Look at the evidence. Can't be proven. What happened on
20 January the 1st 2010 was not murder. Thank you.

21 THE COURT: Okay. For the prosecution.

22 MR. FOARD: Thank you, Your Honor.

23 THE COURT: Mr. Foard.

24 CLOSING STATEMENT BY MR. FOARD

25 MR. FOARD: Counsel. Ladies and gentlemen, I'm

1 standing before you now, and the first thing I have to do
2 is I have to express my most sincere thanks to you for the
3 last four days because I am about to asking you to do
4 something that is remarkably difficult. And I'm going to
5 concede the point that counsel for defense just stated. I
6 am going to ask you to convict Thomas Stewart of the most
7 serious crime we have in the State of South Carolina,
8 murder.

9 And the reason I'm going to ask you to do that is
10 because there is absolutely no question that Thomas
11 Jeffery Stewart killed Bellany Clyburn. No, he didn't
12 kill her. Her butchered her in front of her two children.
13 One of whom was his own. Thirty-nine wounds, ladies and
14 gentlemen. Thirty-nine wounds is what the doctor
15 testified to that were found all over her body from the
16 waist up. To her chest. To her back. To her arms. To
17 her hands. To her head.

18 He slaughtered the mother of his child in cold blood
19 on New Years Day of 2010. He stands before your accused
20 of that crime, and I submit to you that the State has done
21 its job. We have met our burden. We have proven our case
22 beyond a reasonable doubt. We're asking you to find him
23 guilty. And because the State bares the burden of proof I
24 unfortunately bare the duty of take you back through some
25 of this evidence. I know you've heard it. I know we've

1 talked about it. But, unfortunately, we've got to cover
2 it.

3 But in order to cover it adequately, and in order for
4 you to do your jobs as the Judge has said you have to do
5 your job you have to apply the law to the evidence. So
6 let's go back and briefly talk about the law and what the
7 State's burden of proof is in this case.

8 I'm asking you to convict for murder which is proof
9 beyond a reasonable doubt that the Defendant killed
10 another person with malice aforethought. And as you heard
11 malice is hatred, ill will or hostility towards another
12 person. An intentional doing of a wrongful act without
13 just cause or excuse and with an intent to inflict an
14 injury under circumstances that law will infer an evil
15 will.

16 Now, malice doesn't have to be formed way in advance.
17 The Judge told you that. He said, "Malice aforethought
18 was not required if malice exists for any particular time
19 before the act is committed." Ladies and gentlemen, you
20 can find that malice was formed at any point up until
21 Thomas Jeffery Stewart began striking the fatal blows with
22 a knife to Bellany Clyburn.

23 It can be expressed or inferred. That means it can
24 be through spoken words or it can be shown through actions
25 or most importantly it can be inferred from the use of a

1 deadly weapon. . And that is what we have here. We have
2 the use ---

3 MR. YOUNG: Your Honor, object to that.

4 THE COURT: Objection noted.

5 MR. FOARD: Thank you, Your Honor. It can be
6 inferred from the use of a deadly weapon. Now, we've got
7 multiple instances of malice in this case. I'm not
8 addressing the killing. No one is disputing the killing.
9 They said it in their opening, he killed Bellany Clyburn.
10 The question is did he do it with malice.

11 Here, the Defendant borrowed a car that was unknown
12 to the victim. The State would say that she didn't know
13 that car. He borrowed a car that was unknown to the
14 victim. By his statement, if you believe his statement,
15 he made a motion signifying slitting his throat when he
16 approached the victim. By his statement again, if you
17 choose to believe it, he threatened to kill her if she
18 didn't let him use her phone.

19 He laid in wait for her that morning. And most
20 importantly by the very first statement he made that day
21 closest in time to the incident he told Deputy Joey Carnes
22 that he went there with a knife. Only later does he say
23 he armed himself with a knife when he got into the
24 apartment. He told Joey Carnes he went there with a
25 knife. And that, ladies and gentlemen, is critically

1 important because at the end of the State's case you heard
2 the videotaped statements of Bellany Clyburn's two
3 children.

4 You saw them sit in the squad room at Pageland P.D.
5 and tell what they saw. And say said they saw Thomas
6 Stewart come there with a knife and attack their mother.
7 There is malice everywhere you look, ladies and gentlemen.
8 It's not hard to find. It's right here just like the
9 Defense said. It's from that witness stand. It's all
10 around us.

11 That's just the express malice. Let's talk about
12 inferred malice. Inferred malice is shown by a total
13 disregard for human life or by use of a deadly weapon.
14 We've already covered that. He armed himself. And by
15 disregard for human life we're talking about all of this.
16 By the fact that he didn't stop. He kept stabbing and
17 stabbing and stabbing. You see it on the video. He makes
18 a motion when he talks about it, ladies and gentlemen.
19 Thirty-nine times.

20 A complete and total disregard for human life. We
21 can stop right there. He killed a human being. We've got
22 instances of malice. He is guilty of murder. Said and
23 done. He's not guilty of voluntary manslaughter. He is
24 guilty of murder. However, if you decide that you want to
25 consider voluntary manslaughter, if he's guilty of murder

1 he's most definitely guilty of voluntary manslaughter.

2 But I'm not asking you to do that because voluntary
3 manslaughter, although it is a lesser included offense of
4 murder, it's designed for a different set of circumstances
5 than what we have here.

6 Voluntary manslaughter, the State must prove beyond a
7 reasonable doubt that the Defendant took the life of
8 another in sudden heat and passion based on sufficient
9 legal provocation. All right. He took the life of
10 another. We don't even have to talk about that. So let's
11 talk about sudden heat of passion and sufficient legal
12 provocation. Sudden heat of passion may for a time affect
13 a person's self-control and temporarily disturb a person's
14 reason. It must be the type they would make an ordinary
15 person unable to coolly reflect on his actions.

16 So if you take the Defendant's or one of the
17 Defendant's multiple stories. He says that he lost it
18 because she wouldn't let him look at the cell phone. Is
19 that sufficient law -- sufficient legal provocation. Does
20 he have the right ---

21 MR. YOUNG: Your Honor, I'm going to object to the
22 continued finger pointing.

23 THE COURT: Overruled.

24 MR. FOARD: Does he have the right to murder another
25 human being because she wouldn't let him look at a cell

1 phone? There is no sudden event here. He laid in wait
2 for her. He approached her. He forced her back into that
3 apartment, if you believe his version of the story. And
4 he came there with a knife. There is nothing sudden about
5 that, ladies and gentlemen. Sufficient legal provocation
6 must be the type to make a person of ordinary reason and
7 caution become enraged and to lose control temporarily.
8 The provocation needed for voluntary manslaughter must
9 come from some act related to the victim. Words alone are
10 not enough. And the exercise of a legal right no matter
11 how offensive is never sufficient legal provocation for
12 voluntary manslaughter.

13 All right. He pepper sprayed her or maced her.
14 Whatever you want to say. We're not disputing that. We
15 know that. We've got the container of pepper spray. It's
16 there. We've got testimony from a credible law
17 enforcement officer that says he was exhibiting symptoms
18 of pepper spray. I'm not disputing that at all. She was
19 in her own home. She was there with her two children. If
20 he was threatening to her she had the right to defend
21 herself. And the exercise of a legal right is never
22 sufficient legal provocation. Voluntary manslaughter
23 doesn't work. Murder, yes. Voluntary manslaughter, no.

24 Possession of a weapon during the commission of a
25 violent crime. Not going to belabor the point, ladies and

1 gentlemen. As you heard murder and manslaughter are both
2 violent crimes in South Carolina. He admits to having a
3 knife. He told law enforcement he brought the knife
4 there. In order to have it you must be in possession of
5 it. He used it to murder Bellany Clyburn. He is guilty
6 pf possession of a weapon during commission of a violent
7 crime.

8 The Defendant has raised the defense of self-defense,
9 and the Judge talked to you about the fact that there are
10 three elements of self-defense. And it's not one or the
11 other. All three elements of self-defense must be present
12 in order for Thomas Jeffery Stewart to be found not
13 guilty. What are the three elements?

14 He must be without fault in bringing about the
15 difficulty.

16 He must be in imminent danger of death or serious
17 bodily injury or the belief that he's in imminent danger
18 of death or serious bodily injury.

19 And, finally, he must have had no other probable way
20 of avoiding the danger of death or serious bodily injury.

21 Without fault in bringing about the difficulty. If
22 anything he is the cause of the difficulty. He went to
23 her house. He approached her with a knife. He forced her
24 back in. He caused the difficulty, ladies and gentlemen.
25 Prong One doesn't work. Self-defense is not applicable.

1 Prong Two, imminent danger. Was he in actual
2 imminent danger of harm. He would like to say that he
3 was, but he said a lot of things. He gave one version of
4 events when he was arrested. He gave another version of
5 events when he was interviewed later that day. He gave a
6 third version of events this morning here in this
7 courtroom that you witnessed with your own eyes.

8 You have to judge the credibility of the witnesses
9 that come before you. And I submit to you that Thomas
10 Jeffery Stewart is neither credible nor honest.

11 Finally, he must have had not other way of avoiding
12 the danger. That was interesting to me because let's just
13 suspend reality for a minute and decide that we take
14 everything that the Defendant said in his video statement
15 at face value. He says he was maced. He says that
16 Bellany Clyburn ran outside. He says that she was yelling
17 for him to come outside, and he says that he saw a large,
18 unknown black man standing in the doorway of the apartment
19 and he was afraid for his life.

20 So he goes to the kitchen to wash his eyes. To wash
21 the mace or the pepper spray from his eyes which
22 ironically enough is the same kitchen that has an exterior
23 door that -- wait a minute. Is the door that he stated
24 all along is the door that he typically uses to come in
25 and out of the apartment so he wouldn't be seen. So

1 you've got Bellany out front supposedly screaming for him
2 to come out. You've got a black man at the front door,
3 and he's in the kitchen. And yet he feels the need to run
4 through the front door past this phantom black man that
5 nobody can identify to where Bellany is.

6 Why didn't he turn around? Why did he not turn
7 around and go out the back door? According to his version
8 of the story that's the same door he used the night before
9 to escape when the police showed up, and Crystal Clyburn
10 was there. It's because none of what he says is true,
11 ladies and gentlemen. And to find that he had no other
12 way to avoid the danger would mean you would have to
13 believe his lies. .

14 And lies have become an interesting thing in this
15 trial towards the end because Thomas Stewart self-admits
16 that he is a professional gambler. And that's so
17 interesting to me because when I think of a gambler I
18 think of someone with a visor or hat pulled down and
19 sunglasses and sitting at a table with a deck of cards and
20 a hand in front of him. What's he doing. He's looking
21 across the table at people, and he's bluffing. He's
22 lying. He is deceiving. And that is what Thomas Stewart
23 has done since the moment he was apprehended at Piggs Park
24 in Pageland on January the 1st of 2010.

25 He's tried to deceive law enforcement. He's tried to

1 deceive you. He's tried to deceive everyone associated
2 with this case because he doesn't know any difference.
3 His life is built around lies. He lies to his wife. By
4 his admission had, quote, baby mommas. All these children
5 out here by all these different women. He lies. He lies
6 to the women. He holds them by a string. He keeps them
7 coming. He teaches his children to lie for him. His
8 words, ladies and gentlemen, "we taught them to lie." His
9 words, ladies and gentlemen.

10 This entire farce of a defense is based on lies. And
11 like the cards that he uses to make his living that house
12 of cards is crumbling because the truth is right here.
13 And the truth came from that stand from the mouths of the
14 witnesses, but the truth sure didn't come from him. And
15 that was shown to you today by all of the things that he
16 said and all of the ways he changed his story yet again.

17 He says in a prior statement he was in Marshville
18 playing cards after me left Bellany's house that night,
19 and he called Bellany. There is even a back and forth
20 exchange about Bellany's phone number. Law enforcement
21 asked him, "How did you get Bellany's phone number?" He
22 says, "Oh, I sweet talked her. I did it when I sweet
23 talked her." Today he said he called J.D. 's phone and
24 J.D. answered.

25 He said today that between 3:30 and four o'clock on

1 the morning that Bellany died he called Bellany and
2 conversed with her about Crystal and that Bellany was
3 upset. And then he said she let him in the house, and
4 that was the beginning of when his testimony went off the
5 road, ladies and gentlemen. Because that is not what he
6 said before. He said she didn't let him in the house. He
7 said she wanted to smell him and that she had a knife, was
8 threatening him. And he was trying to prove to her that
9 he didn't go home to his wife; that he in fact went to
10 Marshville. Never mentioned in the statement, in the
11 video statement.

12 He says when his exchange with Bellany ended at that
13 point he went to Brenda's. No mention of Brenda's in the
14 previous statement. He said this morning that he went to
15 the car wash when he left Brenda's. Well, that's kind of
16 in the prior statement because at one point in the
17 statement he says that he went to the car wash. And in
18 another point in the statement he says he went to the car
19 wash. Then he went to Jefferson and rode around, but
20 there was no mention of Jefferson this morning.

21 And then he says that after he came back he went up
22 and he knocked on the door. Ladies and gentlemen, there
23 is no prior mention of that. No never said in his prior
24 video that he knocked on the door. He said that she was
25 coming out the door and he approached her. He says that

1 K.S. came to the door in his drawers. There is no prior
2 mention of that either.

3 He says that she packed his stuff and threatened to
4 cut his clothes. Not on the video he didn't say that. He
5 said she threw an Army jacket and pants at him. No prior
6 mention of that. He says that there was this trip out to
7 the car, and then a trip back inside. And then he starts
8 talking about the fact that she maced him and she stabbed
9 him or stuck him in the chest. There is none of that.
10 None of that is in his prior statement. He made it all up
11 as he sat in that chair right there this morning. He put
12 on a show, ladies and gentlemen.

13 I can't even recite to you all the rest of the
14 differences because they go on and on and on. But what's
15 not going to go on and on and on is this closing cause I'm
16 going to wrap it up for you. And I'm going to wrap it up,
17 and I want to end with somewhere that I typically wouldn't
18 end in a closing like this. Because ordinarily I would
19 want to take you back to the victim because she's what
20 we're really here for. It's her life that was lost.

21 But rather than talking about Bellany any more,
22 because I believe that Bellany has had a proper reflection
23 upon, I want to close with the children because they are
24 the walking, living, breathing victims in all of this.
25 They saw something that no child should ever have to see.

1 A horrible, horrible scene that I hope and pray to God in
2 heaven that they don't remember. Maybe they do. I hope
3 if they do remember it that one day they're going to be
4 able to forget it because to lose their mother in such a
5 violent and horrible manner I can't think of anything
6 worse for children of such a tender age.

7 And despite the fact that they've lost one parent I
8 still have to stand before you and ask that you convict
9 Thomas Stewart of killing Bellany Clyburn. Bellany
10 deserves justice. Those children deserve justice. Our
11 community deserves justice. Thomas Stewart doesn't
12 deserve anything.

13 MR. YOUNG: Object to that comment.

14 THE COURT: Overruled.

15 MR. FOARD: I ask you to find him guilty of murder
16 and possession of a weapon during a violent crime. I
17 thank you for your attention. And I wish you well, ladies
18 and gentlemen, in your very hard endeavor that comes
19 before you. Thank you very much.

20 COLLOQUY

21 THE COURT: All right, ladies and gentlemen, in
22 response to the objection that was just posed by the
23 Defense and the comment by the State as to what the
24 Defendant may or may not deserve I will tell you that I
25 think we all agree, counsel, and certainly the Court that

1 the Defendant is entitled to his constitutional rights
2 being afforded to him. And that was not a reference at
3 least in this Court's perception that the State was
4 making. Now, let me talk with you if I may about the
5 verdict form. And you can't see if from where you are,
6 but it basically has three questions. And that's because
7 there are two charges here and then a third lessor
8 included offense which comes up to a total of three.

9 And, Madam Forelady, what the verdict form says I'm
10 just going to publish the first question to you. Read it
11 to you. It says, "As to the charge of murder we the jury
12 unanimously find the Defendant, Thomas Jeffery Stewart,
13 beyond a reasonable doubt." And then I have two choices
14 to give you on the piece of paper. Well, any time you
15 have two choices on a piece of paper you cannot -- you
16 can't give them both the same point.

17 So one becomes in front of the other not because
18 there is a priority of some sort. But one simply must be
19 listed in the of the other. The first choice, again not
20 by priority, is not guilty, and the second choice is
21 guilty. Whatever the unanimous decision of the jury is
22 please record that and move forward because after each one
23 of those -- because if you choose not guilty to the
24 greater offense then it says, "Go to Question Two" which
25 asks you about the lessor included offense.

1 If you choose guilty to the greater offense you don't
2 consider the lessor included offense because you found
3 him guilty of the greater offense. And then the third
4 question has to do with the possession of a weapon during
5 the commission of a violent crime as to guilt or innocent.
6 Now, what I'm going to ask you to do, and before you leave
7 I want to just say a word of thanks to our alternate
8 jurors who served in this case.

9 And thank you for the leadership you provided to the
10 jury, Mr. Sellers and Mr. Gainey, as you've assisted them
11 in choosing our foreperson as well as it is comrade and
12 the shared experience you have had with all of the jurors.

13 I want to say to you that many times alternate jurors
14 when you reach this point and you -- we determine that you
15 will not deliberate with the 12, you say, "Well, my
16 goodness. I have wasted my time." Well, I hope you don't
17 feel that way. But I certainly do not feel that way for
18 this reason: Under our system you must have 12 jurors,
19 and if we had only 12 here.

20 If you two were not present, and if one of our jurors
21 even now on the fourth day of the trial got sick, had an
22 emergency, had to leave, and we were down to 11, without
23 an alternate we would have to declare a mistrial and this
24 case would be retried again. Your presence here has
25 prevented that should it happen. I feel like our jurors

1 are going to hold their health here for the next two to
2 three minutes while we organize the exhibits and send them
3 in. But I just want to thank you in their presence for
4 your service.

5 Now, what would I like to do is have all of you go
6 back to the jury room and say your good byes or chat for a
7 moment. Not about the case, and then when we send in the
8 exhibits -- it's not until then cause it just takes us a
9 moment to make sure their all organized and send them in
10 to you. Then we will bring our alternates back out and
11 I'll have the opportunity to speak to you again. And at
12 that point you may begin your deliberations.

13 Now, for the last three plus days you've been waiting
14 on us. And now it reserves. We will wait on you. You're
15 under no time compulsion. You're in no hurry. You take
16 your time and do what you need to do. If you need to take
17 a break, ladies and gentlemen, the room is a little bit
18 close sometimes. If it gets to a point where some need to
19 leave and just step out for a few moments we'll
20 accommodate that. Just knock on the door.

21 And if that happens and you separate then please
22 cease deliberations until you're all back together because
23 you could reach two inconsistent points, conceivably, at
24 two different places which would not be a good thing to
25 do. Just wait until you're all back together.

1 And when you reach a verdict, after you've filled out
2 this form, knock on the door, and we will be here to
3 receive your verdict. Now, if you kindly would return to
4 the jury room. We'll be with you in just a moment, and
5 thank you for your patience.

6 (WHEREUPON, the jury panel was excused from the
7 courtroom at 3:18 p.m.)

8 THE COURT: Now, let's go first to the charge. Is
9 there object -- are there objections or exceptions to the
10 charge as given by the Court from the State?

11 MR. FOARD: None from the State.

12 THE COURT: And from Defense?

13 MR. SECOR: No, sir.

14 THE COURT: All right. Let's broach one objection
15 that occurred during the argument. There are actually
16 two. The last one I discussed with the jury and gave what
17 I felt to be a curative instruction which I believe was
18 sufficient.

19 But the first one was an objection over counsel's
20 reference to the fact that the malice may be inferred from
21 the use of a deadly weapon. The Court did not charge
22 that. I deleted that from my charge. You may have had it
23 in your printed version, but it was removed. But that
24 does not mean -- the fact that the Court doesn't charge it
25 the Court does not perceive that that takes away the

1 ability of the State to argue that from a factual
2 standpoint. We simply did not provide that law, but
3 nevertheless that doesn't change the factual inference
4 that I believe the State is entitled to argue.

5 Your objection, of course, is preserved, but the
6 Court determine not to stop the arguments and consider it
7 further or discuss it on the record.

8 Now, counsel, what I would ask you to do is would you
9 come up, please. Go with our Clerk and Court Reporter, go
10 through the exhibits. Look at the verdict form in
11 finality. Let's finish that as soon as you can so we can
12 take it all into the jury. Please come forward.

13 MR. YOUNG: Your Honor I don't think that we need to
14 renew our directed verdict and all that stuff after we
15 rested.

16 THE COURT: All right. Let's for the record,
17 however, counsel, let's go ahead at the close of all the
18 testimony, and we will consider you have renewed your
19 objections and I have denied each and every one of them as
20 I have previously. Thus, your position on this record is
21 protected, and the Court has also ruled on the issue.

22 MR. YOUNG: Thank you, Your Honor.

23 MR. REDMOND: Thank you, Your Honor.

24 THE COURT: Please come forward and look at the
25 exhibits. All right. Ladies and gentlemen, let's remain

1 in session. We re going to talk with our alternates a
2 moment. And please go ahead and take the evidence into
3 the jury.

4 (WHEREUPON, the jury panel was excused from the
5 courtroom to begin deliberations at 3:24 p.m.)

6 THE COURT: All right. Mr. Sellers, Mr. Gainey,
7 first of all I want to thank you for -- again, for your
8 service. And, Mr..Sellers, particularly you waived -- you
9 kindly waived your exemption to serve in the first place,
10 and we're grateful for that. We are going to, rather than
11 just release you to leave us we're going to ask you to
12 remain with us for just a little while to make sure that
13 everything is all right in the jury room. Because if we
14 should have to, for some reason, choose an alternate still
15 and replace a juror, well, if you're gone we're unable to
16 do that.

17 And also would not be appropriate for us to allow you
18 to mix with witnesses and others who may have an interest
19 in the case. So we are politely going to ask you if you
20 would join Ms. Lear. She's going to take you to the jury
21 assembly room where we're going to ask you just to remain
22 for a little while and then we'll see how we're doing
23 here, and we will be back with you at some point, all
24 right. Thank you for that courtesy.

25 All right, ladies and gentlemen. We are going to

1 stand down now subject to the call of the jury. Court is
2 in recess until we have either further business from the
3 Solicitor or a response from the jury.

4 (WHEREUPON, Court was in recess at 3:27 p.m.)

5 (WHEREUPON, Court's Exhibit No. 3 was marked for
6 identification and received into evidence.)

7 (WHEREUPON, Court reconvenes at 5:01 p.m.)

8 VERDICT OF THE JURY

9 THE COURT: All right. We are advised that the jury
10 has reached a verdict.

11 MR. YOUNG: I don't know if Your Honor wants to put
12 my objection on the record about that note?

13 THE COURT: Go ahead. We'll do that at this time.

14 MR. YOUNG: Your Honor, the jury sent out a note
15 requesting the charge for murder and malice. Your Honor
16 sent back the portion of the charge. The Defense
17 requested that the entirety of the charge be sent back.

18 THE COURT: All right. And we have marked the note
19 from the jury as an exhibit, and the Court simply
20 responded by sending in the portion of the charge that
21 dealt with murder and defined murder which also defined
22 malice. And although your objection is noted it's
23 overruled as the Court believes the response was
24 appropriate.

25 Now, ladies and gentlemen of the jury -- no, excuse

1 me, of the courtroom, let me just say to you that this has
2 been a hotly contested case. It has been one that, of
3 course, goes to some very core issues for all of us and
4 loss of life and division of the community. But whatever
5 this verdict is it's out of respect for this jury who has
6 come here, not of their own desire, but brought into this,
7 come forward and served their civic duty, whatever their
8 verdict is let's maintain decorum, be respectful. And the
9 Court would intend to, of course, enforce the rules of
10 decorum and thank you in advance for cooperating with
11 that.

12 All right. Now, Madam Clerk, you will publish the
13 verdict?

14 CLERK OF COURT: It doesn't matter.

15 THE COURT: All right. So then when the jury comes
16 in if you would take the verdict form and then hand it to
17 me and I'll give it to the Clerk to publish. All right.
18 Very good. Then let's everyone be at ease. Please, bring
19 in the jury.

20 (WHEREUPON, the jury panel enters the courtroom at
21 5:03 p.m.)

22 THE COURT: All right. Welcome back, ladies and
23 gentlemen of the jury. And, Madam Forelady, I'm am
24 advised that the jury has reached a verdict; is that
25 correct.

1 JURY FOREPERSON: Yes, sir.

2 THE COURT: All right. Would you please give your
3 verdict form to Ms. Hurst. Thank you. Let the record
4 reflect that the verdict form is appropriately filled out
5 and has been signed by the Foreperson. Defendant, please
6 rise, and Madam Clerk, please publish the verdict.

7 CLERK OF COURT: State of South Carolina v. Thomas
8 Jeffery Stewart. Case Numbers 2010-GS-13-192 and -263.
9 As to the charge of murder we the jury unanimously find
10 the Defendant, Thomas Jeffery Stewart, beyond a reasonable
11 doubt guilty.

12 As to the charge of possession of a weapon during the
13 commission of a violent crime we the jury unanimously find
14 the Defendant, Thomas Jeffery Stewart, beyond a reasonable
15 doubt guilty.

16 Foreperson is Michelle Kennedy. Today's date is
17 December 6th 2012. Madam Forelady, is this your verdict
18 and still your verdict?

19 JURY FOREPERSON: Yes, ma'am.

20 CLERK OF COURT: Is it still the verdict of all 12?

21 THE COURT: All right. Let's let the record reflect
22 then that the jury has responded affirmatively to the
23 Court's question, as to the Clerk's question. Mr.
24 Stewart, you may be seated. And, now, counsel, while we
25 are in the presence of the jury are there motions for

1 which a jury response would be necessary?

2 MR. YOUNG: Yes, sir.

3 THE COURT: And what would that motion be?

4 MR. YOUNG: Your Honor, the Defense requests that the
5 jury be polled.

6 POLLING OF THE JURY

7 THE COURT: All right. Then there is a request that
8 the jury be polled. And let me explain this process to
9 you, ladies and gentlemen. Madam Clerk, I have a copy of
10 the -- okay. Do you need this or do you have one?

11 CLERK OF COURT: I don't have that one.

12 THE COURT: You're welcomed to use this if you wish.
13 Whatever is most convenient for you. Our Clerk is going
14 to ask each of you two questions. And what we're going to
15 do is our Clerk will call your name, and when your name is
16 called would you please stand. And the first question is
17 going to be was this your verdict, and then you answer.
18 And then this next question will be is this still your
19 verdict, and then you answer. And we'll do that
20 individually. It's a process we call polling the jury
21 individually. So please follow our Clerk's instructions.

22 CLERK OF COURT: Number 110, Slone L. Perdue. Is
23 this your verdict?

24 JUROR: Yes.

25 CLERK OF COURT: It's still your verdict?

1 JUROR: Yes, ma'am.

2 CLERK OF COURT: Okay.

3 THE COURT: You may be seated. Thank you.

4 CLERK OF COURT: Number 89, Danny R. McManus. Is
5 this your verdict?

6 JUROR: Yes, ma'am.

7 CLERK OF COURT: And still your verdict?

8 JUROR: Yes, ma'am.

9 CLERK OF COURT: Joshua C. Woods, 147. Is this your
10 verdict?

11 JUROR: Yes, ma'am.

12 CLERK OF COURT: And still your verdict?

13 JUROR: Yes, ma'am.

14 CLERK OF COURT: Number 46, Alvin Gainey, Jr. Is
15 this your verdict?

16 JUROR: Yes, ma'am.

17 CLERK OF COURT: And still your verdict?

18 JUROR: Yes, ma'am.

19 CLERK OF COURT: Thank you. Eighty-two, Tammy A.
20 Lowery. Is this your verdict?

21 JUROR: Yes, ma'am.

22 CLERK OF COURT: And still your verdict?

23 JUROR: Yes.

24 CLERK OF COURT: Okay. Ninety-five, Freddie M.
25 Miller. Is this your verdict?

1 JUROR: Yes, ma'am.

2 CLERK OF COURT: And still your verdict?

3 JUROR: Yes, ma'am.

4 CLERK OF COURT: Thank you. 133, Tammy H. Usher. Is
5 this your verdict?

6 JUROR: Yes, ma'am.

7 CLERK OF COURT: And still your verdict?

8 JUROR: Yes, ma'am.

9 CLERK OF COURT: Number 59, Sandra L. Haggins. Is
10 this your verdict?

11 JUROR: Yes, ma'am.

12 CLERK OF COURT: And still your verdict?

13 JUROR: Yes, ma'am.

14 CLERK OF COURT: Thank you. Seventy-six, Michelle B.
15 Kennedy. Is this your verdict?

16 JUROR: Yes, ma'am.

17 CLERK OF COURT: And still your verdict?

18 JUROR: Yes, ma'am.

19 CLERK OF COURT: Number 116 is Ronnie Register. Is
20 this your verdict?

21 JUROR: Yes, ma'am.

22 CLERK OF COURT: And still your verdict?

23 JUROR: Yes, ma'am.

24 CLERK OF COURT: Thank you. Number 88, David R.
25 McLain. Is this your verdict?

1 JUROR: Yes, ma'am.

2 CLERK OF COURT: And still your verdict?

3 JUROR: Yes, ma'am.

4 CLERK OF COURT: Number 80, Kenneth A. Lowe. Is this
5 your verdict?

6 JUROR: Yes, ma'am.

7 CLERK OF COURT: And still your verdict?

8 JUROR: Yes, ma'am.

9 CLERK OF COURT: Thank you.

10 THE COURT: All right. Are there any jurors
11 whose name was not called? If your name was not called
12 please raise your hand. Thus all 12 jurors have been
13 polled and have responded affirmatively to both questions.
14 Now, still, while we're in the presence of the jury, are
15 there any motions from either side for which a jury
16 response would be necessary? From Defense?

17 MR. YOUNG: No, Your Honor.

18 THE COURT: And From the State.

19 MR. FOARD: No, Your Honor.

20 COLLOQUY

21 THE COURT: All right, then, ladies and gentlemen,
22 that concludes your portion of service in this case. Just
23 one moment, please. Madam Clerk. In a few moments our
24 clerk is going to give you a check for your per diem which
25 is not going to be enough for anybody to retire on, but

1 it's going to be the County's expression of gratitude for
2 your service. But as you leave the box, ladies and
3 gentlemen, I'm going to come down, if you will permit me.
4 I'm going to shake your hand for a job well done. A
5 verdict that is fair, and that will be my expression of
6 gratitude and appreciation for your service.

7 Now, what happens next is we're going to have a
8 sentence proceeding. We're going to go ahead and do that
9 this afternoon. And it will not take very long, but what
10 I would like to do is give you the opportunity to be here
11 for that if you wish, but not seated in the jury box. I'm
12 going to let you be seated out in the audience. Where you
13 sit in the audience, there is no alignment. Anywhere, you
14 just sit back there if you wish or you may leave if you
15 wish.

16 But what I would ask you first to do is to come back
17 to the jury room so our Clerk can give you your check for
18 your service and then we'll let you leave. And if you
19 choose to be seated, please, do. If you choose not to and
20 you wish to leave, please, do. If you choose to be seated
21 and then decide you want to leave after hearing for a
22 minute or two, go right ahead. Whatever your preference
23 is because we're grateful for your service for a job
24 that's well done.

25 Now, if you give me just a moment I'm going to come

1 over there, and as you go back to the jury room I'm going
2 to shake your hand. But I'm actually going to step away
3 from you because I don't want to call attention away from
4 the fact that you have to step down. So I'm going to
5 stand right here. Please, just come right back this way.
6 Thank you for your service.

7 (WHEREUPON, the jury panel was excused from the
8 courtroom at 5:11 p.m.)

9 THE COURT: All right. Now, while we're outside the
10 presence of the jury, are there motions for which a
11 Court's response would be necessary? If so go ahead.

12 MR. SECOR: Your Honor, may I confer real quick?

13 THE COURT: Yeah, go ahead.

14 MR. SECOR: Just renew the motion we made pursuant to
15 South Carolina Rule of Criminal Procedure 19(a) at the
16 close of the State's case and also after closing arguments
17 and move for a new trial based on all objections overruled
18 throughout the course of the trial and before trial.

19 THE COURT: All right. The Court is prepared to rule
20 on that. The Court's perception is that this trial has
21 been fair; that the matter was submitted to the jury which
22 is the strength of our system. The jury -- both sides had
23 their full say. The jury has made their decision. The
24 Court finds there is ample evidence in the record to
25 support that decision. And also finds that the rulings

1 taken in their entirety were fair and appropriate for the
2 parties. And I'm going to deny those motions and confirm
3 the jury verdict.

4 SENTENCE OF THE COURT

5 At this time we'll have a sentencing proceeding, but
6 we'll give the jury a moment if they wish to come out and
7 join us or if they wish to leave we'll give them that
8 opportunity. So let's all just be at ease for a moment.
9 They can come right out and be seated or depart if they
10 wish.

11 All right. What we would like to do at this time, I
12 realize Mr. Young has stepped out. He will be right back
13 in a moment, but I'd like to hear from the State. If you
14 have a representative of the victim's family that you wish
15 to speak we'll be glad to hear from them as well. And
16 would ask enter your recommendations for sentencing as
17 well as we will hear from the Defense on those issues.

18 MR. FOARD: Would you like for us to stay at the
19 table or come to the rail?

20 THE COURT: No, you can stay at the table and be
21 fine, but I'd ask you please be sure that everyone speak
22 up so that those in the courtroom can hear the
23 proceedings.

24 MR. FOARD: Your Honor, would you like to hear from
25 the victim's representative first or the State?

1 THE COURT: I'd like to hear from the State first and
2 let's -- we'll give Mr. Young a moment to join us and then
3 hear from State's counsel and then the representative of
4 the family who wishes to speak and then we'll turn it to
5 the Defense side.

6 MR. FOARD: Thank you, Your Honor.

7 THE COURT: Mr. Foard, are you going to be conducting
8 the hearing?

9 MR. FOARD: I am, Your Honor.

10 THE COURT: I'll be glad to hear from you, sir.

11 MR. FOARD: Thank you, Your Honor. I believe you
12 having sat through this entire proceeding, you have -- you
13 aer well versed with the facts of this case. Well versed
14 in the nature of the wounds that were sustained by
15 Miss Bellany Clyburn, and in the heinous manner in which
16 she was killed, Your Honor. So I'm not going to belabor
17 that point, however, I wanted to address the Court
18 specifically, and I believe Mr. Redmond wants to briefly
19 say something also.

20 But I felt like I needed to speak to you, Your Honor,
21 because it's no secret around here. I knew Bellany
22 Clyburn, I grew up with her. We marched in marching band
23 together. I'm not going to presume to say that we were
24 close friends because I wouldn't characterize it as that.
25 But we did spend some time together when I was younger,

1 when she was younger. And I will tell Your Honor that I
2 took this case very personally.

3 I am glad to see that justice, as I believe justice
4 is, has been done here today, Your Honor. And I
5 respectfully request that on behalf of the State, given
6 the nature of the offense, given the finding of the jury,
7 and given all of the circumstances surrounding the crime
8 that the Court impose the maximum penalty possible which I
9 believe would be life in prison for the murder as well as
10 five years for the crime of possession of a weapon during
11 the commission of a violent crime.

12 THE COURT: Mr. Redmond, you want to address?

13 MR. REDMOND: Briefly, Your Honor. I just wanted to
14 address the -- just to make it clear as far as the family.
15 I've had a chance to meet with several of them and talk to
16 several of them over the course of this time. I did not
17 know Ms. Clyburn, as you can probably tell from my
18 cross-examination of the Defendant's wife.

19 I was in Court during the term in which Miss Clyburn
20 pled to the incident involving the Defendant's wife. In
21 fact that was my very first term here in Chesterfield
22 County. I can say that at that time I was also aware of
23 the fact that Mr. Foard knew Ms. Clyburn. And that was
24 something that we talked about. And I also remember how
25 affected he was at the time that she was so violently

1 killed.

2 But to the family I just want to say thank you for
3 your patience. We've had lots of discussions over the
4 course of these years, and we hadn't always agreed,
5 obviously, on the course. Which was natural because
6 you've got a lot of people, a big family, and everybody
7 doesn't always agree on the course that we should take.
8 But thankfully we got to where we all wanted to get and
9 seeing this Defendant convicted of murder.

10 And I am delighted for you as a family that you're
11 able to have the opportunity to get justice for your
12 daughter, granddaughter, cousin, friend, loved one. So I
13 just want to say that. And the last thing I want to say I
14 want to congratulate all the other lawyers involved in the
15 case. Mr. Jones, especially Mr. Foard and the role that
16 they took in helping prepare this case for prosecution.

17 As the Court may know I've had a family tragedy in
18 the last few weeks, and I was not able to be as involved
19 in the preparation of this case as I had been previously.
20 And thanks to them for basically taking up the load and
21 letting me fall behind in their coat tails in the
22 presentation and the preparation of the case.

23 And, finally, to the Defense attorneys who I've known
24 both for a while and think the world of and respect them
25 greatly. I think this is an example of how the system

1 should work in that you don't have -- even though it's
2 adversarial, it doesn't have to be personal. And they did
3 their jobs to the best that they could with what they had
4 to work with. And I think the professionalism exhibited
5 by all of these lawyers is to be commended. And I just
6 felt compelled to say that for the record.

7 THE COURT: All right. Thank you, Mr. Redmond. And
8 then did you have a representative of the family that
9 wishes to speak?

10 MR. FOARD: Yes, Your Honor.

11 THE COURT: All right. And, ma'am, please tell us
12 your name.

13 MS. TYSON: My name is Beverly Tyson.

14 THE COURT: All right. Ms. Tyson, I'm going to ask
15 you if you would to follow our Clerk's instructions,
16 please. We're going to place you under oath where you
17 stand and just raise your right hand, ma'am.

18 BEVERLY TYSON, after being duly sworn, testified
19 as follows:

20 THE COURT: All right, Ms. Tyson, tell us what you
21 have to say, please.

22 MS. TYSON: I just wanted to address Thomas. I
23 hadn't had a chance to talk to him. It's been three years
24 ago since he murdered my child, and it's just some things
25 that I'd like to get off my chest on behalf of me, my

1 grandchildren, my mother and the rest of the family.

2 THE COURT: Go ahead, ma'am.

3 MS. TYSON: This is about justice for Bellany. You
4 killed her in cold blood. You took her away from us. You
5 caused is so much pain. I want to know what she did so
6 bad to you. You played her judge, her jury and her
7 executioner. Now it's your turn.

8 Your wife said during her testimony that she loved
9 you no matter what. We loved Bellany no matter what. And
10 tonight about seven o'clock or so J.D. has a basketball
11 game. K.S. has a school play, and you know, their mother
12 won't be there to see that. She won't be there to see a
13 many things that will happen in their lives. When they
14 grow up and have children and get married.

15 Their children will never know their grandmother
16 other than the stories that will be told. And I think
17 you're a very selfish person.

18 THE COURT: Thank you, ma'am. And you may be seated.
19 Now we will hear from counsel for the Defendant if you
20 wish to speak before sentence is imposed. We will give
21 you that opportunity, Mr. Young.

22 MR. YOUNG: Your Honor is also familiar through the
23 highly publicized and talks between myself and counsel for
24 the State. And I think even in the paper at one point in
25 time the State requested or offered -- not requested a 35

1 year sentence to Mr. Stewart. I don't think that this is
2 a life without parole case, and would request leniency on
3 behalf of Mr. Stewart.

4 THE COURT: All right. And so that those in the
5 courtroom will be clear let me ask the State, and I will
6 say to those who are present. None of this happens in a
7 vacuum. There are often discussions concerning potential
8 settlements, guilty pleas, resolutions of the matter to
9 avoid the trial and the difficulty of trials for the
10 families and all involved.

11 And tell me what offer had been made to Mr. Stewart
12 prior to this matter going to trial.

13 MR. FOARD: Your Honor, Mr. Young is correct. There
14 had been an offer to plead guilty to murder and possession
15 of a weapon during commission of a violent crime with a
16 State's recommendation of 35 years. That was not accepted
17 by the Defendant, Your Honor.

18 That was largely made, as you pointed out, for the
19 purpose of avoiding having to put this family through a
20 trial, avoiding having to take up the State's resources,
21 and given the fact that those situations changed and Mr.
22 Stewart chose not to take that route, we believe that the
23 State is under no -- nothing compelling us to support that
24 that would have been the recommendation. But, of course,
25 it's not now.

1 THE COURT: All right. Very good. Thank you. All
2 right. Mr. Stewart, the Defendant, again, please rise.
3 Mr. Stewart, now after a full and fair trial by a jury of
4 your peers as accorded to you under our State constitution
5 as well as the protection of your constitutional and legal
6 rights you have been convicted by your peers of murder.

7 It will tell you that not matter what sentence this
8 Court should impose upon you it will not be as long as the
9 sentence that you in fact imposed upon your own children
10 and other children and other family members who for a
11 lifetime will have the suffer the consequences of what
12 really was a reprehensible act of tremendous selfishness
13 as it was just by Ms. Tyson.

14 What concerns the Court is that there has been a lack
15 of remorse. There has been multiple explanations which
16 had little credibility to them. Again, this was for the
17 jury to determine, and they have made that determination.

18 I find based upon the fact that this was a public
19 crime that shocked the conscious of this law abiding
20 community that the Court's appropriate response to that is
21 to sentence you to the Department of Corrections for a
22 period of your nature life. Plus a consecutive five years
23 for the carrying of a weapon during the commission of a
24 violent crime. And that is the decision of the Court.

25 MR. YOUNG: Your Honor, may I be heard?

1 THE COURT: You may.

2 MR. YOUNG: Your Honor, I believe imposing the
3 consecutive -- the possession of a weapon during the
4 commission of a violent crime require that it be
5 consecutive unless, of course, the Defendant is sentenced
6 to life.

7 THE COURT: All right. And the Court exercises the
8 option, though, to make that a consecutive sentence. But
9 the result of the sentence is that you will be confined to
10 the Department of Corrections for the remainder of your
11 nature life, sir.

12 I take no pride in that, but I believe it is, based
13 upon what we have before us, the appropriate response for
14 this Court and this community. And, thus, it is so
15 ordered. I will remand you now to the Department of
16 Corrections, sir. Good luck to you.

17 MR. FOARD: Thank you, Your Honor.

18 MR. YOUNG: Thank you, Your Honor.

19 MR. REDMOND: Thank you, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, for the
21 families who are hear. Ladies and gentlemen, this Court
22 will remain in order. For the families who are present --
23 all right. Just one moment. Let's go ahead and take the
24 Defendant at this time. Mr. Young, we're going to ask Mr.
25 Stewart to depart the premises.

1 All right. Ladies and gentlemen for the families
2 that are here, there is nothing that we can do that can
3 change what has happened and the history that has brought
4 this about. But today, from this moment forward, I
5 encourage you. This is a small community. We all know
6 one another; that you will to the best of your ability
7 make peace with the other side of this case and all move
8 forward for the sake of the children. And for the good of
9 the community. And to that end I declare this term
10 adjourned.

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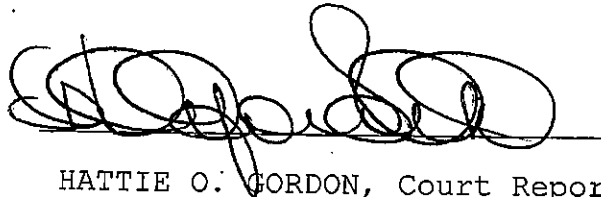
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Chesterfield County, South Carolina, on the 6th day of
December, 2012.

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

June 7, 2013

A handwritten signature in black ink, appearing to read 'Hattie O. Gordon', is written over a horizontal line.

HATTIE O. GORDON, Court Reporter

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

2016 MAY 31 AM 9 22

The State, Respondent,

FAYE L. CHILDS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

v.

Thomas Stewart, Appellant.

I271756
CHE00371

Appellate Case No. 2012-213655

Appeal From Chesterfield County
J. Michael Baxley, Circuit Court Judge

Opinion No. 5331
Heard April 14, 2015 – Filed July 15, 2015

REVERSED AND REMANDED

Jarrett O'Connor Coco, of Nelson Mullins Riley &
Scarborough, LLP, and Chief Appellate Defender Robert
Michael Dudek, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, all of
Columbia, and Solicitor William Benjamin Rogers, Jr., of
Bennettsville, for Respondent.

SHORT, J.: Thomas Stewart appeals his convictions for murder and possession of a weapon during the commission of a violent crime. He argues the trial court erred in (1) finding the State's use of preemptory challenges did not violate *Batson*

*v. Kentucky*¹; (2) overruling his objection and failing to correct the State's remarks to the jury that use of a deadly weapon implied malice because the jury was charged with the lesser included offenses of murder and self-defense; and (3) allowing the State to enter unfairly prejudicial character evidence. We reverse and remand.

FACTS

Stewart was involved in an extra-marital affair with Bellanie Clyburn for eight years.² In April 2009, Clyburn violently attacked Stewart's wife, Melissa, with a lug wrench. Clyburn pleaded guilty to assault and served several weeks of jail time. She was released from jail mid-December 2009, and Stewart spent several days with Clyburn after her release. On December 29, 2009, Clyburn filed a petition for a restraining order against Stewart and signed an affidavit for an arrest warrant for Stewart for trespassing.

During the morning of January 1, 2010, Stewart went to Clyburn's house. Stewart testified he and Clyburn argued, and she stabbed him with a knife.³ Stewart also said Clyburn sprayed him with pepper spray. Stewart testified he was able to get a knife, and Clyburn attacked him outside the house as he was trying to get away.⁴ As a result of the struggle, Clyburn was stabbed 39 times and later died from her injuries. After the fight, Stewart fled to a nearby park, and police arrested him there shortly afterwards. Police found two knives and a can of pepper spray in Clyburn's yard.

¹ 476 U.S. 79 (1986).

² The trial transcript and the State's brief spelled her name "Bellany," but the indictments and the petition for a restraining order that she signed, spelled her name "Bellanie."

³ The arresting officer testified Stewart told him he entered Clyburn's house with a knife; Clyburn pepper sprayed him after they had an argument; Clyburn managed to get the knife from him and run outside; and he ran outside after her and attacked her again. Stewart told the officer he "lost it over love," and wanted to know how much "time he was looking at."

⁴ A witness testified she saw Stewart stabbing Clyburn, and Clyburn was trying to get away from Stewart but he kept pulling her back. The witness did not see Clyburn attacking Stewart. She heard Stewart say, "I'm going to kill you," while he was stabbing Clyburn.

A trial was held December 3-6, 2012. The jury found Stewart guilty of murder and possession of a weapon during the commission of a violent crime. The court sentenced him to life in prison plus five years to be served consecutively. This appeal followed.

STANDARD OF REVIEW

In criminal cases, this court sits to review errors of law only, and is bound by the trial court's factual findings unless those findings are clearly erroneous. *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). Thus, on review, the court is limited to determining whether the trial court abused its discretion. *Id.* An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). The appellate court "does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." *Edwards*, 384 S.C. at 508, 682 S.E.2d at 822.

LAW/ANALYSIS

I. Preemptory Challenges

Stewart argues the trial court erred in finding the State's use of preemptory challenges did not violate *Batson v. Kentucky*, 476 U.S. 79 (1986). We agree.

In *Batson*, 476 U.S. at 89, the Supreme Court of the United States held the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States forbids a prosecutor from challenging potential jurors solely on account of their race or on the assumption that African American jurors as a group will be unable to impartially consider the State's case against an African American defendant. In *Georgia v. McCollum*, 505 U.S. 42, 59 (1992), the Supreme Court held the Constitution also prohibits a criminal defendant from engaging in purposeful racial discrimination in the exercise of peremptory challenges. Additionally, the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States prohibits the striking of a potential juror based on race or gender. *State v. Evins*, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007). When one party strikes a member of a cognizable racial group or gender, the trial court must hold a *Batson* hearing if the opposing party requests one. *State v. Haigler*, 334 S.C. 623, 629, 515 S.E.2d 88, 90 (1999).

In *State v. Giles*, our supreme court explained the proper procedure for a *Batson* hearing:

First, the opponent of the peremptory challenge must make a prima facie showing that the challenge was based on race. If a sufficient showing is made, the trial court will move to the second step in the process, which requires the proponent of the challenge to provide a race neutral explanation for the challenge. If the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the opponent of the challenge has proved purposeful discrimination.

407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014) (internal citations omitted).

Merely denying a discriminatory motive is insufficient; however, the proponent of the strike need only present a race or gender neutral reason. *State v. Casey*, 325 S.C. 447, 451-52, 481 S.E.2d 169, 171-72 (Ct. App. 1997). "[A] 'legitimate reason' is not a reason that makes sense, but a reason that does not deny equal protection." *Purkett v. Elem*, 514 U.S. 765, 769 (1995). The explanation "need not be persuasive, or even plausible, but it must be clear and reasonably specific such that the opponent of the challenge has a full and fair opportunity to demonstrate pretext in the reason given and the trial court to fulfill its duty to assess the plausibility of the reason in light of all the evidence with a bearing on it." *Giles*, 407 S.C. at 21-22, 754 S.E.2d at 265. "The burden of persuading the court that a *Batson* violation has occurred remains at all times on the opponent of the strike." *Evins*, 373 S.C. at 415, 645 S.E.2d at 909. The opponent of the strike must show the race or gender-neutral explanation was mere pretext, which generally is established by showing the party did not strike a similarly-situated member of another race or gender. *Haigler*, 334 S.C. at 629, 515 S.E.2d at 91.

During jury selection, the State used all five of its peremptory strikes, four of which were to strike African American jurors. The impaneled jury was composed of two African Americans and ten Caucasians. Stewart objected, and the court held a *Batson* hearing. The four African American jurors struck by the State were Jurors 33, 101, 117, and 126.

The State gave its reasons for striking the jurors. The State asserted it struck Juror 33 because law enforcement informed the State he had prior domestic issues involving his then girlfriend, who was now his wife. The State excused Juror 101 because he had a prior arrest for possession of cocaine and, although the charge was nolle prossed, it was prosecuted by the Solicitor's Office. The State dismissed Juror number 117 because she was unemployed and knew Clyburn. Juror number 126 was excused because she was late and appeared disinterested.

Stewart argued the State's reasons for striking the four jurors were pretextual. He asserted the court asked the jury panel if any of them had any charges against them, and Juror 33 did not answer. As to Juror 101, Stewart asserted the State did not strike Juror 131, who had a charge for assault and battery with intent to kill that was nolle prossed, or Juror 105, who had a conviction or an arrest for bad checks and simple assault. Therefore, Stewart maintained Jurors 131 and 105, both Caucasians, were similarly-situated to Jurors 33 and 101. Stewart argued the State struck Juror 117 for being unemployed and having gone to school with Clyburn, yet the State did not strike Juror 128 even though Clyburn's family frequented her workplace. Finally, Stewart argued he was not aware Juror 126 was late to court. However, the Court stated it observed Juror 126 was late returning from a break.

The court denied Stewart's *Batson* motion. It ruled the State's reason for striking Juror 101 was permissible because case law supports dismissing a juror who had a previous negative relationship with law enforcement. The court applied the same reasoning to Juror 33, considering his past domestic issues involving law enforcement. As to Juror 126, who was late and appeared disinterested, the court ruled this was a valid reason and a permissible strike. Further, as to Juror 117, although the court ruled the fact that the juror was unemployed was not a valid reason, it found the State's reason, the juror had gone to school with Clyburn, was a valid reason for the strike.

Stewart argues the trial court did not comply with the third step in *Batson*. He asserts the court was required to proceed to the third step unless discriminatory intent was inherent in the explanation provided by the State, which it was not.

"Whether a *Batson* violation has occurred must be determined by examining the totality of the facts and circumstances in the record." *Edwards*, 384 S.C. at 509, 682 S.E.2d at 822. Under some circumstances, the explanation given by the proponent may be so fundamentally implausible the trial judge can find the explanation was mere pretext, even without a showing of disparate treatment.

Haigler, 334 S.C. at 629, 515 S.E.2d at 91. "The trial judge's findings of purposeful discrimination rest largely on his evaluation of demeanor and credibility." *Edwards*, 384 S.C. at 509, 682 S.E.2d at 823. "Often the demeanor of the challenged attorney will be the best and only evidence of discrimination, and an 'evaluation of the [attorney's] state of mind based on demeanor and credibility lies peculiarly within a trial judge's province.'" *Id.* (quoting *Hernandez v. New York*, 500 U.S. 352, 365 (1991)). The judge's findings regarding purposeful discrimination are given great deference and will not be set aside by this court unless clearly erroneous. *Evins*, 373 S.C. at 416, 645 S.E.2d at 909-10. "This standard of review, however, is premised on the trial court following the mandated procedure for a *Batson* hearing." *State v. Cochran*, 369 S.C. 308, 312, 631 S.E.2d 294, 297 (Ct. App. 2006). "[W]here the assignment of error is the failure to follow the *Batson* hearing procedure, we must answer a question of law. When a question of law is presented, our standard of review is plenary." *Id.* at 312-13, 631 S.E.2d at 297.

In *State v. Wilder*, 306 S.C. 535, 538, 413 S.E.2d 323, 325 (1991), our supreme court held a solicitor may strike a juror based on their demeanor and disposition. The court found the State's explanation that it struck two African Americans from the jury because they reported late for jury duty was racially neutral, even though a Caucasian juror, who also reported late, was seated and was appointed as the foreperson. *Id.* Here, Stewart did not allege there was a similarly-situated juror to Juror 126, who was late and appeared disinterested, that the State did not strike. Therefore, we find the State's strike of Juror 126 was permissible.

As to Jurors 33 and 101, Stewart asserted the State did not strike Juror 131, who had a charge for assault and battery with intent to kill that was nolle prossed, or Juror 105, who had a conviction or an arrest for bad checks and simple assault. Although Stewart showed the State did not strike similarly-situated Caucasian jurors, the court found the State's reasons for striking Jurors 33 and 101 were permissible because case law supports dismissing a juror who had a previous negative relationship with law enforcement. The court seemed to find it relevant that Juror 33 had past domestic issues involving law enforcement. However, even though the State offered a racially-neutral explanation for striking the African American jurors, the State negated the reason by seating similarly-situated Caucasian jurors. See *Miller-El v. Dretke*, 545 U.S. 231, 241 (2005) ("If a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at *Batson*'s third step."); *State v.*

Oglesby, 298 S.C. 279, 281, 379 S.E.2d 891, 892 (1989) (finding the solicitor negated his neutral reason when he seated a white female juror who was similarly situated); *id.* ("In this case, an examination of the circumstances shows that the solicitor's originally neutral reason was proven to be a pretext because it was not applied in a neutral manner."). Therefore, we find the State's strikes of Jurors 33 and 101 were not permissible.

Likewise, as to Juror 117, Stewart asserted the State struck Juror 117, but did not strike Juror 128 even though Clyburn's family frequented her workplace. The trial court found the State's reason that the juror had gone to school with Clyburn was a valid reason for the strike.⁵ Although we find a difference between a juror having attended school with Clyburn and Clyburn's family frequenting a juror's workplace, we note they are similar enough to have warranted further review by the court. *See State v. Scott*, 406 S.C. 108, 115, 749 S.E.2d 160, 164 (Ct. App. 2013) ("For the purpose of demonstrating potential jurors are similarly situated under *Batson*, potential jurors are not required to be 'identical in all respects.'" (quoting *Miller-El*, 545 U.S. at 247 n.6)); *id.* ("[I]n determining whether potential jurors are similarly situated, our courts have focused their inquiry on whether there are meaningful distinctions between the individuals compared."). Therefore, we find the trial court should have further reviewed the State's strike of Juror 117.

Because we find the trial court improperly denied Stewart's *Batson* motion, we reverse and remand for a new trial.

II. Remaining Issues

Stewart argues the trial court erred in overruling his objection and failing to correct the State's remarks to the jury that use of a deadly weapon implied malice because the jury was charged with the lesser-included offenses of murder and self-defense. Stewart also argues the trial court erred in allowing the State to enter unfairly prejudicial character evidence. Because we find the trial court erred in denying Stewart's *Batson* motion and reverse and remand on that issue, the court need not

⁵ The State's reason for striking Juror 117 was two-fold: she was unemployed and she knew Clyburn. The trial court ruled that the fact that Juror 117 was unemployed was not a valid reason to strike her. We find this was error because our courts have held unemployment is a race-neutral reason for striking a juror. *See Haigler*, 334 S.C. at 632, 515 S.E.2d at 92 (finding unemployment is a race-neutral reason for a strike).

consider Stewart's remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

CONCLUSION

Accordingly, we find the trial court erred in denying Stewart's *Batson* motion and reverse and remand this case for a new trial.

REVERSED AND REMANDED.

LOCKEMY and MCDONALD, JJ., concur.

The Supreme Court of South Carolina

The State, Petitioner,

2016 MAY 31 AM 9 22

v.

FAYE L. SELLERS
CLERK
CHESTERFIELD, S.C.

Thomas Stewart, Respondent.

1271756

Appellate Case No. 2015-001991

CH200371

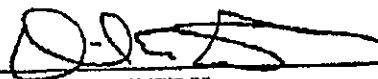
Trial Court Case Nos. 2010-GS-13-00192,
2010-GS-13-00263

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

May 19, 2016

cc:

Robert Michael Dudek, Esquire
Jarrett O'Connor Coco, Esquire
Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire
William Benjamin Rogers, Jr., Esquire
The Honorable Faye L. Sellers
The Honorable Jenny A. Kitchings

Lisa Carter
Circuit Court Reporter

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I N D E X

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>EV.</u>
1			
2			
3			
4	S-1	Disk	6
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6	S-3	Waiver of Rights Form	6
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15	D-5	Photo	6
16	D-6	Photo	6
17	D-7	Photo	6

1 MR. RIVERS: Can I approach, Your Honor? I have
2 some I want to have some pre-marked ---

3 THE COURT: Okay.

4 MR. RIVERS: Labels these however you want.

5 COURT REPORTER: Do you want them separately or do
6 what?

7 MR. RIVERS: Just the ones that are stapled, I
8 guess, make them separate.

9 COURT REPORTER: Okay.

10 MR. RIVERS: Just like they are in order.

11 COURT REPORTER: Okay.

12 MR. RIVERS: Thank you.

13 COURT REPORTER: Give me just a second.

14 MR. RIVERS: Sure. Good morning, Your Honor.

15 THE COURT: Morning.

16 MR. RIVERS: Before we start, my client, the
17 defendant, is shackled -- I'm sorry.

18 THE COURT: All right. I believe Madam, Court
19 Reporter is caught up.

20 MR. REDMOND: And, Your Honor, just for the record
21 I'll go ahead and call the case. Before you seated at the
22 defense table with Mr. Rivers, his attorney, is Thomas
23 Jeffrey Stewart, 2010-GS-13-192 for murder; 2010-GS-13-263
24 for possession of a weapon during the commission of a
25 violent crime. As I indicated he is represented by Mr.

1 Rivers and Mrs. I always -- I want to say Lawson ---

2 MS. LAWSON: It's still Lawson.

3 MR. REDMOND: It's still Lawson, okay, and Mrs.
4 Lawson. And we're here for the purpose of the defense's
5 motion so I'll yield to them at this time.

6 MR. RIVERS: May it please, the Court, Your Honor?
7 We're here, as I understand it, we have a Denno hearing by
8 the State for a voluntarily video statement, along with
9 that, Your Honor, we filed a motion for a bond to be set on
10 the defendant. He has not receive and has not had a bond
11 placed on him. He's been denied since the initial time of
12 arrest. Along with a suppression hearing pursuant mainly
13 to the video tape that will be presented in the Denno
14 hearing. It's my understanding, I don't think the State
15 opposes combination of the Denno and suppression since the
16 same witnesses seem to be pertinent the same.

17 MR. REDMOND: That's correct.

18 MR. RIVERS: We would also ask, Your Honor, if the
19 defendant be allowed, at least, the handcuffs be taken off.
20 I need him to write notes or whatnot to me and it would be
21 just a lot easier for that if we would have those removed.

22 THE COURT: No problem.

23 MR. RIVERS: Thank you, Your Honor.

24 (Whereupon, the handcuffs were removed from the defendant)

25 MR. RIVERS: May I approach, Your Honor? Your

1 Honor, we may -- there is also exhibits that have been
2 submitted by the State and the defense and we agreed on all
3 of those ---

4 MR. REDMOND: Exactly.

5 MR. RIVERS: --- without objection.

6 MR. REDMOND: That's correct. .

7 THE COURT: All right.

8 (Whereupon, all exhibits were stipulated to by both State
9 and defense attorneys)

10 MR. REDMOND: And, Your Honor, with that we are
11 prepared to call our first witness, somewhat out of order
12 so that she can get back to Florence. I would call
13 Kristina Gainey with sled first.

14 THE CLERK: Do you solemnly swear or affirm the
15 information you're about to give to the Court in this
16 matter shall be the truth, the whole truth, and nothing but
17 the truth so help you God?

18 MS. GAINNEY: I do.

19 THE CLERK: Thank you.

20 COURT REPORTER: Come up a little closer.

21 MS. GAINNEY: I've got a really loud voice so I
22 intend to ---

23 COURT REPORTER: Okay. It's Christy Gainey?

24 MS. GAINNEY: It's Kristina, K-r-I-s-t-I--a.

25 MR. REDMOND: May it please, the Court, Your Honor?

K. Gainey- Direct Examination by Mr. Redmond

7

1 KRISTINA GAINNEY, first being
2 sworn, testified as follows:

3 Direct Examination by Mr. Redmond:

4 Q. Agent Gainey, by whom are employed?

5 A. South Carolina Law Enforcement Division.

6 Q. And how long have been so employed?

7 A. I've been with sled for nine (9) years.

8 Q. And were you employed, obviously, on January 1, 2010?

9 A. Yes, I was.

10 Q. And did you have a reason to be called to Pageland
11 that day?

12 A. Yes, I was called out that morning.

13 Q. And to the best of recollection was that involving the
14 murder of Bellanie Clyburn?

15 A. Yes, it was.

16 Q. And as part of your role in the case, not going
17 through everything you did, just stick to the pertinent
18 parts, did you have the opportunity to sit in on an
19 interview of defendant, Thomas Stewart?

20 A. Yes, I did.

21 Q. And do you see him present in the courtroom?

22 A. I do.

23 Q. Okay. And could you point him out for the record?

24 A. He is sitting by Ms. Dawson (sic) at the defense
25 table.

K. Gainey- Direct Examination by Mr. Redmond

8

1 MR. REDMOND: And we'd just ask that the record so
2 reflect that.

3 Q. And, Agent Gainey, at the time of that interview, were
4 you present when he was read his Miranda Rights?

5 A. Yes, I was.

6 Q. And I'll show you what has been marked as State's
7 Exhibit 3, I know it's been quite some period of time, but
8 if I may approach the witness?

9 THE COURT: Yes.

10 Q. Is that your signature on that waiver?

11 A. Yes, it is.

12 Q. And to the best of your recollection is that the
13 wavier that the defendant signed at that time?

14 A. Yes, it is.

15 Q. Now, in looking -- well, based on your recollection in
16 reviewing this wavier, did you have an opportunity to be
17 present again when his rights were read to him?

18 A. Yes, I did.

19 Q. And has he -- were they read to him as it's indicated
20 on the Exhibit 3 which is already in evidence.

21 A. That would be correct.

22 Q. And at that time was there -- before he signed, at
23 anytime was he threaten, coerced, forced into giving a
24 statement or even given his waiver to give a statement?

25 A. No, he was not.

1 Q. Did he seem to have the educational means and the
2 state of mind means to understand what he was being
3 advised?

4 A. Yes, he did.

5 Q. And to your recollection, did he seem to understand
6 and willingly waive his rights to do have an attorney
7 present?

8 A. Yes, he did.

9 Q. And did he waive his rights to remain silent?

10 A. No, he did not.

11 Q. And let me ask that in another way, did he waive his
12 rights to remain silent and give y'all a statement?

13 A. Yes.

14 Q. Okay. And when he gave y'all that statement, at
15 anytime did he ask to stop questioning, get a lawyer or did
16 he seem to willingly and freely give his statement?

17 A. Yes, he willingly gave his statement.

18 Q. And at anytime was he denied any basic human needs
19 such as going to the bathroom, such as food, drink, was he
20 denied anything to the best of your recollection to get him
21 to give a statement?

22 A. No.

23 Q. And was there anything that you saw, in your
24 experience as a sled agent, that gave you concerns that
25 this statement was being conducted improperly?

K. Gainey- Cross Examination by Mr. Rivers

10

1 A. No, there was not.

2 Q. And again you were present during the entire course of
3 the interview and was this interview recorded?

4 A. To the best of my recollection, yes, it was recorded.

5 Q. And with that and I'll just ask a general overall
6 question, anything that you saw made you think that this
7 defendant, Mr. Stewart, did not willingly and voluntarily
8 waive his rights and freely give y'all information as to
9 the incidence, the incident that led to Bellanie Clyburn's
10 death?

11 A. No.

12 MR. REDMOND: That'd be all the questions I have.
13 Please answer any questions that Mr. Rivers may have.

14 Cross Examination by Mr. Rivers:

15 Q. Good morning, it's Agent Gainey?

16 A. Yeah.

17 Q. That would be the proper -- you've indicated and I'm
18 assuming that this is State's 3, it's the waiver, I'm
19 assuming, I'm going to hand this to you, this is the waiver
20 that, prosecution, Mr. Redmond, spoke of that you saw?

21 A. That is correct.

22 Q. Did -- there was a videotape, of course, made also of
23 the statement, is that right? And this would've been
24 before, excuse me, before the video?

25 A. I witnessed it, ah, K.B. Gainey and the time was 2:11

1 p.m.

2 Q. Okay. Did you have an opportunity to talk to the
3 defendant, yourself, prior to that time?

4 A. Not to my recollection.

5 Q. Did you have any opportunity to talk to him at all
6 that day, just yourself?

7 A. Not to my recollection.

8 Q. Okay. You do not have any conversation with him?

9 A. Not that I can recall. That's been seven (7) years
10 ago.

11 Q. Yes ma'am, I understand. But as far as you can
12 recall, you had no interaction with him ---

13 A. That would be correct.

14 Q. --- just you and him? He -- did you notice anything
15 where he appeared to be injured in any kind of way?

16 A. Not that I recall.

17 Q. No injuries that you could see?

18 A. Not that I can recollect at this moment.

19 Q. I want to show you, this is defense, it appears to be
20 (4) four, I know you didn't take those photos, but does
21 that appear to be a photograph of the defendant as you
22 recall?

23 A. It looks like the defendant, correct.

24 Q. And in that photo, I see an injury and it's dated,
25 this photo is dated the first of the year of 2010 which

K. Gainey- Cross Examination by Mr. Rivers

12

1 would be the same day that you were there at the interview,
2 is that correct?

3 A. Yes, sir.

4 Q. Okay. And in that photo does it appear to be an
5 injury or at least some blood to the left ear of the
6 defendant?

7 A. That appears to be blood.

8 Q. Okay. I'm assuming that, it appears to be a cut too,
9 but at least the blood is showing. Do you not recall --
10 was he not in this condition, of the left ear, at the
11 interview?

12 A. I don't recollect.

13 Q. Okay. Could he have been as far as you're ---

14 A. Well, according to your photo.

15 Q. Yes. I would, likewise, ask you this is a photo, this
16 is a, likewise, it's State's -- this is defense 5, this
17 appears -- it's all supplied by the Pageland Police
18 Department photo, this appears to be, seems to me the right
19 hand of the defendant, it appears to be a cut on his hand,
20 is that right?

21 A. That appears to be a cut.

22 Q. Do you recall those cuts, then too, that day?

23 A. I don't recollect.

24 Q. I would, likewise, like to show you defense 6 which is
25 another photo of those series showing again the right hand,

1 you don't remember that either?

2 A. I don't recollect that.

3 Q. And that -- now, does that also show or, at least,
4 some blood or some wound it appears to the right hand?

5 A. It does.

6 Q. Okay. But you don't recollect any of that?

7 A. No.

8 Q. Do you recall during any time that you were with the
9 defendant and, I understand that you were with other
10 officers, that he complained of any impairments, physically
11 or mentally?

12 A. I don't recall.

13 Q. You don't remember him saying anything about headaches
14 or ---

15 A. I don't.

16 Q. --- hurting or anything -- were you there, the
17 videotape, as I understand it the Miranda Rights were
18 given, you stated, correct?

19 A. Correct.

20 Q. Those -- were those on video as far as you know?

21 A. I don't recollect.

22 MR. RIVERS: That's all the questions I have, Your
23 Honor.

24 MR. REDMOND: Brief redirect, Your Honor.

25 THE COURT: All right.

K. Gainey- Redirect Examination by Mr. Redmond

14

Redirect Examination by Mr. Redmond:

Q. As it relates to the injury, were you actually present at the time those pictures were taken?

A. I don't recall.

Q. Okay. And, in fact, I think the defense had mentioned that Pageland PD took it, you were sitting in on the interview and it's reflected on the tape, but as far as what he says happened, just to get into what your understanding is, was this an incident involving an altercation with Bellanie Clyburn that resulted in her death?

A. Correct.

Q. And based on what you were advised and what you observed the defendant say, was there a knife involved as well?

A. Correct.

MR. REDMOND: That'd be all the questions -- oh, no, one more question.

Q. Any -- were any of the injuries that Mr. Rivers appointed to, were they inflicted on the defendant at any time in your presence?

A. No.

MR. REDMOND: That'd be all the questions I'd have.

MR. RIVERS: No further questions.

THE COURT: Thank you.

1 MR. REDMOND: And we would ask that Mrs. Gainey be
2 excused to return to Florence?

3 MR. RIVERS: No objection, Your Honor.

4 THE COURT: The witness is excused.

5 MRS. GAINNEY: Thank you.

6 MR. RIVERS: Next we'd call Joey Carnes.

7 THE CLERK: Do you swear or affirm -- do you
8 solemnly swear or affirm the information you're about to
9 tell the Court in this matter shall be the truth, the whole
10 truth, and nothing but the truth so help you God?

11 MR. CARNES: I do.

12 THE CLERK: Please be seated.

13 COURT REPORTER: State your name for the record
14 please.

15 MR. CARNES: Joseph Carnes, C-a-r--e-s.

16 JOSEPH CARNES, first being
17 duly sworn, testified as follows:

18 **Direct Examination by Mr. Redmond:**

19 Q. And I'm not trying to throw you off but based on Mr.
20 Rivers's questioning of Agent Gainey, I'm gonna actually
21 start off a little different, if I may approach the
22 witness? I'm actually going to show you what's in evidence
23 as a Defense Exhibit's, particularly Defense Exhibits 4, I
24 think this is 5 -- 4 and 5. Do you recognize that being,
25 to the best that you can recall, the condition of the

J. Carnes- Direct Examination by Mr. Redmond

16

1 defendant was in when you first encountered him?

2 A. That is correct.

3 Q. Okay. And the reason I'm getting into that is --
4 thank you, sir -- to your knowledge based on the
5 investigation, were you the first law enforcement officer
6 to have exposure with the defendant?

7 A. To my knowledge, I was.

8 Q. And let's talk about that, how did you become involved
9 in this case, the best of your recollection?

10 A. I was at Westside Estates the morning of the incident
11 on South Arant Street. I was going to attempt to serve a
12 warrant on an individual there. My radio was on scanning
13 the town channel as well as the county channel, I heard the
14 call go out so I decided to leave Westside Estates to stop
15 service on the warrant and attempt to help Pageland
16 officers with the incident. When I left Westside Estates
17 on South Arant Street, I took a right and then turn on
18 Griggs Street. I overheard on the radio the suspect had
19 left and give a vehicle description and I noticed the
20 suspect vehicle turning behind Pigg's Park on Graves Street
21 and I turned in behind it.

22 Q. And at that time, did you execute a stop and were able
23 to apprehend the defendant?

24 A. Both vehicles come to stop at the same time. I turned
25 on my blue lights on my patrol car. As we were stopping,

1 it's kind of a dead end road that ends behind the ballfield
2 back there and he exited the vehicle and I took him into
3 custody.

4 Q. Okay. And at the time you took him into custody,
5 well, when you first encountered him, I might've ask you
6 this already, but does your report reflect that you did
7 note injuries to the defendant before you -- by the time
8 you approached him, he already had those injuries?

9 A. That is correct.

10 Q. Okay.. Now, when you approached him, could you tell us
11 did he give you any information at that time about what had
12 happened?

13 A. Well, initially I noted that he was, had blood all
14 over him so I assume this was the individual in question. I
15 wasn't personally familiar with Mr. Stewart but the vehicle
16 matched the description given and the individual had blood
17 all over him so I placed him under arrest and read him his
18 Miranda Rights. I cleared the vehicle to make sure there
19 was nobody else inside the vehicle and at that time is when
20 I noticed the injuries on the defendant.

21 Q. And let's talk about his Miranda Rights, you said you
22 read him his Miranda rights, could you tell the Court what
23 rights specifically you, and I'm assuming this is orally,
24 you gave him his Miranda Rights, orally?

25 A. That is correct. We have cards but I always prefer to

J. Carnes- Direct Examination by Mr. Redmond

18

1 do it orally, just, you know, we say it so much it's pretty
2 simple to remember.

3 Q. Okay.

4 A. "You have the right to remain silent. Anything you
5 say can and will be used against you in a court of law.
6 You have the right to speak with an attorney before any
7 questioning. If you cannot afford an attorney one will be
8 appointed to you before any questioning. At any time you
9 can execute and decide to stop answering questions and
10 exercise your Miranda Rights. Do you understand the rights
11 I just read to you?"

12 Q. And after that, was there anything -- and let's talk -
13 - before that based on what you observed was he threaten,
14 coerce, any way forced into giving a statement to you?

15 A. No.

16 Q. Did he seem to understand the Miranda Rights that you
17 read, that you gave him?

18 A. He stated to me that he understood.

19 Q. Okay. At that time, once you went through that, did
20 he then tell you, at least, his version of what happened?

21 A. That is correct.

22 Q. Okay. And to the best of your recollection, do you
23 recall what he told you?

24 A. He stated, I believe -- I want to say his initial
25 statement was that he just lost it over love. And he

1 stated several times -- he asked me several times that, you
2 know, what was he looking at. How much time was he looking
3 at. And at the time I didn't know the seriousness of the
4 incident, all I knew that there was a stabbing. So I told
5 him it all depended on how bad the victim was, you know. I
6 kind of ask him, you know, how many times did he stabbed
7 her? He stated, he didn't know that once he started he
8 just couldn't stop.

9 Q. And after he gave you the statement, like you said, he
10 was placed into custody, you gave him his rights, he gave
11 you his version of what took place, did you hand him off to
12 Pageland Police Department?

13 A. That's correct. As soon as I had him in custody and
14 made sure the vehicle was clear of any other people, I
15 radio dispatch to advise Pageland that I had the suspect in
16 custody behind Pigg Park and to send me someone over there.

17 Q. Okay. Who was it that came and actually -- who came
18 from Pageland Police Department to take the defendant into
19 their custody?

20 A. Office Nikkos Newman.

21 Q. And do you recall or were you present or do you know
22 whether or not, I think it was Sergeant Newman at that
23 time, whether he gave the defendant any Miranda Rights?

24 A. When Sergeant Newman arrived, I advised him that I had
25 already read the defendant his rights but that my vehicle

J. Carnes- Cross Examination by Mr. Rivers

20

1 was un-equipped with audio/video at that time, it was a
2 fairly new patrol vehicle. I mean, It hadn't been equipped
3 at that time. So at that time Nikkos, Sergeant Newman,
4 walked him in front of his vehicle and I witnessed
5 Sergeant Newman reading his rights again.

6 Q. And I didn't get into this initially, but by whom are
7 you employed at the time of January 1, 2010?

8 A. Chesterfield County Sheriff's Office.

9 Q. Okay. And are you still in their employment today?

10 A. Yes, I am.

11 Q. And what was your position back then in 2010?

12 A. Back then I was a K-9 officer.

13 Q. And what is your position now?

14 A. Investigator.

15 MR. REDMOND: That'd be the all the questions I have.
16 Please answer any questions that Mr. Rivers may have.
17 Thank you.

18 Cross Examination by Mr. Rivers:

19 Q. Is it deputy -- do you go by Investigator Carnes or
20 Deputy Carnes?

21 A. I'm good with either one. I'm not big on titles.

22 Q. I didn't want to offend you.

23 A. Oh, no, it's all good.

24 Q. And so to go back over that, you were working for the
25 sheriff's department?

1 A. That's correct.

2 Q. Now, and you were working on another matter, so to
3 speak?

4 A. That's correct.

5 Q. When this call came through?

6 A. Yes.

7 Q. And you just happened to see the vehicle at the Pigg
8 Park?

9 A. Pigg Park, yes.

10 Q. Pigg Park. That matched the description of, I guess,
11 to be on the lookout ---

12 A. Yes.

13 Q. --- that you had heard? Now, as I recall, my research
14 you pulled alongside the vehicle, the defendant's vehicle,
15 in some ways?

16 A. Directly behind it.

17 Q. You were behind it?

18 A. Yes.

19 Q. Okay. And when you pulled behind him, he got out of
20 his vehicle I think close to the time or the same time that
21 you got out of yours?

22 A. Virtually, yes, sir.

23 Q. And, of course, he came out of his vehicle in a
24 different way because of his front door?

25 A. That's correct.

J. Carnes- Cross Examination by Mr. Rivers

22

1 Q. What was the way he came out of his vehicle, if you
2 can recall?

3 A. To the best of my memory, he climbed into the back
4 seat and it appeared that he come out the back passenger
5 side door.

6 Q. And then what happened after that, is that when you
7 placed him ---

8 A. Yes, sir. I placed handcuffs on him and I told him
9 that he was under arrest.

10 Q. And what did you do with him after, physically, after
11 -- was he on the ground with the handcuffs?

12 A. Yes, sir, he was on the ground.

13 Q. Okay.

14 A. He was complaining of being pepper sprayed.

15 Q. Okay.

16 A. And he was showing signs that were consistent with
17 being pepper sprayed. He had mucus coming out. He was
18 spitting a lot. It was very obvious to me as a law
19 enforcement officer that, you know, pepper spray had been
20 used on him.

21 Q. Okay.

22 A. And at that time, after I clear the vehicle and made
23 sure, made sure the scene was secured, I retrieved the
24 gallon of water out of my vehicle and decontaminated his
25 eyes.

1 Q. Okay. Did you placed him under arrest prior to the
2 water or after?

3 A. I placed him under arrest initially.

4 Q. Okay.

5 A. The water was maybe a minute or two later. It was
6 shortly, thereafter.

7 Q. Okay. And after you placed him under arrest is that
8 when you Mirandized him?

9 A. That's correct.

10 Q. And so you read him his Miranda Rights prior to him
11 receiving the water?

12 A. That's my memory, yes.

13 Q. And you got the water to, I'm assuming, to aid to his
14 relief, so to speak?

15 A. That's correct.

16 Q. Because he was under, I mean, exactly what was going
17 on with him prior to you getting the water?

18 A. He was having trouble seeing and the mucus ---

19 Q. And he was sitting on the ground at this point?

20 A. Yes, sir. I believe, it's been a long time ---

21 Q. Okay.

22 A. --- initially, he was bellied down, handcuffs to the
23 back. Then I sat him up on his rear end with his leg
24 sitting out.

25 Q. And I believe the prosecution showed, Mr. Redmond

1 showed you the photographs of the defendant?

2 A. Yes.

3 Q. And in particular you would have seen, I assume, you
4 would've seen, in particular, the left, his left ear?

5 A. Yes, sir. And I believe I noted that in my incident
6 report.

7 Q. Yes, sir. Okay. And so when you read -- I would
8 assume that he was most distressed prior to you using the
9 water on him, would that be fair? In other words, the
10 water relieved him and helped in some way?

11 A. The water did relieve him. It helped. Yes.

12 Q. And so in his most distressed, so to speak, is when
13 you read the Miranda Rights to him?

14 A. Well, at the time I read his Miranda Rights I didn't
15 know that he had been pepper sprayed. It was, I placed him
16 under arrest, and immediately read him his Miranda Rights.

17 Q. All right. But -- so my question naturally would be
18 was, when did you first see that he was in physical
19 distress by pepper spray?

20 A. Shortly thereafter.

21 Q. After the Miranda or before?

22 A. Yes, it was definitely after the Miranda that I
23 noticed.

24 Q. So before the -- at the time of the Miranda he looked
25 fine to you? He did complain of any problem?

1 A. I wasn't really paying that much of attention. It was
2 the handcuffs and Miranda was, you know, kind of
3 simultaneously.

4 Q. My only point, deputy, is you felt the need for him to
5 need water that you got out of your car, am I right?

6 A. Yes. Yes.

7 Q. And you felt -- you felt -- you made that
8 determination that he needed that to be cleaned off, so to
9 speak, from the mucus in the effects to his eyes from the
10 pepper spray ---

11 A. Yes, sir.

12 Q. Is that correct?

13 A. Yes.

14 Q. And -- but those were done prior to him receiving the
15 Miranda so when he received the Miranda I'm assuming he had
16 the mucus and the things that go with being pepper sprayed?

17 A. That's correct.

18 Q. Because you did see him get pepper sprayed?

19 A. No, I did not.

20 Q. So he would have been pepper sprayed prior to him
21 coming out of that vehicle?

22 A. That's correct.

23 Q. At all times he would've been pepper sprayed prior to
24 you seeing him at some point?

25 A. That's correct.

J. Carnes- Cross Examination by Mr. Rivers

26

1 Q. Right? Because you didn't see him get pepper sprayed
2 so he had been pepper sprayed the whole time you saw him
3 prior to that?

4 A. That's correct.

5 Q. Okay. And I'm just making the point that the relief
6 with the water because you said that would help somebody,
7 I'm assuming ---

8 A. Yeah, water does relieve ---

9 Q. And when you say that relieves them that relieves them
10 physically and I understand you're not a doctor but I would
11 assume that it would help the mentally to focus and things
12 of that nature too or just help in general?

13 A. I believe mentally is just stretching it just be
14 honest, in my opinion ---

15 Q. But at least physically?

16 A. Physically, most definitely.

17 Q. Okay.

18 A. Because it affects you physically.

19 Q. So whatever statements he gave were following Miranda
20 that you testified, were they may prior to the water to,
21 the statements?

22 A. The statements were made ---

23 Q. Or both?

24 A. I believe he made a few statements prior to and the
25 more I sat and actually talked to him that's when, you

1 know, ---

2 Q. Right.

3 A. --- he started complaining about, you know, everything
4 and that's when I stopped and went and got the water.

5 Q. And so he could have -- he made some statements,
6 according to some of the statements, you said, the love
7 statement and there was another statement about how much
8 time I'm gonna get, some of those -- in some form or
9 fashion he talked about before and after the water?

10 A. That's correct.

11 Q. That's my only point.

12 A. Yes, sir.

13 Q. You handed him off, so to speak, to the Pageland
14 Police Department because it was their jurisdiction, I'm
15 assuming?

16 A. That's correct. The incident occurred inside the city
17 limits.

18 Q. And you noted that it was your understanding that your
19 car was not equipped with videotape?

20 A. That's correct.

21 Q. Of any kind, correct?

22 A. That's correct.

23 Q. But your understanding was that the Pageland Police
24 Department's were?

25 A. It wasn't ask of me but prior to becoming employed by

1 the sheriff's office, I was employed by the Pageland Police
2 Department.

3 Q. Okay.

4 A. And during my tender as a Pageland police officer,
5 most of the vehicles were equipped so I just assumed that
6 the vehicle that was coming ---

7 Q. Right.

8 A. --- had audio and video recording.

9 Q. And the video would typically would take -- that would
10 be in front of the car?

11 A. That's correct.

12 Q. So if a person was standing, let's say at a hood or
13 the bumper of a car, that's where you would see them? In
14 other words, the camera just did move?

15 A. No. The camera didn't move.

16 Q. It's fixed?

17 A. It's fixed inside the vehicle.

18 Q. And it records audio and visual out of the car?

19 A. The camera records the video and then there's a
20 separate microphone ---

21 Q. Okay.

22 A. --- that carries ---

23 Q. Okay. But their sink together?

24 A. Yes.

25 Q. In other words, if someone speaking you can ---

1 A. Yes, sir.

2 Q. --- play the video later and hear them talking and
3 whatever?

4 A. That is correct.

5 Q. And it was your understanding that this car from your
6 past experience with the Pageland Police Department would
7 have had that?

8 A. I was assuming based off of my past experience.

9 Q. When once the defendant was taken into custody by
10 officer Newman, did you know whether Officer Newman later,
11 you stated he Mirandized ---

12 A. He Mirandized him on the scene behind Pigg Park.

13 Q. Okay. Was the defendant in the same position
14 physically?

15 A. No. We had stood him up and walked him in front of
16 Officer Newman's ---

17 Q. For the video?

18 A. Yes, sir. In front of Officer Newman.

19 Q. Okay. And then you heard him go through the
20 Mirandized?

21 A. That's correct.

22 Q. And what connection did you have with the arrest
23 thereafter? Did you just help him load him into the
24 vehicle, so to speak?

25 A. And if I'm not mistaken I stayed by with the

J. Carnes- Redirect Examination by Mr. Redmond

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1 defendant's vehicle until a wrecker company got it.

2 Q. Okay. Was that your ---

3 A. To the best of my knowledge.

4 Q. I'm sorry. Was at the end of your involvement?

5 A. Yes, sir.

6 Q. You didn't go to the Pageland Police Department or
7 have any other connection with the case?

8 A. No, sir.

9 MR. RIVERS: That's all the questions I have. Thank
10 you.

11 MR. REDMOND: Brief redirect, Your Honor.

12 Redirect Examination by Mr. Redmond:

13 Q. At the time that the defendant was stopped, I look at
14 your report I don't notice that the defendant was in
15 violation of any traffic laws at that time?.

16 A. That is correct. It wasn't really a stop. He stopped
17 as I was stopping, I mean, it was ---

18 Q. It was simultaneously?

19 A. Yes, sir.

20 Q. And were you in a patrol vehicle?

21 A. Yes, sir.

22 Q. Okay. Marked patrol vehicle?

23 A. At that time, it was unmarked.

24 Q. Okay. But you pull him over, he hadn't been violating
25 any traffic laws, my point is even though he had been

1 pepper sprayed at the time you first encountered him, was
2 there anything that told you that he was any kind of
3 distress?

4 A. No.

5 Q. I mean, he was able to operate a vehicle. You did not
6 notice him driving or doing anything improperly with pepper
7 spray, even though he had been pepper sprayed, is that a
8 fair statement?

9 A. Yes, sir. That's a fair statement.

10 Q. And, obviously, you're familiar with the use of pepper
11 spray and trained in pepper spray. Despite him being
12 pepper sprayed when you read him his rights, was there any
13 doubt in your mind he understood?

14 A. No, sir. There is no doubt in my mind.

15 Q. In fact, if I recall, your earlier testimony did he
16 actually even respond and reaffirmed it?

17 A. Yes, sir. He stated that he understood his rights.

18 Q. And so that discussion as far as the pepper spray or
19 anything of that nature didn't occur until after he had
20 started talking with you?

21 A. That's correct.

22 Q. And if I understood correctly the question on cross,
23 at some point he mentioned being pepper sprayed?

24 A. That is correct.

25 Q. Okay. And that's when, you know, noticed things that

J. Carnes- Cross Examination by The Court

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1 were consistent with being pepper sprayed?

2 A. That is correct.

3 MR. REDMOND: That'd be all the questions I have,
4 Your Honor.

5 MR. RIVERS: No further questions, Your Honor.

6 THE COURT: All right. I have some.

7 Cross Examination by The Court:

8 Q. Well, obviously, from your testimony, you did not
9 pepper spray the defendant?

10 A. That is correct.

11 Q. In his statement to you, did he acknowledge to you who
12 had sprayed him?

13 A. I do not recall him stating specifically who sprayed
14 him.

15 Q. Did he, in any way, acknowledge to you that law
16 enforcement might have pepper sprayed him?

17 A. No, sir, Your Honor.

18 Q. How about the wounds to the ear and to the hand, did
19 he acknowledge to you how those were obtained?

20 A. No, sir, Your Honor.

21 Q. Okay.

22 THE COURT: Anybody want to ---

23 MR. RIVERS: No, sir.

24 MR. REDMOND: Actually, if I could, Your Honor,
25 because it's been so long, I need to do, with the Court's

1 permission allow him to look at his incident report in
2 fairness to him based on the question the Court had,
3 because I think the answers are in the incident report, if
4 I may approach the witness with the incident report. And
5 out of abundance of caution, I might need to mark this as
6 State's 4. And, Your Honor, I'm not moving to admit this
7 just to help him refresh his recollection. Mark it for ID.

8 MR. RIVERS: We have no objection to the admission
9 of the incident report.

10 MR. REDMOND: And if there's no objection, Your
11 Honor, I'd introduce it.

12 (Whereupon, the Incident Report has been marked and entered
13 into evidence as State's Exhibit No. 4)

14 MR. RIVERS: We just asked that it not be redirect
15 through just any ---

16 MR. REDMOND: And, obviously, it would be introduced
17 for the purposes of this hearing only. Obviously, we would
18 not get into that ---

19 MR. RIVERS: Correct.

20 MR. REDMOND: --- at trial.

21 **Redirect Examination by Mr. Redmond:**

22 Q. If you look at your report, I think it's the second
23 page, if you would flip to it.

24 A. According to my incident report it does state that, "
25 the defendant responded. He knew all of this rights he

N. Newman- Direct Examination by Mr. Redmond

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1 just needed some help because his eyes were burning from
2 where the victim pepper sprayed him."

3 MR. REDMOND: And that would be -- I just wanted to
4 add that based on the Court's ---

5 THE COURT: Thank you, sir. You may step down.

6 MR. REDMOND: The State would next call, Nikkos
7 Newman.

8 THE CLERK: Place your left hand on the Bible and
9 raise your right hand. Do you solemnly swear or affirm to
10 tell the truth, the whole truth, and nothing but the truth
11 so help you God?

12 MR. NEWMAN: So help me God.

13 THE CLERK: Thank you. Please be seated.

14 COURT REPORTER: State your name for the record
15 please.

16 MR. NEWMAN: Nikkos, excuse me, Nikkos Newman, N-i-
17 k-k-o-s, Newman, N-e-w-m-a-n.

18 NIKKOS NEWMAN, first being
19 duly sworn, testified as follows:

20 Direct Examination by Mr. Redmond:

21 Q. By whom are you employed at this time?

22 A. By Lee County Sheriff's Office.

23 Q. And in what capacity are you employed at the Lee
24 County Sheriff's Office?

25 A. As an investigator.

1 Q. And Investigator Newman were you employed by the
2 Pageland Police Department on January 1, 2010?

3 A. Yes, I was.

4 Q. And in what capacity were you employed with the
5 Pageland Police Department?

6 A. I believe I was a patrol sergeant.

7 Q. And at that particular time on 1st of January of 2010,
8 were you called and become involved in the investigation
9 involving the death of Bellanie Clyburn?

10 A. Yes, I was.

11 Q. And could you tell the Court at what point you got
12 involved in the case and what you did initially?

13 A. I was called out, I believe, by assistant Chief Brown
14 at that time to go to Pigg's Park and do the transport of
15 Mr. Thomas Stewart.

16 Q. And at this time that you did the transport of Mr.
17 Thomas Stewart was Joseph Carnes from the sheriff's office
18 there with him?

19 A. Yes, he was.

20 Q. Okay. And what did you do once you arrived at the
21 scene at the Pigg Park?

22 A. When I arrived I spoke with Deputy Carnes briefly. I
23 then pulled Mr. Stewart in front of my patrol vehicle and
24 read him his Miranda Rights and then from there I put him
25 in the patrol vehicle and we proceeded to the

N. Newman- Direct Examination by Mr. Redmond

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1 Pageland Police Department.

2 Q. And I'll ask you the same thing I ask Deputy or
3 Investigator Carnes, what rights do you recall that you
4 read to him?

5 A. I read to him his Miranda Rights.

6 Q. Did he -- and when you read them, did you use a card
7 or did you have a card that you read by?

8 A. I believe I had a card. I'm not sure.

9 Q. Okay. Did you advise him of his right to remain
10 silent; the right to have an attorney; the right to stop
11 questioning; those basic Miranda Rights?

12 A. Yes, sir.

13 Q. And at that time was he questioned at all?

14 A. He was not questioned.

15 Q. Did he tell you anything at that time?

16 A. He did not.

17 Q. All right. But subsequently were you at the Pageland
18 Police Department at the time he gave a video interview?

19 A. Yes, I was.

20 Q. Okay. And we'll get into that in just a minute. As
21 it relates to the scene, did you place the defendant in
22 front of the hood of your car, your patrol vehicle, for the
23 purposes of giving him his Miranda Rights on camera?

24 A. Yes, I did.

25 Q. Did you subsequently discover that the videotape of

1 that, that you intended to take was not available?

2 A. Yes, I was.

3 Q. And could you, to the best of your recollection,
4 recall what I think you might have speculated on what may
5 have happened and why that videotape wasn't working?

6 A. Because he didn't make any statements. He didn't make
7 any utterance or anything.

8 Q. And what was the policy, to the best of your
9 recollection, as it relates to video, were they re, I say
10 re-used, I call them recycle, if there wasn't anything
11 important on that video, on the video, was it recycled
12 after a certain period of time?

13 A. It was.

14 Q. And is that what you suspect may have happened in this
15 situation?

16 A. I do.

17 Q. And again did he tell you anything?

18 A. He did not tell me anything. He did not make any
19 statements at that time.

20 Q. But -- Investigator Carnes was present when you gave
21 him his Miranda Rights?

22 A. He was.

23 Q. Okay. So even though you don't have the video that it
24 was witnessed by a fellow law enforcement officer?

25 A. It was.

N. Newman- Direct Examination by Mr. Redmond

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1 Q. Okay. And then you -- where did you transport him
2 from there?

3 A. I transported him to the Pageland Police Department.

4 Q. And once he got to the Pageland Police Department, was
5 he -- were you in the room with, I believe, Bobby Melton
6 who a Pageland police at the time, assistant Chief, Larry
7 Brown and Kristina Gainey from sled?

8 A. I was.

9 Q. Okay. And were you present at the time that he was
10 read his Miranda Rights?

11 A. I was.

12 Q. Okay. So you gave him his warnings out at the scene
13 when you picked him up from Joey Carnes, but subsequently
14 when he got to the police department, was he read his
15 Miranda Rights again?

16 A. He was.

17 Q. And at this time was there a Miranda waiver form done
18 that you recall? Were you present at the time that was
19 done?

20 A. Yes, I was.

21 Q. Okay. I'm going to show you what's been marked as
22 State's Exhibit number 3, now is your name actually on that
23 Miranda waiver?

24 A. It is not.

25 Q. Okay. And I think the reason is simple, but how many

1 -- were there enough slots to accommodate you and Sergeant
2 Melton being on that form?

3 A. There was not.

4 Q. Okay. Now, were you -- but were you present when
5 Kristina Gainey and assistant Chief Brown gave him his
6 Miranda warnings?

7 A. I was.

8 Q. At the time and I didn't ask you this at the scene, at
9 the time you were at the scene and you read him his Miranda
10 warnings, did he seem to understand his Miranda warnings?

11 A. He did.

12 Q. And this is important, even though he did not say
13 anything and I think you said it, did you ever ask him any
14 questions?

15 A. I did not.

16 Q. Okay. Did he ever respond in any way indicating, no,
17 I don't want to talk to you. I want a lawyer or anything?
18 Was there any discussion at all?

19 A. There was not.

20 Q. Okay. I just want to make sure that was established.
21 So when you get to the Pageland Police Department he's read
22 his Miranda Rights again and this time they are written,
23 did he seem to understand his Miranda warnings?

24 A. He did.

25 Q. Okay. Did, at any time either at the scene or at

N. Newman- Cross Examination by Mr. Rivers

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1 Pageland PD, was he denied any basic human needs such as
2 going to the bathroom, food, drink, was he denied anything
3 in order to force him to give a statement?

4 A. No, sir.

5 Q. Was he threaten or coerced in any way in order to give
6 a statement, in ordered to be force into giving a
7 statement?

8 A. No, sir, he was not.

9 Q. Did he seem to waive his rights freely and
10 voluntarily?

11 A. He did.

12 Q. And did he, in fact, give a statement?

13 A. Yes, he did.

14 MR. REDMOND: I beg the Court's indulgence. That'd
15 be all the questions I'd have at this time. Please answer
16 any questions that Mr. Rivers may have.

17 Cross Examination by Mr. Rivers:

18 Q. Is it deputy?

19 A. Deputy or investigator. It doesn't matter. Thank
20 you.

21 Q. I hand to you Defense Exhibit's I think it's 4 through
22 6 ---

23 COURT REPORTER: Seven.

24 Q. --- 4 through 7. These are photos, photographs, that
25 appear to have been taken at the Pageland Police Department

1 that day that you're talking about on the first of the year
2 of 2010 of the defendant, is that right?

3 A. Yes, sir.

4 Q. You will note it appears that he had injuries to,
5 let's see on number 4, 5, 6 it appears to be injuries to
6 the defendant of his left ear and hands, is that right?

7 A. Yes, sir.

8 Q. On exhibit number 7 does that appear to be as he was
9 dressed as you saw him both at the time alongside the road
10 when you came to transport him and later at the police
11 department?

12 A. Yes, sir.

13 Q. All right. That's the clothing he had own?

14 A. Yes, sir.

15 Q. As far as you remember?

16 A. Yes, sir.

17 Q. You stated that the video -- there was a videotape
18 surveillance or equipment in your vehicle at that time?

19 A. Yes, sir.

20 Q. And did you take the steps necessary to engage that
21 equipment?

22 A. Yes, sir.

23 Q. And what do you have to do to have the machine onset
24 in the vehicle?

25 A. Usually in the patrol vehicles at that time, to the

N. Newman- Cross Examination by Mr. Rivers

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1 best of my recollection, is usually when you cut the blue
2 lights on or you hit it manually to record it with record.

3 Q. Okay. What steps did you take in this case?

4 A. I probably didn't on a code so the blue lights didn't
5 come home so I probably push the record button manually.

6 Q. Okay. So as far as you remember, you weren't using
7 the blue lights, you would've done it manually?

8 A. Yes.

9 Q. Like you said, the lights activate it?

10 A. Yes, sir.

11 Q. And did you take the defendant in front of your
12 vehicle ---

13 A. Yes, sir.

14 Q. --- that day? Was Officer Carnes with you at that
15 point too?

16 A. Yes, sir.

17 Q. Okay. And that's the point you read the Miranda
18 Rights to him?

19 A. Yes, sir, it was.

20 Q. And you testified that he made those statements from
21 that time to you directly or indirectly between that time
22 and the time at the police department?

23 A. He did not make any statements.

24 Q. Okay. You also testified that y'all normally keep, I
25 don't want to put words in your mouth, but as I understand

1 that y'all normally keep the tape if there's something
2 important on there?

3 A. Yes, sir. And my recollection as far as utterances or
4 statements he may have made.

5 Q. But not for the Miranda warnings itself?

6 A. No, sir.

7 Q. Do y'all -- do y'all -- have you taped other Miranda
8 warnings when somebody didn't testify or make a statement
9 thereafter?

10 A. To the best of my recollection, maybe or maybe not,
11 I'm not sure. That was a long time, frankly. A long time
12 ago.

13 Q. Right. I'm just trying to understand the process.

14 A. Normally, I would have kept it if there would have
15 been a statement.

16 Q. And if there is not a statement?

17 A. I probably would not have kept it at that time.

18 Q. In this case, do you remember what happened in this
19 case as to those Miranda warnings, the morning beside the
20 front of your car, what happened to that tape?

21 A. No, sir. I do not.

22 Q. Were you part of erasing that tape or determining that
23 it's no longer necessary?

24 A. No, sir. I am not.

25 Q. Who makes those determinations?

N. Newman- Cross Examination by Mr. Rivers

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1 A. The first sergeant at that time. I think it would be
2 either first Sergeant Mackey or Captain Mackey at that time
3 would have had the keys to those boxes.

4 Q. And those boxes that's inside the vehicle?

5 A. Yes, sir.

6 Q. And a person routinely goes through the box and views
7 at that time?

8 A. I'm not sure that process at that time. As far as
9 going through the tapes and seeing ---

10 Q. What's important and what's not, I guess, that's my
11 question, who's making that determination?

12 A. I guess it would've been first Sergeant or Captain
13 Mackey at that time.

14 Q. But it wasn't you?

15 A. No, sir, it was not.

16 Q. How soon -- all right, do you know any kind of time
17 period on that when they -- is a few days, a month or do
18 you know when they erase?

19 A. I guess when the tape ran out.

20 Q. And they erase the tape, basically?

21 A. Not -- I guess not erase but recorded over or ---

22 Q. Right.

23 A. --- whatever they would need to put the tape back in
24 circulation.

25 Q. The tape, is it a physical tape that was in that

1 machine?

2 A. It was a VHS.

3 Q. So is just like an old VCR?

4 A. Yes, sir.

5 Q. So it's got the big, I don't know, eight inch tape,
6 the old VCR tape, VHS?

7 A. I would imagine so.

8 Q. Had you never seen that before?

9 A. Yes, sir, I saw it.

10 Q. And so was that a VHS tape that went in?

11 A. Yes, sir.

12 Q. Okay. And so it would've been a VHS tape that would
13 come out?

14 A. Yes.

15 Q. And then -- or that tape, they would just rewind it I
16 guess and just record over it?

17 A. I'm not to sure. I didn't rewind ---

18 Q. Was ---

19 A. --- or erase them or whatever to put them back into
20 circulation.

21 Q. For the tapes that were deemed important, where they
22 stored in a certain place at the Pageland Police
23 Department?

24 A. I believe they would've been.

25 Q. I mean, do you know personally -- do you remember?

N. Newman- Cross Examination by Mr. Rivers

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1 A. Not at this time, I do not. I can't recollect who
2 would have did what with the tapes. No, sir.

3 Q. That tape that would have had the defendant on it,
4 would it have had other arrest on there too?

5 A. Possibly, I'm not sure.

6 Q. But, in other words, that one tape would be used --
7 so, in other words, his standing in front of the vehicle
8 that morning could have been at the beginning of the tape,
9 end of the tape, I'm assuming the arrest were -- there were
10 several arrest on the tape, I'm assuming depending how long
11 they were?

12 A. Possibly. I can't say, yes, sir ---

13 Q. Well, in other words, you didn't put in a new tape
14 every time you arrested somebody?

15 A. That's right.

16 Q. Okay. His -- did the defendant appeared to be
17 suffering from results of being pepper sprayed when you saw
18 him that morning?

19 A. No, sir, not at that time.

20 Q. Okay. Did you see where he was wet with the water and
21 whatnot that Deputy Carnes had used on him?

22 A. I could tell some around the neck area.

23 Q. Did you and Deputy Carnes not have a conversation
24 about him being pepper sprayed and how he treated him with
25 water?

1 A. I believe he may have before I read him his Miranda
2 Rights. I'm not to particularly sure of that day it's been
3 a while.

4 Q. Okay. So he could have told you about the pepper
5 spray?

6 A. I'm pretty sure it's possible.

7 Q. All right. And did you note the injuries that are in
8 the photographs to him, the ear and the hands that I showed
9 you?

10 A. Yes, sir. I see those in the picture.

11 Q. Did you remember him having those alongside the road
12 that morning?

13 A. Not too sure. My main objection was to secure him and
14 get him to the police department.

15 Q. Okay.

16 MR. RIVERS: That's all the questions I have, Your
17 Honor.

18 THE COURT: Solicitor?

19 MR. REDMOND: No redirect, Your Honor.

20 THE COURT: You may step down. Thank you.

21 MR. REDMOND: And the State would next call Larry
22 Brown.

23 MR. RIVERS: Your Honor, may we approach?

24 THE COURT: Mmm, hmm.

25 (Whereupon, a bench conference was held off the record)

L. Brown- Direct Examination by Mr. Redmond

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1 THE COURT: The Court will stand at ease for just a
2 minute.

3 (Whereupon, the solicitor request a few minutes to set up
4 the tv for the video to be played for the Court)

5 (Whereupon, video was played for the Court off the record)

6 MR. REDMOND: Your Honor, for the record that was
7 State's 1 and 2 that we played, a two-part video. If it
8 pleases the Court, the State would call Larry Brown to the
9 stand.

10 THE CLERK: Do solemnly swear or affirm to tell the
11 truth, the whole truth, and nothing but the truth so help
12 you God?

13 MR. BROWN: Yes, I do.

14 THE CLERK: Thank you.

15 THE COURT: And, Your Honor, before we start Nikkos
16 Newman and Joey Carnes we've excused them and we didn't put
17 that on the record before hand but they've already left.

18 LARRY BROWN, first being
19 duly sworn, testified as follows:

20 Direct Examination by Mr. Redmond:

21 Q. Please state your name?

22 A. Larry Brown.

23 Q. And, excuse me, by whom are you employed at this time?

24 A. Chesterfield County Sheriff's Office.

25 Q. And in what capacity are you employed with the

1 sheriff's office?

2 A. As a deputy, sir.

3 Q. And previously -- were you previously employed with
4 the Pageland Police Department?

5 A. Yeah. The Town of Pageland at the Pageland Police
6 Department

7 Q. And on January 1, 2010, what capacity would you have
8 been at the Pageland Police Department?

9 A. Assistance chief.

10 Q. And, so pardon me, I will probably end up calling you
11 chief so but on that particular day, did you become
12 involved in the murder investigation of Bellanie Clyburn?

13 A. Yes, I did.

14 Q. And, not getting into everything you did leading up to
15 this point, jumping to the pertinent issue here, at some
16 point did you have any interaction with the defendant for
17 the purpose of getting a statement from him?

18 A. Yes, I did.

19 Q. Okay. Was that your first encounter with the
20 defendant that day at the Pageland Police Department or had
21 you seen him before that, that day?

22 A. At the police station.

23 Q. It was, okay. And so -- in other words, you didn't
24 see him until he was brought by, I believe, Nikkos Newman
25 to the police station?

L. Brown- Direct Examination by Mr. Redmond

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1 A. That's correct.

2 Q. So at the time that you saw him and I guess just to go
3 ahead and address it, the defense 4 and 5, I'll just show
4 you those. Do you recall that being the condition of the
5 defendant that was in when he got to the police department?

6 A. Yes, sir.

7 Q. And where those pictures taken by the Pageland Police
8 Department?

9 A. That's correct.

10 Q. And when he got to the police department, were you
11 aware that, that he had been previously Mirandized?

12 A. Yes, I was.

13 Q. At least twice?

14 A. Yes, that's correct.

15 Q. Now, knowing that, did y'all still and I say y'all,
16 let's go through who was present, was Kristina Gainey from
17 sled present?

18 A. Yes, she was.

19 Q. Was Nikkos Newman present?

20 A. Yes, he was.

21 Q. And I think Bobby Melton was working with the camera
22 that time?

23 A. That is correct.

24 Q. Now, let me show you State's Exhibit, State's Exhibit
25 Number 3, do you recognize that paper document?

1 A. Yes, I do, sir.

2 Q. And can you tell us what that is?

3 A. It's the Miranda Rights document that we read to Mr.
4 Thomas Stewart. The date on it January 1, 2010 around 2:09
5 pm.

6 Q. And is that the form that is alluded to in the video
7 where he had previously before the video had started, been
8 given his Miranda warnings?

9 A. This is correct.

10 Q. And was that done at the Pageland Police Department?

11 A. Yes, it was.

12 Q. And was it witnessed by you, is that your signature?

13 A. Yes, it is.

14 Q. And is the signature Kristina Gainey also affixed to
15 the waiver?

16 A. Yes, it is.

17 Q. I was that waiver read to the defendant verbatim?

18 A. Yes, sir.

19 Q. And did the defendant appear to understand what was
20 being read to him?

21 A. Yes, sir.

22 Q. Did the defendant appear to be any distress at that
23 particular time?

24 A. No, sir.

25 Q. Did -- was the defendant threatened anyway to give his

1 statement?

2 A. No, sir.

3 Q. Was he coerced, forced to give his statement? Was he
4 abused in order to get him to give his statement?

5 A. No, sir.

6 Q. Was he denied any basic human needs such as bathroom
7 breaks or food, water, was he denied anything in order to
8 get him to give his statement?

9 A. No, sir.

10 Q. And again, did he understand in your opinion the
11 rights as they were read to him?

12 A. Yes, sir.

13 Q. And did he waive those rights?

14 A. Yes, he did.

15 Q. And did he do so freely and voluntarily?

16 A. Yes, he did.

17 Q. Did he appear to understand his waiver of his rights?

18 In other words, did he appear to understand what he was
19 waiving to go ahead and talk to y'all?

20 A. Yes, sir.

21 Q. And if I recall correctly right there at the beginning
22 of the first, of the video, did he indicate to y'all that
23 he was willing to talk and that if he needed to stop he
24 would stop?

25 A. That's correct.

1 Q. With that be indicative of the fact that he understood
2 his rights and understood that he had a right to stop at
3 any time?

4 A. Yes, sir.

5 Q. Okay. And does that further, in your experience as a
6 law enforcement officer, make you feel that he understood
7 and was waiving his rights willingly?

8 A. Oh, yes.

9 Q. And we've heard what was on the video so I'm not going
10 to get into what was said because we've already heard that
11 but at the time that he -- and, of course, once he got --
12 was he in custody, and I didn't ask anybody else this, but
13 was he in custody at the time he was given this Miranda
14 waiver?

15 A. Yes, he was.

16 Q. And after the completion of this video, was he then
17 taken for further process and pursuant to being charged
18 with this murder?

19 A. Yes, he was.

20 MR. REDMOND: I beg the Court's indulgence. That'd
21 the all the questions that I have at this time. Please
22 answer any questions that Mr. Rivers might have.

23 A. Thank you.

24 Cross Examination by Mr. Rivers:

25 Q. I was going to say good morning but good afternoon

1 deputy.

2 A. Good afternoon.

3 Q. I may be like Mr. Redmond with the chief thing but
4 I'll try to stick with deputy.

5 A. That's fine.

6 Q. On the day that you testified to, the first of the
7 year of 2010, what was your first interaction that day with
8 Mr. Stewart?

9 A. At the police station.

10 Q. Okay. What did that -- what do they consist of? What
11 did you do? Did you tell him to sit? Were you supervising
12 others? Did you talk to him?

13 A. Well, my first interaction with him was probably was
14 taking of this clothing. Getting some of his clothing.

15 Q. Okay.

16 A. And changed out into a police uniform.

17 Q. And that clothing, I'm assuming, are the same ones
18 that was shown in the photographs I think that you looked
19 at, the defense exhibits? I'll show them to you. Those, 4
20 or 5, I looked at 4.

21 A. Those clothing, yes. That's correct.

22 Q. That's the same clothing. So these clothes which is
23 Defendant's Exhibit 6, those were the clothes that he was
24 in? And, I think also 7, and then they were placed into
25 the ones that we saw on the video?

1 A. That's correct.

2 Q. It was the brown jumper?

3 A. That's correct.

4 Q. All right. And when you saw him at this stage, when I
5 say this stage, this stage when you initially first saw
6 him, what was his condition, physically? Or did you
7 observe the wounds that he, that are shown in the pictures?

8 A. He had a small like laceration on his hand, a very
9 small one. He had a small cut on his ear.

10 Q. Okay. And, in fact, he was treated medically
11 thereafter for those and I'm assuming other things too,
12 maybe he had complained of, is that right?

13 A. That's correct.

14 Q. I think it was like four in the morning, you had --
15 does that sound about right?

16 A. I know it was over night.

17 Q. Yes.

18 A. Yes, sir.

19 Q. In the middle of the morning or whatever you want to
20 call it, the next day. And you stated that you -- were you
21 -- you stated that you knew your testimony was that you
22 knew of the Miranda given twice on the side of the road so
23 to speak, the one by Carnes and the second by Newman ---

24 A. That's cor ---

25 Q. --- you knew of those previously?

L. Brown- Cross Examination by Mr. Rivers

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1 A. That's correct.

2 Q. And so you would've been part of the third?

3 A. That's correct.

4 Q. And the third one is the one that in this defense
5 Exhibit 3 is, is that right? The one that purportedly the
6 defendant signed?

7 A. That's correct.

8 Q. And was this -- we saw that his statement was before a
9 video at the police department, it appeared at the police
10 department?

11 A. Yes, sir, that's correct.

12 Q. And the signature on that document, on the State's
13 Exhibit 3, I'm assuming that was done -- what time of --
14 according to the video, the time line of the video, how
15 soon or before was that document executed before the video
16 of Mr. Stewart?

17 A. This document here?

18 Q. Yes, sir.

19 A. It was probably, approximately almost, almost 2 hours.

20 Q. Okay. And so he was Mirandized, he signed, according
21 to your testimony, he executed the document, the waiver?

22 A. That's correct.

23 Q. And then -- but there was some time before he was
24 videotaped, 2 hours, I'm assuming?

25 A. That's correct.

1 Q. And what was the reason for the delay, his videotape?

2 A. Because we were still assisting sled with other things
3 at that time.

4 Q. Okay. What were the other things?

5 A. Like witnesses, getting them to the police station.
6 Waiting for sled to get there also too and assisting sled
7 with most of the victims, I meant the witnesses and get the
8 witnesses to the police station to make sure they didn't
9 talk to each other or try to fabricate a story other than
10 what happened.

11 Q. Were there witnesses, though, that you were concerned
12 about fabricating a story but weren't they all at the
13 police department that day, though?

14 A. Yeah. They were -- they were separate.

15 Q. But they were separated.

16 A. We tried to get everybody separated.

17 Q. They didn't hear each other? Were they sequestered so
18 to speak or segregate?

19 A. Some of the time. As much as possible because there
20 were a lot of witnesses out there that day ---

21 Q. Right.

22 A. --- and be tried as much as possible. We didn't have
23 a lot of room at the police station but we tried to keep
24 them separated as much as possible.

25 Q. And so you're suggesting that the police department is

L. Brown- Cross Examination by Mr. Rivers

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1 fairly small to hold a number of witnesses ---

2 A. Yes, sir.

3 Q. --- and segregate them, is that right?

4 A. That's correct.

5 Q. And were those witnesses, like for example, the
6 defendant, where was he held at prior to the videotape?

7 A. In a jail cell.

8 Q. In a jail cell. And prior to his executing the
9 Miranda was he also in a jail cell or

10 A. No. He was in -- he wasn't in a jail cell at the
11 time, he was in the booking area.

12 Q. When did he -- he went into the jail cell after he
13 sign the Miranda but before he was videotaped at some
14 point?

15 A. Yes. Because he was sitting in the booking area for a
16 period of time.

17 Q. And why was that?

18 A. Because we hadn't put him in jail at the first moment
19 because we wanted to make sure we got his clothes and stuff
20 and we didn't ---

21 Q. Okay.

22 A. --- put him straightly in jail ---

23 Q. Okay.

24 A. --- when he first got there.

25 Q. Okay. The Miranda document, the State's Exhibit, was

1 that executed in front of the video taped by the machine?

2 A. This document here?

3 Q. Yes.

4 A. No, sir.

5 Q. Was his acknowledgment taped in front of the videotape
6 machine at any point? In other words, if he didn't execute
7 the statement of the Miranda -- I'm assuming, you stated it
8 to him?

9 A. In the video? Prior to the ---

10 Q. Yeah. I'm just trying ---

11 A. Yeah, prior to the video me and him -- the video was
12 on before we ask him any questions. We assured him that
13 his Miranda Rights was signed and he acknowledged that.

14 Q. Okay. But he did he do so on video?

15 A. Yes. He acknowledged that verbally.

16 Q. Okay. So -- but -- so is there another video other
17 than the one we have today where he acknowledges those
18 Miranda warnings?

19 A. No, sir.

20 Q. So this is the only video of Mr. Stewart that day, the
21 one that's been played before the Court?

22 A. That's correct.

23 Q. All right. And in that one there is no reading or
24 the signing, which you're saying he didn't sign the ---

25 MR. REDMOND: Your Honor, I would object to the form

L. Brown- Cross Examination by Mr. Rivers

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1 of the question only because it's going to kind of screw up
2 the transcript. The acknowledgment, the comment about the
3 acknowledgment, is actually on the video. There is an
4 acknowledgment which I think is what the witness is
5 referring to so I think the question may need to be
6 rephrased so there isn't ---

7 MR. RIVERS: That's no problem.

8 MR. REDMOND: --- a problem in the transcript.

9 Q. You stated that he, you gave a statement just shortly
10 though, that he being the defendant, acknowledged in the
11 beginning of the video that we just saw, that he had been
12 Mirandized, correct?

13 A. That's correct.

14 Q. Okay. And you also stated that his signing of State's
15 Exhibit was done off camera?

16 A. That's correct.

17 Q. All right. And so, likewise, your reading of the
18 Miranda Rights to the defendant were, likewise, done off
19 camera?

20 A. That's correct.

21 Q. Had you plan to put them on camera, the reading of the
22 Miranda Rights or did something happen to the machine? I'm
23 trying to see why the reading of the Miranda Rights to the
24 defendant was not on the videotape.

25 A. I can't remember why.

1 Q. Was there an opportunity where you did video it and
2 the video was later, something happen to it or do you
3 recall?

4 A. I know in the beginning of the tape, in the beginning
5 of the video we had some problems getting it started.

6 Q. Okay.

7 A. I'm not -- I'm not -- my recollection -- my memory on
8 that how we didn't do it on the video but I know in the
9 beginning Captain Melton had some videotape issues and then
10 got it working.

11 Q. What were the issues with the videotape?

12 A. It wasn't recording and he tell us it wasn't recording
13 at the first part.

14 Q. Do you know why it wasn't recording?

15 A. I'm not sure, I'm not tech guy with cameras.

16 Q. Right. I'm just trying to see if it was the machine
17 or was it the tape or do you know?

18 A. No. It was something about, I mean, he was doing the
19 video, I mean, he was setting the videotape up and he was
20 testing it and it wasn't recording or something to that
21 effect and then he got it working, got it working properly.

22 Q. But what we do know is that the reading by you to the
23 defendant of his Miranda Rights it was not on video?

24 A. That's correct.

25 Q. It was not put on video?

L. Brown- Cross Examination by Mr. Rivers

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1 A. That's correct. The actual signing of the Miranda
2 Rights were not put on video.

3 Q. Well, not just the signing, the part of you reading
4 those to him ---

5 A. That's correct.

6 Q. --- and asking him was he aware or whatnot, that was
7 not on video either?

8 A. That's correct.

9 Q. That was not on video?

10 A. That's correct.

11 Q. But the interview, so to speak, was on video and we
12 just heard it and I understand that you state that the
13 first part of it was the acknowledgment but that's the part
14 this on video but there was no video as to the actual
15 warning giving to him on Miranda?

16 A. That's correct.

17 Q. Can you tell us why that wasn't done? In other words,
18 why was one part done so fairly lengthy and then the part
19 about Miranda because you would agree that would be very
20 important?

21 A. Well, when read his rights at 2:09 pm and the
22 videotape didn't start to 4, almost 4 o'clock and he was
23 very knowledgeable of his Miranda Rights and he understood
24 it. So when we started the video, I mean, he wasn't
25 working properly at the beginning but we got it working and

1 we assured him, informed him again of his Miranda Rights
2 and Miranda warnings and then he know when to stop
3 answering questions at any time, he acknowledged everything
4 and he seemed very coherent.

5 Q. Because the tape, I believe, and the tape will speak
6 for itself, but the tape was actually his acknowledgment of
7 the Miranda warnings? In other words, you didn't go back
8 through the Miranda warnings at the tape you just had him
9 acknowledge ---

10 A. That's correct.

11 Q. --- having read those, correct?

12 A. That's correct.

13 Q. So any reading of the Miranda warnings to him is not
14 videotaped?

15 A. That's correct.

16 Q. That's correct. All right. I understand you to say
17 that his acknowledgment, he did make some utterance on the
18 video tape. Also on the videotape that we saw today
19 there's not a date and time stated on the videotape, is
20 that a normal process when you video a statement by
21 witness?

22 A. Where date and time stamped, are you saying?

23 Q. Or just a stamp or just an acknowledgment, today is
24 such and so day and at such and so time, I didn't hear
25 that, was that off-camera or was that....

L. Brown- Cross Examination by Mr. Rivers

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1 A. I'm not sure the date was timed, I think it was. I
2 know the time was on there.

3 Q. Okay. But there was no verbal or oral time given or
4 placed or whatnot on the video that I can hear?

5 A. You didn't hear the time?

6 Q. No.

7 A. It said, I'm pretty sure it said 3:55.

8 Q. And the date?

9 A. I'm not quite sure of that but we can play it back but
10 I think I put the date on there. I know -- I know I
11 remember saying 3:55.

12 Q. The defendant was taken to, I think, Chesterfield
13 General Hospital, is that right? At some point after the
14 statement?

15 A. That would have been the nearest hospital for us.

16 Q. It was Chesterfield General?

17 A. Yes, sir.

18 Q. Does that sound right? I have medical records from
19 Chesterfield, I'm assuming those correct. Who made the
20 determination that the defendant needed to go to the
21 hospital, do you recall?

22 A. I don't have -- I don't have a recollection of that.
23 I'm not sure.

24 Q. I'll show you these. These are the Defendant's
25 Exhibit 1. There should be a narrative. Chesterfield

1 General Hospital dated the 2nd of January of 2010.

2 A. Okay.

3 Q. I was just trying to find out who would've made the
4 determination that he needed go to the hospital?

5 A. Well, jail personnel -- dispatcher or jail authorized
6 to seek medical attention any patient, any inmate.

7 Q. Okay.

8 A. And if the Court did take notice the head -- and you
9 noted the cut to the ear?

10 A. That's correct.

11 Q. And the hands, you saw that along with the photos?

12 A. That's correct.

13 MR. RIVERS: I beg the Court's indulgence, Your
14 Honor.

15 Q. And you stated again the defendant did sign I think
16 it's State's 1?

17 MR. REDMOND: State's 3?

18 Q. State's 3, the waiver? You witnessed that, the
19 defendant signing that?

20 A. Yes, sir.

21 Q. Did any other person -- any other witnesses sign
22 these, these documents?

23 A. Agent Gainey.

24 Q. Who is that?

25 A. Agent Gainey.

T. Stewart- Direct Examination by Mr. Rivers

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1 Q. Oh, I'm sorry, I meant like a like document I don't
2 mean this one in particular, did you have other witnesses
3 or just this defendant? I'm understanding he was the only
4 one that was under arrest. I'm just asking is there a
5 different form that you use for witnesses versus those that
6 are accused as far as witness statements or whatnot?

7 A. No.

8 Q. You use this same form or no form for them and just
9 for the defense for these?

10 A. Some statements that you sign have Miranda Rights on
11 them.

12 Q. Okay. And that's just what I was asking, would they
13 have signed different ones, those other witnesses? There
14 appear to be several other witnesses in the case.

15 A. That's possible

16 MR. RIVERS: That's all I have, Your Honor.

17 MR. REDMOND: No redirect, Your Honor.

18 THE COURT: You may step down. Thanks.

19 MR. REDMOND: That would be the State's proffer.

20 MR. RIVERS: We would -- we would like to present
21 testimony from the defendant, Your Honor.

22 THE COURT: All right.

23 MR. RIVERS: At this time we'd like to call Mr.
24 Stewart.

25 THE CLERK: Please your left hand on the Bible and

1 raise right. Do you solemnly swear or affirm to tell the
2 truth, the whole truth, and nothing but the truth so help
3 you God?

4 MR. STEWART: I do.

5 THE COURT: Thank you. Please be seated.

6 THOMAS JEFFREY STEWART, first being
7 duly sworn, testified as follows:

8 Direct Examination by Mr. Rivers:

9 Q. Mr. Stewart, you are, Thomas Stewart?

10 A. Yes, I am.

11 Q. And where are you from originally, Mr. Stewart?

12 A. Wadesboro, North Carolina.

13 Q. But you lived the bulk of your life in Chesterfield
14 County?

15 A. Yes, I did.

16 Q. And since this incident, you've been incarcerated in
17 one form or another since the date of the arrest, is that
18 correct?

19 A. Yes.

20 Q. Including today, naturally?

21 A. Yes.

22 Q. And you've been here for the whole hearing today of
23 being a suppression or a Denno hearing, Jackson v. Denno
24 hearing, correct?

25 A. Yes, I have.

T. Stewart- Direct Examination by Mr. Rivers

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1 Q. And you've heard the testimony presented?

2 A. Yes.

3 Q. Now, I want to go through the time line so to speak
4 with your arrest. You were arrested that morning of the 1st
5 at Pigg Park?

6 A. Yes, I was.

7 Q. And that was by Officer Carnes?

8 A. Yes, it was.

9 Q. Can you tell us what happened, what were you going to
10 Pigg Park for and what happened thereafter?

11 A. I was going to because I used to coach baseball and
12 umpire ---

13 Q. You may need to speak up.

14 A. I used to coach baseball and umpire a lot in Jefferson
15 and Pageland and I was going there because I was trying to
16 get some water for my eyes.

17 Q. Okay. And why are you trying to get water for your
18 eyes?

19 A. I couldn't really think or see good enough to, you
20 know, to drive.

21 Q. And this was following the incident that you had with
22 the decedent?

23 A. Yes, it was.

24 Q. And I'm assuming -- we've heard testimony today from
25 two of the officers that you were, appeared to be pepper

1 sprayed that morning in the eyes?

2 A. Yes, I was.

3 Q. By Ms. Clyburn, I think, there was an incident report
4 that is actually put into evidence to show that?

5 A. Yes, there was.

6 Q. And that's why you went there and stop there to get
7 water?

8 A. Yes.

9 Q. Okay. And at some point, Officer or Deputy Carnes
10 pulled behind you ---

11 A. Yes.

12 Q. --- the vehicle you were driving?

13 A. Yes, he did.

14 Q. And what happened after that?

15 A. I think I seen blue lights and I stopped. We was at a
16 dead but I could have went around anyways. It's a little
17 circle at Pigg Park and I just stopped the car and I got
18 out and I met him and I climbed over the back seat. I
19 climbed over the seat and got out and met him at the back.

20 Q. Okay. And then what happened, thereafter?

21 A. He put the handcuffs on me and put me face down on the
22 ground.

23 Q. All right. He noted -- I'm assuming he arrested you
24 and told you what he was arresting you for at that time?

25 A. I can't recall if he told me what I was arrested for

T. Stewart- Direct Examination by Mr. Rivers

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1 but I know he did put handcuffs on me and put me on my
2 belly to the ground and then he went to the vehicle. I do
3 remember that much.

4 Q. At some point, did he read the Miranda warnings to
5 you?

6 A. I can't -- I can't say yes and no. I can't recall him
7 reading me anything, you know, telling me the thing I have
8 the right to remain silent or anything like that. I can't
9 recall that. I can't recall that.

10 Q. Okay. But do you recall when he washed, helped you
11 wash your eyes out with the pepper spray and whatnot?

12 A. Yes, he did that.

13 Q. All right. So your testimony as to Officer Carnes is
14 that you did not waive or hear the Miranda warnings much
15 less waive them, is that your testimony?

16 A. That's pretty much.

17 Q. At some point Officer Newman came, is that correct?

18 A. Yes.

19 Q. And what did he do with you when he pulled up, what
20 happened?

21 A. When Officer Newman came, he grabbed the back of my
22 hand. I was handcuffed to the back and he grabbed the back
23 of the hands and put me in the patrol car and took me
24 straight to booking and hooked me up to a rail in the
25 Pageland Police Department in booking. I stayed there

1 until they took pictures and took my clothes off and sled,
2 Mrs. Kristina, she was at the -- at the Pageland Police
3 Department you in booking you got, you're in a cage, you
4 know, it's got bars and you can see everything. And Mr.
5 Adam Foard was there also at that time and she was standing
6 right there and she got my clothes and Larry Brown and
7 Nikko took pictures of my body. And then they took me into
8 the interview room and ---

9 Q. Let me go back to Officer Newman, Officer Newman was
10 simply, really he transported you initially from the scene
11 to the Pageland Police Department, correct?

12 A. Yes, he did.

13 Q. At that point; Deputy Carnes took off so to speak?
14 That was his last interaction with you?

15 A. No. Deputy Carnes came to the police department too
16 and Mr. Adam Foard was there also. I mean, I could see
17 everything.

18 Q. Okay.

19 A. It's right there in front me. He was there too.

20 Q. Okay. So you're stating that Deputy Carnes came to
21 Police Department?

22 A. Yes, he did. Yes, he did.

23 Q. Along -- but separate from Officer Newman?

24 A. Yeah. Me and Newman came together but Officer Carnes
25 came.

T. Stewart- Direct Examination by Mr. Rivers

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1 Q. Okay.

2 A. Yeah, he came.

3 Q. At the site, did Officer Newman read your Miranda
4 Rights at the scene?

5 A. No.

6 Q. At the Pigg Park?

7 A. No. When I got in the car with Mr. Newman he turned
8 the camera -- the camera was going that way, he turned the
9 camera on me inside the car.

10 Q. Okay.

11 A. And told me the reason why he turn the camera on me.

12 Q. And why did he tell you he turn the ---

13 A. He said because it's recording and if I say anything
14 to him then it needed to be recorded. So he turn the
15 camera ---

16 Q. Did you make any statements to him in the car?

17 A. No, I did not. No, I did not.

18 Q. Do you recall being taken in front of his car by
19 Officer Newman?

20 A. No, I never was taken in front of his car. I was put
21 in the back of his car and taken to the police department.
22 Straight there.

23 Q. So it's your testimony that you were not informed of
24 your Miranda Rights by Officer Newman?

25 A. No, I was not. I know that for sure.

1 Q. You also, like you said, you testified you went -- you
2 were transported to the Pageland Police Department,
3 correct?

4 A. Yes, I was.

5 Q. Were you read your Miranda Rights there?

6 A. I can't remember but I know I was in front of Captain
7 Frances and Frances had me sign a form but he didn't read
8 me the rights.

9 Q. Do you -- I want to show you what's labeled as State's
10 3, is that the form which you are referring to or are you
11 talking about a different form with Sergeant Frances?

12 A. I can't say if it was or wasn't but I know I sign one
13 for Frances. I know I sign one for him.

14 Q. Is that your signature on that document?

15 A. It look -- it looks like something I may do. It looks
16 like maybe, you know, my handwriting. I can't deny it. I
17 mean, I'm not going to lie, I don't -- I can't recall
18 signing this form but I know I signed a form. I know I
19 signed, you know, papers.

20 Q. Okay.

21 A. I know I signed papers.

22 Q. Do you recall being by Deputy Brown or Chief Brown or
23 assistant Chief I think at that time, do you recall him
24 reading the Miranda warnings to you?

25 A. No. Chief Brown never read me anything. Chief Brown

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1 wouldn't even give me a band aid.

2 Q. Okay.

3 A. I mean, that's what he said I needed. He said you
4 need a band aid, you don't need to go to the hospital.
5 That's what he told me.

6 Q. Okay. So this document this would've been pursuant or
7 I guess offered by, facilitated by Sergeant Frances, is
8 that your testimony?

9 A. I signed some papers for Sergeant Frances.

10 Q. And you understand this is a, it includes at the
11 bottom, a waiver of your rights or whoever signs these
12 things, you understand that?

13 A. Yes, I understand.

14 Q. I'm going to hand you what's, an exhibit by the
15 defense 6, 7, I can't read the writing, but it's of four,
16 these all show, purport to show your physical condition the
17 day of arrest, is that right?

18 A. Yes.

19 Q. Is that you those photos, in those photos?

20 A. Yes, it is.

21 Q. What -- you appear in these photos to have a matter of
22 injuries, can you tell the Court what those injuries were?

23 A. I got stabbed in the hand as I was putting my hand up.
24 I think three in the hand and I got stabbed three times. I
25 got one long cut on my left ear and I got stabbed two more

1 times in my ear.

2 Q. Okay. When your ---

3 A. I got stabbed in the chest, the shoulders. I still
4 got pictures of my shoulder also. When she hit me when I
5 come outside.

6 Q. The large -- the largest are the main injuries, were
7 to the hand and head, though, were they not?

8 A. Yeah. Then I had a knot on the side of my head also.

9 Q. Okay. And in this, what's been labeled as defense
10 Exhibit 4 it shows your left ear. When you say your ear,
11 you're referring to your left ear?

12 A. My left ear, yes.

13 Q. There's no injury to your right ear, at that point?

14 A. No.

15 Q. And when you refer to your hand, you're really
16 referring primarily to your right hand?

17 A. Yes, I am.

18 Q. Is that right?

19 A. Yes, I am.

20 Q. As exhibited -- well, Exhibit 6?

21 A. Mmm, hmm.

22 Q. Is that right?

23 A. Yes, it is.

24 Q. Okay. And you were treated, in fact, at Chesterfield
25 General Hospital for these injuries?

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1 A. Yes, I was.

2 Q. Were -- you stated that you've signed or maybe signed
3 this paper that's a State's exhibit, do you recall no when
4 reading your Miranda Rights to you at the Pageland Police
5 Department at any time?

6 A. No, not anytime. They was really being mean to me.
7 Larry Brown was being a lot mean to me. He wouldn't give
8 me no water. I ask for water because my eyes were so
9 irritated. He was really being mean to me. He was, you
10 know, really being mean about the whole thing, you know.

11 Q. Did you know Sergeant or Deputy Brown prior to that
12 day?

13 A. Deputy Brown?

14 Q. Well, he's a deputy now he was the assistant police
15 chief at that point?

16 A. Yeah, I know Larry on many occasions. Yeah, I did.

17 Q. Okay. And how would you classify y'all's relationship
18 prior to this arrest because as you know it's a small town?

19 A. Well, we didn't have a relationship it was just he was
20 dating one of the girls that I was dating, you know, that
21 was pretty much it.

22 Q. Was it friendly, otherwise?

23 A. Yeah. He let me drive, I mean, I drove with no
24 license. I ain't never been stopped by Larry so we had a
25 pretty good relationship.

1 Q. Okay. Of course, you heard and saw the video,
2 purported video statement ---

3 A. Mmm, hmm.

4 Q. --- given by you that day ---

5 A. Mmm, hmm.

6 Q. --- you saw that today in the courtroom, correct?

7 A. Yes, I have.

8 Q. I believe it your contention that there are issues
9 with the authenticity of that video, is that correct?

10 A. Yes, it is.

11 Q. Can you tell us what would make those, that video
12 inauthentic?

13 A. The video don't show anything wrong with my left ear.
14 And I was stabbed and cut on my left ear and the doctor
15 told me I like to have lost my hearing but, I mean, you've
16 got a picture of it, another picture blowed up that you can
17 show the Court that. I think the tape has been tampered
18 with. It has been tampered and alter because in the
19 interview I said some things to Larry about the
20 relationship with the victim also that was not recorded or
21 should have been recorded on the tape. There's a whole lot
22 of stuff in the video, it jumps, and a whole lot of stuff I
23 know that it has been altered.

24 Q. Did you -- is it your testimony -- did you make
25 statements outside of that video to law enforcement?

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1 A. No, I made statements to on the video.

2 Q. Did you make statements off the video, though, that
3 the video didn't capture?

4 A. Oh, no. No. when I came in the room the video was,
5 Mr. Bobby, let me know that the video was on.

6 Q. Okay. What was your state of mind at the time that
7 the video was given?

8 A. I can't say that I was in my right mind but I don't
9 think I realized what was going on at the time. I think I
10 was shocked. A little shocked at what happened or whatever
11 because I just don't remember. I just don't remember ever
12 really stabbing the victim. I just don't remember it. I
13 really don't. To this day I still don't remember it. I
14 try to fight it, fight with myself to bring me to some kind
15 of, okay, I stabbed her here or I stabbed her there. I
16 can't see it. The only thing I remember is her taking the
17 knife out of my hand. That's all I remember. And I just
18 don't remember it.

19 Q. You received medical attention some the next morning,
20 is that right?

21 A. Yes, I did.

22 Q. Chesterfield General Hospital?

23 A. Mmm, hmm.

24 Q. Can you tell us -- I'll hand this to you this is
25 Defendant's Exhibit 1, the first one, it's a narrative, can

1 you tell us what they did for you at Chesterfield General
2 as a result of the injuries that are shown on the video?

3 A. He check my eyes and he told me I slight concussion.
4 He gave me ---

5 Q. Excuse me, they are shown on the exhibits, I'm sorry.
6 Go ahead.

7 A. You talk about the pictures?

8 Q. Yeah. Shown on the pictures. You don't have to say
9 what somebody said just tell us how did they treat you?
10 What did they treat you for?

11 A. Well, my hand was -- my hand was handcuffed to the bed
12 and he only checked my ear and he check my head and eyes
13 for concussion.

14 Q. This is -- this document is labeled as defendant's
15 Exhibit 2, can you tell -- it's labeled -- entitled
16 Pageland Police Department medical screening form.

17 A. Mmm, hmm.

18 Q. It appears on Item 17 that was circled by someone, it
19 looks to be Frances, is Officer Frances ---

20 A. Yes.

21 Q. --- the one you dealt with as to the paperwork mainly
22 that day?

23 A. Mmm, hmm.

24 Q. And date, of course, the first. It stated -- there's
25 on the circle, can you tell us what that circle is around

T. Stewart- Direct Examination by Mr. Rivers

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1 and what it's in reference to number 17?

2 A. Seventeen, "have you ever fainted recently or had a
3 recently head injury?", And I circled, "Yes".

4 Q. And what injury did you have?

5 A. I had a knot on my left side also and the injuries to
6 my ear.

7 Q. And where does those injuries stem from? Where did
8 they come from?

9 A. She stabbed me and cut me, cut me on the ear.

10 Q. That was -- in other words, they resorted from the
11 incident that issue?

12 A. Yes, it did.

13 Q. And did you receive any prescriptions or were you
14 giving any medicines for those?

15 A. Yes, he did, 800 mg and then he gave me Toradol it's
16 for swelling of the brain or head or something like that.

17 Q. And you stated in your testimony that you feel that
18 the tape that we saw today had been tampered with?

19 A. Yes, it has. It has no date and time. They didn't
20 read me my rights and I know it did a lot of jumping and
21 some I haven't seen recently but I viewed those tapes
22 before, before I went to trial. I viewed the VHS, the
23 original copy. Then I reviewed the CD's and they, they
24 similar but today I seen a whole -- the injuries are not on
25 my left ear. There's no injuries at all on the tape. But

1 my hand it look like it's just dry blood but I'm stabbed
2 more than one time in my hand. It only shows a big red
3 line and I was bleeding the whole time I was in there. And
4 when I came out of there the sled lady couldn't put my hand
5 down because of all the blood. She couldn't run the black
6 stuff over my hands, putting it down. I mean, she
7 testified to that, you know.

8 Q. And when you say, 'the black stuff', you are referring
9 to getting the fingerprints?

10 A. The fingerprints, yes.

11 Q. Okay. And you stated that you've been incarcerated
12 since the day this happened?

13 A. Yes, I have.

14 Q. And you have not been given a bond as of today?

15 A. No, I haven't.

16 Q. And if a bond were given, could you make a bond?

17 A. I would try my best.

18 Q. Would you do your best to return to court and make
19 appearances schedule?

20 A. Yes, I would.

21 Q. Would you assist in your defense with counsel?

22 A. Yes, I would.

23 Q. And follow their guidelines and their requirements?

24 A. Yes, I would.

25 MR. RIVERS: That's all the questions I have at this

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1 time, Your Honor.

2 THE COURT: All right.

3 MR. REDMOND: May it please the Court, Your Honor? I
4 was not going to ask many questions believe it or not but
5 there are a couple of things I do want to address.

6 Cross Examination by Mr. Redmond?

7 Q. First of all, you been asked on direct by Mr. Rivers
8 about Deputy Carnes.

9 A. Mmm, hmm.

10 Q. You initially said you didn't recall whether or not he
11 read you your rights but then when you were asked the
12 question later, you said, by Mr. Rivers, you said, no, no,
13 no, he didn't read me my rights. Are we having the same
14 recollection? Obviously, there is a transcript but that's
15 what I wrote down. Would that be a fair characterization
16 of your discussion about Deputy Carnes?

17 A. Yes, I don't remember Deputy Carnes reading me my
18 rights.

19 Q. All right. And you said, like you said, you didn't
20 remember whether or not he read it but then you said, no,
21 he didn't, there's a difference ---

22 A. Um.

23 Q. --- is what I'm getting at. Would it be fair to say
24 that you couldn't say one way or the other as it relates to
25 Deputy Carnes? You are a little clearer as it relates to

1 your dealings about Mr. Newman, Investigator Newman, but
2 would it be fair to say that you cannot, you don't remember
3 whether he did or not?

4 A. It'd be fair to say. Yeah, what you say.

5 Q. Okay. Thank you. Last thing I will say or ask you
6 about is your memory. When you talk about the things that
7 you know about, that you weren't read your rights. Nikkos
8 didn't do it. Larry didn't do it. All these things about
9 what was going on, but then the reason that you are in jail
10 interestingly, isn't it true that you say you really don't
11 remember? You don't remember -- your testimony today is
12 you don't remember stabbing Bellanie Clyburn? You don't
13 remember what took place, is that a fair statement?

14 MR. RIVERS: Objection, Your Honor. I think that's
15 outside the scope hearing that issue.

16 MR. REDMOND: He asked -- I'm asking him based on a
17 question that was asked on the direct.

18 MR. RIVERS: I only ask, Your Honor, in regards to
19 the medical matters the reason for the treatment he
20 received.

21 THE COURT: Rephrase your question.

22 Q. As it relates your memory, do you remember based on
23 what you testified on direct, do you remember actually
24 stabbing Bellanie Clyburn?

25 MR. RIVERS: Same objection, Your Honor. It's

1 outside the scope.

2 THE COURT: I'm going to overrule that.

3 MR. REDMOND: Thank you, judge.

4 MR. RIVERS: Thank you, Your Honor.

5 Q. Do you remember stabbing, based on what you've
6 testified on direct ---

7 A. No, I don't.

8 Q. You don't?

9 A. No, I don't. No, I don't.

10 Q. So would it be fair to say then we probably would be,
11 a reasonable person would be fair questioning your memory
12 on anything that day, including your memory as to whether
13 you were read your Miranda Rights if you sit here today
14 saying you don't even remember stabbing Bellanie Clyburn
15 thirty-seven times?

16 A. I think you need to read the transcript also because
17 it says it was twenty-one times.

18 Q. I would -- okay, twenty-one, twenty-seven, multiple
19 times but you say you don't remember now, do you? Would it
20 be fair as a reasonable person for us to assume we should
21 question your memory about everything that day if you can't
22 remember stabbing somebody even twenty-one times?

23 A. Well, with a slight concussion ---

24 MR. RIVERS: Your Honor, I object. It seems you've
25 been asking him a medical termination as to his mental

1 capacity.

2 MR. REDMOND: I'll withdraw the question.

3 THE COURT: Sustained.

4 MR. RIVERS: Thank you, Your Honor.

5 MR. REDMOND: I have nothing further.

6 MR. RIVERS: Nothing further.

7 THE COURT: You may step down please.

8 MR. RIVERS: We would like a break before argument.

9 THE COURT: Sure. Stand at ease for a few minutes.

10 MR. RIVERS: Thank you, sir.

11 (Whereupon, the Court took a moment per the defense
12 attorney's request)

13 THE COURT: Yes, sir.

14 MR. REDMOND: Your Honor, May it please, the Court?

15 The State would contend that under the standard set by
16 Jackson v. Denno, we have met the requirements as it
17 relates to the showing of voluntariness. Of course, this
18 is an issue of whether or not it's admissible but it's up
19 to a jury, obviously, to give it its due weight. And I
20 think under that standard the State has more than met its
21 burden of presenting the voluntariness of the statement
22 despite the defendant's comments at the end which I think
23 is also interesting even though the question itself was
24 never answered and properly so. But the issue there, I
25 think, goes to the heart of this particular matter. He's

1 claiming that his rights weren't read to him or whatnot but
2 we've got officers saying something different. That goes
3 to the heart of what a jury issue is because again it's the
4 issue of, the jury would assign it as due weight as it
5 relates to the admissibility. I think the testimony is as
6 such that it is clearly admissible. The statements the
7 defendant gave, particular statements to Investigator
8 Carnes and the statement was given on the video. And I
9 would note as it relates to the video and I think I ask one
10 of the witnesses this, I think I asked Deputy Brown or
11 Chief Brown this, but at the beginning of the tape he even
12 on his own makes the comment I can stop, you know, he knows
13 that he can stop if he wants to, then he goes and tells his
14 story. And then, of course, at the end of the last
15 question I ask him regarding his memory, you know, he
16 himself says even on the video it's very clear on the
17 events, I mean, particulars even down to the wind blowing
18 and waking him up some, but now he saying he doesn't
19 remember. So if there is a credibility the State would say
20 that, that's clearly on the defense side in that regard.
21 Be that as it may, Your Honor, I think the State has met
22 its burden and there is no evidence by the way of any kind
23 of, I think, of tampering or alterations of the issue that
24 the defendant had gotten into at the end of their
25 presentation of his testimony, I don't think there's any

1 evidence to support that merely injector on the part of the
2 defendant offering no other evidence to that effect. So
3 with that, Your Honor, we submit that this statement, that
4 the statements are admissible and should be heard by jury.
5 Thank you.

6 MR. RIVERS: May it please, the Court, Your Honor?
7 As to the Jackson v. Denno matter they were several
8 witnesses here today for the State, as I recall, there were
9 four. In sequence, we had out of order I think the sled
10 agent, to make a long story short, Your Honor, everything
11 that was pertinent and helpful to the State she remembered
12 from clarity and anything that would not, she did not
13 recall. I would submit to the Court that credibility as to
14 that issue would be endow.

15 As to Deputy Carnes, his statements along with the
16 defendant seem to be fairly consistent. There is no proof,
17 however, that by a signatory on the form as to the Miranda
18 reading or waiver thereafter, nor thereafter with Officer
19 Newman who came to place the defendant before a video so
20 that we could have that evidence of that Miranda warning
21 being read to him and the waiver. There is no -- that
22 video disappeared or we don't know what happened but he was
23 placed in front of the car but magically the video is not
24 here before us.

25 As to the next witness I believe was former assistant

1 chief, Mr. Brown, likewise, we have the video here today, a
2 statement most of which is inculpatory and shows in a bad
3 light toward the defendant. However, the portion of what
4 we need as to Miranda was done off camera. We have no
5 information for it. There was an acknowledgment. I'm not
6 sure if that's an acknowledgment stated by the defendant
7 the State says and constitutes acknowledgment of that prior
8 Miranda warning but we would argue that, that is not good
9 enough.

10 Also, my client's physical state was certainly
11 impaired. He received medical treatment for injuries to
12 his left ear and hand. It was testified and acknowledged
13 at length today. He also has testified or stated on the
14 video today at the end of that video that he assaulted the
15 victim that day I believe in the cell or whatever, by the
16 cell, seems to be some type of hallucination. I'm not
17 sure, it was played today. We would say that all of that
18 is evidence along with the medical records of his mental
19 state not being sufficient enough to waive those rights
20 much less acknowledge them and certainly not to do so
21 intelligently and knowing matter and, therefore, pursuant
22 to Jackson v. Denno, we believe that those statements
23 should be held out for lack of voluntariness due to his
24 Miranda warnings not be given or proof thereof shown from a
25 preponderance of the evidence.

1 As to the issue of the videotape and the prior motion
2 to have the same suppressed, Your Honor, there is on the
3 videotape we saw the date, this was a video tape that was,
4 it's actually a DVD that was converted from a VHS tape, as
5 I recall. There are many times during it's play today,
6 that I saw that it jump, for a lack of a better phrase. It
7 is shown on the video or a lack of showing of the left ear.
8 My client seems to be fine even though the photos, admitted
9 today, at least one photo showed a severe injury to his
10 left ear and so that would be the basis of my defendant's
11 claim as to the video being doctored, altered or,
12 otherwise, amended. And, again, it does jump and there's
13 some pauses in it early as to where the audio is not as
14 clear.

15 Likewise, my client has never received a bond and if,
16 Your Honor, would grant any of the relief sought by the
17 defendant today, we would ask that a reasonable bond be
18 placed on him since he's never been out of a jail cell
19 since this incident happened. Thank you, Your Honor.

20 THE COURT: Thank you, gentlemen. I appreciate
21 y'all's very able presentations.

22 All right. Taking a look at this thing, an overall
23 picture, we do have some conflicting testimony here which
24 would require some findings on my part. We also have a lot
25 of memory, I don't want to say memory loss, but on both

1 sides of this case you've got some unable to remember
2 various things that I noted.

3 Taking Deputy Carnes's testimony along with the later
4 testimony about the warnings that were given, the Miranda
5 warnings or rights that were given at the vehicle which is
6 a little bit of a moot point to me since no statement was
7 given anyway, but, you know, along with Deputy Carnes's
8 testimony along with a signed form that it is alleged that
9 the defendant signed, I make that threshold finding that
10 the Miranda Rights were adequately given and, of course,
11 all of this can later be reviewed by a jury as far as a
12 jury issue. From the evidence it appears that the
13 defendant understood his rights and waived his right to
14 remain silent. It appeared, also, a reinforcement I find
15 on that because in that video statement he did seem to be
16 aware that he could stop his statement at any time so that
17 sort of re-enforces that. At no time did he request to
18 stop or terminate any of the statement. No time the Court
19 finds that he requested counsel. Everything before the
20 Court there's no evidence. I find no evidence of any
21 threats, duress, coercion, undue influence, any undue
22 trickery, therefore, the Court finds and rules that the
23 statements were freely, voluntarily and intelligently given
24 under all the evidence and testimony presented here to get
25 by the threshold Denno ruling. And like I say, if y'all

1 don't resolve the case then a jury can certainly have a say
2 so in what you have presented here in the court.

3 With that said I need to talk to counsel up here juste
4 a minute, if y'all would approach please?

5 (Whereupon, a bench conference was held off the record)

6 THE COURT: And I want it clear about the ruling on
7 the suppression, you know, I saw no overwhelming evidence
8 to suppress the video. Just the nature of the testimony
9 didn't even indicate anything to the Court that there was
10 any interruptions there. As far as a bond issue since I
11 got the next term of court and just speaking with y'all,
12 that's sort of a moot point with me even though I know you
13 deserve to have a decision on it but based on that hold any
14 bond ruling in abeyance to when we can review it later on
15 if necessary.

16 MR. RIVERS: Yes, sir.

17 THE COURT: Does that address everything on the
18 record that we needed?

19 MR. RIVERS: And just -- and just for the record to
20 clarify my objection to the ruling ---

21 THE COURT: Right.

22 MR. RIVERS: --- just for my -- to protect my
23 client, Your Honor.

24 THE COURT: Okay.

25 MR. REDMOND: And, Your Honor, I do have a signed

1 plea sheet that we had negotiated depending on the outcome
2 of this. If I could approach, it's a plea under Alford to
3 the murder charge with the negotiated thirty (30) year
4 sentence. I just noticed something and in thinking about
5 it and I didn't talk about this but I think it's okay, if
6 the defendant is willing to go forward with it and this is
7 going to be a bit unusual and I hope I can, the mother of
8 the victim, the mother of Bellanie Clyburn, is not present
9 and since I have been in Darlington I personally have not
10 had a chance to try to reach out to her. I know that the
11 Tyson's and her mother have talking to her -- I beg the
12 Court's indulgence. I have been informed that it would be
13 okay if he does decide to go forward, for us to go forward
14 with everything today. I just wanted to make sure I didn't
15 get myself into a bind.

16 THE COURT: All right.

17 MR. REDMOND: And, Your Honor, I asked if we may
18 approach.

19 (Whereupon, all parties approached to the front of the
20 Court)

21 MR. REDMOND: And, Your Honor, before we proceed with
22 the plea it's under North Carolina versus Alford and after
23 talking with Mr. Rivers I want to put on the record what,
24 the reasons for that so it is clear to everybody and
25 correct me if I'm wrong and I'm sure Mr. Rivers will

1 correct me if miss state, the reason it is North Carolina
2 versus Alford because this case and even based on what
3 we've heard today, this case is definitely one that falls
4 in the murder versus manslaughter category. Based on
5 discussions we had previously that focused on manslaughter
6 it's been the State's position that it be murder. The
7 State acknowledges the fact that the jury, you know, we
8 don't know what would've happened so what we've done now,
9 obviously, he was tried previously only convicted on murder
10 which I'm sure factors into his thinking as to why we're
11 doing this plea at this time. But I wanted to make it
12 clear that, and correct me if I'm wrong, by it being an
13 Alford he's not acknowledging, he's not denying the role he
14 had in the death of Bellanie Clyburn Tyson, he's just not
15 admitting that it's murder versus manslaughter with that
16 issue, still hanging out there ---

17 MR. RIVERS: Yes and no.

18 MR. REDMOND: Okay.

19 MR. RIVERS: We're -- if I may, Your Honor?

20 MR. REDMOND: And that's what I say if I misspoke ---

21 MR. RIVERS: Our contingent under North Carolina v.
22 Alford is that my client has maintaining his innocence,
23 however, subject to there being overwhelming proof of his
24 possible of being convicted of murder. In fact, he's had a
25 trial that was overturned for a non-evidentiary or a non-

1 trial matter other than, with the Batson ruling. The basis
2 of that and that's were you go to, what you're talking
3 about ---

4 MR. REDMOND: Okay.

5 MR. RIVERS: --- is our belief that this is a
6 voluntary manslaughter case, primarily, and not a murder
7 case. But we understood that my client understands he
8 could be convicted of that and saying he, in fact it was
9 overturned and because of that, that's the reason for the
10 tender. My client maintains his innocence under Alford but
11 he understands that with the videotape coming in which is a
12 confession videotape, his chances of being found guilty are
13 very high and he wants to take advantage, therefore, of the
14 offer of the State ---

15 THE COURT: And the Court ---

16 MR. RIVERS: --- without a trial. Is that fair?

17 THE COURT: The, I hate to use the term concession,
18 I guess that's the return ---

19 MR. REDMOND: Well, I guess ---

20 THE COURT: --- is recommending or negotiating
21 thirty (30) years?

22 MR. RIVERS: Yes, sir.

23 MR. REDMOND: Yes, sir. That would be the concession
24 and as opposed to the life sentence.

25 MR. RIVERS: Because, and on that theory, judge,

1 because we know that, my client and I are well aware that
2 that's the maximum under voluntary manslaughter for thirty
3 (30) years so that would be, in my opinion, our best
4 opportunity to receive that verdict. However, we can very
5 well be back, in fact, receiving a sentence of thirty (30)
6 years and so, therefore, the reasoning for that.

7 THE COURT: Gotcha.

8 MR. RIVERS: Thank you, Your Honor.

9 THE COURT: All right. Let's take a look at the
10 background information, Mr. Stewart, correct me if I've got
11 the wrong information it appears that you are 47 years of
12 age?

13 MR. STEWART: Correct.

14 THE COURT: And you are from Chesterfield County?
15 You were born in 1969?

16 MR. RIVERS: He's from -- Your Honor, if I may, he's
17 originally from Wadesboro.

18 MR. STEWART: I've been staying here for twenty
19 something years ---

20 MR. RIVERS: From Anson County but I think he's ---

21 THE COURT: Anson County.

22 MR. RIVERS: I think he's trying to claim Anson
23 County over Chesterfield, judge, I say that's what he's
24 trying to do.

25 THE COURT: All right. Mr. Stewart, you understand

1 that if you entered this plea to the charge of murder which
2 allegedly occurred in Chesterfield County on or about
3 January 1, 2010 that you could receive a life sentence?

4 MR. STEWART: Yes, sir.

5 THE COURT: It's still a life sentence?

6 MR. STEWART: Yes, sir.

7 THE COURT: With a minimum of thirty (30)?

8 MR. STEWART: Yes, sir.

9 THE COURT: What is outline before the Court is a
10 negotiated plea of thirty (30) years.

11 MR. STEWART: Yes, sir.

12 THE COURT: So I either accept it or reject it. I
13 don't have any real, the way I term it is wiggle room here
14 so it more or less locks me in either to accept it or
15 reject it. With that said, do you fully understand that if
16 you entered this plea that you will be waiving your
17 constitutional right to a jury trial?

18 MR. STEWART: Yes, I do.

19 THE COURT: If you have a trial the State would
20 have to prove your guilt beyond a reasonable doubt?

21 MR. STEWART: Yes, sir.

22 THE COURT: And would have to convince twelve
23 jurors unanimously of your guilt?

24 MR. STEWART: Yes, I do.

25 THE COURT: Through counsel, of course, you would

1 be able to cross examine the State's witnesses, put up your
2 own defense and witnesses. You would be able to testify at
3 your own defense if you such chose or you could elect not
4 to testify and you would be invoking your Fifth Amendment
5 Rights by doing so. If you did not testify it couldn't be
6 held against you and I would even tell the jury that.
7 That's your Fifth Amendment Rights of the United States
8 Constitution. Do you understand that?

9 MR. STEWART: Yes, sir.

10 THE COURT: You understand that you are presumed
11 innocent and that presumption would stay with you
12 throughout any trial and it would only end if the jury
13 convicted you?

14 MR. STEWART: Yes, sir.

15 THE COURT: If the jury did convict you, you'd have
16 a right to an appeal just as you can appeal a guilty plea
17 as long as you file a notice of appeal within ten (10) days
18 of sentencing.

19 MR. STEWART: Yes, sir.

20 THE COURT: Of course, now, in order to, certainly,
21 in order to prevail on an appeal you'd have to show error
22 on the Court and with the guilty plea you would have to go
23 a little bit further with that to show error on the Court
24 or something, you know, lack of jurisdiction or whatever.
25 So the bottom line is it's a little more difficult to

1 appeal a guilty plea. Now, with that said and I fully
2 understand you're not entering a straight up guilty, you're
3 entering under North Carolina versus Alford, is that
4 correct?

5 MR. STEWART: Yes, sir.

6 THE COURT: Then I am going to amend this sentence
7 sheet to show that. And you understood the statements of
8 counsel as to the North Carolina versus Alford plea and
9 your justification for entering into that?

10 MR. STEWART: Yes, sir.

11 THE COURT: Do you have any questions about those
12 rights?

13 MR. STEWART: I haven't read what North Carolina
14 versus what you call it is, but I take your word for.

15 MR. RIVERS: We've had discussion at length. But --
16 Thomas is an avid reader but he understands ---

17 MR. STEWART: Yeah.

18 MR. RIVERS: --- I'm sure because we've had
19 discussions about that.

20 THE COURT: All right. You understand the jury
21 trial rights?

22 MR. STEWART: Jury -- yeah, I do.

23 THE COURT: You don't want a jury trial? That's
24 what you've indicated on the sheet and I got asked you
25 about it. I certainly don't want to influence you either

1 way because that's an important decision you have to make
2 but I understand from counsel that you are aware of what
3 the jury trial is about because apparently this one was
4 tried and it was reversed from what I understand it was a
5 Batson matter stated by counsel so I guess you have a clear
6 understanding of what could happen at a jury trial.

7 MR. STEWART: Since this all just hit me just sudden,
8 Your Honor, I can't -- I can't make up my mind between now
9 and ---

10 MR. REDMOND: Well, Your Honor, the case is scheduled
11 for trial. This is actually a concession made by the State
12 and I will say that my patience, and if I am improper I
13 apologize, but my patience is down to zero so this isn't
14 going to hang around much longer. He's had plenty of time
15 to talk about it. I got approached about it. I did not
16 extend this so I got no trouble with walking away right
17 now.

18 THE COURT: Well, I don't want anybody to make any
19 ---

20 MR. REDMOND: And I understand that, judge, I'm just
21 saying that from my standpoint, we did not initiate this
22 particular arrangement and I'm just not in the mood of
23 being yo-yo around and so -- because of that I'm not saying
24 that and I understand the Court's perspective, but I think
25 on behalf of this family I'm compelled to say that, you

1 know, we're tired of the games. So again this was
2 something that we did at their request. Again, if he
3 doesn't want to do it, suits me fine. We can get ready for
4 trial the week of July 10th.

5 MR. RIVERS: Your Honor ---

6 THE COURT: Let you speak with Mr. ---

7 MR. RIVERS: Yes, sir.

8 THE COURT: Go ahead.

9 MR. RIVERS: I would say I don't -- I can understand
10 the State but I really don't believe -- I do not believe my
11 client truly is playing games. It's just hit him and we've
12 talked about this today, it's just hit him that he lost his
13 motion. He was counting on the videotape not coming in and
14 it's coming in as some other issues arising at the trial.
15 So it's my belief that he simply was asking for more time
16 but he understands why we're here and I told him that the
17 State's offer would be rescinded after today and quite
18 honestly, we hadn't talked that through but I had assumed
19 that. But I'm here because I believe it's in the best
20 interest of my client.

21 THE COURT: And nothing I am saying is against Mr.
22 Rivers, I mean, ---

23 MR. RIVERS: I didn't take that way.

24 MR. REDMOND: --- he's diligently beyond the call of
25 duty in that regard. So I just wanted to make sure it's

1 nothing directed at him at all.

2 MR. RIVERS: No problem. I didn't take that at all.
3 No, sir.

4 MR. STEWART: Well, Your Honor, just like you stated
5 I have my rights but I still got this preservatives for.
6 this evidence today, right?

7 MR. RIVERS: Yes. You still have your appellant
8 rights.

9 THE COURT: Yes, you can -- you can appeal.

10 MR. STEWART: Okay.

11 THE COURT: Yeah.

12 MR. STEWART: All right. So I will go ahead and
13 accept it.

14 THE COURT: Yeah. You know, if you file a notice
15 of appeal within ten (10) days ---

16 MR. STEWART: Yeah.

17 THE COURT: --- if you feel like an error ---

18 MR. STEWART: Yes, sir. That's fine.

19 THE COURT: --- you could cover that you just have
20 to make sure you get that noticed filed.

21 MR. STEWART: Yes, sir.

22 THE COURT: All right. Any questions about what I
23 went over?

24 MR. STEWART: No, I just -- it just happened today.
25 I ain't know about it for a couple of days so he was saying

1 that I was playing games. I ain't know nothing about it
2 until today so that's why I said, hold, let me think for a
3 minute but, you know, it's in my best interest I think to
4 plea guilty.

5 THE COURT: All right. And I'm not sure we're
6 absolutely clear. You need to tell me that you're entering
7 a plea under North Carolina versus Alford.

8 MR. STEWART: I'm entering a plea under North
9 Carolina versus Alford.

10 THE COURT: And -- I've lost track from where I got
11

12 MR. RIVERS: Your Honor, if I may regenerate his
13 understanding that he was giving up his right to a jury
14 trial and that's when we hit this -- he had a pause, judge
15 ---

16 MR. REDMOND: That's correct.

17 MR. RIVERS: --- I think to an emotional matter
18 because if he ---

19 THE COURT: But I covered all the rights ---

20 MR. REDMOND: Yes, sir.

21 MR. RIVERS: I think -- yes, sir.

22 MR. REDMOND: And Mr. Rivers is correct, it hit -- he
23 had the pause when the issue came up about whether he
24 wanted to waive those bill of rights and plead under Alford
25 in lieu of a jury trial.

1 MR. RIVERS: Yes, sir, I think actually a re-
2 integration of those.

3 MR. REDMOND: Exactly.

4 THE COURT: Okay. I know where I was. Has anybody
5 threaten you in any way in order to get you to enter this
6 plea?

7 MR. STEWART: No, sir.

8 THE COURT: Has anybody improperly promised you
9 anything ---

10 MR. STEWART: No, Your Honor.

11 THE COURT: --- to get you to plea?

12 MR. STEWART: No -- no, Your Honor.

13 THE COURT: Once again you fully understand what
14 you're doing?

15 MR. STEWART: Yes, sir.

16 THE COURT: Obviously, you're not under the
17 influence of any drugs or alcohol?

18 MR. STEWART: No, sir.

19 THE COURT: Do you fully understand everything that
20 I have gone over with you?

21 MR. STEWART: Yes, sir.

22 THE COURT: You do not or do you suffer from any
23 condition mental or physical or a combination of both that
24 could be effecting your understanding? Are you entering
25 this Alford plea of your own free will and accord?

1 MR. STEWART: Yes, I am, Your Honor.

2 THE COURT: You understand and I don't get into
3 this, but since I got it here in front of me, have you
4 discussed with counsel your parole eligibility of the
5 ramifications of violent and serious offenses and the
6 strike situation, have you discussed that with him?

7 MR. STEWART: No, we haven't discussed it but I know.
8 We haven't discussed it but I know.

9 THE COURT: You understand ---

10 MR. STEWART: Yes, sir.

11 THE COURT: --- on your own?

12 MR. STEWART: Yes, sir.

13 THE COURT: Okay. I find his entrance of this
14 Alford plea is freely, voluntarily and intelligently
15 entered into. The next finding I have to make now is, are
16 you satisfied with your representation?

17 MR. STEWART: Yes, I am.

18 THE COURT: Mr. Rivers has answered all of your
19 questions?

20 MR. STEWART: Yes, he has.

21 THE COURT: And once again, I ask you now, you are
22 waiving your right to a jury trial, is that correct?

23 MR. STEWART: Yes, sir.

24 THE COURT: All right. He also has informed me
25 that he's satisfied with his representation and I accept

1 the plea and I also find that he has been represented by
2 competent counsel with whom the Court is well familiar with
3 and the plea is accepted.

4 MR. REDMOND: Thank you, Your Honor, and before I
5 give a brief factual recitation, again I would echo as it
6 relates to Mr. Rivers as the Court knows the case file
7 previously. Mr. Rivers was not even involved. He wasn't
8 even with the office at that time but in my discussions
9 with him between him and the solicitor and myself, it's
10 obvious that he has brought his self up to speed and you
11 can tell even from today in a very diligent fashion that
12 even as it relates to our negotiations to resolve this
13 matter they have been in good faith. So I think given that
14 he is stepping in, at this point, I just want to make that
15 obvious for the record.

16 MR. RIVERS: Thank you.

17 MR. REDMOND: As it relates to the facts, Your Honor,
18 the video pretty much laid out the incident that happened.
19 We may have some differences as it relates to how it's
20 characterized but on the first of January in Pageland,
21 Bellanie Clyburn leaving her apartment at the Pageland
22 Place apartments was -- well -- and there's some
23 discrepancies as to what point but she was exiting the
24 apartment based on her two young children who I don't know
25 if it was clear, witnessed this incident and there was an

1 altercation that began inside the apartment. It found its
2 way outside of the apartment where there were several other
3 witnesses in that neighborhood that actually witnessed it
4 and had testified previously and had been under subpoena.
5 We managed to track down all of the witnesses from the
6 first trial. They have been served with their subpoenas as
7 it relates to us retrying the case if we had not reached
8 this plea.

9 As also indicated on the video he had been in a long-
10 standing relationship with Ms. Clyburn. They had her
11 youngest child, is the son of Mr. Clyburn, I met, excuse
12 me, Mr. Stewart. They had to witness their mother being
13 killed and I actually, I haven't had a chance Kiran (sic)
14 directly but I have talked to Jadlin (sic) so I can tell
15 the court at least that contact it is, obvious, how
16 traumatic an incident that was for them to witness. And
17 correct me if I'm wrong, I think they were ages 8 and 5 at
18 the time this occurred so, you know, go back even more and
19 to have to relive that so I think this is a fair resolution
20 and it is somewhat of a compromise because it would be an
21 issue about manslaughter versus murder. We acknowledge
22 that. That's why we are here at this particular ruling.
23 Jury last time did convict of murder. We don't know what a
24 brand-new jury, a brand-new set of jurors would find. We
25 know that is an issue. So with all that said, Your Honor,

1 I think this is fair resolution. Of course, murder is a
2 day for day offense. We've talked with the family about
3 the fact that he would get credit for the 7 and a half
4 years that he has been incarcerated, by law he is entitled
5 to that. But he can not get any less than the thirty (30)
6 years that we negotiated. He would have to serve every day
7 of that. So I think to avoid putting the kids to the
8 trauma of a trial that would be my first rationale for
9 saying that I think this is a fair resolution.

10 THE COURT: Mr. Rivers?

11 MR. RIVERS: If I may please, the Court, Your Honor?
12 I have represented Thomas since last August. He has been a
13 very good client to work with. Thomas is highly
14 intelligent. In fact, I was telling Thomas today my wife
15 was picking at me the other day because I had a good bit of
16 materials as anybody can imagine at the house and in
17 regards to various clients of mine and she stated, I think
18 I told Thomas, you deal with some rough ones, I said, not
19 in Thomas. I said I cuss more than Thomas does and it
20 really is true. In reviewing the matter and going through
21 the materials and again this was tried before so I had the
22 benefit of reading the transcript several times. It's
23 really -- it's really -- it's a sad case. There's no
24 question, there's no question that it's sad on the victim
25 that died. There's no question about that. I don't want to

1 make light of that. I certainly don't attempt to say that
2 but I also would say it's a tragedy on his side also. It
3 was a foolish serious mistake. But out of the emotions
4 between these two individuals they had a very emotional
5 relationship. And a relationship that neither one of them
6 should've had and it got out of hand and culminated on that
7 date right at -- well New Year's Eve and -- but Thomas,
8 it's such an unusual crime because he such a likable
9 person, otherwise. He's one of the easiest clients I've
10 ever dealt with. He's highly intelligent. He can tell me
11 things that need to be looked at before I look at them.
12 But it's also -- he knows how I feel about it. It's very
13 sad for him. I've talked with Thomas since the beginning
14 that I believed it to be a manslaughter case. To me,
15 clearly a heat of passion matter, but he was also convicted
16 previously of murder so I cannot forget that and he could
17 be convicted of murder. It shouldn't have happened. It's
18 terrible. And I don't know where it came from in Thomas
19 because I haven't seen that individual. But I have faith
20 in him to make some type of recovery so he won't die in
21 prison. We've had that -- I made that statement to Thomas
22 many a time and he's aware of that. I don't think the tape
23 showed it and I don't know if he exhibited it in the first
24 trial but he is remorseful. But I just feel sad for the
25 whole situation but I certainly -- and again no question

1 about the victim, it's terrible but he ruined his life too
2 and he's paying for it. And I think he would like to say
3 some words to the Court.

4 THE COURT: Mr. Stewart?

5 MR. STEWART: Your Honor, I'm so sorry. I'm sorry, I
6 really am. I really am. I'm sorry. I'm so sorry. I'm
7 sorry. I'm sorry. So sorry.

8 THE COURT: Counsel?

9 MS. LAWSON: I've got nothing, Your Honor.

10 MR. FOARD: No, Your Honor.

11 THE COURT: I need to hear from the family and I
12 have a question right off the bat, how are the children
13 doing?

14 MR. TYSON: They're doing well. You know, the
15 oldest boy graduates. The oldest boy he's getting ready to
16 go to college. The young boy he is doing well, you know,
17 we just kind of hope that, you know, in the future that
18 nothing of his past will haunt him to cause him to make
19 some crazy decisions, you know. We just pray for him and
20 love him and my mom gives him everything he needs. Gives
21 him the love of a mother but he's always going to miss the
22 love of a father that he never had. So I'm just glad that
23 we're through with this and hopefully we won't have to deal
24 with this here no more.

25 THE COURT: Now, the child that is thinking about

1 college ---

2 MR. TYSON: Yeah, he going.

3 THE COURT: Do I need to give him some advice about
4 Carolina and Clemson or do y'all got that under control?

5 MR. TYSON: Well, he going to where he can -- we'll
6 give him a few dollars to go somewhere. But the youngest
7 boy he's so bright. He's in the eighth grade.

8 MS. TYSON: All A's.

9 MR. TYSON: He's faster than a pro basketball
10 player already. He just don't listen to his uncle. I told
11 him I said you got to run. He don't want to run, you know,
12 and he's real bright. It's just -- it's just -- they're
13 just blessed, you know, blessed to have us. To have a
14 mother like my mother. They've really been doing well.

15 THE COURT: That's great.

16 MR. TYSON: And we thank you for everything.

17 MR. REDMOND: And, judge, if I could just briefly say
18 and I know for me it's oxymoron some time but I will be
19 brief, from -- and this no affront to other victims
20 families but I've got to know them over the years and
21 especially Pastor Tyson and Ms. Tyson, but I've gotten to
22 know them over the years and the diligence they've shown
23 for those kids and every time I talk with Pastor Tyson,
24 Jadlin (sic) is usually with him or he's own his way to get
25 Jadlin (sic) or they just drop Jadlin (sic) somewhere but

1 usually Jadlin (sic) is in there. I mean, they close ranks
2 and I think it's a credit and it speaks to the character of
3 this family and I wish we had not met under the
4 circumstances.

5 THE COURT: Thank y'all for being there.

6 (Whereupon, Mr. Tyson raises his hand)

7 THE COURT: Sure.

8 MR. TYSON: I would like to say I forgive you but
9 we never will forget what you done to our beautiful niece.
10 You know, for what it's worth, whatever it's worth, I
11 forgive you.

12 MS. TYSON: I do too. It was hard for me but I do
13 forgive you because we love her and I know her kids miss
14 her.

15 MR. RIVERS: Your Honor, if I May? Thomas had
16 brought up an issue, I know this is unusual, but I told him
17 he may want to address that with the Court instead of
18 myself.

19 THE COURT: Yes, sir.

20 MR. STEWART: I just want to ask the family could I
21 write my son or something, you know, if it's -- it's in
22 their hands, you know.

23 MR. TYSON: I don't think that would be a good
24 idea.

25 MR. STEWART: Okay.

1 MR. TYSON: I really don't. I don't think it would
2 be a good idea.

3 MR. REDMOND: I think he stays with his dad in
4 Lancaster ---

5 MR. TYSON: No, he stays ---

6 MR. REDMOND: No. No. He stays with you. Okay.

7 MR. TYSON: It won't be a good idea. No. No.
8 Just wait until he becomes a man then he make that decision
9 ---

10 MR. REDMOND: I was gonna say maybe time will change
11 over the years.

12 THE COURT: How old is he now?

13 MR. TYSON: Thirteen.

14 MR. STEWART: That's fine.

15 THE COURT: Okay. Let's see.

16 MR. RIVERS: Thank you, Your Honor.

17 THE COURT: Now, I got a question before we
18 finalize this, this credit?

19 MR. REDMOND: Yes.

20 THE COURT: Is it exactly 7 and a half years or
21 what's the request of counsel concerning what I checked on
22 here, do you want me to leave it up to the Department of
23 Corrections?

24 MR. REDMOND: Well, it starts January 1st of 2010, we
25 know that so whatever they calculate, at least we know the

1 start date for sure so which is, the start -- he was
2 incarcerated within a few moments literally. So ---

3 THE COURT: January ---

4 MR. REDMOND: January 1, 2010.

5 THE COURT: That settles that then. All right.

6 Pursuant to this negotiated plea the sentence of the Court
7 is thirty (30) years to the State Department of
8 Corrections, credit since January 1, 2010. Thank y'all so
9 much.

10 MR. RIVERS: Thank you, Your Honor.

11 MR. REDMOND: Thank you, Your Honor. It's actually
12 2730.

13 MR. FOARD: It's 2730 days.

14 MR. REDMOND: Thank you, Your Honor.

15 (CONCLUSION OF THE HEARING ON JUNE 23, 2017)
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25

CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Chesterfield County, South Carolina, on the 23rd day of June, 2017.

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

s/ Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

June 20, 2018

The South Carolina Court of Appeals

The State, Respondent,

v.

Thomas Stewart, Appellant.

Appellate Case No. 2017-001473

RECEIVED

OCT 18 2017

ATTORNEY GENERALS
OFFICE

ORDER

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.



FOR THE COURT

Columbia, South Carolina

cc:

Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
James Matthew Rivers, Esquire
John Benjamin Aplin, Esquire
Kernard Edward Redmond, Esquire

FILED

October 17, 2017

Hande C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2017 NOV 15 AM 11:02

RECEIVED

FORM 5

DEC 11 2017

STATE OF SOUTH CAROLINA

County of

CHESTERFIELD

IN THE COURT OF COMMON PLEAS

Answered

Full name and prison number (if any) of Applicant

THOMAS JEFFREY STEWART#353430

v.

2017-CP-13-1716

APPLICATION FOR

POST-CONVICTION RELIEF

State of South Carolina

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution, 990 Wiscachy Highway, Bishopville South Carolina 29010
2. Name and location of Court which imposed sentence Chesterfield County Court of General Sessions, Chesterfield, South Carolina
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

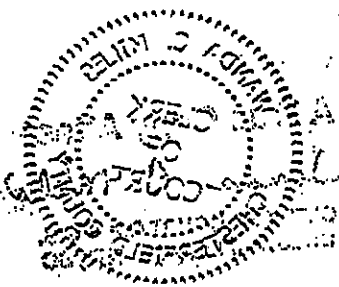
(a) 2010-95-13-00192; Murder

(b)

A True Copy AttestWanda C. Miles
CLERK OF COURT, C.P. & Q.S.
CHESTERFIELD COUNTY, SC

2017 DEC -7 PM 1:00

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, SC



- (~~6~~) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) June 23, 2017; Thirty (30) years
 (~~6~~) _____
 (~~6~~) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty ☒
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes, I did
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. South Carolina Court of Appeals
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. Dismissed
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. October 17, 2017
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. Unknown
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) N/A
 (~~6~~) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 (a) Denial of Effective Assistance of Counsel
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) Counsel failed to Investigate the facts of the
 (b) Case; Counsel provided erroneous advice about
 (c) Sentencing and never filed for Reconsideration
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? No.
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
 (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

i. N/A

~~ii.~~

~~iii.~~

~~iv.~~

(d) the date of each such disposition:

i. N/A

~~ii.~~

~~iii.~~

~~iv.~~

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

~~ii.~~

~~iii.~~

~~iv.~~

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No, it has not

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

~~ii.~~

~~iii.~~

(b) the proceedings in which each ground was raised:

i. N/A

~~ii.~~

~~iii.~~

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) (10)(a), first Collateral Attack

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes, I was.

(b) your trial, if any? N/A

(c) your sentencing? Yes, I was.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes, I was.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. James Matthew Rivers, 101 West Main Street,
Suite B, Chesterfield, South Carolina 29709

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Plea, Sentencing, and South Carolina Court
of Appeals

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

Based on the above, Sentence Vacated, Conviction
Reversed and Remanded for a New Trial.

20. Are you now under sentence from any other court that you have not challenged?

No, I am not.

STATE OF SOUTH CAROLINA

County of

CHESTERFIELD

VERIFICATION

I, THOMAS JEFFREY STEWART, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 4th
 day of DEC., 2011.

Uniqua Greene (L.S.)
 Notary Public

My Commission Expires: 9-29-2027

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, THOMAS JEFFREY STEWART, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

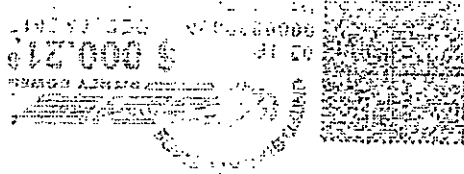

Applicant

SWORN or affirmed to and subscribed before me this
4th day of Dec., 2017.

Uniqua Greene
Notary Public

My Commission Expires: 9-29-2027

RE: THOMAS STEWART, #353430
Lee Correctional Institution
B3 Unit, B-Side, Cell 1213
490 Wessely Highway
Bishopville, South Carolina



HONORABLE WANDA C. MILES
Clerk of Court
Chestnutfield County
Post Office Box 507
Chestnutfield, South Carolina 29707

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD) FOR THE FOURTH JUDICIAL CIRCUIT

Thomas Jeffrey Stewart,) Case No.: 2017-CP-13-00776
S.C.D.C. No. 353430,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RETURN

2018 JUL -9 AM 11:26
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

In response to the application for post-conviction relief filed by Thomas Jeffrey Stewart (Applicant) on December 7, 2017, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Chesterfield County Clerk of Court. Applicant was indicted at the March 2010 term of the Chesterfield County Grand Jury for murder (2010-GS-13-00192), and possession of a weapon during the commission of a violent crime (2010-GS-13-00263).

Casey Secor, Esq. and S. Boyd Young, Esq. represented Applicant at trial. Kernard E. Redmond and Adam Foard, of the Fourth Circuit Solicitor's Office, prosecuted the case. On December 3, 2012, Applicant proceeded to trial before the Honorable J. Michael Baxley and a jury. The jury found Applicant guilty as indicted on December 6, 2012. Judge Baxley sentenced Applicant to imprisonment for a term of life.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Jarrett O. Coco, Esq., who raised the following three issues:

1. The trial court erred in finding no discrimination in the State's use of peremptory challenges because (a) the trial court failed to comply with the third step in the

Batson analysis which requires a court to meaningfully evaluate the persuasiveness of the prosecutor's group neutral explanations and make a deliberate decision whether purposeful discrimination occurred; and (b) Appellant proved the State's proffered reasons were pretextual because they were not applied in a neutral manner.

2. Where the State announced to the jury that malice can be implied from use of a deadly weapon and where the jury was asked to consider a lesser included offense of murder and self defense, the trial court erred in overruling Appellant's objection and failing to issue a correction to the jury.
3. The trial court erred in overruling Appellant's objection to unfairly prejudicial character evidence offered by the State.

The parties proceeded to oral arguments on April 14, 2015. Applicant was represented by Mr. Coco, Esq., and Donald J. Zelenka, of the South Carolina Attorney General's Office, represented the State. By opinion decided July 15, 2015, the South Carolina Court of Appeals reversed Applicant's convictions and remanded the case, finding the State committed a Batson violation and that the trial court erred in its review. State v. Stewart, 413 S.C. 308, 775 S.E.2d 416 (Ct. App. 2015). Respondent petitioned the Supreme Court of South Carolina for a writ of certiorari, which was denied by order dated May 19, 2016. The Remittitur was issued on May 24, 2016.

After remand, Applicant was represented by James Matthew Rivers, Esq. On June 23, 2017, Applicant pled to murder pursuant to North Carolina v. Alford, 400 U.S. 25, (1970); the weapon charge was dismissed *nolle prosequi*. The Honorable Paul M. Burch sentenced Applicant to imprisonment for a term of 30 years.

Applicant filed a timely notice of appeal. By Order filed October 17, 2017, the South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. State v. Stewart, S.C. Ct. App. Order filed October 17, 2017. The remittitur issued November 2, 2017.

II.

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Denial of Effective Assistance of Counsel"
 - a. "Counsel failed to Investigate the facts of the Case;"
 - b. "Counsel Provided erroneous advice about sentencing and never filed for Reconsideration"

Attached to and incorporated herein are the records of the Chesterfield County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial and plea transcripts, Applicant's appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at

625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

V.

Respondent denies each allegation not expressly admitted, qualified, or explained.

VI.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

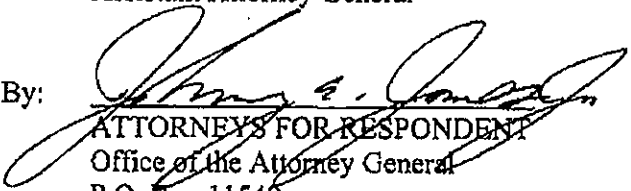
ALAN WILSON
Attorney General

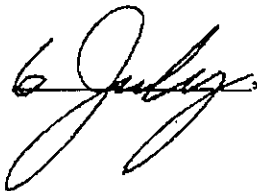
W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

 2018

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2018 JUL -9 AM 11:26

State of South Carolina	)	Court of Common Pleas
	)	Fourth Judicial Circuit
County of Chesterfield	)	Case No. 2017-CP-13-00776
	)	
Thomas Jeffrey Stewart,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
The State of South Carolina,	)	
	)	
Defendant.	)	
	)	

August 21, 2019
Chesterfield, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge

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

L. Sherril Alford, Esquire
Attorney for the Applicant

Jacob A. Isenberg, Esquire
Attorney for the State

Hattie O. Gordon
Official Circuit Court Reporter

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter

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Redirect by Ms. Alford..... 22

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 AUGUST 21, 2019

2 MR. ISENBERG: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MR. ISENBERG: The first case the State would like to
5 call is Thomas J. Stewart versus the State of South Carolina.
6 So if we could have the applicant brought out, we'll be ready
7 to proceed, unless opposing counsel just needs a minute to
8 gather everything.

9 MS. ALFORD: I'm ready.

10 THE COURT: Okay.

11 (WHEREUPON, the applicant entered the courtroom.)

12 MR. ISENBERG: Your Honor, the State is ready to
13 proceed.

14 THE COURT: Certainly. Go ahead.

15 MR. ISENBERG: Your Honor, first of all, my name is
16 Jacob Isenberg. I represent the State of South Carolina
17 through the Attorney General's Office. This case is Thomas
18 Jeffrey Stewart versus the State of South Carolina. It's
19 Case Number 2017-CP-13-0076.

20 Mr. Stewart filed his application on December 7th, 2017,
21 and he's confined in the South Carolina Department of
22 Corrections pursuant to the orders of the Chesterfield County
23 Clerk of Court. He was indicted at the March 2010 term of
24 the Chesterfield County Grand Jury for murder and possession
25 of a weapon during the commission of a violent crime. Casey

1 Secor and Boyd Young represented him at trial. Kernard
2 Redmond and Adam Ford of the Fourth Circuit prosecuted the
3 case.

4 On December 3rd, 2012, he proceeded to trial before the
5 Hon. Michael Baxley, and a jury found him guilty as indicted
6 on December 6th, 2012. He was sentenced to life in prison.
7 Sorry. He was sentenced to imprisonment for life without
8 parole. I'm sorry.

9 And that verdict did get overturned on appeal based upon
10 a -- what I believe was a *Batson* motion. Yeah. Sorry. A
11 *Batson* motion for a jury strike violation.

12 And thereafter, the parties did decide to enter into a
13 plea agreement for 30 years. That was a negotiated sentence.
14 And on June 23rd, 2017, he pled to murder pursuant to *North*
15 *Carolina v. Alford*, though a weapons charge was dismissed.
16 The Hon. Paul M. Burch did sentence him and agreed to that
17 negotiated sentence for imprisonment for a term of 30 years.

18 Applicant filed a timely notice of appeal and by order
19 filed October 17th, 2017, the South Carolina Court of Appeals
20 dismissed his appeal for a failure to provide a sufficient
21 explanation as required by 203. The remittitur was issued on
22 November 2nd, 2017.

23 He -- his allegations on this post-conviction relief
24 application are that his counsel did fail to investigate the
25 facts of the case and that his counsel did provide erroneous

1 advice about sentencing and never filed for reconsideration.

2 And with that, I will let opposing counsel make opening
3 statements unless Your Honor has any questions for me.

4 THE COURT: No, no questions.

5 Ms. Alford?

6 MS. ALFORD: May it please the Court, Your Honor. My
7 name is Sherril Alford. I'm a 608 attorney appointed to
8 represent the applicant, Mr. Thomas Stewart, in this case.

9 Mr. Stewart is currently incarcerated for a term of 30
10 years. However, Mr. Stewart entered into that plea under the
11 assumption that he was pleading to a charge of manslaughter.
12 This is a case where he was not clear on all of the facts, as
13 well as the collateral consequences of him entering into this
14 plea.

15 THE COURT: All right. You may proceed. Call your
16 first witness.

17 MS. ALFORD: I would like to call Mr. Thomas Jeffrey
18 Stewart.

19 THE COURT REPORTER: Put him in the court reporter box.
20 Do you have a mic for him? We had problems earlier. It's
21 not on. The main mic is on. That's on. We don't have mics,
22 do we?

23 THE COURT: Mine is working.

24 THE COURT REPORTER: If you can just speak loud, I'd
25 appreciate it. We have no mic for you. Okay.

THOMAS JEFFREY STEWART - DIRECT BY MS. ALFORD

1 MS. ALFORD: May it please the Court, Your Honor.

2 Mr. Stewart, state your full name for the record,
3 please?

4 THE APPLICANT: Thomas Jeffrey Stewart.

5 MS. ALFORD: Make sure you speak up so the court
6 reporter can hear you.

7 THE COURT: We didn't place him under oath, did we?

8 THE APPLICANT: No.

9 THE COURT: Hold on one second. I believe the witness
10 is not under oath. Let me go ahead and explain to him.

11 Please raise your right hand to the extent you can. Do
12 you swear or affirm that the evidence you're about to give in
13 this case is the truth, the whole truth, and nothing but the
14 truth, so help you God?

15 THE APPLICANT: Yes, sir.

16 THE COURT: Thank you. You may go ahead.

17 MS. ALFORD: Okay.

18 THOMAS JEFFREY STEWART, being
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. ALFORD:

22 Q: Mr. Stewart, remember to speak loudly so that the court
23 reporter can hear you. Would you please state your full name
24 for the record?

25 A: Thomas Jeffrey Stewart.

THOMAS JEFFREY STEWART - DIRECT BY MS. ALFORD

1 Q: Thank you. And you're currently incarcerated where?

2 A: Lee County.

3 Q: And what are you incarcerated -- what are your
4 convictions?

5 A: Murder.

6 Q: Okay. And what is the length of your current sentence?

7 A: Thirty years.

8 Q: Okay. So you were convicted of murder and you -- was
9 this conviction through by way of trial or plea?

10 A: Plea.

11 Q: Okay. Who represented you on that charge and during
12 your plea?

13 A: Mr. Matt Rivers.

14 THE COURT REPORTER: Mr. who? Wait.

15 THE APPLICANT: Attorney Matt Rivers.

16 BY MS. ALFORD:

17 Q: Okay. Let's go through --

18 THE COURT: Let me know if you can't hear now.

19 THE COURT REPORTER: It's that thingy noise. Okay.

20 Wait.

21 THE COURT: What is that?

22 THE COURT REPORTER: What are they doing? Construction
23 back there?

24 THE BAILIFF: They are doing construction on the
25 magistrate's courtroom back there. We can shut the door and

THOMAS JEFFREY STEWART - DIRECT BY MS. ALFORD

1 see if that will help.

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

3 MS. ALFORD: Okay.

4 BY MS. ALFORD:

5 Q: Mr. Stewart, let's go through your post-conviction
6 relief application that you filed. You stated that counsel
7 failed -- your defense attorney, Mr. Rivers, failed to
8 investigate the facts of your case?

9 A: Yes, ma'am.

10 Q: Tell the Court a little bit about that?

11 A: Well, I talked to counsel five times about the tape
12 being tampered with and I -- I wanted an expert and we agreed
13 that we would have an expert to review the tape in court and
14 we had no expert.

15 Q: Over what span of time did you speak with him? You said
16 you spoke with him about five times?

17 A: Yes, ma'am.

18 Q: Over what span of time?

19 A: Probably 11 months.

20 Q: Okay. So there was a period of time for about 11 months
21 before you actually entered into your plea?

22 A: Yes, ma'am.

23 Q: Okay. When you spoke with Mr. Rivers about hiring this
24 expert to review the videotape, what was his response?

25 A: He would get them.

THOMAS JEFFREY STEWART - DIRECT BY MS. ALFORD

1 Q: Okay. And you continued to ask him about it and were
2 you ever informed of whether or not he got an expert to
3 review the video?

4 A: No, ma'am.

5 Q: And what was the videotape of?

6 A: A confession.

7 Q: Okay. So this was your interrogation?

8 A: It was an interrogation.

9 Q: Once you were arrested?

10 A: Yes, ma'am.

11 Q: Okay. At what point did you ask Mr. Rivers about the
12 expert? Did you get a chance to ask him prior to you going
13 in to plea?

14 A: Yes, I did.

15 Q: And what was his response at that point?

16 A: I think the assistant that he had, Ms. Caroline, told me
17 that he did not get one.

18 Q: Okay. Was that something that you discussed with him
19 when you met with him to enter into your plea?

20 A: That's the only way I would plea.

21 Q: What was his response?

22 A: That -- that we didn't have one.

23 Q: Okay. So how did the plea come about?

24 A: The plea came about -- I walked in the courtroom for my
25 pretrial hearing and he said the only way that the judge

THOMAS JEFFREY STEWART - DIRECT BY MS. ALFORD

1 would hear my pretrial if I signed the plea. So I signed my
2 name on a piece of paper and I think we had trial that day
3 for about at least three hours.

4 Q: Okay.

5 A: Before I signed the plea sheet hearing.

6 Q: So when you say trial, did you have a second trial after
7 the first one?

8 A: No. We had a pretrial hearing for the tape being
9 tampered with.

10 Q: Okay. And what was the outcome of that hearing?

11 A: I think Mr. -- Judge Burch said that he see no reason to
12 -- he said I want to make -- I want to make it clear about
13 ruling on the suppression. You know, I saw no overwhelming
14 evidence to suppress the video.

15 Q: And where are you finding that? Where are you finding
16 that information, Mr. Stewart?

17 A: On page 91.

18 Q: And what line?

19 A: Line 6 through 8.

20 Q: Okay. And repeat again for us what the judge said?

21 A: The judge said I want to make it clear about the ruling
22 on the suppression. You know, I saw no overwhelming evidence
23 to suppress the video.

24 Q: So, in other words, the suppression of the video was
25 denied?

THOMAS JEFFREY STEWART - DIRECT BY MS. ALFORD

1 A: It was not suppressed.

2 Q: It was not suppressed? Okay. At what point did Mr.

3 Rivers discuss with you the offer from the prosecution, from

4 the solicitor?

5 A: I think it was that day.

6 Q: The day of?

7 A: The same day.

8 Q: Of the hearing?

9 A: Yes. That seems right.

10 Q: Okay. What did he tell you that the offer would be if

11 you pled guilty?

12 A: Thirty years.

13 Q: On what charge?

14 A: I got it on record that they was talking about

15 manslaughter. It's on the record on page -- page 104.

16 Q: And what --

17 A: Page 104.

18 Q: What line is that on page 104?

19 A: Oh, no, not 104. Excuse me. It's not 104. 104 would

20 be parole eligibility. It's page 95.

21 Q: Page 95? What line?

22 A: Line 2 through 6.

23 Q: And what does that say on page 95?

24 A: It says manslaughter for 30 years. So that would be in

25 my opinion our best opportunity to receive that verdict.

THOMAS JEFFREY STEWART - DIRECT BY MS. ALFORD

1 However, we can very well be back in fact receiving a
2 sentence of 30 years and so, therefore, the reason for that,
3 and the judge said gotcha.

4 Q: And who was speaking?

5 A: Matt Rivers, who was my attorney, was speaking and the
6 judge said gotcha.

7 Q: Okay. So was it your impression that you would be
8 entering into a guilty plea to the voluntary manslaughter
9 charge?

10 A: Yes, it was.

11 Q: Okay. And you were told you would receive how much
12 time?

13 A: Thirty years.

14 Q: Okay. But there's still a difference between the 30
15 years for a conviction for murder and manslaughter; correct?

16 A: Yes, it is.

17 Q: And what is that difference?

18 A: Thirty years day for day or 26 years.

19 Q: So let me ask you this. Does one come with the
20 possibility of parole, whereas the other does not?

21 A: Yes, it does. Manslaughter.

22 Q: Okay.

23 A: And that's on page 104. It talk -- the judge talks to
24 me about the eligibility of parole and had I discussed with
25 counsel about parole.

THOMAS JEFFREY STEWART - DIRECT BY MS. ALFORD

1 Q: And what line is that?

2 A: That's on line 2 through 6, 104.

3 Q: Okay. And what was your response to the judge?

4 A: My response to the judge, no, we haven't discussed it,
5 but I -- we haven't discussed that, but I -- no.

6 Q: Okay. But you did inform the judge at that time that
7 you had not discussed --

8 A: No, ma'am.

9 Q: -- that particular plea with your attorney; is that
10 correct?

11 A: Yes.

12 Q: Okay. And, in fact, it's your testimony today that he
13 only presented the offer to you the day of; is that correct?

14 A: Yes.

15 Q: Okay. And also in your application, you alleged that
16 your counsel provided erroneous advice about sentencing and
17 never filed for reconsideration. What -- let's break that
18 down. What did he tell you about the sentencing
19 specifically?

20 A: Well, he said it was an 85% of the sentencing and, while
21 we were discussing that, I said if my evidence is preserved,
22 which is on page 101, I will take the plea. And I went
23 through that with him and the judge. On page 101, I said,
24 well, Your Honor, just like you stated, I have my rights, but
25 I still have this preserved for this evidence today. I was

THOMAS JEFFREY STEWART - DIRECT BY MS. ALFORD

1 talking about the pretrial hearing we just had.

2 And Mr. Rivers spoke up after that. He said, yeah, you
3 have -- you still have your appellate rights. Then the judge
4 said, yeah, you can. You can appeal. Then I said, okay.
5 Then the judge said again, yep. I said all right. I will go
6 ahead and accept it. And then the judge said, yeah, you know
7 if you file an appeal within 10 days, and I said yep. He
8 said if you feel like an error was made, and I said, yes,
9 sir, and that's fine.

10 Q: Okay. So basically, you were asking if everything that
11 came out of the pretrial hearing was preserved for appellate
12 review?

13 A: Yes, I did.

14 Q: That was your question to the Court?

15 A: Yes.

16 Q: And the Court told you that it was?

17 A: Yes.

18 Q: And at that point, you agreed to accept the plea offer
19 that you had just received that day?

20 A: Yes.

21 Q: You had had no prior conversations with Mr. Rivers about
22 this plea agreement; is that correct?

23 A: Correct.

24 Q: Okay. Now, the second part of that where in your
25 application where you said he never filed for

THOMAS JEFFREY STEWART - DIRECT BY MS. ALFORD

1 reconsideration, tell the Court about what you mean by that?

2 A: Well, I thought any time that a person plead guilty
3 that, you know, he can always go back in front of a judge
4 just in case the judge was angry or, you know, the family,
5 you know, was angry or whatever and the judge may reconsider
6 his -- his plea. You know what I'm saying?

7 Q: Did --

8 A: The time he gave me.

9 Q: Did you ask or instruct Mr. Rivers to motion the Court
10 for reconsideration of the sentence?

11 A: Yes. Me and -- me and the other counsel there.

12 Q: And when -- when did you ask him to file that motion for
13 reconsideration?

14 A: Right after.

15 Q: So the same day?

16 A: Yes, ma'am.

17 Q: What was his response?

18 A: We'll talk about it.

19 Q: Did you ever speak about it after that?

20 A: No.

21 Q: And to your knowledge, was that motion for
22 reconsideration ever filed?

23 A: No, ma'am.

24 Q: Is there anything else you would like to let the Court
25 know?

THOMAS JEFFREY STEWART - DIRECT BY MS. ALFORD

1 A: No.

2 Q: Okay.

3 MS. ALFORD: That's all the questions I have, Your
4 Honor.

5 Please answer any questions for Mr. Isenberg, if he has
6 any.

7 THE COURT: Mr. Isenberg.

8 MR. ISENBERG: Thank you, Your Honor. May it please the
9 Court.

10 CROSS-EXAMINATION

11 BY MR. ISENBERG:

12 Q: Good morning, Mr. Stewart.

13 A: How are you doing, sir?

14 Q: You just testified on direct that your counsel failed to
15 investigate the case; correct?

16 A: Yes, sir.

17 Q: Okay. And you said that your counsel only failed to
18 investigate -- investigate the case because he failed to hire
19 an expert witness; correct?

20 A: Yes, sir.

21 Q: Okay. And so your allegation is based upon the fact
22 that he did not hire an expert witness to review the
23 videotape that you wanted suppressed from evidence; correct?

24 A: Yes, sir.

25 Q: And that video suppression was relevant to your trial

THOMAS JEFFREY STEWART - CROSS BY MR. ISENBERG

1 because it contained confession statements; correct?

2 A: Yes, sir.

3 Q: Okay. And that video statement was not suppressed, was
4 it?

5 A: No, sir.

6 Q: Okay. And after that, you entered in a plea of guilty;
7 correct?

8 A: Yes, sir.

9 Q: And you're saying before you entered in a plea of
10 guilty, your counsel did provide you with erroneous advice;
11 correct?

12 A: Yes, sir.

13 Q: Okay. And the erroneous advice was that you would be
14 entering into a plea of guilty based upon the charge of
15 manslaughter; correct?

16 A: Not only that. On the fact that the evidence was
17 supposed to have been preserved for appellate review.

18 Q: Okay.

19 A: The evidence preserved.

20 Q: But you, in fact, received an appeal based upon this
21 guilty plea; correct?

22 A: No. I got the paper right here that said that the
23 evidence was not preserved for appellate review.

24 Q: Okay. And the evidence was not preserved for appellate
25 review, you're referring to the videotape; correct?

THOMAS JEFFREY STEWART - CROSS BY MR. ISENBERG

- 1 A: Yes, sir.
- 2 Q: Okay. And you did not allege that there was a failure
3 to preserve; correct?
- 4 A: At that time, I didn't know until I got the transcript.
- 5 Q: Okay. And you haven't alleged that there was a failure
6 to preserve up until this point; correct?
- 7 A: No. I think I wrote counsel. I think me and Matt
8 talked about it, and I have a letter from him stating that in
9 20 days I could file a rights argument based for the thing
10 that he said he would get back with me on. I never heard
11 anything back. And I also mentioned to counsel that -- that
12 it should have been admitted to the PCR.
- 13 Q: Okay. And so you want -- you want an appeal based upon
14 the failure to suppress your videotape; correct?
- 15 A: No. I would like to have an appeal because I was gave
16 advice from the judge and my attorney that the case was
17 reviewable for me for appeal.
- 18 Q: Okay. And so this all centers around the videotape;
19 right?
- 20 A: Yes, it does.
- 21 Q: Okay. And this videotape contains several confessions,
22 just like we already discussed; correct?
- 23 A: I wouldn't say really a confession. I would say
24 tampered, a tampered confession.
- 25 Q: Okay. And you were convicted of murder before you

THOMAS JEFFREY STEWART - CROSS BY MR. ISENBERG

1 entered into your guilty plea; correct?

2 A: Yes, because --

3 Q: Okay.

4 A: -- he failed to -- he failed to get an expert at trial
5 also.

6 Q: Okay.

7 A: Not him, but the other attorney.

8 Q: Okay. So basically, what I'm hearing is that it's
9 everyone's fault but yours?

10 A: No. It's my fault for even leaning on their, you know,
11 advice. They gave me the wrong advice just for --

12 Q: Okay.

13 A: -- the plea.

14 Q: So you didn't enter into the guilty plea because you
15 were guilty, you entered into it because you got bad advice?

16 A: Yes, sir.

17 Q: Okay. And it wasn't because the video wasn't -- wasn't
18 suppressed before trial?

19 A: Say that again now?

20 Q: You entered the guilty plea because the -- the video
21 wasn't suppressed; right?

22 A: No. I entered into the plea because they said that it
23 was preserved for appellate review. So I'm thinking, okay,
24 I'll take the plea and then a direct appeal will look at the
25 video and see if it's tampered with. So that's the only

THOMAS JEFFREY STEWART - CROSS BY MR. ISENBERG

1 reason because I got the evidence right here they told me. I
2 asked them that on page 101.

3 Q: Okay. And so you understand that you're saying that you
4 entered into a guilty plea of murder just so you could have
5 an appeal; correct?

6 A: No. I didn't see murder. He just said that it was
7 going to be manslaughter for 30 years and I just read that to
8 you from the record.

9 Q: Okay. So you are, in fact, alleging that he told you it
10 was manslaughter instead of murder?

11 A: Yes.

12 Q: Okay. And so you're saying that based upon this advice
13 that it would be manslaughter and that there would be
14 appellate rights, you entered into this guilty plea?

15 A: Yes.

16 Q: Correct?

17 A: Yes.

18 Q: Okay. And so you didn't have any other allegations
19 beyond that?

20 A: No. I thought the allegations were good enough because
21 I know it takes time.

22 Q: Right. So all this centers around the videotape being
23 tampered with?

24 A: Yes, it does.

25 Q: Okay. All right.

THOMAS JEFFREY STEWART - REDIRECT BY MS. ALFORD

1 MR. ISENBERG: Well, I have no further questions for
2 this witness, Your Honor.

3 THE COURT: Any redirect?

4 MS. ALFORD: Briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. ALFORD:

7 Q: So, Mr. Stewart, you stated that you pled guilty solely
8 because of the advice of counsel; correct?

9 A: Yes.

10 Q: You were under the impression that you were pleading to
11 voluntary manslaughter?

12 A: Yes, ma'am.

13 Q: Would your decision have been different if counsel would
14 have advised you differently?

15 A: If counsel would have advised me, yes, it would have
16 been different.

17 MS. ALFORD: No further questions, Your Honor.

18 THE COURT: All right. Thank you, sir. You can step
19 down.

20 You may call your next witness.

21 MS. ALFORD: Your Honor, I'm going to call Mr. --
22 Attorney Matt Rivers.

23 THE COURT: Okay. All right. Do you swear or affirm
24 the evidence you're about to give is the truth?

25 THE WITNESS: Yes, sir.

JAMES MATTHEW RIVERS - DIRECT BY MS. ALFORD

1 THE COURT: Please be seated.

2 THE COURT REPORTER: Let's go on with it.

3 JAMES MATTHEW RIVERS, being
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. ALFORD:

7 Q. Mr. Rivers, would you please state your name for the
8 record?

9 A: Yes, ma'am. James Matthew Rivers.

10 Q: And what do you do for a living?

11 A: I'm the circuit public defender for the Fourth Judicial
12 Circuit as of March 1st, 2016.

13 Q: And prior to March 1st of 2016?

14 A: I worked for that same office for two years and then
15 prior to that I was in private practice for about 17 years.

16 Q: And are you familiar with Mr. Thomas Stewart?

17 A: I am.

18 Q: Okay. Did you represent him on a guilty plea?

19 A: Yes, ma'am.

20 Q: Okay. Were you his attorney, I guess his only attorney
21 once the case was appealed and reversed? Did you represent
22 him throughout that whole process leading up to the plea?

23 A: I did. However, he referred to Ms. Lawson, who was a
24 staff attorney in our office. She met -- she went with me a
25 couple times when I talked to Mr. Stewart, but I was -- she

JAMES MATTHEW RIVERS - DIRECT BY MS. ALFORD

1 was not officially counsel. She was a young lawyer that was
2 just assisting me for the early on part of my representation
3 of Mr. Stewart.

4 Q: About how long did your period of representation to Mr.
5 Stewart last?

6 A: Roughly a year.

7 Q: During that course of that year, how many times would
8 you say you met with him?

9 A: I would say probably 15, 16 maybe. We would -- I would
10 visit him physically and I also would do it through really an
11 iPad, I guess you would say. Chesterfield County has the
12 ability for that. In our circuit of our four counties, some
13 counties do not. Chesterfield does.

14 I would visit him. So I would use the iPad and I would
15 see him in person. And then when I would see him in person,
16 I would call ahead to make -- and the jail normally would
17 allow me to visit him in a larger room. In other words, we
18 could be in a room together, not with the glass in between on
19 the telephone.

20 Q: Okay. So you said you met with him probably about 15
21 times?

22 A: I'm just -- I'm just estimating, but yes, ma'am.

23 Q: And I know it's been a while, but on average how long
24 would you say those meetings lasted?

25 A: Well, I would say from 20 minutes to two hours.

JAMES MATTHEW RIVERS - DIRECT BY MS. ALFORD

1 Q: Okay. And --

2 A: Depending.

3 Q: And during these meetings, what did you discuss with Mr.
4 Stewart?

5 A: Well, at the beginning -- and if I recall, it was about
6 August when he came back to our local jail of -- I guess that
7 was 2016. And so initially when it came back, of course, I
8 saw the paperwork, but I didn't read the appeal. My initial
9 thinking was it came back on an appeal for a jury issue or,
10 excuse me, a trial issue.

11 And so when I started my representation with Mr.
12 Stewart, it was really in the aim of heading for a trial, a
13 retrial. And so our -- so that was where I was coming from,
14 so to speak. Mr. Stewart, of course, wanted to -- when we
15 initially -- in the first six weeks or so, we talked more
16 about getting him a bond. And so -- and then getting
17 discovery.

18 And so I guess what I'm saying is our meetings changed
19 over time from the beginning of getting a bond the focus
20 would be because he had been incarcerated for several years
21 at that point and then more into the discovery and then, of
22 course, right at the end towards a plea, once I determined
23 and in conference with him that a trial just was not an
24 option.

25 Q: And other than meeting with Mr. Stuart, did you speak

JAMES MATTHEW RIVERS - DIRECT BY MS. ALFORD

1 with other witnesses who could possibly provide information?

2 What other investigation did you do?

3 A: Yes, ma'am. Well, he had an investigator the first time
4 during the trial and then I had the Court through my motion
5 allow us funding for Bill Beane, who was an investigator out
6 of the low country in Myrtle Beach. And so Mr. Beane was our
7 investigator. So I hired him and he spoke to those
8 witnesses.

9 I made a couple of phone calls to family members. I
10 never got really any response. It was originally -- his
11 original trial and his original case, it was clear that his
12 family -- his family, who not necessarily were witnesses, was
13 very involved. That was not the case the second time. I
14 mean, honestly, he was completely on his own as far as family
15 members. There was nobody to talk to, to be honest with you.

16 Q: Okay. And at what point -- and I mean over the course
17 of this 11 months, did you begin to speak with him about a
18 possible plea?

19 A: Well, it was -- and so if we began in August and we get
20 to the next summer, let's say May or June, I began to in my
21 mind see that a plea was where we were going. And what I
22 mean by that is I had planned the whole time for a trial. He
23 had -- Mr. Stewart had -- his main concern was the videotape.

24 As soon as I did see the videotape, which took several
25 months, it was on a VHS, an old VHS type tape at that time,

JAMES MATTHEW RIVERS - DIRECT BY MS. ALFORD

1 and it took several months for me to get that from the
2 Solicitor's Office. Once I watched that, I mean it was a
3 confession on the tape and when I saw that, that was, of
4 course, the first clue that we really had a problem.

5 And so the investigator, Mr. Beane, he spoke to -- there
6 was one witness in particular, Carrie. I think her last name
7 was Day. She was an eyewitness to the killing of the victim
8 in daylight and she was a devastating witness. She -- I had
9 the transcript, of course.

10 It was an unusual case because it was a case that had
11 been tried before. So I had the transcript. I could -- I
12 knew exactly what people would testify pretty much to what
13 the case of the State would be, which would on the face of
14 it, you would think, give you an advantage. On the other
15 hand, you could also see how damning, depending on the case,
16 it could be. It was a very damning case. And so in the
17 spring of that year, I would say from April on, it was clear
18 to me.

19 Now, saying that, I had also -- on the first trial, the
20 focus was more on the defense. I would call it, like, more
21 of a bogeyman, like somebody else might have helped. I
22 didn't really see that as being -- I thought it was clear in
23 the verdict by the jury that they had -- I thought they had a
24 credibility issue with that.

25 I focused and I talked to Mr. Stewart many a time.

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1 Through the photographs and whatnot, there were two knives
2 present. The victim in the case was killed by multiple
3 stabbings. And so in looking at the transcript, it was never
4 brought out in my opinion enough about there being a second
5 knife that was found and that the knives came from the house
6 of the victim. In other words, Mr. Stewart did not bring the
7 weapons with him.

8 To me, that was the best -- not evidence per se, but
9 that was the best facts to show that this was -- there was no
10 malice aforethought. However, I thought also it was clearly
11 a voluntary manslaughter case in my opinion. I still believe
12 that and that was the reason for the *Alford* plea, not a
13 guilty plea because I maintained that and Mr. Stewart
14 maintained that.

15 He made -- and I'm not saying he has any confusion, but
16 that's an issue that he heard me say that many a time. It
17 was clearly in my opinion not an involuntary manslaughter
18 case, but it was the -- I thought it was a textbook case of
19 crime of passion and voluntary manslaughter.

20 Q: Did Mr. Stewart ask you to hire an expert to review the
21 videotape?

22 A: He did. We talked about it. He didn't ask me as much
23 it was a joint discussion. I'm not saying he's wrong about
24 that. He was a very good client, to be honest with you, but
25 I did hire one. I hired Mr. Dave Taylor. I talked to Thomas

JAMES MATTHEW RIVERS - DIRECT BY MS. ALFORD

1 about it. I didn't give him a report because that also was
2 damning.

3 Mr. Taylor had been a former news videographer for
4 Channel 15 News, WPDE, which is the local news station in
5 Florence. He reviewed it for me because I was looking for
6 where the tape might've been cut, spliced, etc.

7 I met with Mr. Taylor after he reviewed it frame by
8 frame and paid him from our office. I did not ask for money
9 from the -- from the State for that. I paid it out of funds
10 out of our office and Mr. Taylor said, quote, Matt, I've
11 looked at it -- it's James Matthew, but I go by Matt -- and
12 he said it's just an older tape, but he said it's not been
13 sliced. He said there's nothing wrong with the tape.

14 I told Mr. Stewart that and I did not want to present
15 him. I could not in my opinion, you know, produce a witness
16 that would be against our case. So yes, I did. I hired Mr.
17 Taylor.

18 Q: Okay. Do you have any proof that you can present the
19 Court?

20 A: I don't have it right now, but I mean I'm sure I've got
21 a canceled check. He charged me \$300. I wrote it -- I had
22 it written out of our office account out of the public
23 defender's account. I keep two accounts. We work for a
24 different administrative county right now. It's Marlboro
25 County, but previously it was Chesterfield. But yeah, sure.

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1 I don't have it with me. I brought this little bit of a
2 file. My file is about three foot tall, but I mean I wrote
3 him a check. I didn't -- it's not like I gave him cash or
4 something.

5 Q: At what point did you discuss the voluntary manslaughter
6 plea with Mr. Stewart?

7 A: That was probably starting about May. It was really
8 towards the end because, quite honestly, I did not ever get a
9 plea offer from the State. We were both, in my opinion,
10 headed towards trial and this case was originally --
11 previously, under the first trial, originally he was noticed
12 for the death penalty. Originally, this was a death penalty
13 trial. That's why Mr. Boyd Young was involved, and then the
14 State changed its mind during the course.

15 And so when -- so when it came back, of course, I
16 thought it was a trial. Once I hired Mr. Taylor, once Mr.
17 Beane met me at my office and told me that the witnesses were
18 the same, and I was hoping actually Mrs. Day, who was the key
19 eyewitnesses -- quite honestly, she was an older lady. I
20 don't want to say I was hoping that she had forgotten, but I
21 was thinking maybe that was an issue. Mr. Beane assured me
22 that was the last problem she had. She was a damning
23 witness.

24 Then I knew we had a confession against us if that tape
25 came in, and Mr. Stewart agreed. I told him, quite frankly,

JAMES MATTHEW RIVERS - DIRECT BY MS. ALFORD

1 if that tape of that confession came in to evidence, I did
2 not see any -- I couldn't see 40 lawyers that could get him
3 off of a conviction in this county, and it did come into
4 evidence and that was our problem.

5 Q: Okay. So when you -- you said that you began speaking
6 with Mr. Stewart about possible voluntary manslaughter around
7 May. So when you showed up on June the 23rd, you stated you
8 were still kind of in trial mode. When you showed up for the
9 suppression hearing, was it your plan to go forward with the
10 trial or did you -- were you then able to discuss a plea with
11 the prosecution?

12 A: I had talked to him, Mr. Stewart, prior to that, briefly
13 though. I went to see him at the jail, the Chesterfield
14 County Detention Center, previously. I want to say that
15 week. When I say previously, I want to say about Thursday to
16 Friday.

17 And we had a long meeting and then, of course, I think
18 this matter might've been -- I want to say a Monday, but I
19 might be wrong about that. That -- in those days before when
20 I met him at the jail, that's when I was convinced that the
21 only chance we had was the case -- the videotape not coming
22 in.

23 Now, I explained to him that the -- our best-case
24 scenario -- and I said this in the plea and that's the
25 language he's quoting from is the same language I'm about to

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1 use. I told him and I told the judge on the plea that it was
2 my opinion that our best-case scenario would be that he would
3 be found guilty of voluntary manslaughter and that that's
4 assuming if the tape came into evidence. I did not see any
5 way in my -- you know, we would have that.

6 He was given a self-defense. There was a self-defense
7 charge given in the first trial. My strategy was not to
8 emphasize that. It was to actually emphasize to get us off
9 murder, to go into the heat of passion and spontaneity of it,
10 the lack of malice aforethought.

11 I told him, however, that I did talk to -- I talked to
12 Mr. Redmond, Kernard Redmond -- he's a deputy solicitor with
13 the Fourth Judicial Circuit -- previously in Darlington that
14 week, the week before this occurred in June, and really about
15 some other matters and I -- he said something about the plea.
16 I had never had a plea offer up to that point. So that's one
17 reason I didn't talk to him a long time about it because I
18 didn't get it until the previous week myself.

19 Mr. Redmond said, well, that he would -- he would agree
20 to it being -- if Mr. Stewart would agree to the minimum on
21 murder, which would be 30 years, that he would be agreeable
22 to that. Well, I knew the maximum, even though the sentences
23 day for day versus 85 percent are different, but the maximum
24 for voluntary manslaughter in this state is 2 to 30.

25 In other words, I knew 30 and I thought, well, if he was

JAMES MATTHEW RIVERS - DIRECT BY MS. ALFORD

1 found guilty of voluntary manslaughter, that doesn't
2 necessarily means he would get the maximum, but under the
3 facts of the case, the way this lady was killed, I thought
4 our chances of getting the full 30 were pretty high.

5 And so I was faced with a situation, as I said when we
6 pled, that I was -- he was facing up to 30 on voluntary
7 manslaughter. In my opinion, he would have gotten 30, and
8 versus 30 being the minimum on murder.

9 So it was -- it's a -- it was an issue. And so when we
10 had an issue where we -- when the State acknowledged that
11 they would be agreeable to 30 and that I asked about the
12 *North Carolina v. Alford* because I did not think that my
13 client ought to plead guilty straight up, so to speak, to
14 murder because I did not feel as an attorney that that was
15 the case, they were agreeable with that.

16 Not that I needed their agreement per se, but there are
17 some judges and some prosecutors who are reluctant in this
18 state -- whether that's right or wrong, but that's the truth
19 -- to take what we call an *Alford* plea. Once I heard that, I
20 went and met with Mr. Stewart a day or so after that at
21 length for a long time at the Chesterfield Detention Center
22 explaining just that, that we were in a dilemma because the
23 maximum on voluntary was 30. That was also the minimum.
24 Whatever I did, I had to get him away from that life
25 sentence.

JAMES MATTHEW RIVERS - DIRECT BY MS. ALFORD

1 Now, that life sentence had been overturned, but he
2 could have very well in my -- my opinion was more than 50-50
3 chance that he would be found guilty again of murder, and I
4 just told him that, Mr. -- or I called him Thomas. Thomas, I
5 didn't want you to spend the rest of your life in jail, and
6 he -- he acknowledged that.

7 I also was privy to the notes. In our office, we use an
8 electronic database. My predecessor, Mr. Stevens, started
9 it. We use a program called Defender Data. And in Defender
10 Data, I also had the notes of the prior attorneys involved in
11 the case and the notes in the other case. And in those
12 notes, it was -- it was repeated time and time again that
13 there was plea negotiations between Mr. Stewart or at least
14 his lawyers and the State and it ranged from anywhere from 25
15 years to 40 that was offered.

16 So I knew that he previously was -- was accepting to
17 that. So, you know, I didn't shock his conscience, so to
18 speak, by approaching with that, but the reason I did go to
19 him more late in the game, so to speak, is that's when I was
20 told myself. The State brought that to my attention. That
21 was the first time.

22 Q: Let me ask you --

23 A: And I went immediately to him physically and told him
24 face-to-face.

25 Q: Let me ask you this. Did you ever have a conversation

JAMES MATTHEW RIVERS - DIRECT BY MS. ALFORD

1 with him and explain to him that he was pleading to murder
2 and not voluntary manslaughter?

3 A: Yes, but it was --

4 Q: Did you ever discuss that?

5 A: I'm sorry, ma'am, but yes, we did. And of course, I had
6 explained it versus an *Alford* plea in the frame of mind of
7 the evidence and how the *Alford* plea versus a normal guilty
8 plea. But that it would be accepted as a guilty plea, but
9 that he would not be saying that he agreed that he murdered
10 this person.

11 Q: But you did make certain --

12 A: Yes, ma'am.

13 Q: -- that he was clear that the charge was murder and not
14 the voluntary --

15 A: Absolutely.

16 Q: -- manslaughter?

17 A: Absolutely.

18 MS. ALFORD: No further questions, Your Honor.

19 MR. ISENBERG: Your Honor, may it please the Court?

20 THE COURT: Certainly.

21 CROSS-EXAMINATION

22 BY MR. ISENBERG:

23 Q: Good morning, Mr. Rivers.

24 A: Good morning, sir.

25 Q: How are you doing today?

JAMES MATTHEW RIVERS - CROSS BY MR. ISENBERG

1 A: I'm doing fine, sir.

2 Q: Good.

3 A: I hope you are.

4 Q: Yeah. It's a bit of a drive from Columbia, especially
5 when there is a wreck on 20.

6 A: I understand.

7 Q: I'll try -- I'll try to make this short and sweet. Your
8 -- your former client alleged that you failed to investigate
9 his case based on not hiring an expert, but you indicate that
10 you did hire an expert; correct?

11 A: Yes, sir.

12 Q: And that expert did give you an opinion on the
13 videotape; correct?

14 A: He did.

15 Q: And that expert's opinion was not favorable to your
16 client; correct?

17 A: It was not.

18 Q: So you opined that that expert would not be favorable to
19 present at trial; correct?

20 A: Yes, sir.

21 Q: And you made sure your client was aware of the expert's
22 opinion; correct?

23 A: Yes, sir.

24 Q: Okay. And you told your client that you were hiring the
25 expert and then you gave him the expert's opinion afterwards;

JAMES MATTHEW RIVERS - CROSS BY MR. ISENBERG

1 correct?

2 A: Yes, sir.

3 Q: Okay. And you did go through that suppression hearing
4 based upon the videotape; correct?

5 A: Yes, sir.

6 Q: And you lost that suppression hearing; correct?

7 A: We did.

8 Q: And then you made sure to preserve an objection on the
9 record to the suppression hearing; correct?

10 A: I did.

11 Q: Okay. And at that point in your mind, were you -- were
12 you covered for appeal based upon that issue?

13 A: I would think so. Yes, sir.

14 Q: Okay. So based upon your experience, that objection
15 covered you on appeal?

16 A: Yes, sir.

17 Q: Okay. So is there anything else you think you need to
18 add in terms of the expert witness?

19 A: No, sir.

20 Q: Okay. And your client also alleged you gave him
21 erroneous advice to plead guilty; correct?

22 A: Yes. I think that's what he said.

23 Q: Okay. And he said that you told him that he was
24 pleading guilty to manslaughter; right?

25 A: Yes, sir.

JAMES MATTHEW RIVERS - CROSS BY MR. ISENBERG

1 Q: But you, in fact, said that y'all had a discussion and,
2 in that discussion, you told him he was pleading guilty to
3 murder; correct?

4 A: Absolutely.

5 Q: Okay.

6 A: I think, again, there might have been confusion because
7 my feeling at that time and continues to be and still is is
8 that I felt personally, again, that it was voluntary
9 manslaughter, but my opinion and what is the ruling is two
10 different things.

11 Q: Right. And you entered into a negotiated sentence;
12 correct?

13 A: Yes, sir.

14 Q: And for a negotiated sentence to be sufficient, there
15 needs to be a benefit to the bargain; correct?

16 A: I would think so. Yes, sir.

17 Q: And the benefit of the bargain in your opinion was 30
18 years, which was a nice time considering you thought this
19 case was in the middle of manslaughter and murder; correct?

20 A: On a best-case scenario, I thought it was middle of
21 manslaughter and our exposure was life potentially.

22 Q: Right. And you thought, okay, 30 years is the maximum
23 for manslaughter and the minimum for murder?

24 A: Right.

25 Q: So this is an appropriate time to negotiate a sentence

JAMES MATTHEW RIVERS - CROSS BY MR. ISENBERG

1 for; correct?

2 A: Yes, sir. And I also had the State dismiss the

3 consecutive -- the charge that had been consecutive

4 previously on the weapons charge.

5 Q: Right.

6 A: That was part of the negotiations. They dismissed that

7 indictment.

8 Q: Right. And you told your client what the benefit of the

9 bargain was; correct?

10 A: Yes, sir.

11 Q: And you told the Court what the benefit of the bargain

12 was; correct?

13 A: Yes, sir.

14 Q: Based upon your experience, did you feel like you needed

15 to say anything further to your client about the benefit of

16 his plea?

17 A: No, sir.

18 Q: Okay. And -- where was I? Oh, one more -- I'll touch

19 on one more thing. You testified on direct that your goal in

20 this case when you decided to -- took this case on was to

21 avoid life in prison because that's what he got at trial;

22 correct?

23 A: That was certainly surely the maximum exposure and the

24 case had been tried again -- before and the case was

25 overturned, but it was turned on a *Batson* issue.

JAMES MATTHEW RIVERS - CROSS BY MR. ISENBERG

1 Q: Right.

2 A: They tried the full case after the *Batson* motion.

3 Q: Right. And in your opinion, the overturning at the
4 trial from the trial court was a procedural issue; correct?

5 A: Yes, sir, it was.

6 Q: Not a substantive issue; correct?

7 A: Correct.

8 Q: And you -- you testified on direct that he acknowledged
9 that his goal was to avoid life; correct?

10 A: Yes, sir. I wouldn't say necessarily that was his goal.
11 It was hard to say what Thomas's goal was, to be quite honest
12 with you, during my representation. And I'm not trying to be
13 --

14 Q: That's --

15 A: -- facetious or funny, but I cannot tell you exactly
16 what Thomas's goal was per se. I wouldn't want to put words
17 in his mouth like that.

18 Q: But y'all did discuss that it was important to avoid a
19 life sentence again; correct?

20 A: It was a fair amount to me.

21 Q: Right. And so when you walked out of your final
22 discussions with your client about the plea, you were
23 confident he understood that it was a murder, negotiated
24 sentence --

25 A: Yes, sir.

JAMES MATTHEW RIVERS - CROSS BY MR. ISENBERG

1 Q: -- for 30 years; correct?

2 A: Yes, sir.

3 Q: And you still feel today that you don't -- that you
4 didn't need to explain any further what it meant; correct?

5 A: No, sir.

6 Q: Okay.

7 MR. ISENBERG: No further questions for this witness,
8 Your Honor.

9 THE COURT: Anything further?

10 MS. ALFORD: Nothing further, Your Honor.

11 MR. ISENBERG: Your Honor, the State --

12 THE COURT: All right.

13 MR. ISENBERG: The State would request just a brief
14 closing argument.

15 THE COURT: Certainly.

16 MR. ISENBERG: Whenever you're ready.

17 THE COURT: Any more witnesses for the applicant?

18 MS. ALFORD: No more witnesses, Your Honor.

19 THE COURT: Anything else from the State?

20 MR. ISENBERG: Sorry. I jumped the gun, Your Honor.

21 The State does not have any witnesses. Now we would request
22 brief closing.

23 THE COURT: Certainly. I'll be glad to hear from both
24 sides on this.

25 MR. ISENBERG: Your Honor, based upon this hearing, I

1 believe the applicant has alleged three things: failure to
2 investigate based on an expert witness, an involuntary plea
3 based upon erroneous advice on the components of the plea,
4 and involuntary plea based upon entering into the plea with
5 erroneous advice that he be preserved for appeal.

6 On the failure to investigate, counsel credibly
7 testified that he hired an expert. He told his client. The
8 expert gave him an opinion that was not favorable, and he
9 told his client the expert's opinion and that he did not
10 present the expert for trial because he did not believe it
11 would be favorable.

12 There is absolutely no evidence of deficiency in that --
13 in that regard. So we would ask that that case or that
14 allegation be dismissed with prejudice.

15 For the involuntary plea based upon erroneous advice as
16 to the components, counsel credibly testified that he made
17 his client aware that this was a murder plea, there would be
18 a negotiated sentence for 30 years, and he also credibly
19 testified that they were -- his client was aware of the
20 benefit of the bargain was the 30 years.

21 He even indicated they had discussions that their goal
22 was to avoid life and so they felt like 30 years was a good
23 in-between because this case was sort of in that middle
24 ground of manslaughter and murder. So we believe there is
25 absolutely no evidence of deficiency in this regard.

1 For the involuntary plea based upon a failure to
2 preserve for appeal, there is evidence in the record. The
3 record reflects and speaks for itself. He objected to the
4 suppression hearing. Sorry. He objected to the ruling in
5 the suppression hearing and he testified that at that point
6 he fully believed he preserved his client's case for appeal
7 based upon the sole issue of the video, entering the video
8 into evidence. And for that, the State would say that there
9 is absolutely no evidence of deficiency in that regard.

10 And for that, we would ask that all of these allegations
11 be dismissed with prejudice, and I'll turn it over to
12 opposing counsel to make an opposing argument.

13 THE COURT: Ms. Alford?

14 MS. ALFORD: May it please the Court, Your Honor.

15 In this case, Mr. Stewart testified that he felt that
16 counsel failed to sufficiently investigate his case by not
17 hiring an expert. Although counsel did testify that he hired
18 an expert, counsel also testified that he did not share that
19 information with Mr. Stewart because he felt like it would
20 prejudice -- it was -- the evidence was against him. He did
21 say that he told Mr. Stewart that he had hired an expert, but
22 he also was not able to provide any proof to us today that
23 that expert was, indeed, hired.

24 And as far as Mr. Stewart's allegation that counsel
25 provided erroneous advice about sentencing, Mr. Stewart

1 testified that when he spoke with his attorney, the
2 discussion was always about voluntary manslaughter. Defense
3 counsel himself even stated that he felt like it was a -- it
4 was a casebook case of voluntary manslaughter and that the
5 biggest thing he was trying to do was make sure that they
6 could possibly get the 30 years -- excuse me -- the life
7 sentence for murder off the table.

8 Throughout the whole process, Mr. Stewart testified that
9 it was his -- he was under the impression and it was his
10 assumption based on conversations he had with his counsel and
11 what was presented in court during that hearing and also he
12 pointed out from the record that that's what he believed that
13 he was pleading to.

14 So we feel like that with the testimony that was
15 presented today, there is sufficient testimony and evidence
16 to show that counsel did fail to investigate and relay the
17 information to Mr. Stewart, as well as providing him
18 erroneous advice about sentencing.

19 THE COURT: Thank you.

20 Anything in reply?

21 MR. ISENBERG: Your Honor, just in rebuttal, counsel did
22 make an argument about not presenting any evidence that he
23 had an expert witness. The applicant has the burden to
24 provide evidence that there was, in fact, a deficiency. So
25 he has the burden to provide evidence that there was a

1 deficiency on counsel's part to present an expert witness.

2 He did not provide any hard evidence.

3 So we believe based upon the standard that opposing
4 counsel is presenting that he has not satisfied his burden to
5 prove that and, with that, the State would rest.

6 THE COURT: All right. Thank you, sir.

7 RULING

8 THE COURT: All right. I'm prepared to rule and I find,
9 among other things, that the testimony of applicant's
10 attorney was believable and, in reaching that conclusion
11 among other things, not just the appearance on the witness
12 stand but contained in the record, certain statements. On
13 page 91, the solicitor advises the Court that they have a
14 signed plea sheet that had been negotiated depending on the
15 outcome of this. I think he was talking about the
16 suppression hearing.

17 And it's a plea under *Alford* to murder with a negotiated
18 30 years. The sentence sheet also refers to the plea being a
19 plea to murder under *North Carolina v. Alford*.

20 In addition, the -- on page 94, applicant's attorney
21 explained to the Court why they wished to accept the deal
22 offered by the State. On page 95 and 96, again, there is
23 reference to the plea being a plea to the charge of murder.
24 That statement was made by Judge Burch, going on to indicate
25 that he could receive life. And as referenced earlier on

1 page 107, the solicitor informs the judge that pursuant to
2 the plea, the defendant or applicant in this case would have
3 to serve every day of that, not 85 percent.

4 For those reasons and for reasons enumerated by the
5 State's attorney, the Court agrees with the argument and
6 position of the State and, therefore, finds that the
7 applicant has failed to meet the applicant's burden of proof
8 and the application of post-conviction relief is, therefore,
9 denied.

10 And, Mr. Isenberg, could you get us an order pursuant to
11 those instructions within 20 days?

12 MR. ISENBERG: Yes, Your Honor.

13 THE COURT: All right. Thank you, sir.

14 (WHEREUPON, the proceedings ended.)

15

16 --- END REQUESTED TRANSCRIPT ---

17

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State of South Carolina)

) Certificate

County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 46, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Chesterfield County, South Carolina, on the 21st day of August, 2019, as taken down by Official Court Reporter Hattie O. Gordon and transcribed by me to the best of my ability.

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

S/Krystal J. Smith

Court Reporter

Florence, South Carolina

March 18, 2020

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD) FOR THE FOURTH JUDICIAL CIRCUIT

Thomas Jeffrey Stewart,) Case No.: 2017-CP-13-00776
S.C.D.C. No. 353430,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

2019 SEP 30 PM 12:06
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed by Thomas Jeffrey Stewart ("Applicant") on December 7, 2017. Respondent made its return on July 6, 2018. The Court convened an evidentiary hearing into the matter on August 21, 2019, at the Chesterfield County Courthouse. Applicant was present at the hearing and represented by Sherril Alford, Esquire. Jacob A. Isenberg, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, James Rivers, Esquire ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Chesterfield County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. After a thorough review of the evidence and testimony, this Court finds Applicant's application should be dismissed with prejudice.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Chesterfield County Clerk of Court. Applicant was indicted at the March

2010 term of the Chesterfield County Grand Jury for murder (2010-GS-13-00192), and possession of a weapon during the commission of a violent crime (2010-GS-13-00263).

Casey Secor, Esq. and S. Boyd Young, Esq. represented Applicant at trial. Kernard E. Redmond and Adam Foard, of the Fourth Circuit Solicitor's Office, prosecuted the case. On December 3, 2012, Applicant proceeded to trial before the Honorable J. Michael Baxley and a jury. The jury found Applicant guilty as indicted on December 6, 2012. Judge Baxley sentenced Applicant to imprisonment for a term of life.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Jarrett Coco, Esq., who raised the following three issues:

1. The trial court erred in finding no discrimination in the State's use of peremptory challenges because (a) the trial court failed to comply with the third step Batson analysis which requires a court to meaningfully evaluate the persuasiveness of the prosecutor's group neutral explanations and make a deliberate decision whether purposeful discrimination occurred; and (b) Appellant proved the State's proffered reasons were pretextual because they were not applied in a neutral manner.
2. Where the State announced to the jury that malice can be implied from use of a deadly weapon and where the jury was asked to consider a lesser included offense of murder and self-defense, the trial court erred in overruling Appellant's objection and failing to issue a correction to the jury.
3. The trial court erred in overruling Appellant's objection to unfairly prejudicial character evidence offered by the State.

The parties proceeded to oral arguments on April 14, 2015. Applicant was represented by Mr. Coco, Esq., and Donald J. Zelenka, of the South Carolina Attorney General's Office, represented the State. By opinion decided July 15, 2015, the South Carolina Court of Appeals reversed Applicant's convictions and remanded the case, finding the State committed a Batson violation and that the trial court erred in its review. State v. Stewart, 413 S.C. 308, 775 S.E.2d 416 (Ct.

Wanda C. Ellis
CLERK OF COURT
CHESTERFIELD COUNTY
28 SEP 30 PM 12:07

App. 2015). Respondent petitioned the Supreme Court of South Carolina for a writ of certiorari, which was denied by order dated May 19, 2016. The Remittitur was issued on May 24, 2016.

After remand, Applicant was represented by James Matthew Rivers, Esq. On June 23, 2017, Applicant pled to murder pursuant to North Carolina v. Alford, 400 U.S. 25, (1970); the weapon charge was dismissed *nolle prosequi*. The Honorable Paul M. Burch sentenced Applicant to imprisonment for a term of 30 years.

Applicant filed a timely notice of appeal. By Order filed October 17, 2017, the South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. State v. Stewart, S.C. Ct. App. Order filed October 17, 2017. The remittitur issued November 2, 2017.

II. CURRENT ALLEGATIONS

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failure to investigate facts of the case
 - b. Provided erroneous advice about sentencing and never filed for reconsideration

Applicant requests relief as follows:

- Sentence vacated, conviction reversed, and remand for new trial

At the evidentiary hearing, Applicant proceeded forward on the above-mentioned allegations.

Applicant also proceeded forward on a claim for ineffective assistance of counsel based upon a failure to preserve an issue for appeal.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony

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 Wanda C. Mills
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, the Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690).

The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his

statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

1. Failure to Investigate Facts of Case

Applicant contends Counsel failed have an expert inspect the confession video in preparation for trial. In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court's principle concern is whether the investigation "was itself reasonable." Taylor v. State, 404 S.C. 350, 364, 745 S.E.2d 97, 104 (2013). However, Counsel is not deficient in conducting a reasonable investigation as long as they interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011).

Here, Applicant testified Counsel agreed to have an expert review the confession tapes. Specifically, Applicant testified he wanted the tapes to be checked for doctoring. Finally, Applicant testified Counsel failed to have an expert review these tapes before the suppression hearing.

On the other hand, Counsel credibly testified he paid an expert to review the confession tapes. Thereafter, Counsel credibly testified the expert concluded there was nothing wrong with these tapes. Finally, Counsel credibly testified he relayed this information to Applicant before the suppression hearing.

SEP 30 PM 07
Wanda C. Miles
CLERK OF COURT
JESSEFIELD COURT, S.C.

Accordingly, this Court finds Counsel provided credible testimony on the issue. Therefore, this Court finds Counsel reasonably investigated the tapes to ensure there was no improper tampering. As a result, this Court finds Applicant has failed to overcome the burden to prove Counsel was deficient in investigating the confession tapes.

Applicant contends an expert witness would conclude his confession tapes were improperly doctored. The prejudice prong is dependent upon whether counsel's deficiencies "affected the outcome of the plea process." Frierson v. State, 417 S.C. 287, 789 S.E.2d 762 (Ct. App. 2016), *aff'd as modified*, 423 S.C. 257, 815 S.E.2d 433 (2018). To establish it through witness corroboration an applicant "must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. SCRE 801. Mere "speculation" about the details of what a witness would testify about is insufficient to establish prejudice. Dalton v. State, 376 S.C. 130 at 143, 654 S.E.2d 870 at 877.

Here, Applicant testified law enforcement cut portions of the video out of his statements. Thereafter, Applicant testified an expert in video tapes would figure this out after reviewing them. On the other hand, Counsel credibly testified the individual he paid to review these tapes worked in videotaping news for several years. Counsel further credibly testified this expert affirmatively concluded nothing was wrong with the tape. Therefore, Counsel credibly testified he decided not to use this witness in preparing for trial because the testimony elicited would be unfavorable.

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Wanda C. Bailey
CLERK OF COURT
SOUTH CAROLINA



Accordingly, Applicant has not presented a witness to corroborate his claims. Also, Counsel provided a credible explanation on what an expert thought of the video at issue. Therefore, this Court finds Applicant is insufficiently speculating as to what an expert witness would testify about the confession video. As a result, this Court finds Applicant has failed to overcome the burden to prove he was prejudiced by an alleged failure to investigate the confession video.

2. Failure to Advise

Applicant contends Counsel failed to advise him he was pleading to murder instead of manslaughter.

Here, Applicant testified he believed he was pleading to manslaughter based upon conversations with Counsel before the plea hearing. Applicant testified Counsel agreed this was not a murder case so they agreed only a manslaughter plea would be accepted. Finally, Applicant testified he did not realize he pled to murder until after incarceration.

On the other hand, Counsel credibly testified he believed this case presented a genuine jury question on whether manslaughter or murder occurred. Further, Counsel credibly testified he communicated his belief on the factual issue to Applicant. Counsel credibly testified he talked with Applicant about the importance of avoiding life without parole. Thereafter, Counsel negotiated a sentence of thirty years for murder. Counsel credibly testified he believed this was a favorable plea based upon thirty years being the minimum for murder as well as maximum for manslaughter. Counsel credibly testified he communicated this deal to Applicant, who did not want to plead guilty to murder. Counsel credibly testified he understood Applicant did not want to plead guilty to murder. Therefore, Counsel credibly testified he communicated to Applicant the existence of Alford guilty pleas. Counsel credibly testified Applicant understood all of the details

Wanda C. Miles
CLERK OF COURT
DISTRICT COURT, S.C.
SEP 30 PM 12:07

behind the negotiated sentence. Finally, Counsel credibly testified Applicant affirmatively agreed to the negotiated sentence.

Accordingly, this Court finds Counsel provided credible testimony on this issue. Specifically, it is hard to believe Applicant would have entered an Alford plea if he believed it was for voluntary manslaughter. Further, Counsel provided the same explanation on this matter at the plea hearing. (Tr. 94-5). Therefore, this Court finds Applicant has failed to overcome the burden to prove Counsel did not advise him the negotiated sentence was based upon murder.

Applicant contends he was prejudice by the bad advice based upon not being eligible for early release under community supervision.

Here, Counsel credibly testified he communicated that pleading guilty to murder included serving day for day. Counsel then credibly testified he believed Applicant understood this would be the consequence of pleading guilty to murder. Counsel credibly testified Applicant acknowledged it was important to avoid the possibility of receiving a sentence of life without parole again. Counsel then credibly testified they discussed the fact that his previous LWOP sentence was only reversed due to a procedural issue at trial. Therefore, Counsel credibly testified they agreed upon a goal of avoiding life in prison this time around.

Accordingly, this Court finds Counsel provided credible testimony on the issue. Applicant had a sentence of life without parole overturned on a procedural issue. Thereafter, he communicated to his lawyer the importance of avoiding that sentence again. He would have been exposed to life without parole had he gone to trial. Therefore, this Court finds Applicant pled guilty with the motivation of receiving a sentence more favorable than what he would have been exposed to at trial.

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 Brenda C. Hiles
 CLERK OF COURT
 WEST GASTON COUNTY, S.C.

Alternatively, Counsel contends Applicant pled guilty because he lost the suppression hearing. Here, Counsel credibly testified Applicant signed a plea sheet to be enforced in the event he lost the suppression hearing. The record reflects Applicant signed a plea sheet agreeing to enter a negotiated sentence, under Alford, for murder. At the plea hearing, Counsel stated this agreement was contingent upon the outcome of the suppression hearing. (Tr. 92). Thereafter, Counsel stated the benefit of this negotiated sentence was avoiding the high likelihood of being found guilty of murder at trial based upon the admissible confession tapes. (Tr. 94). Therefore, this Court finds Applicant pled guilty based upon losing the suppression hearing.

Alternatively, Respondent contends the plea court remedied any alleged erroneous advice given by Counsel. An accurate plea colloquy can effectively cure erroneous advice or misunderstandings between counsel and their client. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997) (stating that plea counsel's deficient performance can be cured by the plea court's colloquy). At the plea hearing, the court notified Applicant he would serve every day of the thirty year sentence. (Tr. 107). Accordingly, this Court finds the plea colloquy correct any alleged erroneous advice about the eligibility of early release for a charge of murder.

3. Failure to Object

Applicant contends Counsel failed to preserve the confession tapes for suppression review on appeal.

Here, Counsel credibly testified he went through with a hearing to suppress the confession tapes. Furthermore, Counsel credibly testified he lost the suppression hearing. Finally, Counsel credibly testified he objected to the court's decision to not suppress these confession tapes. This is consistent with the record. Specifically, the record reflects the plea court acknowledged Counsel preserved this issue for review. (Tr. 91). Accordingly, this Court finds Counsel objected to the

2019 SEP 30 PM 12:07
Wanda C. Hines
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

court's decision to protect Applicant on appeal. Therefore, Applicant has failed to overcome the burden to prove Counsel was deficient based upon a failure to object.

Applicant contends he was prejudiced by Counsel's error because the suppression issue was not preserved for appeal. Here, the record reflects Counsel filed a notice of appeal based upon the plea court's ruling that videotaped statements were admissible. The record also reflects Counsel notified the Court of Appeals he specifically argued the evidence was inadmissible based upon tampering.¹ Thereafter, the record reflects the Court of Appeals issued an order of dismissal based upon the failure to provide a sufficient explanation in accordance with 203(d)(1)(B)(iv). Accordingly, Applicant has failed to explain how this order specifically pinpoints a failure to preserve in dismissal. Therefore, this Court finds Applicant has not provided sufficient evidence to conclude this dismissal resulted from a failure to preserve. Therefore, this Court finds he has failed to prove prejudice on an alleged failure to object.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek

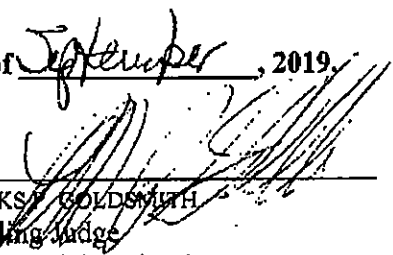
¹ Counsel also cited Jackson v. Denno, 378 U.S. 368 (1964).

appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

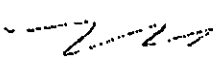
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 19 day of September, 2019.



BROOKS GOLDSMITH
Presiding Judge
Fourth Judicial Circuit


_____, South Carolina

2019 SEP 30 PM 12:06
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

WITNESSES

Asst. Chief Larry Brown

Pageland Police Department

Law Enforcement Case #: 10-01-006



390

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
CHE00371

ARRESTED ON: 2010-01-01

ACTION OF GRAND JURY

Grand Jury Foreperson

FD. Fair (TD)

Date

3-23-2010

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2010-GS-13-0263

The State of South Carolina

County of Chesterfield

COURT OF GENERAL SESSIONS

Term:
March 2010

THE STATE

vs.

Thomas Jeffery Stewart

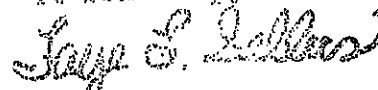
INDICTMENT FOR

Weapons / Poss. weapon during violent crime, if
not also sentenced to life without parole or
death

§16-23-0490

CDR Code: 0549

A True Copy, Attest



CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF CHESTERFIELD)

Weapons / Poss. weapon during violent crime, if not
also sentenced to life without parole or death

§16-23-0490

At a Court of General Sessions, convened on March 23, 2010, the Grand Jurors of
Chesterfield County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Thomas Jeffery Stewart did in Chesterfield County, on or about January 1, 2010, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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

A True Copy, Attest
Larry S. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Asst. Chief Larry Brown

Pageland Police Department

Law Enforcement Case #: 10-01-006



390

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
1271756

ARRESTED ON: 2010-01-01

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

F.D. Fair (FD)
3-23-2010

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2010-GS-13-0192

The State of South Carolina

County of Chesterfield

COURT OF GENERAL SESSIONS

Term:
March 2010

THE STATE

vs.

Thomas Jeffery Stewart

INDICTMENT FOR

Murder / Murder

§16-03-0010; 16-03-0020

CDR Code: 0116

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

INDICTMENT FOR

Murder / Murder

§16-03-0010; 16-03-0020

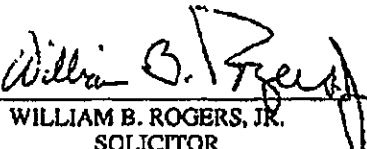
At a Court of General Sessions, convened on March 23, 2010, the Grand Jurors of Chesterfield County present upon their oath:

MURDER

. CDR: 0116 16-03-0010,0020

That Thomas Jeffery Stewart did in Chesterfield County, on or about January 1, 2010, willfully, feloniously, and intentionally kill the victim, Bellanie Clyburn, with malice aforethought, either express or implied, by means of stabbing, and the victim did die as a proximate result thereof on or about 1/10/2010 in Chesterfield County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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


WILLIAM B. ROGERS, JR.
SOLICITOR